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7

8 **UNITED STATES DISTRICT COURT**

9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10

11 RAHINAH IBRAHIM, an individual, 12 Plaintiff, 13 vs. 14 DEPARTMENT OF HOMELAND SECURITY; et al., 15 Defendants. 16 17 ___________________________________/	No. C 06-0545 WHA MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS FILED BY "THE UNITED AIR LINES DEFENDANTS" [FRCP 12(b)(1); 12(b)(6)] Date: July 20, 2006 Time: 8:00 a.m. Courtroom: 9 – 19th Floor Honorable William H. Alsup United States District Judge

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1 Defendants UNITED AIR LINES, INC. (erroneously sued as "United Airlines"), UAL
2 CORPORATION and DAVID NEVINS (herein collectively referred to as "the United defendants")
3 respectfully submit the following memorandum in reply to plaintiff's opposition to their motion to
4 dismiss plaintiff's complaint ("Opposition").

5 **I.**

6 **INTRODUCTION**

7 In their moving papers, the United defendants made the point that if the plaintiff has any
8 viable claims at all as a result of her experiences at the San Francisco International Airport on
9 January 2, 2005, those claims lie against individuals and/or entities other than the United defendants.
10 The point that plaintiff has no meritorious claim against the United defendants is established by
11 plaintiff's own complaint and now underscored by her Opposition.

12 As plaintiff says in her Opposition, "the Complaint alleges that David Nevins, an employee
13 of United Air Lines, asked to see Ibrahim's ticket, called the San Francisco police and requested that
14 they send officers to the airport. (Complaint, ¶¶ 24-25, 41.)" (Opposition at 35). Those, in fact, are
15 the *only* factual assertions plaintiff proffers to describe the acts of the United defendants. Yet even
16 if those facts are assumed for purposes of this motion to be true, as a foundation for actionable
17 claims against the United defendants, they are simply inadequate.[1]

18 All that plaintiff can muster in opposition to United's motion are vague and conclusory
19 assertions that the United defendants somehow participated as part of a cabal that plotted
20 indiscriminately to apply the No-Fly list, thereby wrongly ensnaring the plaintiff. However, such
21 conjuring is also insufficient to breath life into claims that are legally lifeless. After all, "conclusory
22 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for
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[1]Nor can plaintiff hide behind the assertion that "[n]ow, the . . . defendants . . . move to dismiss Ibrahim's claims, based on factual declarations, which Ibrahim has had no opportunity to evaluate through discovery, and based on Security Directives, filed with this Court, which Ibrahim has not been allowed to see." (Opposition at 1). First, the United defendants did not file any declarations, and they do not rely on any extrinsic facts in support of their motion. Theirs is a motion which can and should be decided by reference to the complaint itself and the applicable law. Second, the United defendants did not file any information which plaintiff has not been allowed to see. To the extent the United defendants refer to the Security Directives, they rely solely upon information which is recounted in prior court decisions and otherwise available in the public record.

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failure to state a claim." *Epstein v. Washington Energy Co.,* 83 F.3d 1136, 1140 (9th Cir.1996); *Ramirez v. United Airlines, Inc.,* 416 F.Supp.2d 792, 795 (N.D. Cal. 2005) (Alsup, J.).

II.

ARGUMENT

A. This Court Lacks Subject Matter Jurisdiction

In its motion, the United defendants, like the other defendants, showed that jurisdiction over plaintiff's claims – which are "inescapably intertwined" with government orders – rests exclusively with the Court of Appeals. While resisting this position, plaintiff does not confess the fact that she, herself, filed a petition for review in the Ninth Circuit on the very day that she filed the instant case. (*Rahinah Ibrahim v. Department of Homeland Security, et al.,* United States Court of Appeals, Ninth Circuit, Docket No. 06-70574).[2] That petition arises out of precisely the same operative facts as are presented in this case.[3]

Moreover, the Ninth Circuit has now ruled on an April 4, 2006 motion to dismiss filed by the respondents in that case. According to the Ninth Circuit docket, the following action was taken:

> Order filed. This is a petition for review of a Security Directive of the Transportation Security Administration. A petition for review must be filed in 'the USCA for the Dist. of Columbia Circuit or in the ct of appeals of the US for the circuit in which [petr] resides or has its principal place of business.' Petr works & resides in Malaysia. Accordingly, we transfer this petition for review to USCA for the Dist. Of Columbia Circuit. The Clk is directed to transfer the petition for review & all other pending mtns to the USCA for the Dist. Of Columbia Circuit. Upon transfer of the petition, the Clk shall close this case. TRANSFERRED. (Procedurally terminated After Other Judicial Action; Transferred. William C. CANBY, Thomas G. NELSON, Andrew J. KLEINFELD) [06-70574] (ea)

This would seem to provide at least some persuasive proof of the fact that: (a) plaintiff agrees resolution of her claims relating to the No-Fly list is within the province of the Court of Appeals and (b) the Court of Appeals apparently agrees.

