

RAHINAH IBRAHIM)	
)	
Petitioner,)	
)	
v.)	
)	No. 06-70574
DEPARTMENT OF HOMELAND SECURITY,)	
et al.)	
)	
Respondents.)	
)	

In accordance with Circuit Rule 27-1, Respondents respectfully submit the following Motion to Dismiss for Lack of Jurisdiction. Petitioner has filed this action out of time, and in the wrong court; further, she lacks Article III standing because the Government conduct of which she complains is not the cause of any inability for her to fly into the United States - she has failed to assert that she has a visa to do so. Thus, this case should be dismissed for any or all of three independent reasons.

Pursuant to Ninth Circuit Rule 27-11(a)(1), Respondents also respectfully move this Court to immediately stay the briefing schedule, so that it can consider the clear bases for dismissal set forth below, before the parties and the Court devote substantial resources regarding the underlying merits of a Petition for Review over which this Court lacks jurisdiction.

INTRODUCTION

According to her allegations, petitioner Rahinah Ibrahim attempted to fly from San Francisco to Malaysia on January 2, 2005. She was prevented from doing so, was told that she could not fly because she was on a "no fly" list, and was arrested. Ibrahim also alleges that she was subsequently told that her name had been removed from the "no fly" list, and the next day, on January 3, 2005, she was able to fly from San Francisco to Malaysia, although she was subjected to searches before boarding connecting flights.

This case is a Petition for Review, filed in this Court pursuant to 49 U.S.C. § 46110, in which petitioner seeks review of the Security Directives of the Transportation Security Administration ("TSA") establishing the "no fly list" and the related "selectee list." See Attachment 1. Although not currently before this Court, petitioner also filed a complaint in the United States District Court for the Northern District of California, arising out of the same set of facts and raising various state law claims and claims under 42 U.S.C. § 1983. See Attachment 2.

DISCUSSION

1. As noted above, the sole asserted basis for jurisdiction in this Court over the Petition for Review is 49 U.S.C. § 46110. That statute states, in relevant part:

[A] person disclosing a substantial interest in an order issued by the Secretary of Transportation . . . may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

49 U.S.C. § 46110(a) (emphasis added).

This Court lacks jurisdiction because, by her own allegations - which we will assume to be true solely for the basis of this motion - Ibrahim's petition is clearly out of time. According to her district court complaint, the relevant events giving rise to this case - her inability to board a plane, the allegation that she was on the "no fly" list, and her arrest - all took place on January 2 and 3, 2005. See Attachment 2 at pp. 8-9. Ibrahim alleges no other instance in which the "no fly" or "selectee" lists were applied to her. She did not file her Petition for Review, however, until more than one year later, on January 27, 2006.

Petitioner, therefore, failed to file her petition "not later than 60 days after the order is issued" as § 46110 requires. At a minimum, the 60 days must have begun to run no later than when the Security Directive establishing the "no fly" and "selectee" lists - which is the sole basis for petitioner's suit - was allegedly applied to her and she was aware of it.

That allegedly occurred in January 2005, but petitioner waited well more than 60 days - indeed, she waited more than one year - before filing her petition for review.¹ Petitioner's untimeliness deprives this Court of jurisdiction, and for that reason alone this Court should dismiss her petition.

2. Moreover, under 49 U.S.C. § 46110, a person may "fil[e] a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business." Petitioner filed her petition in this Court, but she does not allege residence in this Circuit. According to her district court complaint, Ibrahim resides in Malaysia. See Attachment 1 at p. 2 ("Plaintiff, RAHINAH IBRAHIM . . . currently resides in the country of Malaysia."). Accordingly, she cannot file her petition in this Court; the only court of appeals that could have jurisdiction over her petition is the United States Court of Appeals for the D.C. Circuit. Thus, this Court should dismiss her petition for lack of jurisdiction for that independent reason.

Transfer to the D.C. Circuit under 28 U.S.C. § 1631 is unavailable in this case. That statute permits transfer "to any

¹ Although "[t]he court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day," 49 U.S.C. § 46110, the petition sets for no basis for doing so.

. . . court in which the action or appeal could have been brought at the time it was filed or noticed" when doing so "is in the interest of justice." But, as noted above, no court would have had jurisdiction over the instant petition at the time it was filed because the 60 days in which to file the petition had long since run. Accordingly, transfer is inappropriate. See Danko v. Director, Office of Workers' Compensation Programs, 846 F.2d 366, 368-69 (6th Cir. 1988) (where petition for review filed in wrong forum, court declined to transfer because petition was not timely filed in original forum); Hardesty v. Benefits Review Bd., 783 F.2d 138, 139 (7th Cir. 1986) (same); cf. Haugh v. Booker, 210 F.3d 1147, 1150 (10th Cir. 2000) (courts should "avoid raising false hopes and wasting judicial resources that would result from transferring a case which is clearly doomed").

3. Petitioner independently lacks Article III standing to bring her claims. Although the petition itself does not address the point, from her complaint we assume that petitioner's claimed injury is that the "no fly" or "selectee" lists prohibit or interfere with her ability to return to the United States by air travel. If that is her claim, however, neither the "no fly" or "selectee" lists is the cause of Ibrahim's injury, nor will that injury be redressed by any decision of this Court. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (plaintiff must demonstrate, inter alia, a "causal connection between the injury and the conduct complained of" and that the injury is "likely" to

be "redressed by a favorable decision") (alteration and internal quotation marks omitted).

