

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

AKRAM DJUMAEV,

Plaintiff,

v.

U.S. FEDERAL BUREAU OF INVESTIGATION; U.S. DEPARTMENT OF HOMELAND SECURITY; ALEJANDRO MAYORKAS, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CITIZENSHIP & IMMIGRATION SERVICES; UR MENDOZA JADDOU, DIRECTOR OF U.S. CITIZENSHIP & IMMIGRATION SERVICES; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; STEVE K. FRANCIS, ACTING EXECUTIVE ASSOCIATE DIRECTOR FOR HOMELAND SECURITY INVESTIGATIONS; U.S. CUSTOMS AND BORDER PROTECTION; TROY MILLER, ACTING COMMISSIONER OF U.S. CUSTOMS & BORDER PROTECTION; U.S. DEPARTMENT OF STATE; ANTONY BLINKEN, SECRETARY, U.S. DEPARTMENT OF STATE; MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES; CHRISTOPHER WRAY, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

Defendants.

Case No.: 1:21-cv-05016

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Akram Djumaev has been a lawful permanent resident of the United States since March 2013. Despite Mr. Djumaev's right to enter and reside in the United States as a lawful permanent resident, the Defendant U.S. government officials and agencies, through their actions and omissions, have exiled him from his adopted home for over five years and continue to bar him from reentering the United States.
2. In addition, the Defendant U.S. government officials and agencies have violated Mr. Djumaev's Fourth Amendment rights due to the search and prolonged detention of Mr. Djumaev's personal smartphone and its contents.
3. Mr. Djumaev has been stuck in Uzbekistan since March 2016. He has expended considerable effort over the past five years to return to the United States. He has booked multiple flights, but each time Defendants have prevented him from boarding flights to the United States. Defendants have not informed Mr. Djumaev why he is unable to fly.
4. Rather than helping resolve Mr. Djumaev's troubles returning to the United States, Defendants coerced Mr. Djumaev into signing a Form I-407, a form intended for lawful permanent residents who wish to *voluntarily* relinquish their permanent resident status in the United States.
5. Special Agent Megan MacDonald, under the control and supervision of Defendant Federal Bureau of Investigation (FBI), and Special Agent William Cook, under the control and supervision of Defendant Department of Homeland Security – Homeland Security Investigations (HSI) subjected Mr. Djumaev to a coercive interrogation during which Defendants repeatedly accused him of being involved in criminal activity without

providing any basis for those accusations. Despite Mr. Djumaev's repeated denial, Special Agent MacDonald and Special Agent Cook told him that he had no choice other than to sign Form I-407, and that if he failed to do so he would be arrested and incarcerated upon his return to the United States. Mr. Djumaev, believing he had no choice, signed the I-407 document to end the interrogation, which lasted approximately two hours.

6. Through this action for declaratory and injunctive relief, Mr. Djumaev seeks, *inter alia*, (i) an order voiding the I-407 and directing Defendants to honor Mr. Djumaev's lawful permanent resident card (his Green Card) or, in the alternative, directing Defendants to issue him a reentry permit or other suitable documents to allow him to travel back to the United States; (ii) removal of Mr. Djumaev's name from the U.S. government's No Fly List or, in the alternative, an order directing Defendants to provide him a meaningful opportunity to challenge his placement on the No Fly List; and (iii) an order directing the government officials responsible for searching, seizing, and sharing Mr. Djumaev's smartphone and its contents without a warrant to return his smartphone and expunge all information seized, retained, and disseminated from his smartphone.

PARTIES

7. Plaintiff, AKRAM DJUMAEV, is a resident of Chicago, IL. He is a thirty-two year-old citizen of Uzbekistan who has been a lawful permanent resident of the United States since March 2013. Mr. Djumaev traveled to Uzbekistan in January 2016 for the purpose of getting engaged. He intended to return to the United States in March 2016. He has been unable to return to the United States since then, due to Defendants' actions and omissions. In total, he has booked three flights to return home and has been unable to board each time.

8. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) is an agency of the United States government involved in the acts challenged, and employs officers named as Defendants in this complaint.
9. Defendant ALEJANDRO MAYORJAS is SECRETARY of the Department of Homeland Security. As head of DHS, Secretary MAYORKAS has authority over all policies, procedures, and practices related to border searches and the Traveler Redress Inquiry Program, the sole, inadequate mechanism for, *inter alia*, filing a complaint about placement on the No Fly List, including those challenged in this lawsuit. Defendant MAYORKAS is sued in his official capacity.
10. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) is a component within Defendant Department of Homeland Security. Defendant USCIS is involved in the acts challenged and employs the officers named as Defendants in this Complaint.
11. Defendant UR MENDOZA JADDOU is Director of Defendant USCIS. As head of USCIS, Defendant JADDOU has authority over all policies, procedures, and practices related to USCIS granting and revoking immigration benefits, including those challenged in this lawsuit. Defendant JADDOU is sued in her official capacity.
12. Defendant U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) is an agency of the United States government involved in the acts challenged, and employs PATRICK J. LECHLEITNER, named as Defendant in this complaint and Special Agent William B. Cook, directly involved in the acts alleged.
13. Defendant STEVE K. FRANCIS is Acting Executive Associate Director for Homeland Security Investigations (HSI), a division of defendant U.S. Immigration and Customs

Enforcement. Acting Executive Associate Director FRANCIS has authority over all HSI policies, procedures, and practices related to the presence of HSI agents at interviews at U.S. Embassies, including those challenged in this lawsuit. Defendant LECHLEITNER is sued in his official capacity.