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[2]The Ninth Circuit docket reflects a filing date of January 30, 2006; according to plaintiff's pleadings, however, she filed the petition on January 27, 2006, the very same day this action was commenced in this Court.

[3]However, the petition filed in the Court of Appeals does not name the United defendants or the San Francisco County defendants.

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In this Court, plaintiff argues, *inter alia,* that 49 U.S.C. § 46110 is inapplicable to her claims for "incarceration and/or visa revocation." (Opposition at 15). Again, her submission to the Ninth Circuit contradicts this claim. There, plaintiff also complained both of her incarceration and her visa revocation.[4] In the Court of Appeals, plaintiff elaborated that her:

> inclusion on the 'No-Fly' list, and respondents' refusal to provide a mechanism to safeguard her Due Process rights, have caused and continue to cause Ibrahim particularized, redressible injury. By placing Ibrahim on the 'No-Fly' list without informing her, and without providing any due process either before or after she learned of her inclusion on the list, respondents have ***subjected Ibrahim to unnecessary and undeserved arrest, incarceration, stigma, embarrassment, harassment, and delay.*** The threat of each of these harms recurring remains unabated to this day, should Ibrahim, a scholar associated with Stanford University, attempt to board a United States airline. [¶] Indeed, as recently as March 10, 2005, a ticket agent in Malaysia informed Ibrahim that next to her name on the No-Fly list was the instruction to arrest her at once. (Emphasis added). (Circuit Oppo. at 10-11).

She explained, too, that her "harm includes her being subjected to physical arrest as a result of her apparent placement on the no-fly list." *Id.* at 6. Regarding the visa revocation, plaintiff stated, *inter alia*, that "[f]inally, in April, 2005, Ibrahim received a letter from the United States Embassy in Kuala Lumpur, dated April 14, 2005, stating that Ibrahim's Visa was 'revoked', 'under Section 21 2(a)(3)(B) of the Immigration and Nationality Act', by the Department of State on January 31, 2005.. ." *Id.* at 5. She added that "the revocation of Ibrahim's visa appears to be connected to her status with respect to the no-fly list." *Id.* at 6.

In support of her argument that she had standing and had timely filed her petition for review in the Court of Appeals, plaintiff pressed the point that each of the harms she suffered as a result of her alleged placement on the No-Fly list would be redressed by a favorable result in those proceedings. *Id.* at 12-13. She identified those allegedly causally-related harms as "unwarranted arrest, incarceration, stigma, embarrassment, harassment, and delay." *Id.*

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[4] As plaintiff explained to the Ninth Circuit, her "injury . . . is not limited to her inability to come to the United States. Such placement [on the list] is likely to cause her harm in her attempts to fly out of other airports, such as her attempt to fly out of Kuala Lumpur, in March, 2005." (Petitioner [Plaintiff's] Opposition to Respondent's Motion to Dismiss filed in the Ninth Circuit ("Circuit Oppo.") at 6).

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In short, the grievances plaintiff here seeks to air have also been presented for resolution by the Court of Appeals – initially the Ninth Circuit and now, upon transfer by the Ninth Circuit, the Court of Appeals for the District of Columbia.

Plaintiff also quarrels with the notion that 49 U.S.C. § 46110 has any application to the "No-Fly" list, notwithstanding the Ninth Circuit's decision in *Gilmore v. Gonzales,* 435 F.3d 1125 (9th Cir. 2006) and the district court's opinion in *Green v. Transportation Security Administration*, 351 F.Supp.2d 1119 (W.D. Wash. 2005). This is because the Transportation Security Administration ("TSA") was moved from the Department of Transportation into the newly created Department of Homeland Security. Although Congress failed to conform Section 46110 to reflect the change when this transition occurred, Congressional intent that Section 46110 would continue to apply to the TSA is not negated. By its terms, Section 46110 applies to orders issued in whole or in part under, *inter alia*, 49 U.S.C. § 114(h)(l), the provision under which the TSA Security Directives at issue here were promulgated.