Regardless of any effect the "no fly" or "selectee" lists may or may not have on petitioner, she cannot return to the United States for an entirely independent reason. To enter the United States, petitioner must have a currently valid visa. See generally 8 U.S.C. § 1181(a). Neither her petition for review nor her district court complaint set forth facts asserting that petitioner has a currently valid visa. However, a plaintiff or petitioner bears the burden of establishing standing. See Wilbur v. Locke, 423 F.3d 1101, 1107 (9th Cir. 2005) (plaintiffs generally bear the burden of establishing standing); International Brotherhood of Teamsters v. TSA, 429 F.3d 1130, 1134 (D.C. Cir. 2005) (on petition for review under 49 U.S.C. § 46110, petitioner "should establish its standing . . . at the first appropriate point in the review proceeding," which includes establishing standing "in response to a motion to dismiss for want of standing"). Even construing her petition in light of the facts alleged in her district court complaint, petitioner alleges no more than that at one time in the past she had a valid visa. See Attachment 2 at pp. 2, 7.² Because Ibrahim has not

² The records "pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential," 8 U.S.C. § 1202(f), except that "in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest

established that she is currently eligible to return to the United States regardless of any "no fly" or "selectee" list, she cannot show that those lists are the cause of her claimed injury or that a favorable decision by this Court would redress that injury. Accordingly, she lacks Article III standing.


4. This Court should immediately stay the current briefing schedule pending disposition of this obviously meritorious motion. Pursuant to Ninth Circuit Rule 27-11(a)(1), a motion requesting dismissal "shall stay the schedule for . . . briefing pending the court's disposition of the motion." This Court should determine whether or not it has jurisdiction to entertain the Petition for Review before the parties and this Court devote any resources relating to the merits of the underlying dispute concerning important airline security and safety measures.

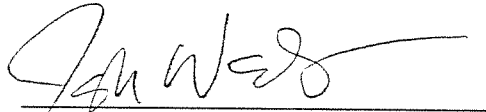
of the ends of justice in a case pending before the court," id. § 1202(f)(1).

CONCLUSION

For the reasons stated above, this Court should immediately stay the briefing schedule and should dismiss the petition for lack of jurisdiction.

Respectfully submitted,


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April 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2006, I filed and served the foregoing MOTION TO DISMISS FOR LACK OF JURISDICTION AND TO STAY BRIEFING SCHEDULE by causing the original and four copies to be sent to this Court via Federal Express and by causing one copy to be served upon the following counsel by Federal Express:

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EXHIBIT 1

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FILED

JAN 25 2006

**CATHY A. GATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

RAHINAH IBRAHIM,

Petitioner,

v.

**DEPARTMENT OF HOMELAND
SECURITY; MICHAEL CHERTOFF
, in his official capacity as the
Secretary of the Department of
Homeland Security; TOM RIDGE, in his
official capacity as the former Secretary
of the Department of Homeland
Security; TRANSPORTATION
SECURITY ADMINISTRATION;
KIP HAWLEY; in his official capacity as
Administrator of the Transportation
Security Administration; DAVID M.
STONE, in his official capacity as Acting
Administrator of the Transportation
Security Administration; TERRORIST
SCREENING CENTER; and Donna A.
BUCELLA, in her official capacity as
Director of the Terrorist Screening Center.**

Respondents.

CASE NO.

06-70574

**PETITION OF RAHINAH
IBRAHIM FOR REVIEW OF
THE TRANSPORTATION
SECURITY ADMINISTRATION
SECURITY DIRECTIVES
ESTABLISHING THE "NO-FLY
LIST"**

Petitioner, Rahinah Ibrahim, hereby petitions the Court for review of the Security Directives issued by Respondent, the Transportation Security Administration, establishing the "no-fly list" and the "selectee list", collectively referred to as the "No-Fly List", on or about November, 2001. A copy of the Security Directives is not available to attach to this Petition as respondents have refused to disclose information on the Security Directives.

This Court has jurisdiction over this petition and venue is proper in this Court pursuant to 49 U.S.C.A. §46110, which provides the U.S Court of Appeals with jurisdiction over an "order" issued by the Transportation Security Administration, and pursuant to *Green v. Transportation Security Administration* (2005) 351 F.Supp.2d 1119.

On information and belief, to date, no court has upheld the constitutional validity of the Security Directives.

Dated: January 27, 2006

McMANIS, FAULKNER & MORGAN



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9 Attorneys for Plaintiff, Rahinah Ibrahim

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 RAHINAH IBRAHIM, an individual,
14 Plaintiff,

15 v.

16 DEPARTMENT OF HOMELAND
17 SECURITY; MICHAEL CHERTOFF, in his
18 official capacity as the Secretary of the
19 Department of Homeland Security; TOM
20 RIDGE, in his official capacity as the former
21 Secretary of the Department of Homeland
22 Security; TRANSPORTATION SECURITY
23 ADMINISTRATION; KIP HAWLEY; in his
24 official capacity as Administrator of the
25 Transportation Security Administration;
26 DAVID M. STONE, in his official capacity
27 as Acting Administrator of the
Transportation Security Administration;
TERRORIST SCREENING CENTER;
DONNA A. BUCELLA, in her official
capacity as Director of the Terrorist
Screening Center; NORM MINETA, in his
official capacity as Secretary of
Transportation; FEDERAL AVIATION

FILED

JAN 27 2006

E-filing RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASE NO.