14. Defendant U.S. CUSTOMS AND BORDER PROTECTION (CBP) is involved in the acts challenged and employs TROY MILLER, named as Defendant in this Complaint. Defendant U.S. Customs and Border Protection is a component agency within Defendant U.S. Department of Homeland Security.
15. Defendant TROY MILLER is Acting Commissioner of CBP. Acting Commissioner MILLER has authority over all CBP policies, procedures, and practices relating to border searches, including those challenged in this lawsuit. Defendant MILLER is sued in his official capacity.
16. Defendant U.S. DEPARTMENT OF STATE is a federal agency responsible for overseeing the issuance of immigrant and nonimmigrant visas and U.S. passports and protecting and assisting U.S. citizens living or traveling abroad.
17. Defendant ANTONY BLINKEN is the SECRETARY of the DEPARTMENT OF STATE and is sued in his official capacity. Defendant BLINKEN oversees the Department of State's activities with respect to the Immigration and Nationality Act.
18. Defendant MERRICK GARLAND is the Attorney General of the United States and the head of the United States Department of Justice, which oversees the Federal Bureau of Investigation, an agency of the United States government involved in the acts challenged and employs CHRISTOPHER WRAY, named as defendant in the complaint and Megan

MacDonald, involved in the acts alleged. Defendant GARLAND is sued in his official capacity.

19. Defendant CHRISTOPHER WRAY is the Director of the FBI. The FBI is an agency of the United States government involved in the acts challenged. Defendant WRAY is sued in his official capacity.

JURISDICTION AND VENUE

20. This case arises under the Constitution of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.
21. Jurisdiction is also conferred by the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), under which the court has authority to set aside unlawful agency action.
22. This Court has authority to issue declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 8 U.S.C. §§ 2201-2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.
23. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because Defendants are officers of agencies of the United States sued in their official capacity and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

Form I-407

24. Form I-407 is an internal USCIS document used by consular and immigration officers abroad to ensure that an alien has voluntarily abandoned lawful permanent resident status and has been informed of his or her right to a hearing before an Immigration Judge. *See* Form I-407 Instructions.¹

¹ The current version of Form I-407 contains some differences from the version Mr. Djumaev was coerced into signing.

25. Individuals may file Form I-407 if they are outside of the United States or at a port-of-entry. Form I-407 may be filed in person or by mail. USCIS has delegated authority to consular officers to accept and process Form I-407 in countries and at posts where USCIS does not have a presence. 9 FAM 202.2-8(c)(2).
26. If a lawful permanent resident signs this form at an Embassy or Port of Entry, the DHS officer or the DOS consular officer must explain to the individual that, by signing the form, the individual is waiving their right to a hearing before an immigration judge. The DHS officer or the DOS consular officer must also explain that if the individual chooses a hearing before an immigration judge instead, they would have the right to (1) be represented at no expense to the U.S. government by an attorney or accredited representative; (2) challenge any evidence that DHS may present against the individual; (3) present evidence in the individual's favor; (4) require that DHS prove, by clear, unequivocal, and convincing evidence, that the individual has lost his or her lawful permanent resident status through abandonment; and (5) appeal a decision against the individual. *Id.* 202.2-8(c)(10).
27. Defendant Department of State's internal guidelines, as set forth in the provisions of the Foreign Affairs Manual, instruct consular officers that "[t]he decision to abandon [lawful permanent resident] status is strictly voluntary" and that officers "should not encourage or require individuals to abandon [lawful permanent resident] status or to record such an abandonment on Form I-407." 9 F.A.M § 202.2-8(c)(1). Further, the manual explains that using the form "is intended to ensure that the individual knowingly, voluntarily, willingly, and affirmatively records the abandonment of his or her status." *Id.*

28. The guidelines also state that officers must interview any individuals submitting a Form I-407 in person if “there is any indication that the individual is not acting voluntarily” *Id.* § 202.2-8(c)(8). According to the Foreign Affairs Manual: “The purpose of the interview is to ensure that the individual is acting voluntarily and to dispel any misinformation that may have led the [lawful permanent resident] to believe he or she must submit Form I-407.” *Id.*
29. During such an interview, consular officers are instructed to “ascertain that the individual did not make the decision to sign Form I-407 based on misinformation or incorrect advice.” 9 F.A.M. § 202.8(c)(9).

Waiver of Appeal

30. By signing Form I-407, an individual “waives the right to a hearing before an immigration judge.” *Id.* § 202.8(c)(10). Consular officers are instructed to inform individuals of this waiver before signing. *Id.*
31. Consular officers are instructed to inform individuals that by waiving a right to a hearing, they are waiving the rights to representation, to challenge any evidence put forth, to present evidence in their favor, to hold DHS to its burden of proof, and “to appeal a decision” against them. *Id.* § 202.8(c)(10)(a)-(e).
32. Neither the Administrative Appeals Office (AAO), a component of Defendant USCIS, nor the Board of Immigration Appeals (BIA), a component of the U.S. Department of Justice, would have jurisdiction in this case.