Finally, even assuming this Court had jurisdiction to adjudicate matters relating to plaintiff's incarceration and visa revocation (notwithstanding what she argued in the Ninth Circuit), neither the incarceration nor the visa revocation implicate the United defendants. This fact goes to plaintiff's failure to state actionable claims against the United defendants, a subject addressed in greater detail in the moving papers and in the discussion below.

B. The United Defendants Do Not Challenge The Complaint For Lack of Adequate Notice Under Rule 8

The Opposition opens with argument that plaintiff's complaint meets the liberal pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.[5] Theirs is not a "dispute[] over pleading technicalities," as plaintiff says. (Opposition at 8). Rather, the United defendants submit that plaintiff's "short and plain statement of [her] claim," as set out in her complaint, establishes that vis-à-vis the United defendants she *is not* entitled to relief.

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[5]The United defendants' only complaint about the *sufficiency* and *clarity* of the complaint, as a matter of pleading, pertains to the first cause of action which seems to agglomerate a number of Constitutional claims which are stated as separate and more precisely labeled causes of action elsewhere in the complaint.

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Therefore, regardless of liberality of pleading requirements, and in spite of liberal rules of construction, plaintiff simply has not stated claims upon which relief may properly be granted against the United defendants.[6]

C. In the Final Analysis, Even If This Court Did Have Subject Matter Jurisdiction, Plaintiff Has Failed To State Actionable Claims Against The United Defendants

1. Introduction

All that plaintiff can credibly claim is that the United defendants (1) asked to see her airline ticket during the passenger check-in process; (2) placed a call to law enforcement officers; (3) may have informed law enforcement that plaintiff was on the "No-Fly" list; and (4) asked that the police come to the check-in area. Because of this, plaintiff resorts to invoking sweeping and unsupportable assertions about how she believes the United defendants worked in concert with the other defendants – with the aim of prohibiting her from flying to Malaysia.

It is true that in their appraisals, courts "must accept all material allegations in the complaint as true and construe them in the light most favorable" to the non-moving party. *NL Industries, Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986); *see also Pareto v. Federal Deposit Insurance Corp.*, 139 F.3d 696, 699 (9th Cir. 1998). Courts "do not, however, necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.), *cert. denied*, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed.2d 474 (1981). Additionally, it is improper for courts to assume that the non-moving party can prove facts that it has not alleged or that the moving party has violated laws in ways that have not been alleged. *Associated General Contractors of CA, Inc., v. CA State Council of Carpenters*, 459 U.S. 519, 526, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983).

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[6] In support of the notion that civil rights complaints should be liberally construed, plaintiff cites *Rodriguez v. California Highway Patrol,* 89 F.Supp.2d 1131, 1136-1137 (N.D. Cal. 2000). The real lesson of *Rodriguez*, however, is that courts should be more forgiving toward pleadings of *pro se* litigants. More accurately, this circuit applies a rule of reason to civil rights actions challenged for sufficiency at the pleading stage. While a plaintiff is not expected to plead her evidence or specific factual details not ascertainable in advance of discovery, even liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled. *Gibson v. United States,* 781 F.2d 1334, 1340 (9th Cir.1986), *cert. denied* 479 U.S. 1054, 107 S.Ct. 928, 93 L.Ed.2d 979.

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2. Constitutional Claims Under 42 U.S.C. § 1983

Most of plaintiff's argument about her Section 1983 claims against the United defendants is a response to an issue barely touched upon in the moving papers. In footnote 7, United raised a question about whether plaintiff could legitimately characterize the United defendants in this case as "state actors" for purposes of Section 1983. United pointed to what was itself little more than a passing reference, in the district court's order in *Gilmore v. Ashcroft,* 2004 WL 603530 at *2 (N.D.Cal.), to the effect that "there are questions about the private defendant's [airlines'] liability as a state actor." But as in *Gilmore,* while this is a legitimate question, it is also one that, in Judge Illston's words (in *Gilmore)*, "need not be addressed at this time."