06 0545

COMPLAINT FOR:

- WHA
- 1) 42 U.S.C. §1983 – Violation of Due Process;
 - 2) 42 U.S.C. §1983 – Violation of Equal Protection
 - 3) 42 U.S.C. §1983 – Violation of Fourth Amendment
 - 4) 42 U.S.C. §1983 – Violation of First Amendment Right to Freedom of Religion
 - 5) 42 U.S.C. §1983 – Violation of First Amendment Right to Freedom of Association
 - 6) CA Civ. Code §52.1 – Interference With Exercise of Civil Rights
 - 7) CA Civ. Code §52.3 – Deprivation of Civil Rights
 - 8) False Imprisonment
 - 9) Intentional Infliction of Emotional Distress
 - 10) Negligent Infliction of Emotional Distress

1 Administrator of the Federal Aviation
2 Administration; FEDERAL BUREAU OF
3 INVESTIGATION; ROBERT MUELLER,
4 in his official capacity as Director of the
5 Federal Bureau of Investigation; SAN
6 FRANCISCO AIRPORT; CITY OF SAN
7 FRANCISCO; COUNTY OF SAN
8 FRANCISCO; COUNTY OF SAN
9 MATEO; SAN FRANCISCO POLICE
10 DEPARTMENT; UAL CORPORATION;
11 UNITED AIRLINES; DAVID NEVINS, an
12 individual; RICHARD PATE, an individual;
13 JOHN BONDANELLA, an individual;
14 JOHN CUNNINGHAM, an individual;
15 ELIZABETH MARON, an individual; and
16 DOES 1 through 100, inclusive.

17 Defendants.

18 Plaintiff hereby alleges as follows:

19 **INTRODUCTORY STATEMENT**

20 1. The above-entitled action is brought under 42 U.S.C. section 1983, and California
21 Civil Code sections 52.1 and 52.3, on the grounds that defendants, among other things, violated
22 the federal and state constitutional rights of plaintiff, granted to her under the First, Fourth, Fifth
23 and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3, 4, 7, 13
24 and 15 of the California Constitution.

25 **JURISDICTION AND VENUE**

26 2. This case arises under the United States Constitution and the laws of the United
27 States. This Court has jurisdiction over this action pursuant to Article III of the United States
28 Constitution, 5 U.S.C. Sec. 552a, and 28 U.S.C. sections 1331, 1343 and 1361. Venue is proper
in this district, pursuant to 28 U.S.C. section 1391(e), because defendants include officers and
employees of the United States and the acts and conduct complained of herein occurred in this
judicial district.

1 INTRADISTRICT ASSIGNMENT

2 3. Assignment of this action to the San Francisco Division is proper under Civil
3 Local Rule 3-2(d), because a substantial part of the events giving rise to the claims alleged herein
4 occurred in the County of San Mateo.

5 PARTIES

6 4. Plaintiff, RAHINAH IBRAHIM, ("IBRAHIM"), is an individual, who obtained
7 her Doctorate Degree at Stanford University, while in the United States on a student visa, and
8 currently resides in the country of Malaysia. IBRAHIM has no criminal record and no links to
9 terrorist activity.

10 5. On information and belief, defendant, DEPARTMENT OF HOMELAND
11 SECURITY ("DHS"), is a department of the United States Government, created on October 8,
12 2001, to develop and coordinate the implementation of a comprehensive national strategy to
13 secure the United States from terrorist threats or attacks. It is the department ultimately
14 responsible for the Transportation Security Administration and, in turn, the No-Fly List.

15 6. On information and belief, defendant, MICHAEL CHERTOFF ("CHERTOFF"),
16 is the current Secretary and head of the Department of Homeland Security. He is sued here in
17 his official capacity.

18 7. On information and belief, defendant, TOM RIDGE ("RIDGE"), is the former
19 Secretary and head of the Department of Homeland Security. He is sued here in his official
20 capacity.

21 8. On information and belief, defendant, TRANSPORTATION SECURITY
22 ADMINISTRATION ("TSA"), is a department of the United States Government and a sub-
23 agency of the DHS. The role of the TSA is to implement the provisions of the Aviation and
24 Transportation Security Act (P.L. 107-71), signed by President George W. Bush on November
25 19, 2001. The authority to regulate airport security was transferred to the TSA from the Federal
26 Aviation Administration on November 19, 2001, when the TSA was established.

9. On information and belief, defendant, KIP HAWLEY ("HAWLEY"), is the Administrator of the TSA, and on information and belief, is responsible for maintaining and managing the No-Fly List. He is sued here in his official capacity.

10. On information and belief, defendant, DAVID M. STONE ("STONE"), was the Acting Administrator of the TSA at the time of the incident, and on information and belief, was responsible for maintaining and managing the No-Fly List. He is sued here in his official capacity.

11. On information and belief, defendant, TERRORIST SCREENING CENTER ("TSC"), is a department of the United States Government. Its mission is to maintain a list of "Terrorist Identities Information" for agencies of the United States Government, including the TSA. The TSC determines who is on the list that the TSA uses to compile the No-Fly list.

12. On information and belief, defendant, DONNA A. BUCELLA ("BUCELLA"), is the Director of the TSC, and is being sued in her official capacity as such.

13. On information and belief, defendant, NORM MINETA, is the Secretary of Transportation and is being sued in his official capacity as such.

14. On information and belief, defendant, FEDERAL AVIATION ADMINISTRATION ("FAA"), is an independent federal agency that regulates air travel.

15. On information and belief, defendant, MARION C. BLAKEY, is the Administrator of the FAA and is being sued in her official capacity as such.

16. On information and belief, defendant, FEDERAL BUREAU OF INVESTIGATION ("FBI"), is a department of the United States Government, and maintains a "No-Fly watchlist" and transmits this list to the Transportation Security Administration. The airlines are required to check their passenger lists against this No-Fly watchlist.

17. On information and belief, defendant, ROBERT MUELLER, is the director of the FBI, and is being sued in his official capacity as such.

18. On information and belief, defendant, SAN FRANCISCO INTERNATIONAL AIRPORT ("SFO"), is an international airport located in San Mateo County.

1 19. On information and belief, defendant, CITY OF SAN FRANCISCO ("CITY OF
2 SF"), is a municipal entity, which oversees the San Francisco Police Department.

3 20. On information and belief, defendant, COUNTY OF SAN FRANCISCO ("SF
4 COUNTY"), is a municipal entity, which also oversees the San Francisco Police Department.

