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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

AYMAN LATIF, et al.,

Plaintiffs,

v.

ERIC H. HOLDER, JR., et al.,

Defendants.

Case No.: 10-cv-750 (BR)

**PLAINTIFFS' MOTION TO
STRIKE OR TO COMPEL
DISCLOSURE OF DEFENDANTS'
EX PARTE SUBMISSIONS**

Hearing: January 21, 2010, 1:30 P.M.

LR 7-1 CERTIFICATION

The parties made a good faith effort through telephone conferences to resolve the dispute pursuant to LR 7-1, and have been unable to do so.

MOTION

Pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution and other applicable law, Plaintiffs move for an order striking the Defendants' *ex parte* submission of secret evidence for *in camera* review in support of their Motion to Dismiss or for Summary Judgment, which Defendants have identified as:

1. a classified FBI declaration;
2. redacted portions of the Declaration of Christopher M. Piehota, Deputy Director for Operations of the Terrorist Screening Center; and
3. a supplemental memorandum of law.

Defs.' Notice of Filing (Dec. 13, 2010) (dkt no. 49).

In the alternative, Plaintiffs request that the Court enter an order

1. requiring Defendants (a) to disclose their *ex parte* classified submissions subject to a suitable protective order or (b) to provide Plaintiffs with an unclassified summary of the arguments and evidence contained therein;
2. striking any materials determined after *in camera* review to be subject to the law enforcement privilege;
3. requiring Defendants to disclose any non-privileged materials; and
4. ordering Defendants to disclose any sensitive security information subject to the protections contemplated by the Department of Homeland Security

Appropriations Act of 2007, Pub. L. No. 109-295, § 525, 120 Stat. 1355, 1381-82.

The grounds for the motion are as follows: Defendants' use of secret arguments and information in seeking summary judgment offends due process; Defendants must choose between making their *ex parte* submissions available to Plaintiffs and forgoing reliance on them. Due process requires the disclosure of any classified information on which Defendants wish to rely or, at a minimum, an unclassified summary of the arguments and evidence contained therein. Due process also requires the disclosure of any non-privileged materials; any evidence over which Defendants have validly claimed the law enforcement privilege must be removed from the case. And, because Congress authorized the disclosure of sensitive security information to civil litigants in the Department of Homeland Security Appropriations Act of 2007, § 525, 120 Stat. at 1381-82, the Court should order Defendants to disclose any such information upon which they choose to rely, subject to appropriate protections, as shown more fully in the accompanying Memorandum of Points and Authorities.

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December 15, 2010