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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

GULET MOHAMED

Plaintiff

v.

ERIC H. HOLDER, JR., in his official
capacity as Attorney General of the
United States;

ROBERT S. MUELLER, III, in his
official capacity as Director of the
Federal Bureau of Investigation; and

TIMOTHY J. HEALY, in his official
capacity as Director of the Terrorist
Screening Center.

Defendants

CASE NO.:

HON.:

COMPLAINT

**FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**(Violation of Fourteenth
Amendment Rights and the
Administrative Procedure Act**

**Memorandum in Support of Plaintiff's Motion
for Temporary Restraining Order and Preliminary Injunction**

Plaintiff, Gulet Mohamed, submits this Memorandum in Support of his Motion for a Temporary Restraining Order and Preliminary Injunction ordering Defendants to remove Plaintiff from their no-fly list and allow him to reenter the United States.

INTRODUCTION

The United States is not allowing Mr. Gulet Mohamed, a nineteen year-old U.S. citizen, to return to the United States. Currently, Mr. Mohamed is being detained in a Kuwaiti deportation facility after a week of torture, beatings, and threats to his life by captors speaking English and Arabic, seemingly directed by the United States. But instead of working for Mr. Mohamed's return to the United States, Defendants have placed Mr. Mohamed on a no-fly list that is making it impossible for Kuwait to deport him.

Kuwait has tried to return Mr. Mohamed back to his country of citizenship. Indeed, on January 16, 2010, at the direction of Kuwaiti officials, Mr. Mohamed's family purchased a ticket for him back to the United States. When Kuwaiti officials took Mr. Mohamed to the airport, however, Mr. Mohamed was not allowed onto the United Airlines flight.

The United States is the only place Kuwait can deport Mr. Mohamed. However, due to Defendants' actions, Mr. Mohamed simply cannot board a plane to the United States.

Mr. Mohamed faces no criminal charges in Kuwait. He faces no criminal charges in the United States. There is not even an outstanding allegation of wrongdoing against this American teenager. And yet, the United States, by putting him on a no-fly list and preventing Kuwait from

deporting him via a direct flight back to the United States, has effectively banished Mr. Mohamed from his country of citizenship.

The United States is depriving Mr. Mohamed of perhaps the most basic prerogative of American citizenship: the right to be in the United States. This is patently unconstitutional, and it is up to this Court to bring Gulet Mohamed—an American citizen—back to his country.

FACTS

Plaintiff Gulet Mohamed is a nineteen year-old naturalized U.S. citizen. He was born in Somalia and immigrated to the United States at the age of three. (Complaint, ¶ 2). Mr. Mohamed is a resident of Alexandria, Virginia. *Id.*

On or about March of 2009, Mr. Mohamed temporarily left the United States to learn Arabic and connect with members of his family living abroad. (Complaint, ¶ 20). His first destination was Sanaa, Yemen, where he studied Arabic for a few weeks. *Id.* However, out of concern for his safety given the instability of the country, he traveled to Somalia and stayed with relatives for several months. *Id.* Finally, on or about August of 2009, he travelled to Kuwait to continue his Arabic studies and stay with an uncle. *Id.* Mr. Mohamed entered each country lawfully and maintained lawful status for the duration of his travels abroad. *Id.*

On December 20, 2010, Mr. Mohamed went to the Kuwait International Airport, near Kuwait City, to renew his visa, just as he had done every three months since he arrived in Kuwait. (Complaint, ¶ 22). After an abnormally long wait of several hours, Mr. Mohamed contacted his brother in Virginia via email to inform him that the visa process was taking longer

than usual. *Id.* This is the last communication anyone received from Mr. Mohamed for more than a week. *Id.*

While at the airport, two men in civilian clothes approached Mr. Mohamed, handcuffed him, blindfolded him, escorted him to a waiting SUV, and drove him to an undisclosed location approximately fifteen minutes from the airport. (Complaint, ¶ 23). During Mr. Mohamed's abduction, he was repeatedly beaten and tortured by his interrogators. *Id.* Mr. Mohamed's interrogators struck him in the face with their hands regularly and in Mr. Mohamed's estimate more than a hundred times. *Id.* The interrogators whipped his feet and other parts of his body with sticks. *Id.* At one point, the interrogators threatened to run currents of electricity through Mr. Mohamed's genitals. *Id.*