5 21. On information and belief, defendant, COUNTY OF SAN MATEO ("SM
6 COUNTY"), is a municipal entity, where SFO is located.

7 22. On information and belief, defendant, SAN FRANCISCO POLICE
8 DEPARTMENT ("SFPD"), is a police department which has jurisdiction over events occurring
9 at SFO.

10 23. On information and belief, defendant, UAL CORPORATION ("UAL"), is the
11 holding company for United Airlines.

12 24. On information and belief, defendant, UNITED AIRLINES, ("UNITED"), is a
13 Delaware corporation with its principal place of business in Chicago, Illinois.

14 25. On information and belief, defendant, DAVID NEVINS ("NEVINS"), is an
15 employee of UNITED, who works at the UNITED ticket counter at SFO as a Customer Service
16 Supervisor.

17 26. On information and belief, defendant, RICHARD PATE ("PATE"), is a Police
18 Sergeant for SFPD.

19 27. On information and belief, defendant, J. CUNNINGHAM ("CUNNINGHAM"),
20 badge number 236, is a police officer of the SFPD.

21 28. On information and belief, defendant, ELIZABETH MARON ("MARON"), is a
22 police officer of the SFPD.

23 29. On information and belief, defendant, JOHN BONDANELLA, is an employee of
24 the TSIS, located in Washington, D.C.

25 30. The true names or capacities, whether individual, corporate, associate or
26 otherwise of defendants, DOES 1 through 100, inclusive, are unknown to plaintiff, who therefore
27 sues said defendants by such fictitious names. Plaintiff prays leave to amend the complaint to
28 show the true names and capacities of defendants when the same have been ascertained.

GENERAL ALLEGATIONS

31. Plaintiff brings this lawsuit to challenge defendants' administration, management and implementation of the "No-Fly List", a list circulated to commercial airlines and security personnel with instructions to detain and question any passenger whose name matches or is similar to one on the No-Fly List.

32. Defendants began implementing the No-Fly List in November, 2001. Since then, it has resulted in hundreds, if not thousands, of innocent passengers being routinely stopped, questioned, searched, and sometimes physically arrested, as in this case. Defendants do not inform individuals that they have been placed on the No-Fly List or why they are on the list. Moreover, individuals whom defendants determine are not security threats continue to be identified on the No-Fly List. Passengers, therefore, have no meaningful opportunity to challenge their identification on the No-Fly List.

33. For several years before the terrorist attacks of September 11, 2001, the U.S. Government issued directives identifying persons who were deemed to pose a threat to civil aviation. In November, 2001, the TSA was formed and assumed responsibility for compiling and administering these directives, with the assistance of the TSC. Today, defendants maintain at least two watch lists of individuals perceived to be threats to aviation security. The "no-fly" list contains names of people which airlines are prohibited from transporting. The "selectee" list contains names of passengers who must go through additional security screening before boarding an aircraft. These two lists collectively are referred to as the "No-Fly List." On information and belief, the No-Fly List contains thousands of names, primarily names of individuals of Muslim or Middle Eastern descent.

34. Until November, 2002, defendants denied the existence of the No-Fly List. Until today, defendants have refused to disclose important information regarding the No-Fly List, including the criteria for placing names on or removing names from the No-Fly List, procedures for amending information on the List such as when it is determined that an individual is not a security threat, or rules for maintaining or managing the List. Because defendants have refused to provide any of this information, defendants may be using race, religion, ethnicity, national

1 origin, or the exercise of protected First Amendment rights as factors in maintenance and
2 implementation of the No-Fly List.

3 35. On information and belief, defendants occasionally disseminate updated versions
4 of the No-Fly List as attachments to security directives and emergency amendments to
5 commercial airlines in the United States. The 15 domestic airlines have almost half a million
6 employees and, on information and belief, a substantial percentage of these employees have
7 access to the No-Fly List. On information and belief, these security directives and the No-Fly
8 List are also provided to customs and immigration agents, airport security, and law enforcement
9 agencies. Moreover, information from the No-Fly List is inputted into other security databases
10 such as the FBI and the FAA. On information and belief, defendants, TSA and DHS, and the
11 heads of their departments, instruct recipients of the No-Fly List to detain and interrogate any
12 individual who checks in for a flight whose name is similar or identical to a name on the No-Fly
13 List. Even if the passenger's actual identity is verified, a boarding pass is issued which is
14 stamped with a mark to indicate the passenger must be subjected to enhanced screening, also
15 referred to as "secondary screening."

16 36. Innocent passengers subjected to this treatment are stigmatized, humiliated, and
17 subjected to interrogations, delays, enhanced searches, detentions, travel impediments, and
18 sometimes actual physical arrest without a warrant or any probable cause. This treatment is
19 completely unexpected as they have no notice that they have been placed on the No-Fly List.

20 37. Plaintiff, IBRAHIM, was subjected to this humiliating treatment on January 2,
21 2005, at the SFO, while traveling to Malaysia, through an initial stop in Hawaii.

22 38. IBRAHIM is a citizen of Malaysia. She is a Muslim woman who is clearly
23 identifiable as Muslim as she wears a head scarf, also known as a "hijab." IBRAHIM has no
24 criminal record and no ties whatsoever to any terrorist activity. At the time of the incident,
25 IBRAHIM was a student at Stanford University, studying to obtain her Doctorate Degree (PhD),
26 and lawfully in the United States on a student visa. IBRAHIM's student visa was valid from
27 September 26, 2001 to January 11, 2007. She was preparing her thesis on affordable housing
28 and on January 2, 2005, IBRAHIM was scheduled to fly to Kuala Lumpur, Malaysia, with a

1 changing flight in Hawaii, to present her research findings at a conference sponsored by Stanford
2 University. She was scheduled to return to Stanford in March, 2005, to submit her dissertation
3 and complete her PhD.