The United defendants' primary concern is that plaintiff has not alleged – and cannot allege – that they committed any actionable, constitutional violations which caused plaintiff any damage. This is especially true because certain of the actions attributed to the United defendants were legally privileged and cannot support a claim. Again, the only facts with respect to United, are few and uncontroversial. Plaintiff first maintains that:

> David Nevins asked to see Ibrahim's ticket. Mr. Nevins is an employee of United, and the Customer Service Supervisor at the United ticket counter at SFO. (Opposition at 2-3, citing Complaint at ¶ 25).

But anyone who has flown knows that he or she is required to present his or her airline ticket (or analogous documentation) to the airline at the check-in counter. Typically, the ticket is shown to a customer service employee. So, when Mr. Nevins asked to see passenger Ibrahim's ticket, he was doing something that was routine. It was part of his job and it should have been expected by the plaintiff-passenger. In fact, the plaintiff does not allege that she was surprised at the request. Thus, at an airport check-in counter, by no stretch of the imagination, can the act of asking to see a passenger's airline ticket, or of looking at the ticket thus presented, be viewed as constitutionally impermissible. It is not and was not.

Plaintiff alleges, as well, that:

> "[Mr. Nevins] called the San Francisco police and requested that they send officers to the airport."

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It is unclear what plaintiff challenges as constitutionally improper about these acts attributed to Mr. Nevins. The fact is, Mr. Nevins had an absolute right to call the police; and his act of doing so was, in fact, absolutely privileged. See, e.g., *Hagberg v. California Federal Bank FSB,* 32 Cal.4th 350 (2004); *Fremont Comp. Ins. Co. v. Superior Court* 44 Cal.App.4th 867, 875 (1996); *Passman v. Torkan,* 34 Cal.App.4th 607 (1995); *Hunsucker v. Sunnyvale Hilton Inn,* 23 Cal.App.4th 1498, 1502 (1994).

In *Hagberg,* an Hispanic woman, with appropriate identification, sought to cash a check at her bank. Mistakenly, the bank thought the check was counterfeit, called the police, and the woman was patted down, handcuffed and arrested while in the bank. *Hagberg, supra,* 32 Cal.4th at 355-356. The California Supreme Court found that the absolute privilege under Civil Code § 47(b) barred the woman's complaint against the bank for race discrimination, false arrest, false imprisonment, slander, invasion of privacy, intentional infliction of emotional distress, and negligence, because the bank's statements to the police concerned suspected criminal activity. *Id.* at 357, 375, 376.

Here, in footnote 15 of her opposition, the plaintiff attempts to tease out a distinction between what the United defendants allegedly did ("called the San Francisco police and requested that they send officers") (Opposition at 35), and what was done in the reported cases cited in the moving papers ("a third party who was calling the police to report a crime"). But, there is no difference between the situations: the one here presented and the ones in the case law. If any difference there is, it is one without any meaningful distinction. The fact is, anyone who reports suspected criminal activity can be said to be, in plaintiff's words, "participating in the process of enforcing the [law]." That is not a reason to conclude the report is outside scope of the absolute privilege. If anything, it supports the conclusion that the report ought to be considered privileged. After all, the absolute privilege applicable to a communication concerning possible wrongdoing, serves the important public interest of securing open channels of communications between citizens and law enforcement personnel and other public officials charged with investigating and remedying wrongdoing. *Mulder*

1 *v. Pilot Air Freight*, 32 Cal.4th 384 (2004).[7]

2 Perhaps the best illustration of the fallacy of plaintiff's position is the fact that the Section
3 47(b) privilege has been applied in cases involving "whistleblowers," or individuals who made
4 reports to authorities precisely so the authorities would "participat[e] in the process of enforcing the
5 [law]," to use the phraseology employed here by the plaintiff. See, e.g., *Brown v. Dep't of*
6 *Corrections,* 132 Cal. App. 4th 520, 527-529 (2005).

7 So, when plaintiff characterizes the United defendants as "inherently participating in the
8 process of enforcing the No-Fly list" she does nothing at all to defeat the privilege under Civil Code
9 § 47(b). The privilege *does* apply. It is all the more apposite because, as plaintiff herself concedes,
10 the United defendants are *required* to do what they are told in terms of utilizing the No-Fly list; even
11 plaintiff does not, and cannot, suggest that an airline has any discretion in how it will utilize the
12 "No-Fly" and Selectee lists which the government supplies to the air carriers.[8]

13 The absolute privilege of Section 47(b) deals a death blow to all of plaintiff's claims against
14 the United defendants.

