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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 RAHINAH IBRAHIM,

17
18 Plaintiff,

19 v.

20 DEPARTMENT OF HOMELAND
21 SECURITY, *et al.*,

22 Defendants.
23

No. 3:06-cv-0545 (WHA)

**EXHIBIT C:
DEFENDANTS' RESPONSE TO THE
COURT'S ORDER (DKT. 661)
REGARDING PLAINTIFF'S RESPONSE
REGARDING PLAINTIFF'S DAUGHTER**

[REDACTED]

1 The Court should deny Plaintiff's request to re-open the trial record. The testimony
2 presented after the close of evidence regarding REDACTED travel was offered
3 to respond to the Court's inquiry regarding whether any official of the United States government
4 attempted to prevent REDACTED attendance at trial. Tr. at 167: 5-7 ("The Court: . . . I
5 want to know whether or not the government did something to obstruct a witness"); 178: 8-13
6 ("I'm suggesting to the government you get a witness out here"). The Court specifically stated
7 that this post-trial evidentiary session was not intended to be considered part of the trial record.
8 *Id.* at 167:2-7 ("we may have an evidentiary hearing *that's not part of this trial*") (emphasis
9 added); *see also id.* at 811:8-11 (noting that the Court was allowing hearsay testimony because "I
10 did ask for a witness to come in and explain what happened"); *id.* at 814:10-815:3 (same). This
11 was an appropriate instruction because "the time for testing of proof is the time of trial." *Locklin*
12 *v. Switzer Bros.*, 299 F.2d 160, 169 (9th Cir. 1961). "Post-trial experimenting with the evidence
13 produced at trial is no substitute for the proper and orderly presentation of proof" at trial, *id.*, and
14 that principle applies here.

15 To the extent, however, that the Court determines that the testimony and the declarations
16 should be treated as substantive evidence at trial, it should only be admitted as evidence to
17 determine whether the Government intentionally interfered with the trial proceedings in this
18 case. *See* Tr. at 167: 5-7. It should not be admitted, as Plaintiff requests, to support an allegation
19 that Plaintiff's daughter has suffered the "very adverse effects" alleged by Plaintiff and which
20 were the subject of last week's trial. Dkt. 658 at 2:22-23. Defendants would be prejudiced by
21 this result in that they have not had the opportunity, through the civil discovery procedures or
22 otherwise, to properly counter REDACTED allegations in this regard. Plaintiff should
23 not now be permitted to inject the assertions about REDACTED, a third-party to the
24 lawsuit, into a record in an attempt to demonstrate *Plaintiff's* ability to travel and fly, about
25 which Plaintiff offered extensive evidence at trial. The Court should accordingly deny Plaintiff's
26 request to add facts for the purpose that she proposes in her brief.

27 Without prejudice to this position, Defendants offer the below proposed findings of fact
28 and conclusions of law.

PROPOSED FINDINGS OF FACT

The National Targeting Center

1. U.S. Customs and Border Protection (CBP) established the National Targeting Center (NTC) as a twenty four hour, seven days a week, operation to provide advance targeting, research, and coordination among numerous law enforcement and intelligence agencies. NTC provides this support in both passenger and cargo environments.

Declaration of Maureen Dugan (“Dugan Dec.”), ¶ 2, *attached as Exhibit A*

2. After the attempted in-flight bombing of NW flight #253 on December 25, 2009, the National Targeting Center – Passenger (NTC-P) began vetting all flights prior to their departure from a foreign location to the United States **REDACTED**

REDACTED

REDACTED

REDACTED

Dugan Dec. ¶ 2; Dugan at 801:16-18; 23-25

3. The Regional Carrier Liaison Group serves as a liaison between CBP and the carriers.

Dugan at 806:11-15; Dugan Dec. ¶ 9

4. In certain instances an air carrier may be subject to penalties, including fines, for transporting an alien to the United States if that individual is not admissible.

Dugan Dec. ¶ 9

Events of December 1, 2013

5. On December 1, 2013, **REDACTED**, Plaintiff’s daughter, was booked to travel on December 2, 2013 from Kuala Lumpur, Malaysia to Manila, Philippines (on Malaysia Airlines) and from Manila to San Francisco International Airport (on Philippine Airlines).

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12. REDACTED

[REDACTED]

REDACTED

13. REDACTED

[REDACTED]

REDACTED

14. The trial in this matter played no role REDACTED. Defendants' counsel was not involved in the decision REDACTED, and there is no indication that the people involved REDACTED knew that REDACTED was coming to the trial.

Dugan at 809:3-4; 834:15-21

15. REDACTED

[REDACTED]

REDACTED

Events of December 2, 2013

16. REDACTED

[REDACTED]

REDACTED

17. REDACTED

[REDACTED]

1 REDACTED

2 [REDACTED]

3 [REDACTED]

4 18. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 19. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 20. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 21. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 22. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 **PROPOSED CONCLUSIONS OF LAW**

25 1. Defendants did not act to deprive [REDACTED] of the ability to testify at
26 trial.

27 Proposed Findings of Fact: 5-22; *Erickson v. Newmar Corp.*, 87 F.3d 298, 303
28 (9th Cir. 1996) (“Federal courts have inherent powers to manage their own
proceedings and to control the conduct of those who appear before them[,]” and

have the “inherent power to punish bad faith conduct which abuses the judicial process,” including witness tampering)

2. Defendants’ Counsel did not act to deprive REDACTED of the ability to testify at trial.

Proposed Findings of Fact: 5-22; *Erickson v. Newmar Corp.*, 87 F.3d 298, 303 (9th Cir. 1996)

3. REDACTED

Proposed Findings of Fact: 9-21; 8 U.S.C. § 1103; 8 U.S.C. § 1323

4. REDACTED

REDACTED

5. REDACTED assertions regarding her travel difficulties are not relevant to this litigation because she is not a party to this litigation, this case is not a class action, and the evidence does not relate to a claim or defense.

Compl., Dkt. 161; Federal Rules of Evidence 401

6. REDACTED assertions regarding her travel difficulties are not relevant to this litigation because the evidence does not involve facts that are of consequence in determining the action, and any probative value is substantially outweighed by the prejudice and confusion on the issues.

Federal Rules of Evidence 401, 403

7. Defendants are not responsible for any actions REDACTED

Proposed Findings of Fact: 11-13; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–62 (1992) (noting that a plaintiff lacks standing to challenge the government for actions taken by third parties that the government did not cause); *Allen v. Wright*, 468 U.S. 737, 759–61 (1984) (“The links in the chain of causation between the challenged Government conduct and the asserted injury are far too weak for the chain as a whole to sustain respondents’ standing”)

1 DATED: December 13, 2013

Respectfully submitted,

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