4 39. Prior to her trip, in October, 2004, IBRAHIM had a hysterectomy surgery at
5 Stanford University Medical Hospital, with an extremely invasive abdominal approach.
6 IBRAHIM suffered severe complications from her surgery which extended her recovery period
7 for months. IBRAHIM also suffered back and abdominal pain from her surgery and was
8 regularly taking medication for these complications.

9 40. On January 2, 2005, at approximately 7:00 a.m., IBRAHIM arrived at SFO with
10 her fourteen-year old daughter. IBRAHIM and her daughter were scheduled to leave on a United
11 Airlines flight from SFO. at 9:00 a.m. IBRAHIM and her daughter, escorted by IBRAHIM's
12 friend, went to the ticket counter to obtain their boarding passes and check in their bags.
13 IBRAHIM informed UNITED of her medical complications and requested wheelchair
14 transportation to the airline gate.

15 41. At that time, defendant, NEVINS, approached IBRAHIM and asked to see her
16 tickets. NEVINS called SFPD and informed them that IBRAHIM was on the No-Fly List. At
17 the request of NEVINS, defendants, CUNNINGHAM and PATE, of SFPD, arrived at the airport.
18 On information and belief, PATE checked the No-Fly List for IBRAHIM's name. He called
19 defendant, BONDANELLA, of the TSIS in Washington, D.C. Defendant, BONDANELLA, told
20 defendant, PATE, to not allow IBRAHIM on the flight, to contact the FBI, and to detain
21 IBRAHIM for questioning. A SFPD officer, whose name is not known to plaintiff, also arrived
22 at the scene.

23 42. Meanwhile, IBRAHIM stood waiting for an hour and a half, with no wheelchair,
24 while she suffered from back and abdominal pain. IBRAHIM's friend informed the SFPD
25 officers several times of IBRAHIM's medical condition.

26 43. At 8:45 a.m., fifteen minutes before IBRAHIM's flight was scheduled to leave,
27 defendant, CUNNINGHAM, told IBRAHIM that she was being arrested. IBRAHIM was
28 handcuffed by CUNNINGHAM, with her hands placed behind her back, in the middle of the

1 airport, in front of her fourteen-year old daughter, and everyone else at SFO. IBRAHIM was not
2 informed as to why she was being arrested. Instead, she was taken to the SFPD police station,
3 escorted by three male officers, while she sat in the back seat, rubbing her abdominal muscles
4 from the pain.

5 44. Upon arriving at the police station, IBRAHIM was searched by defendant,
6 MARON. During this search, MARON attempted to remove IBRAHIM's hijab and searched
7 under her hijab in public view, before the other male officers. On information and belief, the
8 police officers also informed the FBI of IBRAHIM's detention.

9 45. IBRAHIM was placed in a holding cell at the SFPD police station for
10 approximately two hours while she continued to suffer from severe back and abdominal pain.
11 IBRAHIM was not given her medication when she asked for it to relieve her pain. Eventually,
12 the paramedics were called as a result of IBRAHIM's medical condition. IBRAHIM was finally
13 given her medication after the paramedics left.

14 46. On information and belief, the FBI finally requested SFPD to release IBRAHIM
15 at approximately 11:15 a.m., over two hours after her flight had left. IBRAHIM was given no
16 information as to why her name was on the No-Fly List.

17 47. Defendants represented to plaintiff that her name had been removed from
18 the No-Fly List. The following day, on January 3, 2006, IBRAHIM discovered that she was still
19 on the No-Fly List when she attempted to fly again. After some effort, IBRAHIM was finally
20 allowed to fly to Kuala Lumpur, Malaysia. At SFO, however, and at every stop over, IBRAHIM
21 was publicly subjected to enhanced searches before boarding any flights.

22 48. On July 1, 2005, plaintiff filed a claim with the City and County of San Francisco
23 and a claim with the City and County of San Mateo for her damages suffered as a result of
24 defendants' conduct. On August 2, 2005, the County of San Mateo issued a letter rejecting
25 plaintiff's claim. On September 8, 2005, the City and County of San Francisco issued a letter,
26 also rejecting plaintiff's claim.

27
28

FIRST CAUSE OF ACTION

(42 U.S.C. Section 1983 Violations of Plaintiffs' Rights Under the United States Constitution.)

49. Plaintiff re-alleges paragraphs 1 through 48 above and incorporates them herein by reference.

50. In doing the acts complained of herein, defendants deprived plaintiff of her rights under the United States Constitution as set forth under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution;

51. Defendants, in committing the acts herein alleged, were acting under color of state law.

52. Defendants were acting in accordance with their custom, policy and/or practice in violating plaintiff's constitutional rights as set forth above.

53. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

54. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

SECOND CAUSE OF ACTION

(42 U.S.C. Section 1983 Violations of Plaintiff's Right to Due Process.)

55. Plaintiff re-alleges paragraphs 1 through 54 above and incorporates them herein by reference.

56. In doing the acts complained of herein, defendants deprived plaintiff of her right to Procedural and Substantive Due Process under the United States Constitution as set forth under the Fifth and Fourteenth Amendments to the United States Constitution;

1 57. The No-Fly List and the placement of IBRAHIM on this list is unconstitutional in
2 that it violates the due process protections guaranteed under the Fifth and Fourteenth
3 Amendments of the United States Constitution and Article I, Sections 7 and 15 of the California
4 Constitution. On information and belief, the placement of names on the No-Fly List is done in
5 an arbitrary and capricious manner and without any factual findings or rational basis.

