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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 RAHINAH IBRAHIM,	)	No. CV 06-00545 WHA
Plaintiff,	)	
v.	)	FEDERAL DEFENDANTS' MOTION TO
	)	FILE UNDER SEAL SENSITIVE SECURITY
12 DEPARTMENT OF HOMELAND	)	INFORMATION IN SUPPORT OF THEIR
13 SECURITY, et al.,	)	MOTION TO DISMISS PLAINTIFF'S CLAIMS
	)	FOR LACK OF SUBJECT MATTER
Defendants.	)	JURISDICTION

15 The federal defendants in this action, consisting, *inter alia*, of the United States  
 16 Department of Homeland Security and the Transportation Security Administration (“TSA”),  
 17 hereby move under Local Rule 7-11 to file under seal the Security Directives that implement the  
 18 security watch lists – known collectively as the “No Fly list” – which are the subject of plaintiff’s  
 19 claims against the federal government. The federal defendants submit these Security Directives  
 20 in support of their motion to dismiss plaintiff’s claims for lack of subject matter jurisdiction,  
 21 which is to be filed with the Court on May 22, 2006, for hearing on Thursday, June 29, 2006.  
 22 Because the Security Directives cannot be publicly released pursuant to applicable law, the  
 23 federal defendants respectfully request that they be filed under seal for the Court’s *in camera, ex*  
 24 *parte* review. In support of this request, the federal defendants represent as follows:

25 1. Following September 11, 2001, Congress enacted the Aviation and Transportation  
 26 Security Act, by which it created TSA and charged it, *inter alia*, with oversight of the nation's  
 27 aviation security system. See Pub. L. No. 107-71, § 101, 115 Stat. 597, 597-604 (2001).  
 28

1 Pursuant to this oversight authority, TSA is required, *inter alia*, to "prescribe regulations  
2 prohibiting the disclosure of information obtained or developed in carrying out security . . . if the  
3 Under Secretary decides that disclosing the information would . . . be detrimental to the security  
4 of transportation." 49 U.S.C. § 114(s)(1)(C). Pursuant to that authority, the TSA has defined a  
5 set of information known as "sensitive security information" or "SSI" (see 49 C.F.R. part 1520),  
6 and has directed that such information shall not be disclosed except in certain limited  
7 circumstances that are not applicable to the instant case. 49 C.F.R. § 1520.9(a)(2). The Under  
8 Secretary has defined SSI to include, *inter alia*, "[a]ny Security Directive . . . [i]ssued by TSA."  
9 49 C.F.R. § 1520.5(b)(1)(i), (b)(2)(I).

10 2. The Security Directives that implement the No Fly list, which are the subject of  
11 plaintiff's claims against the federal defendants, constitute SSI pursuant to 49 C.F.R. §  
12 1520.5(b)(2)(i), and cannot therefore be publicly released. Chowdhury v. Northwest Airlines  
13 Corporation, 226 F.D.R. 608 (N.D. Cal. 2004) (records that constitute SSI cannot be disclosed to  
14 parties in civil litigation). See also Gilmore v. Gonzales, 435 F.3d 1125 (9<sup>th</sup> Cir. 2006) (in which  
15 the appellate court reviewed *in camera* Security Directives that had been filed under seal by the  
16 government in support of its case).

17 CONCLUSION

18 For the foregoing reasons, the federal defendants respectfully request the Court to accept  
19 for filing under seal the Security Directives that implement the No Fly list.

20 Respectfully submitted,

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