33. The AAO exercises appellate jurisdiction over certain categories of immigration benefits.²
The AAO does not have authority to review whether or not surrender of lawful permanent residence is voluntary. *See In Re: Applicant*, WL 7068878 (AAO 2011).
34. The BIA may only exercise jurisdiction over appeals from decisions made by immigration judges and certain district directors of Defendant DHS.³
35. Mr. Djumaev was never afforded the opportunity to appear before an immigration judge; the signing and/or filing of Form I-407 does not involve the decisions of any district directors of Defendant DHS. Therefore, the BIA does not have jurisdiction over the coerced signing of this form at this juncture.

The No Fly List

36. The Terrorist Screening Center (TSC) – administered principally by the FBI – develops and maintains the Terrorist Screening Database (TSDB). The TSDB is the federal government’s centralized database that includes information about all individuals who are supposedly known to be or reasonably suspected of being involved in terrorist activity. The TSDB is also known as the master Terrorist Watchlist.
37. The No Fly List is a subset of the TSDB. Individuals on the No Fly List will be denied boarding on any flight to, from, or over the United States. National Counterterrorism Center, Watchlisting Guidance, ¶ 4.10.1 (March 2013) (Watchlisting Guidance).
38. As of 2013, there are five unique criteria for nomination to and placement on the No Fly List. Any person who represents any of the following may be placed on the No Fly List:

² The Administrative Appeals Office, USCIS, <https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-ao/administrative-appeals-office-ao>.

³ Office of the Director, The Department of Justice, <https://www.justice.gov/eoir/office-of-the-director>.

- a. A threat of committing an act of “international terrorism” or “domestic terrorism” with respect to an aircraft;
 - b. A threat of committing an act of “domestic terrorism” with respect to the homeland;
 - c. A threat of committing an act of “international terrorism” against any U.S. Government facility abroad and associated or supporting personnel, including U.S. embassies, consulates and missions, military installations, U.S. ships, U.S. aircraft, or other auxiliary aircraft owned or leased by the U.S. government;
 - d. A threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so; or
 - e. Any individual who was a detainee held at the Naval Station, Guantánamo Bay, unless the President certifies in writing that the detainee poses no threat to the United States, its citizens, or its allies. Watchlisting Guidance, ¶¶ 4.5.1-4, 4.6.
39. The TSC provides the No Fly List to the Transportation Security Administration (TSA), a component agency of Defendant DHS, for use in pre-screening airline passengers on commercial flights.
40. The TSA screens travelers by conducting a name-based search concerning the passenger prior to boarding. This search is conducted when an individual attempts to obtain a boarding pass, not when the individual purchases a ticket. If an individual is on the No Fly List, he or she will be allowed to purchase a ticket but then will be denied boarding at the airport.
41. In addition, U.S. Customs and Border Protection (CBP) will serve a notice to carriers transporting individuals on flights to or over the United States. If an individual is on the

No Fly List, CBP will issue the air carrier a notice recommending denial of boarding for that individual.

42. No one – not even United States citizens or lawful permanent residents – receive notice when they are added to the TSDB or the No Fly List. Individuals only effectively learn of their placement on the No Fly List when they are denied boarding at an airport by airline representatives.

DHS TRIP Redress Procedures

43. The only mechanism for challenging placement on the No Fly List is the Traveler Redress Inquiry Program (TRIP), which is managed by Defendant DHS.
44. If the name of the individual seeking redress is an exact or near match to a name on the No Fly List, DHS submits the TRIP inquiry to the TSC, which makes the final decision as to whether any action should be taken.
45. As of April 2015, a U.S. citizen or lawful permanent resident who is denied boarding, subsequently applies for redress through TRIP, and is on the No Fly List after a redress review, will receive a letter confirming his status on the No Fly List and an opportunity to challenge their placement.
46. DHS TRIP is largely ineffective, frequently refuses to release specific facts, and fails to timely process many complaints related to the No Fly List. Availing oneself of the DHS TRIP process usually includes waiting a significant amount of time even for confirmation of placement on the No Fly List.
47. If the traveler requests more details after receiving confirmation of their placement on the No Fly List, DHS TRIP will forward the file to the TSC Redress Office who then notifies

the NCTC and the relevant nominating agency that a request for additional information has been submitted.

48. The TSC Redress Office then requests an unclassified summary of the basis for an individual's placement on the No Fly List from these agencies. Upon receipt of the unclassified summary, the TSC forwards the case back to DHS TRIP.
49. DHS TRIP is then required to provide more detail to the individual, specifying the criteria under which the individual was placed on the List, and to the extent feasible, provide an unclassified summary of information that states the basis of an individual's inclusion in the No Fly List.
50. This second letter must provide the opportunity for a traveler to submit written responses, including exhibits or other materials ("DHS TRIP appeal"). There is no time limit for DHS TRIP to provide this information, and individuals who have received notice of placement on the No Fly List have waited years for the unclassified summary.
51. Upon DHS TRIP's receipt of an individual's submission in response to the second letter, DHS TRIP sends the response and any included information to the TSC. The TSC then reviews the response and other available information.
52. If the TSC determines the individual seeking review should not remain on the No Fly List, the TSC has the authority to remove them from the No Fly List. If the TSC determines that they should remain on the list, it submits a recommendation to the TSA Administrator that includes a summary of reasons the TSC considers material to that determination.
53. The TSA Administrator then must issue a final determination and furnish the individual with a final written letter providing the basis for the decision. TSA must also notify the individual of the ability to seek further judicial review under 49 U.S.C. § 46110.