6 58. Defendants' actions in administering and maintaining the No-Fly List deprived
7 plaintiff of liberty and property interests protected by the Fifth Amendment. Defendants are
8 grossly negligent, reckless, and/or deliberately indifferent to the risk that the deprivations these
9 actions cause. The deprivations are without due process of law because plaintiff was not
10 informed of her placement on the No-Fly List or given any opportunity to contest such
11 placement. Also, defendants have failed to provide constitutionally adequate mechanisms for
12 plaintiff to avoid being subjected to the stigma, interrogations, delays, enhanced searches,
13 detentions, and/or other travel impediments associated with having a name identical or similar to
14 a name on the No-Fly List.

15 59. Defendants, in committing the acts herein alleged, were acting under color of state
16 law.

17 60. Defendants were acting in accordance with their custom, policy and/or practice in
18 violating plaintiff's constitutional rights as set forth above.

19 61. As a direct and proximate result of defendants' wrongful acts alleged herein,
20 plaintiff suffered severe damages, including humiliation and damage to her reputation, physical
21 pain, emotional distress, and deprivation of her constitutional rights, according to proof at the
22 time of trial.

23 62. Defendants committed the actions alleged herein maliciously, fraudulently,
24 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
25 improper motive amounting to malice and with conscious disregard of plaintiff's rights. As
26 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
27 proof at the time of trial.
28

THIRD CAUSE OF ACTION

(42 U.S.C. Section 1983 Violations of Plaintiff's Right to Equal Protection)

63. Plaintiff re-alleges paragraphs 1 through 62 above and incorporates them herein by reference.

64. In doing the acts complained of herein, defendants deprived plaintiff of her right to Equal Protection under the United States Constitution as set forth under the Fourteenth Amendment to the United States Constitution;

65. Defendants placed IBRAHIM on the No-Fly List in an arbitrary and capricious manner, and arrested her for several hours. On information and belief, defendants acted in a discriminatory manner, with the intent to discriminate, in that IBRAHIM was placed on the No-Fly List and arrested based on her religious beliefs and her national origin as a citizen of Malaysia.

66. Defendants, in committing the acts herein alleged, were acting under color of state law.

67. Defendants were acting in accordance with their custom, policy and/or practice in violating plaintiff's constitutional rights as set forth above.

68. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

69. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

FOURTH CAUSE OF ACTION

(42 U.S.C. Section 1983 Violation of Plaintiff's Fourth Amendment Right Against
Unreasonable Search and Seizure)

70. Plaintiff re-alleges paragraphs 1 through 69 above and incorporates them herein by reference.

71. In doing the acts complained of herein, defendants deprived plaintiff of her right against unreasonable searches and seizures under the United States Constitution as set forth under the Fourth Amendment to the United States Constitution;

72. Defendants placed IBRAHIM on the No-Fly List, arrested her, and searched her without any probable cause or an arrest or search warrant. As alleged above, it is common for individuals who have no links to terrorist activity to be placed on the No-Fly List or to be detained for having a name similar to a name on the No-Fly List and to be subjected to enhanced searches without any cause.

73. Defendants, in committing the acts herein alleged, were acting under color of state law.

74. Defendants were acting in accordance with their custom, policy and/or practice in violating plaintiff's constitutional rights as set forth above.

75. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

76. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

1 FIFTH CAUSE OF ACTION

2 (42 U.S.C. Section 1983 Violation of Plaintiff's Right to Freedom of Religion)

3 77. Plaintiff re-alleges paragraphs 1 through 76 above and incorporates them herein
4 by reference.

5 78. In doing the acts complained of herein, defendants deprived plaintiff of her
6 freedom of religion under the United States Constitution as set forth under the First Amendment
7 to the United States Constitution;

8 79. Plaintiff is an identifiable Muslim woman who wears the hijab. Defendants
9 violated plaintiff's freedom of religion in that, on information and belief, plaintiff, and other
10 individuals placed on the No-Fly List, are targeted based on their religious beliefs or appearance.

11 80. Defendants, in committing the acts herein alleged, were acting under color of state
12 law.

13 81. Defendants were acting in accordance with their custom, policy and/or practice in
14 violating plaintiff's constitutional rights as set forth above.

15 82. As a direct and proximate result of defendants' wrongful acts alleged herein,
16 plaintiff suffered severe damages, including humiliation and damage to her reputation, physical
17 pain, emotional distress, and deprivation of her constitutional rights, according to proof at the
18 time of trial.

19 83. Defendants committed the actions alleged herein maliciously, fraudulently,
20 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
21 improper motive amounting to malice and with conscious disregard of plaintiff's rights. As
22 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
23 proof at the time of trial.

24 SIXTH CAUSE OF ACTION

25 (42 U.S.C. Section 1983 Violations of Plaintiffs' Right to Freedom of Association)

26 84. Plaintiff re-alleges paragraphs 1 through 83 above and incorporates them herein
27 by reference.
28

85. In doing the acts complained of herein, defendants deprived plaintiff of her freedom of association under the United States Constitution as set forth under the First Amendment to the United States Constitution;

86. Plaintiff is an identifiable Muslim woman who wears the hijab. Defendants violated plaintiff's freedom of association in that, on information and belief, plaintiff, and other individuals placed on the No-Fly List, are targeted based on their association with the Muslim community or the Islamic religion, and based on her national origin.

87. Defendants, in committing the acts herein alleged, were acting under color of state law.

88. Defendants were acting in accordance with their custom, policy and/or practice in violating plaintiff's constitutional rights as set forth above.

89. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

90. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

SEVENTH CAUSE OF ACTION

(Interference With Exercise Of Civil Rights – California Civil Code Section 52.1)

91. Plaintiff realleges paragraphs 1 through 90 above and incorporates them herein by reference.

92. Defendants placed plaintiff on the No-Fly List and on January 2, 2005, defendants, police officers, arrested plaintiff without a warrant or other legal process.