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18 [7]The policy underlying the privilege is to assure utmost freedom of communication between citizens and public authorities whose responsibility it is to investigate and remedy wrongdoing. *Hagberg, supra,* 32 Cal. 4th at 364. Indeed, "[t]he importance of providing to citizens free and open access to governmental agencies for the reporting of suspected illegal activity outweighs the occasional harm that might befall a defamed individual. Thus the absolute privilege is essential." *Id.* at 364-365, quoting *Williams v. Taylor,* 129 Cal.App.3d 745, 753-754 (1982).

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[8]Thus, plaintiff's assertion that "[t]he sequential and collaborative actions of United with other entities prevented Ibrahim from boarding her flight and led to her eventual arrest without any cause, thereby violating her rights under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution," is both wholly conclusory and legally unfounded. The United defendants are responsible for their acts and omissions; those acts and omissions were benign and in certain instances privileged. To the extent one can say, as plaintiff does, that "United is inherently participating in enforcing the No-Fly list," that is because United is legally and absolutely required to do so if it is to continue to hold an operating certificate as an airline in the United States. The same is true of plaintiff's assertion that "United implemented a discriminative 'No-Fly List' by calling the San Francisco police." The fact is, all that United really did was call the police.

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Indeed, according to plaintiff's allegations, on subsequent occasions, she was confronted and either subjected to enhanced searches, threatened with arrest or denied passage altogether. Since she avers that this occurred while trying to fly into or out of Malaysia, and because United Air Lines does not fly to Malaysia at all, those experiences obviously involved other airlines and not United.

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3. Civil Code § 52.1

To maintain a claim under this statute, plaintiff must first overcome the fact that the conduct of the United defendants was absolutely privileged. This she cannot do.

Moreover, the statute prohibits actual or attempted interference with Constitutional or legally safeguarded rights by threats, intimidation or coercion. Again, as to the United defendants, the best that plaintiff can do is to allege that Mr. Nevins picked up a phone and called the police. There are no allegations, and is no evidence, that the United defendants did anything at all that was threatening, intimidating or the least bit coercive. In view of the privilege and the state of the allegations and proof, there is no sustainable claim against the United defendants under this statute.

4. Civil Code § 52.3

The same privilege under Civil Code § 47(b) discussed above serves to insulate the United defendants from liability for violating Civil Code § 52.3, a statute which, in any event, by its express terms, applies to the conduct of law enforcement officers. When a private individual picks up a telephone and places a call to the police, that call does not have the talismanic power to transform the private citizen into a "law enforcement officer" who is potentially subject to liability under Civil Code § 52.3. The private individual, here a customer service supervisor working for an airline, is no more an "agent" of law enforcement, one "acting on behalf of the government" or "part of [a] scheme," than he is a "law enforcement officer." None of these labels apply to the customer service supervisor, Mr. Nevins, and none will subject him to liability as a "law enforcement officer."

And, while plaintiff says that where a private actor calls the police, that gives rise to liability as a state actor when the police arrests the individual, she fails to cite any authority of any kind for that notion. Such a thesis is radically at odds with virtually all the jurisprudence on the subject of the official proceedings privilege and Civil Code § 47(b).

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5. False Imprisonment

Based on what is actually alleged in the complaint, it is surprising to read in the Opposition that plaintiff meant for her false imprisonment claim to extend to the United defendants. Nonetheless, from the Opposition, it is apparent that plaintiff does not – and never will – have evidence with which to prove the essential elements of a false imprisonment claim against the United defendants.

As plaintiff agrees, "'[t]he elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief.'" *Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept.* 387 F.Supp.2d 1084, 1102 (N.D. Cal. 2005), *citing Easton v. Sutter Coast Hosp.*, 80 Cal.App.4th 485, 496 (2000)." (Opposition at 37).

But whereas plaintiff says "the United defendants satisfy all three elements" (*id.*), the proof as respects the United defendants actually satisfies *none* of the required elements. The United defendants did not confine plaintiff at all, much less intentionally and without her consent. The allegation that "Nevins contacted the San Francisco police" (*id.*) is simply not an allegation that he intentionally confined the plaintiff without her consent.

Likewise, a viable false imprisonment claim depends upon confinement which is not legally privileged. Therefore, assuming Mr. Nevins' "contact[with] the San Francisco police" were somehow contorted into an intentional, nonconsensual confinement, it would nonetheless be a privileged act for the reasons discussed above.