54. For U.S. citizens and lawful permanent residents who are denied boarding on flights returning to the United States, the U.S. government has adopted a policy to review whether a one-time waiver would be appropriate. Watchlisting Guidance, § 4.10.3.1. A one-time waiver would permit an air carrier to transport an individual on a specified itinerary under controlled conditions.
55. An air carrier that denies a U.S. citizen or lawful permanent resident boarding overseas for a flight to the United States should instruct the individual to contact the consular section of the nearest U.S. Embassy or consulate.
56. The U.S. Embassy or consulate will serve as point of contact for the individual to apply for and receive a one-time waiver.
57. The TSC must approve a one-time waiver before it may be granted. Defendant DHS coordinates the one-time waiver process with Defendants FBI, DOS, CBP, DOJ, and the TSA.
58. The one-time waiver does not affect an individual's status on the No Fly List.

The CBP Directive

59. A directive issued by CBP in 2009 purports to authorize border agents to seize, detain, search, and freely dispose of the contents of an international traveler's "electronic devices." CBP Directive No. 3340-049, "Border Search of Electronic Devices Containing Information" (Aug. 20, 2009). The impermissibly broad directive claims to permit the following actions, among others, by CBP officers:
 - a. The review and/or analysis of all of the contents of a seized electronic device without individualized suspicion—regardless of sensitivity, password-protection, encryption, confidentiality, or privilege;

- b. The detention of a seized electronic device after the international traveler has left the border for more in-depth review and analysis, without individualized suspicion;
- c. The dissemination of the traveler's devices, electronic copies of the devices, or information obtained from those devices, to other government agencies or private parties for the purpose of obtaining assistance in the search and analysis of their contents; and
- d. The retention of a copy of information that relates to "immigration, customs, or other enforcement matters," and the sharing of that information with federal, state, local and foreign law enforcement agencies. *Id.* at § 5.4.1.2.

60. The directive issued by CBP in 2009 was the operative directive in January 2016 when law enforcement agents seized Mr. Djumaev's smartphone at JFK International Airport.⁴

61. Under this directive, if CBP officers had "probable cause to believe that the device . . . contains evidence of or is fruit of a crime that CBP is authorized to enforce," then CBP could retain the information without restriction.

62. However, even in the absence of probable cause or any level of suspicion, the previous directive allowed for the retention of information relating to "immigration, customs, and other enforcement matters if such retention is consistent with the privacy and data protection standards of the system in which such information is retained." *Id.* § 5.4.1.1-2.

⁴ In January 2018, after the events detailed below, CBP issued a new directive concerning border searches of electronic devices. Pursuant to the 2018 directive, CBP will only conduct an "advanced search" of electronic devices in "instances in which there is reasonable suspicion of activity in violation of the laws enforced or administered by CBP, or in which there is a national security concern . . ." CBP Directive No. 3340-049A, "Border Search of Electronic Devices", § 5.1.4 (Jan. 4, 2018).

As such, upon information and belief, any confidential, privileged, or otherwise private information could be retained with few restrictions.

63. The CBP directive was also overly permissive in many regards, including with respect to the search of privileged or confidential information. For example, the directive did not categorically prohibit the search, review, retention and dissemination of business confidential information. CBP agents were instructed to treat business or commercial information as confidential information and to protect it from unauthorized disclosure, but there was no requirement of individualized suspicion to seize, search, or disseminate that information. *Id.* § 5.2.3.
64. Similarly, the CBP directive did not categorically restrict the search, review, retention and dissemination of information and/or electronic devices that contain attorney-client privileged material. *Id.* § 5.2.1 (“Although legal materials are not necessarily exempt from a border search, they may be subject to special handling procedures.”). The directive did not describe those special handling procedures.
65. Moreover, the CBP directive purported to allow officers to retain attorney-client privileged or other confidential, sensitive information if it “pertains to immigration matters.” *See id.* § 5.4.1.2. The officers did not need to demonstrate any level of individualized suspicion to retain privileged material that they believed relates to immigration matters. *Id.*
66. As a result, vast swaths of information, including attorney-client privileged communications, exchanges between family members, or employment contract negotiations between an employer and employee could be retained in an individual’s Alien file. *Id.*

67. Defendant USCIS and other U.S. federal agencies that oversee immigration proceedings or adjudicate applications for immigration benefits thus have access to information that is otherwise unavailable to them. For example, USCIS does not normally subpoena an applicant's phone to evaluate the bona fides of a marriage. But thanks to CBP's directive, as it stood at the time, if a lawful permanent resident travels outside the country, USCIS does not have to take that extraordinary step. USCIS could take advantage of CBP's claimed authority to look at a wealth of private and confidential information in making a decision on any kind of immigration application.