93. Defendants made the arrest without probable cause to believe that plaintiff had committed a crime.

94. The arrest interfered with plaintiff's constitutional rights granted to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3, 4, 7, 13 and 15 of the California Constitution.

4 95. On information and belief, the acts of the defendants herein alleged were done
5 with malice, fraud, and oppression, and in reckless disregard of plaintiff's constitutional rights.

96. As a proximate result of the acts of defendants herein alleged, plaintiff incurred both economic and noneconomic damages.

8 97. Defendants committed the actions alleged herein maliciously, fraudulently,
9 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
10 improper, evil motive amounting to malice and with conscious disregard of plaintiff's rights. As
11 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
12 proof at the time of trial.

13 EIGHTH CAUSE OF ACTION

14 (Deprivation of Civil Rights - California Civil Code Section 52.3)

15 98. Plaintiff realleges paragraphs 1 through 97 above and incorporates them herein by
16 reference.

17 99. On January 2, 2005, defendants, police officers, arrested plaintiff without a
18 warrant or other legal process.

19 100. Defendants made the arrest without probable cause to believe that plaintiff had
20 committed a crime.

101. The arrest deprived plaintiff of her constitutional rights granted to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3, 4, 7, 13 and 15 of the California Constitution.

102. On information and belief, the acts of the defendants herein alleged were done with malice, fraud, and oppression, and in reckless disregard of plaintiff's constitutional rights.

103. On information and belief, the acts of defendants herein alleged, were done pursuant to a pattern and practice of depriving persons of rights, privileges, and immunities

1 secured by the laws and Constitution of the State of California, and the laws and Constitution of
2 the United States.

3 104. As a proximate result of the acts of defendants herein alleged, plaintiff incurred
4 both economic and noneconomic damages.

5 105. Defendants committed the actions alleged herein maliciously, fraudulently,
6 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
7 improper, evil motive amounting to malice and with conscious disregard of plaintiff's rights. As
8 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
9 proof at the time of trial.

10 NINTH CAUSE OF ACTION

11 (False Imprisonment)

12 106. Plaintiff realleges paragraphs 1 through 105 above and incorporates them herein
13 by reference.

14 107. On January 2, 2005, in the city of San Francisco, defendants, police officers,
15 maliciously seized and arrested plaintiff, without a warrant, or other legal process.

16 108. Defendants made the arrest without probable cause to believe that plaintiff had
17 committed a crime.

18 109. Plaintiff was imprisoned at the San Francisco Airport police station for hours.

19 110. As a proximate result of the acts of defendants herein alleged, plaintiff incurred
20 both economic and noneconomic damages.

21 111. Defendants committed the actions alleged herein maliciously, fraudulently,
22 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
23 improper, evil motive amounting to malice and with conscious disregard of plaintiff's rights. As
24 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
25 proof at the time of trial.

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TENTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

112. Plaintiff realleges paragraphs 1 through 111 above and incorporates them herein by reference.

113. On January 2, 2005, defendants, police officers, arrested plaintiff, knowing that they lacked a warrant or other legal process. Defendants made the arrest, knowing that they lacked probable cause to believe that plaintiff had committed a crime. Therefore, defendants made the arrest with the intention of causing, or reckless disregard of the probability of causing, emotional distress for plaintiff.

114. On information and belief, the acts of the defendants herein alleged were willful, despicable, malicious, and oppressive.

115. As a proximate result of the acts of defendants herein alleged, plaintiff incurred severe emotional distress and mental suffering. Plaintiff experienced extreme humiliation, shame, and anger when:

a) Defendants, police officers, handcuffed plaintiff in front of her fourteen year old daughter at the San Francisco Airport, on the morning of January 2, 2005;

b) A crowd of passengers gathered to watch defendants, police officers, detain and arrest plaintiff, without a warrant or probable cause, at the San Francisco Airport on the morning of January 2, 2005;

c) Defendants, police officers, forced plaintiff to miss her flight by detaining and arresting her without a warrant or probable cause;

d) Defendant, MARON, removed part of plaintiff's hijab and loosened plaintiff's hair;

e) Defendants, police officers, caused plaintiff to experience abdominal pain and high blood pressure by incarcerating plaintiff in a detention area without access to her medications;

f) Defendants, police officers, forced plaintiff to urinate in a public area while in the holding cell.

1 g) Defendants represented to plaintiff that her name had been removed from
2 the No-Fly List, but plaintiff later discovered that defendants had in fact made no effort to
3 remove plaintiff from the No-Fly List.

4 **ELEVENTH CAUSE OF ACTION**

5 **(Negligent Infliction of Emotional Distress)**

6 116. Plaintiff realleges paragraphs 1 through 115 above and incorporates them herein
7 by reference.

8 117. On January 2, 2005, defendants, police officers, knew or should have known that
9 arresting and imprisoning plaintiff without a warrant or probable cause would cause plaintiff
10 severe emotional distress.

11 118. On January 2, 2005, defendants, police officers, arrested plaintiff, knowing that
12 they lacked a warrant or other legal process. Defendants made the arrest, knowing that they
13 lacked probable cause to believe that plaintiff had committed a crime.

14 119. On information and belief, the acts of the defendants herein alleged were willful,
15 despicable, malicious, and oppressive.

