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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

AYMAN LATIF, et al.,  <i>Plaintiffs,</i>	Case 3:10-cv-00750-BR
v.  ERIC H. HOLDER, JR., et al.,	<b>DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE – EXHIBIT B</b>

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE  
EXHIBIT B  
JANUARY 4, 2011 LETTER TO BEN WIZNER**



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**January 4, 2011**

**VIA EMAIL**

Ben Wizner  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004

**Re: Latif v. Holder, 3:10-cv-00750-BR (D. Oregon)**

Dear Ben,

In your recent filings regarding the government's *ex parte* submissions, you refer to the provisions that authorize the disclosure of Sensitive Security Information ("SSI") to non-covered parties in civil litigation, namely, Section 525(d) of the Department of Homeland Security Appropriations Act, 2007, Public Law No. 109-295, § 525(d), 120 Stat. 1382 (Oct. 4, 2006), as reenacted by Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 522, 121 Stat. 2069 (Dec. 26, 2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, § 510, 122 Stat. 3682 (Sept. 30, 2008); and the Legislative Branch Appropriations and Continuing Appropriations Resolution of 2010, Pub. L. 111-68, Division B, § 101, --- Stat. --- (Oct. 1, 2009) ("Section 525(d)" or "the Act").<sup>1</sup> You suggest that you have met the requirements of Section 525(d) and are entitled to review the SSI that was submitted *ex parte* to the Court on December 13, 2010. *See* Pls. Mem. In Support of Mot. To Strike, Docket No. 52 at 16-19 (filed December 15, 2010).

Please note, however, that Section 525(d) mandates that a series of steps be completed before any SSI may be disclosed to a non-covered person in civil litigation. Specifically, you must: (i) apply to TSA in writing, explaining how the information you seek is relevant to your client's case, and demonstrating that you have a substantial need for the information in preparation thereof, and (ii) undergo vetting, including a criminal background check and a terrorist threat assessment. TSA must then conclude that providing you access to the SSI at issue would not pose a risk of harm to the nation. Only then may you be granted access to relevant SSI pursuant to a protective order

<sup>1</sup> SSI is information obtained or developed in the conduct of security activities, the disclosure of which the Transportation Security Administration ("TSA") has determined would, among other things, be detrimental to the security of transportation. *See* 49 U.S.C. § 114(r); 49 C.F.R. § 1520.5(a)(3). SSI may not be disclosed to a non-covered person in civil discovery except with the express consent of the TSA Administrator or his designee, *see* 49 C.F.R. § 1520.9(a)(2), or pursuant to Section 525(d).

The arguments contained in your brief do not constitute a proper request for SSI, nor is the Court empowered to grant your request in light of the various requirements outlined above. TSA is not currently a party to this litigation, but undersigned counsel will transmit your request if you direct it to us. Accordingly, if you would like to request access to SSI via Section 525(d), please send to me, in writing, a request to apply for SSI access pursuant to the Act. As explained above, your request should include a statement explaining how the information you seek is relevant to the case and why you believe you have a substantial need for the information in the preparation of your case. You will then be required to undergo the vetting process. This process involves the submission of certain forms, the payment of a fee, and ink finger-printing by an authorized federal employee.

SSI access, if granted, would permit a vetted attorney to use SSI for purposes of this litigation. In addition, that attorney would be obligated to protect that SSI as a covered person subject to TSA enforcement action. The attorney would not be permitted to disclose SSI to any person without first consulting TSA, including, but not limited to, a court reporter, your clients, other attorneys or staff in your office, and vendors.

If you, or one of your co-counsel, wish to apply for access to SSI pursuant to the Act, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Kelleher". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Diane Kelleher