Unlawful Search and Seizure of Plaintiff Akram Djumaev's Property

68. Mr. Djumaev is a thirty-three year-old lawful permanent resident of the United States and a citizen of Uzbekistan. Mr. Djumaev has been a lawful permanent resident of the United States since March 2013.
69. In January 2016, Mr. Djumaev took a trip to Uzbekistan to visit family and meet his future wife. Mr. Djumaev departed from John F. Kennedy International Airport (JFK).
70. After going through security, four plainclothes law enforcement agents approached him and interrogated him. The agents flashed their badges. They asked Mr. Djumaev about his travel plans, biographical details, and also whether he knew anyone in Turkey, Syria, or Afghanistan.
71. The agents took Mr. Djumaev's smartphone, asked him for the password, and asked to look at his emails.
72. The agents then told him they had to confiscate his smartphone. The agents provided Mr. Djumaev with a CBP Form 6051D Detention Notice and Custody Receipt for Detained Property (CBP Receipt), bearing the name of Special Agent Robert Murphy. The CBP

Receipt did not reflect the reason for detention or the tests that CBP intended to conduct on the smartphone.

73. Mr. Djumaev was not asked for his consent to search his smartphone and was not presented with a search warrant.
74. Defendants have yet to return Mr. Djumaev's smartphone.
75. Mr. Djumaev's smartphone contained private and sensitive information which he did not intend others to view without his voluntary consent.
76. Ultimately, after approximately an hour of questioning at JFK, Mr. Djumaev was able to board a plane to Tashkent, Uzbekistan, where he arrived on January 7, 2016.

Plaintiff Akram Djumaev's Boarding Denial

77. Mr. Djumaev was scheduled to return to the United States on March 22, 2016 as he had booked a round trip ticket before leaving in January 2016.
78. When Mr. Djumaev arrived at Tashkent International Airport on March 22, 2016, an airline attendant informed him that he would not be able to board. The airline attendant instructed Mr. Djumaev to contact the U.S. Embassy in Tashkent (Embassy).
79. That same day, Mr. Djumaev contacted the Embassy and consular staff instructed Mr. Djumaev to file a TRIP complaint with Defendant DHS. The Embassy also sent Mr. Djumaev information about the procedure for obtaining a one-time waiver.
80. Mr. Djumaev followed the instructions to file a TRIP complaint shortly after visiting the Embassy and then waited for a response. Mr. Djumaev did not have legal counsel at this point in time.

Plaintiff Akram Djumaev's Embassy Encounter

81. In May 2016, an Embassy employee called Mr. Djumaev and instructed him to come in for an interview. The Embassy employee did not explain why they were calling him to come for an interview. Mr. Djumaev assumed that this demand was connected to his denial of boarding. Believing that his attendance was required for him to return to the United States, he went to the Embassy on the appointed date.
82. On May 24, 2016, Mr. Djumaev arrived at the embassy and was escorted by two men to another room where he met the following individuals: FBI Special Agent Megan McDonald; Special Agent William Cook from DHS-HSI; and two officers of the U.S. Department of State—Andrei Stittes, the head of security for the Embassy, and an unidentified consular officer, John Doe, who identified himself as coming from the U.S. Embassy in Kazakhstan. Mr. Stittes served as interpreter for Mr. Djumaev, translating into and from Russian. Mr. Djumaev understands Russian, but it is not his first language or the language in which he is most comfortable. Mr. Djumaev is most comfortable speaking in Uzbek.
83. Mr. Djumaev was in a windowless room with the above-named individuals, seated at a table. The door to this room was shut.
84. Special Agents McDonald and Cook conducted an interrogation of Mr. Djumaev. None of the agents informed Mr. Djumaev of his right to remain silent or his right to have an attorney present during the interrogation. At the beginning, they informed him that he could leave the room.
85. Special Agents MacDonald and Cook did not offer Mr. Djumaev an explanation for the denial of boarding on March 22, 2016, nor did they indicate what, if anything, Mr. Djumaev had done between January 7, 2016 and March 22, 2016 warranting that denial.

Special Agents MacDonald and Cook aggressively repeated to Mr. Djumaev: “You are a threat to the U.S.” They did not provide an explanation or justification for that claim.

86. After asking him for biographical details and questions about his immigration history, the agents stated: “We have more serious questions. We know the answers already, just be honest with us.”
87. One of the agents asked: “You know what’s going on around the world in Syria—just going there is one thing, providing support is another thing, you know that?”
88. The agents also asked him repeatedly about his former employers, individuals who had been recently prosecuted in the United States on federal criminal charges.
89. The agents also asked: “Did you have something to do with those kinds of things? If you admit it, it will be better for you.”
90. The agents repeatedly exhorted Mr. Djumaev to “admit” that he was “guilty.”
91. The agents aggressively repeatedly said: “You’re lying, just be honest with us, we know everything.”
92. One of the agents said: “We know you’re guilty, just admit it, just admit it.”
93. Around this point, Special Agent Cook began yelling at Mr. Djumaev.
94. The agents claimed repeatedly that Mr. Djumaev had been involved in criminal activity, but they did not provide any proof or evidence to substantiate those allegations.
95. Special Agents McDonald and Cook insisted that Mr. Djumaev was lying and threatened that if he returned to the United States he would be arrested and incarcerated.
96. Eventually, after nearly an hour of demanding that Mr. Djumaev “admit” his “guilt,” Special Agents McDonald and Cook told Mr. Djumaev that he had two options: (1) he could return to the United States where, according to them, he would be arrested or (2) he

could agree to sign a paper saying that he will not return to the United States. Special Agents McDonald and Cook told Mr. Djumaev “the FBI will leave you alone” if he chose the second option.