The subject matter of the interrogators' questioning—communicated in English and Arabic—indicates that Defendants facilitated Mr. Mohamed's illegal detention, interrogation, and torture. (Complaint, ¶ 25). Mr. Mohamed's interrogators asked him detailed questions about his American siblings, referenced non-public facts regarding his family, and even had information about specific encounters Mr. Mohamed had in Virginia. *Id.* One of his interrogators claimed to have met Mr. Mohamed at a mosque in Virginia where the two exchanged introductions briefly. *Id.*

On Tuesday, December 28, 2010, Mr. Mohamed's interrogators transferred him to a deportation facility. (*See* Exhibit A – Pictures in Detention). At this deportation facility, Mr. Mohamed conversed with a prisoner who covertly kept a mobile phone in his prison cell. (Complaint, ¶ 28). Mr. Mohamed asked to use it, because his family still knew neither what

happened to him nor his present location. *Id.* Mr. Mohamed made a call to his family, telling them where he was and what had happened to him. *Id.*

Kuwaiti officials have since told members of Mr. Mohamed's family that they are holding him at the behest of the United States government and are willing to release him back to the United States since they have no interest in keeping him in custody. (Complaint, ¶ 29). On January 16, 2010, Kuwaiti officials attempted to deport Mr. Mohamed via a United Airlines flight. (*See Exhibit B – Washington Post Article*). At the direction and insistence of Kuwaiti authorities, Mr. Mohamed's family purchased him a ticket and delivered it to Kuwaiti authorities. (*See Exhibit C – Flight Ticket Receipts*). When Kuwaiti authorities took Mr. Mohamed to the airport, however, they were unable to get Mr. Mohamed aboard the flight due to Defendants' placement of Mr. Mohamed on a no-fly list. (*See Exhibit B – Washington Post Article*). Mr. Mohamed's placement on the no-fly list has been confirmed by the United States in conversations reported in the press. (*See Exhibit D – New York Times Article*).

Defendant Eric H. Holder, Jr. is the Attorney General of the United States and heads the Department of Justice ("DOJ"), a department of the United States government that oversees the Federal Bureau of Investigation ("FBI"). (Complaint, ¶ 3). The FBI in turn administers the Terrorist Screening Center ("TSC"), which was created to consolidate the government's approach to terrorism screening. *Id.* The TSC develops and maintains the federal government's consolidated Terrorist Screening Database (the "watch list"), of which the No Fly List is a component. *Id.*

Despite letters to Defendants, Mr. Mohamed remains banished from his country of citizenship. (*See Exhibit E – Letter to Defendants*).

ARGUMENT

Plaintiff is entitled to a temporary restraining order and a preliminary injunction, because (1) he is “likely to succeed on the merits, (2) he is “likely to suffer irreparable harm in the absence of preliminary relief,” (3) the “balance of equities tips in his favor, and (4) granting Plaintiff preliminary relief is in the “public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008). Here, each of these four factors weigh in favor of Plaintiff’s request for a temporary restraining order and a preliminary injunction.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

A. The U.S. Citizen Plaintiff is Likely to Succeed on the Merits of Their Claim That Their Placement on the No Fly List and Resulting Inability to Fly Directly to the United States or Over U.S. Airspace Violates Their Fourteenth Amendment Right to Citizenship.

The Fourteenth Amendment guarantee of citizenship prohibits government action that abridges or restricts the citizenship rights of U.S. citizens. *See Afroyim v. Rusk*, 387 U.S. 253, 267 (1967); *United States v. Wong Kim Ark*, 169 U.S. 649, 703 (1898). This protection extends to the absolute rights of U.S. citizens to reside in the United States and to return to their country of citizenship after traveling abroad—rights that are inherent in the concept of U.S. citizenship itself. *See Nguyen v. INS*, 533 U.S. 53, 67 (2001); *Balzac v. Porto Rico*, 258 U.S. 298, 308-09 (1922). The U.S. Citizen Plaintiff is likely to succeed on the merits of his claim that the Defendants’ inclusion of his name on the No Fly List impermissibly infringes upon his Fourteenth Amendment right to citizenship. Defendants’ placement of this Plaintiff on a government watch list that prohibits him from flying to the United States or over U.S. airspace

has effectively banished the U.S. Citizen Plaintiff from his country of citizenship in violation of the Fourteenth Amendment.

1. A U.S. Citizen Has a Right to Reside in, and to Return to, the United States That Is Protected By The Fourteenth Amendment.

