

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

GULET MOHAMED,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:11-cv-50 (AJT/TRJ)
	)	
ERIC H. HOLDER, JR., <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

On January 30, 2015, the Court held a public hearing on the pending cross-motions for summary judgment with respect to the procedural due process claim pertaining to a United States citizen’s placement on the No Fly List. [Doc. Nos. 158 & 160]. In connection with those motions, the defendants have renewed their claims that “dismissal of the [procedural due process] claim is ... appropriate because information properly protected by the state secrets privilege would be required or at risk of disclosure in litigating Plaintiff’s claims, including for presenting valid defenses.” *See* Doc. No. 159 at 37. The defendants have also offered to “further address the Court’s questions or concerns in an appropriate forum.” Doc. No. 171 at 2. Upon review of this matter, the significance of the issues involved and the need to obtain additional information in order to properly assess and adjudicate the pending motions, it is hereby:

ORDERED that the Court will hold an *ex parte, in camera*, sealed hearing on Tuesday, February 24, 2015, at 10:00 AM in order to provide the defendants with the opportunity to provide and the Court to consider additional information concerning the defendants’ claims concerning the existence of state secrets and their relevance to the pending procedural due process claims, including additional information concerning:

(1) state secrets or national security information the defendants may wish to present to the Court not reflected in the documents previously filed *ex parte*, in camera and under seal in response to the Court's Orders dated September 15, 2014 [Doc. No 139] (amended by Order dated November 7, 2014 [Doc. No. 145]), and January 8, 2015 [Doc. No. 165];

(2) how the under seal documents as to which the state secrets privilege is claimed precludes adjudication of the procedural due process claims without their use and disclosure;

(3) how the defendants apply the criteria for placement on the No Fly List consistent with the restrictions listed in its publically disclosed criteria at Doc. No. 158-1 (Grigg Declaration) at ¶¶ 16-18;

(4) any criteria other than those publicly disclosed for the purposes of placing United States citizens on the No Fly List;

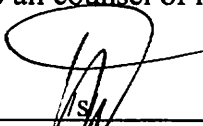
(5) how defendants distinguish between United States citizens that are placed on the No Fly List and those placed on the Selectee List and the need to have a level of security beyond those protections afforded through the Selectee List;

(6) whether, and if so how, national security considerations make it impractical or otherwise undesirable to submit for *ex parte*, *in camera* judicial review and approval the placement of United States citizens on the No Fly List, either before a citizen's placement on the No Fly List or within a specific time period after placement on the No Fly List; and

(7) whether, and if so how, national security considerations make it impractical or otherwise undesirable for United States citizens who challenge their inability to board a commercial aircraft to receive information concerning their placement on the No Fly List under procedures comparable to those employed in criminal matters under the Classified Information Procedures Act ("CIPA"); and

(8) any other national security information that the defendants believe is necessary for the Court to consider in connection with its consideration of the procedural due process claims and any remedies that may be ordered with respect to any constitutional violations that the Court may ultimately find.

The Clerk is directed to forward copies of this Order to all counsel of record.

  
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Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
February 2, 2015