97. They repeated multiple times that he would be arrested and incarcerated if he tried to return home to the United States. Special Agents McDonald and Cook told Mr. Djumaev that there was a “100% guarantee” of him going to jail.
98. Special Agents McDonald and Cook told Mr. Djumaev: “We have to come to an understanding before you leave this room.”
99. Believing that the defendants present would not permit him to leave the Embassy unless he signed the Form, Mr. Djumaev, with no real choice in the matter, went along with their second option. This happened around two hours after the interrogation began.
100. The agents handed him an already typed and prepared Form I-407 “Record of Abandonment of Lawful Permanent Resident Status.” The form was in English. The form was already on the table—neither the Special Agents nor the DOS employees left the room to retrieve it.
101. The Form I-407 was already pre-filled with typed-in answers to Boxes 1-7, concerning Mr. Djumaev’s full name, Alien registration number, date of birth, country of birth, country of citizenship, and date of last departure from the United States.
102. Prior to this interrogation, Mr. Djumaev did not convey to any of the Special Agents, the Defendants, or any other governmental agency that he wished to relinquish his permanent resident status. To be absolutely clear, at no point, then, since, or now, has Mr. Djumaev wished to relinquish his permanent resident status. He intends to resume his life in the United States.

103. Upon information and belief, Defendants, including Special Agents McDonald and Cook, planned in advance of this interrogation to pressure Mr. Djumaev into signing Form I-407, without any prior indication or evidence that Mr. Djumaev wished to relinquish his permanent resident status.
104. Andrei Stittes, an employee of the Embassy, translated some parts of the form into Russian orally to Mr. Djumaev. Mr. Stittes is the one who wrote onto the form everything that was not already type-written, except for Mr. Djumaev's signature and the date.
105. The agents instructed Mr. Djumaev that he would have to provide an explanation on the form. Mr. Djumaev explained to Mr. Stittes that he was scared to be arrested if he went back to the United States, but Mr. Stittes wrote on the form: "I am accused of participation in ISIS and will be arrested when I go back. That is why I will not return." Mr. Djumaev did not instruct Defendant Stittes to write that on the form.
106. Mr. Djumaev, after being pressured heavily by Special Agents McDonald and Cook into believing he had no other choice, signed the form. Mr. Djumaev believed that he would not be allowed to leave the room unless he signed the Form I-407.
107. Mr. Djumaev was so shaken up by the coercive interview and the impossible choice with which he had been presented that he had to write the date three separate times because his hands were shaking, crossing out two incorrect versions.
108. Defendants did not inform Mr. Djumaev of his right to a hearing before an immigration judge. Defendants did not inform Mr. Djumaev of his right to have representation at a hearing before an immigration judge. Defendants did not inform Mr. Djumaev that DHS would bear the burden of proving by clear and convincing evidence that he had abandoned his status at any hearing before an immigration judge. Defendants did not inform Mr.

Djumaev that he would have the right to appeal any decision against his favor by an immigration judge.

109. Mr. Djumaev had only been outside of the United States for four months when he was coerced into signing the I-407 form.

110. In August 2016, Mr. Djumaev received a response to his TRIP complaint noting that a review of Mr. Djumaev's file had been conducted and that there were no corrections warranted at the time.

111. Defendants, through their actions and omissions, prevented Mr. Djumaev from receiving notice of his placement on the No Fly List, deprived him of his opportunity to obtain information regarding the basis for that placement, and took away his chance to contest that information. As Mr. Djumaev is a lawful permanent resident, Defendant DHS was required to inform him whether he remained on the No Fly List and to offer him notice and an opportunity to be heard.⁵

112. Mr. Djumaev booked another flight for October 20, 2016 to try returning home once again. However, a few days before this flight, Mr. Djumaev's travel agent informed him that he would be unable to board. The travel agency had received a message from the airline: "U.S. immigration had instructed the airlines not to permit him to board and to contact the Embassy."

113. On December 7, 2016, Mr. Djumaev received an email from the Embassy telling him that he needed to come in for a meeting and asked for his cell number, which he provided.

⁵ See Notice of Revised Redress Procedures, *Tanvir v. Lynch*, No. 13-CV-6951-RA, ECF No. 85 (S.D.N.Y. May 4, 2015) ("Under the newly revised procedures, a U.S. person who purchases a ticket, is denied boarding at the airport, subsequently applies for redress through DHS TRIP about the denial of boarding, and is on the No Fly List after a redress review, will now receive a letter providing his or her status on the No Fly List and the option to receive and/or submit additional information.").

Later an Embassy employee called him, asking him to come to the Embassy on December 12, 2016. The Embassy employee did not explain why Mr. Djumaev needed to come in.

114. On December 8, 2016, Mr. Djumaev's counsel sent an e-mail to the Embassy to inquire about the purpose of the upcoming appointment.