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” U.S. Const. amend. XIV, § 1. The right to citizenship expressly conferred by the Fourteenth Amendment is “a most precious right,” *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 158 (1963), and is “interpreted in light of pre-existing common-law principles governing citizenship.” *Id.* at 159 n.10 (citing *Wong Kim Ark*, 169 U.S. at 654). There is no more fundamental and enduring principle governing the right to citizenship than the principle that a citizen has a right to reside in his country of citizenship and to return to it after traveling abroad. “[I]t is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again to set foot on its soil. It is not to be wondered that the occasions for declaring this principle have been few.” *Worthy v. United States*, 328 F.2d 386, 394 (5th Cir. 1964); *see also Nguyen*, 533 U.S. at 67 (conferral of citizenship necessarily includes “the absolute right to enter” the United States).

The principle that U.S. citizenship affords a concomitant right to reside in the United States and to return to this country after traveling or residing abroad underlies numerous Supreme Court decisions issued in a variety of contexts and is codified in international legal authorities, including the Universal Declaration of Human Rights, which provides that “[e]veryone has the right to leave any country, including his own, and to return to his country.”² The Supreme Court recognized that U.S. citizenship guarantees the right to reside in the United States in *Balzac v. Porto Rico*, 258 U.S. 298 (1922), a decision addressing the rights conferred

upon Puerto Ricans when they were granted citizenship by the Organic Act of Porto Rico of March 2, 1917. U.S. citizenship enabled Puerto Ricans “to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political.” *Id.* at 308. The Court observed, moreover, that the statute affording U.S. citizenship to Puerto Ricans was passed out of a “desire to put them as individuals on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity, should they desire, to move into the United States proper. . . .” *Id.* at 311. The Ninth Circuit has characterized the right of a U.S. citizen to reside in the United States as “absolute.” *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987). The right to reside in the United States encompasses the right to return to the United States from abroad. *See Lozado Colon v. U.S. Dept. of State*, 2 F. Supp. 2d 43, 46 (D.D.C. 1998) (noting that “one of the fundamental rights of citizenship” is the “right to travel freely throughout the world and when he wants to, to return and reside in the United States.”)

The Supreme Court has expressly held that the conferral of U.S. citizenship entitles an individual “to the full protection of the United States, *to the absolute right to enter its borders*, and to full participation in the political process.” *Nguyen*, 533 U.S. at 67 (emphasis added). Similarly, the Third Circuit has recognized that it is “the fundamental right of an American citizen to reside wherever he wishes, whether in the United States or abroad, and to engage in the consequent travel. It is the right to exercise a choice of residence.” *Acosta v. Gaffney*, 558 F.2d 1153, 1157 (3d Cir.1977) (internal citations omitted); *see also Hernandez v. Cremer*, 913 F.2d 230, 238 (5th Cir. 1990) (“The individual interest at stake—the right of a citizen to re-enter the United States after lawfully traveling abroad—is fundamental.”).

Numerous decisions in the immigration context concerning the rights of U.S. citizens whose spouses or parents are deported confirm that citizens have a right to return to the United States from abroad. *See, e.g., Newton v. INS*, 736 F.2d 336, 343 (6th Cir.1984) (recognizing that U.S.-citizen children of deported noncitizen parents “will remain American citizens who have the right to return to this country at any time of their liking”); *Ayala-Flores v. INS*, 662 F.2d 444, 446 (6th Cir. 1981) (per curiam) (noting that U.S.-citizen child of deported noncitizen parents will, “once she reaches the age of discretion, . . . be able to decide for herself where she will live, and at that time, she will be free to return and make her home in this country”). As one lower court has elaborated, “[t]he only absolute and unqualified right of citizenship is to residence within the territorial boundaries of the United States; a citizen cannot be either deported or denied entry.” *United States v. Valentine*, 288 F. Supp. 957, 980 (D.P.R. 1968). Accordingly, the U.S. Citizen Plaintiff has an “absolute” right under the Fourteenth Amendment to return to the United States. Defendants have impermissibly interfered with that right through their operation of the No Fly List.

2. Defendants’ Inclusion of the U.S. Citizen Plaintiff on the No Fly List Has Resulted in His Effective Banishment From the United States in Violation of His Fourteenth Amendment Rights.

Because Mr. Mohamed is currently in a Kuwaiti deportation facility, he has but one means of returning to the United States: a flight on an airplane to the United States. It is not the case that Mr. Mohamed has the freedom in his situation to fly to another country and depart by land or sea to the United States. He is in a deportation facility and lacks such options. If Mr. Mohamed cannot fly to the United States due to Defendants’ placement of him on a no fly list, then Defendants have effectively banished him from his country of citizenship.