Finally, plaintiff was not confined by the United defendants at all, much less for any appreciable period of time. Plaintiff does not, and cannot, allege any facts to the contrary.

6. Intentional and Negligent Infliction of Emotional Distress

In a wholly conclusory fashion, plaintiff argues that "the United defendants . . . jointly participated in the humiliation, embarrassment, and degradation of Ibrahim, by causing her to be arrested in public view, before her friend and her fourteen year old daughter, while she was suffering from abdominal pain, without any probable cause and having done nothing wrong." (Opposition at 38).

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But that is not what the United defendants did, even according to plaintiff's own factual averments. When it comes to alleging *facts*, the best that plaintiff can do is to assert that the United defendants asked to see her airline ticket and placed a call to the police. Plaintiff *does not* allege, and could not allege in good faith, that the United defendants caused her to be arrested, much less to be arrested in any particular (i.e., public and humiliating) manner. How law enforcement and the legal authorities responded and took action in response to the call from Mr. Nevins were matters entirely beyond the control of the United defendants.[9] United's own actions were not only privileged, but they were also anything but "outrageous."

7. Injunctive Relief

The Opposition reaches a crescendo with perhaps the most bold and misplaced assertion of them all. It is one offered in support of the notion that the United defendants should be subject to the equitable relief sought by the plaintiff. It is the claim that "United plays the most crucial role in the implementation of the 'No-Fly List' and therefore is entangled with the scheme of entities that create the 'No-Fly List.'" (Opposition at 40). The fact is, the United defendants have no discretion in terms of what they are permitted to do with the lists provided by the government. To the extent they do anything at all to "implement" the "No-Fly List," they are merely doing what is lawfully commanded of them.

And, in any event, none of the equitable relief sought by the plaintiff is applicable to the United defendants. Plaintiff has prayed first "[f]or a declaration that defendants' maintenance, management, and dissemination of the No-Fly list are unconstitutional under the First, Fourth, Fifth and Fourteenth Amendments." (Prayer at ¶ d). The United defendants, however, have nothing whatsoever to do either with the maintenance, management or dissemination of the list. Next, plaintiff prays "[f]or an injunction requiring defendants to remedy immediately the Constitutional

[9]Plaintiff certainly does not, and cannot, allege that the United defendants affirmatively did anything to seek to have plaintiff detained or arrested. Citing to paragraph 41 of her complaint, plaintiff says that "Nevins worked with the San Francisco police officers to effect Ibrahim's arrest, resulting in the deprivation of her constitutional rights." But paragraph 41 says no such thing. As recited in everything else written by or on behalf of the plaintiff, all that is alleged is that Mr. Nevins called the police and asked that an officer come to the check-in counter. There is nowhere any factual suggestion that Mr. Nevins did – or even could have done under the circumstances alleged – anything to effect plaintiff's arrest.

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violations in the maintenance, management, and dissemination of the No-Fly list." (Prayer at ¶ e). Again, even assuming there were any Constitutional violations – a point not in any way conceded by these defendants – the United defendants are not involved in maintenance, management, and dissemination of the list. To so enjoin them would be meaningless. Finally, plaintiff seeks "an injunction requiring defendants to remove IBRAHIM's name from the No- Fly List." (Prayer at ¶ f). Because the United defendants have no power to remove names from the list, plaintiff again prays for the impossible from these defendants.

III.

CONCLUSION

Subject matter jurisdiction over this controversy – one which is inextricably intertwined with federal Security Directives – rests exclusively with the Court of Appeals for the District of Columbia. Even if this Court did have subject matter jurisdiction, however, the plaintiff has failed to state actionable claims against the United defendants. Even with all that plaintiff has said in her Opposition, it is plain that the facts do not, and will not, support sustainable claims against the United defendants. For that reason, and for all the reasons set forth in the moving papers, United's motion to dismiss should be granted and the claims against the United defendants should be dismissed with prejudice.[10]

Dated: June 29, 2006

Respectfully submitted,

CODDINGTON, HICKS & DANFORTH

/s/

By______________________________
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[10]The Court need not grant leave to amend a dismissed complaint where it is clear that amendment will serve no purpose, because the complaint can not be cured to constitute a claim for relief. *Havas v. Thornton*, 609 F.2d 372, 376 (9th Cir. 1979).