115. On December 11, 2016, Mr. Djumaev communicated with an American Embassy employee, Josh LNU (last name unknown). Josh LNU spoke in Russian and told Mr. Djumaev that the purpose of the meeting at the Embassy was to return Mr. Djumaev's smartphone to him—the smartphone which had been confiscated nearly a year earlier at JFK. Josh LNU also told Mr. Djumaev to bring his Green Card to the embassy.

116. Upon information and belief, Josh LNU was acting in his official capacity as an agent of the FBI stationed with the Regional Security Office at the Embassy.

117. Mr. Djumaev told Josh LNU that he did not want to come to the Embassy. Mr. Djumaev was afraid to go back to the Embassy after his prior experience there. Josh LNU stated that he could meet Mr. Djumaev outside the Embassy, but reiterated that Mr. Djumaev should bring his Green Card.

118. Later that day, Mr. Djumaev and undersigned counsel called Josh LNU. Josh LNU stated that the purpose of the meeting was to return Mr. Djumaev's smartphone. Josh LNU refused to provide any additional information over the phone until counsel sent a signed Form G-28, Notice of Representation of Attorney or Accredited Representative, to the Embassy on behalf of Mr. Djumaev.

119. On December 12, 2016, counsel e-mailed a signed G-28 form to the Embassy on behalf of Mr. Djumaev.

120. On December 21, 2016, Mr. Djumaev's counsel called Josh LNU to inquire into the status of the Embassy's request. Josh LNU refused to provide counsel with any further information regarding Mr. Djumaev's smartphone or the request that he bring his permanent resident card. When counsel persisted, Josh LNU responded: "We received our orders from DHS to cease and desist."
121. On March 28, 2017, undersigned counsel wrote to Defendants DHS and USCIS detailing Mr. Djumaev's ordeal. Counsel requested that DHS and USCIS investigate and invalidate the coerced I-407. To date, Defendants have not responded to counsel.
122. On May 13, 2017, Mr. Djumaev once again bought a ticket to return to the United States for May 28, 2017 on Uzbek Airlines.
123. On May 22, 2017, Defendant USCIS sent counsel a response to a Freedom of Information Act/Privacy Act request for Mr. Djumaev's Alien file (A-file). Mr. Djumaev's A-file included the Form I-407 that Mr. Djumaev was coerced into signing.
124. On May 28, 2017, for the third time since March 22, 2016, Mr. Djumaev attempted to return to the United States. Mr. Djumaev went to the airport and the airline refused to issue him a boarding pass.
125. On June 27, 2017 Mr. Djumaev's counsel contacted the Embassy in order to confirm the validity of the instructions for the one-time waiver process, originally sent to Mr. Djumaev on March 30, 2016. As a lawful permanent resident, Mr. Djumaev would be eligible for a one-time waiver to return to the United States if he were on the No Fly List.
126. On July 12, 2017, the Embassy wrote to counsel—without answering whether the one-time waiver is still available to Mr. Djumaev—that Mr. Djumaev is considered "a lawful

permanent resident with an abandoned [lawful permanent resident] status” because Mr. Djumaev has been outside of the United States for more than year.

127. The Embassy did not reference the forced Form I-407 in its response to counsel.

128. Defendants have kept Mr. Djumaev outside of the United States for over five years against his will. Through their actions and omissions, including coercing him into signing Form I-407, refusing to respond to requests to invalidate the I-407, and placing and retaining him on the No Fly List, Defendants have forcibly exiled Mr. Djumaev outside of the United States.

129. This entire ordeal has imposed significant financial and emotional costs on Mr. Djumaev. He lost his trucking job in the United States and was not reimbursed for the costs of the flights in March 2016 and October 2016. Moreover, Mr. Djumaev has lived with significant anxiety since May 2016, wondering if he will ever be able to return home to the United States.

130. Mr. Djumaev wishes to return to his home, the United States, as soon as possible. Mr. Djumaev never intended to abandon his residency, as evidenced by the numerous efforts he has made over the past few years to return.

CLAIMS

COUNT I

FAILURE TO PROVIDE NOTICE AND HEARING – COERCION TO ABANDON LPR STATUS

Procedural Due Process (U.S. Constitution, Fifth Amendment)

131. Plaintiff Mr. Akram Djumaev incorporates by reference each and every allegation contained in the paragraphs above.
132. Defendants' actions and omissions deprived Mr. Djumaev of constitutionally protected liberty interests.
133. Mr. Djumaev, like all lawful permanent residents with continual residence in the United States, has a liberty interest in maintaining his status. Mr. Djumaev has a right—both statutory and constitutional—not to have his lawful permanent resident status revoked, modified, or altered without due process of law.
134. Defendants have deprived Mr. Djumaev of these rights without due process of law in violation of the Fifth Amendment to the United States Constitution by preventing him from boarding flights to the United States, by coercing him into signing an I-407 form, and by preventing him from returning within 180 days of his departure from the United States.
135. Mr. Djumaev is entitled to a legal mechanism that affords him notice and an opportunity to contest the deprivation of his liberty interests resulting from Defendants' effective revocation of Mr. Djumaev's lawful permanent resident status. Mr. Djumaev's affected liberty interests include but are not limited to his interests in maintaining his lawful permanent resident status.