16 120. As a proximate result of the acts of defendants herein alleged, plaintiff incurred
17 severe emotional distress and mental suffering. Plaintiff experienced extreme humiliation,
18 shame, and anger when:

19 a) Defendants, police officers, handcuffed plaintiff in front of her fourteen
20 year old daughter at the San Francisco Airport, on the morning of January 2, 2005;

21 b) A crowd of passengers gathered to watch defendants, police officers,
22 detain and arrest plaintiff, without a warrant or probable cause, at the San Francisco Airport on
23 the morning of January 2, 2005;

24 c) Defendants, police officers, forced plaintiff to miss her flight by detaining
25 and arresting her without a warrant or probable cause;

26 d) Defendant, MARON, removed part of plaintiff's hijab and loosened
27 plaintiff's hair;

28 e) Defendants, police officers, caused plaintiff to experience abdominal

1 pain and high blood pressure by incarcerating plaintiff in a detention area without access to her
2 medications;

3 f) Defendants, police officers, forced plaintiff to urinate in a public area;

4 g) Defendants represented to plaintiff that her name had been removed from
5 the No-Fly List, but plaintiff later discovered that defendants had in fact made no effort to
6 remove plaintiff from the No-Fly List.

7 **TWELFTH CAUSE OF ACTION**

8 **(Declaratory and Injunctive Relief)**

9 121. Plaintiff realleges paragraphs 1 through 120 above and incorporates them herein
10 by reference.

11 122. An actual and immediate controversy has arisen and now exists between plaintiff
12 and defendants related to their respective rights and duties. Defendants have unlawfully failed to
13 comply with constitutional requirements by engaging in the acts and omissions described in this
14 Complaint. Plaintiff is, therefore, entitled to a declaration of rights over this controversy.

15 123. Plaintiff has no adequate remedy at law. Defendants have acted, and continue to
16 act, to deprive plaintiff of her constitutional rights. Plaintiff is suffering and will continue to
17 suffer irreparable injury as a result of the policies and practices described in this Complaint
18 unless those policies and practices are enjoined by this Court. Plaintiff has no plain, adequate, or
19 speedy remedy at law and is entitled to injunctive relief against defendants. Plaintiff has no
20 administrative remedy because defendants' policies and practices preclude any administrative
21 determinations from affording actual relief.

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PRAYER

WHEREFORE, plaintiffs pray for the following relief:

- a. For compensatory damages according to proof;
- b. For exemplary and punitive damages according to proof;
- c. For costs of suit, including attorneys' fees;
- d. For a declaration that defendants' maintenance, management, and dissemination of the No-Fly list are unconstitutional under the First, Fourth, Fifth and Fourteenth Amendments.
- e. For an injunction requiring defendants to remedy immediately the Constitutional violations in the maintenance, management, and dissemination of the No-Fly list.
- f. For an injunction requiring defendants to remove IBRAHIM's name from the No-Fly List.
- g. And such other and further relief as the Court may deem appropriate.

Dated: January 27, 2006

McMANIS, FAULKNER & MORGAN


JAMES McMANIS
MARWA ELZANKALY

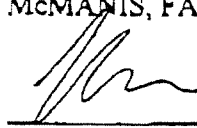
Attorneys for Plaintiff,
RAHINAH IBRAHIM

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: January 27, 2006

McMANIS, FAULKNER & MORGAN


JAMES McMANIS
MARWA ELZANKALY

Attorneys for Plaintiff,
RAHINAH IBRAHIM

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Sender's Name Joshua Waldman		Recipient's Name Marva Elzankaly	
Phone (Include area code) (202) 514-0236		Phone (Include area code)	
Office, Board, Division, or Bureau Name USDOJ/CIV/APPELLATE		Organization Name McManis, Faulkner & Morgan	
Street Address and Room Number 950 PENNSYLVANIA AVE NW ROOM 7232		Street Address and Room Number (No post office box or APO or FPO address) 50 West Sa Fernando, 10th Floor	
City WASHINGTON	State DC	Zip Code 20530	
City San Jose	State CA	Zip Code 95113	
PAYMENT (Mark on box)		IF HOLD FOR PICKUP, ENTER FEDEX ADDRESS HERE	
Bill To:		Street Address	
<input checked="" type="checkbox"/> Sender's FedEx Account Number Shown Above		City	
<input type="checkbox"/> Recipient's FedEx Account Number Shown Here:		State	
<input type="checkbox"/> 3rd Party's FedEx Account Number Shown Here:		Zip Code	
EXPRESS SERVICE (Packages up to 150 lbs.) Delivery commitment may be later in some areas.)		Express Freight Service (Packages over 150 lbs)	
<input checked="" type="checkbox"/> FedEx Priority Overnight Next business morning by 10:30a		<input type="checkbox"/> FedEx 1Day Freight* Next business morning by 10:30am	
<input type="checkbox"/> FedEx Express Saver Third business day by 4:30p		*Call for Confirmation	
<input type="checkbox"/> FedEx 2Day Second business day by 4:30p		<input type="checkbox"/> FedEx First Overnight Earliest next business morning delivery to selected locations by 8:00a	
<input type="checkbox"/> FedEx Standard Overnight Next business afternoon by 5:00p areas		New FedEx Extra Hours Later drop-off with next business afternoon delivery for selected locations	
<input type="checkbox"/> FedEx 2Day Freight Second business day noon		<input type="checkbox"/> FedEx 3Day Freight Third business day by 3:00pm	
SPECIAL HANDLING		SPECIAL SERVICE (Mark special service required, as appropriate)	
<input type="checkbox"/> Dry Ice		<input type="checkbox"/> Hold for Pickup Weekday (Fill in address block above)	
<input type="checkbox"/> Accessible Dangerous Goods		<input type="checkbox"/> Hold for Pickup Saturday (If offered. Fill in address block above)	
<input type="checkbox"/> Inaccessible Dangerous Goods		<input type="checkbox"/> Saturday Delivery (If offered. Extra charge)	
DECLARED VALUE (If over \$100 a piece):		RECEIPT SIGNATURE	
White: (In Pouch); Yellow: (Sender); Green: (Mailroom)		Recipient Only	
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