The banishment does not simply burden Mr. Mohamed's core citizenship right to reside in the United States. Defendants' actions have eliminated Mr. Mohamed's right to reside in the United States altogether. No compelling interest is served by this elimination and to the extent that Defendants defend their actions in reference to a compelling interest it is surely the case that their means are not narrowly tailored. In sum, Defendants' placement of Mr. Mohamed on a no fly list has unconstitutionally deprived him of his fundamental right to reside in the United States.

II. PLAINTIFF WILL SUFFER IRREPARABLE INJURY WITHOUT PRELIMINARY RELIEF

The U.S. Citizen Plaintiff has already suffered irreparable harms and will continue to do so in the absence of preliminary relief. Plaintiffs have experienced the irreparable injury of involuntary exile from their country of citizenship in violation of their Fourteenth Amendment rights. Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore "will often alone constitute irreparable harm." *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997); *see, e.g., Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (affirming a grant of preliminary relief and holding that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"); *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985), *modified on other grounds*, 796 F.2d 309 (9th Cir. 1986) (finding violation of Fourth Amendment rights to cause irreparable harm); *Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. 1992) (finding alleged violation of Fourth Amendment rights to demonstrate irreparable harm); *McDonell v. Hunter*, 746 F.2d 785, 787 (8th Cir. 1984) (affirming a grant of preliminary relief and finding alleged privacy violation to constitute an irreparable harm). Thus, the ongoing involuntary exile that Defendants have placed Mr.

Mohamed in constitutes irreparable injury as a matter of law. Mr. Mohamed's physical injuries and the psychological stress of being in the custody of the Kuwaiti government that likely executed his torture bolsters a finding of irreparable injury.

III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS' FAVOR AS PRELIMINARY RELIEF WOULD NOT SUBSTANTIALLY INJURE THE GOVERNMENT

The balance of equities tips sharply towards Mr. Mohamed, who has already suffered and will continue to suffer from acute injuries in the absence of preliminary relief allowing him to return to the United States via commercial flights. Preliminary relief will not substantially injure Defendants. The Plaintiff who brings this motion does not pose a security threat to commercial aviation, nor does he know why his name has been included on the No Fly List. Mr. Mohamed is willing to undergo any suitable screening procedures and in-flight security measures that the government may deem necessary. It can hardly be disputed that the government is capable of safely ensuring that Plaintiff can return to the United State by plane. Indeed, U.S. officials have in the past issued one-time waivers permitting persons on a no-fly list to fly to the United States. This has been done without incident.

In these circumstances, the government will be hard-pressed to articulate any hardship that would flow from allowing Plaintiffs to fly home subject to enhanced security screening or to provide evidence that Plaintiffs would actually or realistically threaten the security of commercial aviation if granted the ability to board flights on these terms.

Any conceivable hardship deriving from additional expenditure of resources that might be required by heightened screening measures is significantly outweighed by the irreparable injuries that the Plaintiff has suffered and will continue to suffer absent preliminary relief. At

most, Defendants will be required to arrange a secure flight in order to resolve this Motion. Absent injunctive relief, Plaintiff will continue to suffer the litany of constitutional injuries and associated hardships described in detail above.

IV. THE PUBLIC INTEREST WOULD BE FURTHERED BY AN INJUNCTION ORDERING THE DEFENDANTS TO PERMIT PLAINTIFF TO RETURN TO THE UNITED STATES BY AIR SUBJECT TO SUITABLE SCREENING PROCEDURES

Preliminary relief would advance the public interest by upholding rights guaranteed by the Fourteenth Amendment. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to protect constitutional rights.”); *Rhodes v. Chapman*, 452 U.S. 337, 362 (1981) (“The public certainly has an interest in the judiciary intervening when prisoners raise allegations of constitutional violations.”); *Elam Constr., Inc. v. Reg'l Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997) (“The public interest also favors plaintiffs' assertion of their First Amendment rights.”); *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (“[I]t is always in the public interest to protect the violation of a party's constitutional rights.”). All citizens of the United States have an interest in ensuring that the executive branch does not violate the constitutional right of citizens to return home from abroad.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff requests that the Court in the proposed form submitted by Plaintiff, schedule a hearing on Plaintiff's request for a preliminary injunction at the earliest possible date, and after that hearing, enter a preliminary injunction in the form proposed by Plaintiff.

Respectfully submitted,

By: _____

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