COUNT II

FAILURE TO PROVIDE NOTICE AND HEARING – PLACEMENT ON THE NO FLY LIST
Procedural Due Process (U.S. Constitution, Fifth Amendment)

136. Mr. Djumaev also has a liberty interest in travel free from unreasonable burdens within, to, and from the United States.
137. Mr. Djumaev has a right to be free from being falsely stigmatized as an individual associated with “terrorist” activity and from having these associational falsehoods disseminated widely to government agencies, airline carriers, and foreign governments.
138. Mr. Djumaev’s placement on the No Fly List has adversely affected his liberty interest in travel and his right to be free from false stigmatization by the government.
139. Defendants, acting in their official capacity and under color of authority, were and remain responsible for promulgating, implementing, maintaining, administering, supervising, compiling, or correcting the No Fly List.
140. By failing to articulate and publish a clear standard and criteria for inclusion on the No Fly List, to inform Mr. Djumaev of his placement on the No Fly List and the bases for being on the No Fly List, and to provide Mr. Djumaev with a meaningful opportunity to challenge his placement on the No Fly List, Defendants deprived Mr. Djumaev of protected liberty interests without affording him due process of law in violation of the Fifth Amendment to the United States Constitution.
141. Defendants have violated Mr. Djumaev’s rights without affording him due process of law and will continue to do so into the future if Mr. Djumaev is not afforded the relief demanded below.

COUNT III
FAILURE TO PROVIDE NOTICE OF IMMIGRATION CHARGES AND REMOVAL HEARING

Immigration and Nationality Act (8 U.S.C. §§ 1101(a)(20), 1229, 1229a)

142. Plaintiff Mr. Djumaev incorporates by reference each and every allegation contained in the paragraphs above.
143. Defendants' actions and omissions described herein deprive Mr. Djumaev of rights guaranteed by the Immigration and Nationality Act, 8 U.S.C. §§ 1101(A)(20), 1229, 1229a.
144. As a lawful permanent resident of the United States, Mr. Djumaev has been "lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws." 8 U.S.C. § 1101(a)(20).
145. Defendants cannot deprive Mr. Djumaev of the privilege of residing permanently in the United States without charging him and providing him with a removal hearing before an immigration judge, in accordance with the procedures set forth in 8 U.S.C. §§ 1229, 1229a.
146. Defendants have violated the INA by excluding Mr. Djumaev from the United States and preventing his return to the United States without charge and without a removal hearing.

COUNT IV
UNLAWFUL AGENCY ACTION
Administrative Procedure Act (5 U.S.C. § 706)

147. Plaintiff Mr. Djumaev incorporates by reference each and every allegation contained in the paragraphs above.
148. Defendants' failure to provide Mr. Djumaev with constitutionally adequate notice of the bases for his placement on the No Fly List and a meaningful opportunity to challenge his continued inclusion on the No Fly List is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

149. Because Mr. Djumaev does not present, and has never presented, a threat to aviation safety or a threat to commit an act of terrorism, Defendants' placement and continued inclusion of Mr. Djumaev on the No Fly List is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.
150. Defendants' revocation of Mr. Djumaev's lawful permanent resident status on the basis of a coerced Form I-407 was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful agency action pursuant to 5 U.S.C § 706.

COUNT V
VIOLATION OF FOURTH AMENDMENT
Unreasonable Search and Seizure (U.S. Constitution, Fourth Amendment)

151. Plaintiff Mr. Djumaev incorporates by reference each and every allegation contained in the paragraphs above.
152. By searching, seizing, copying, retaining and distributing Mr. Djumaev's smartphone and its private contents without probable cause or reasonable suspicion, Defendants violated and continue to violate his rights under the Fourth Amendment to the United States Constitution.
153. The overly permissive CBP directive in effect in January 2016 unconstitutionally authorized the continued search, retention, and distribution of Mr. Djumaev's smartphone, and thus, private information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

154. Declaring that Defendants' policies, practices, and customs described herein violate Mr. Djumaev's rights under the Fourth and Fifth Amendments to the United States Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act;
155. Enjoining Defendants and their agents, employees, successors, and all others acting in concert with them, from subjecting Mr. Djumaev to the unconstitutional and unlawful practices described in this complaint;
156. Issuing an order voiding the improperly coerced I-407 form and directing Defendants to honor Mr. Djumaev's lawful permanent resident card; or in the alternative ordering Defendants to provide Mr. Djumaev adequate documentation to board a carrier to return to the United States and challenge any attempted revocation of his lawful permanent resident status;
157. Ordering Defendants to provide a constitutionally adequate mechanism affording Mr. Djumaev with meaningful notice of the standards for inclusion on the No Fly List, meaningful notice of his placement on the No Fly List and of the grounds for his inclusion on the No Fly List, and a meaningful opportunity to contest his placement on the No Fly List before a neutral decision-maker;
158. Ordering Defendants to return to Mr. Djumaev all information in their custody or control obtained from Mr. Djumaev's smartphone and, to the extent the information cannot be returned, to expunge or otherwise destroy the information and take steps to ensure that any such seized information that Defendants shared with others is also returned to Mr. Djumaev or permanently destroyed by its recipients;
159. Ordering Defendants to disclose to Mr. Djumaev (1) whether any information obtained from his smartphone has been disclosed or disseminated to any other agencies,

