

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case No. 10-cv-2878-JLK-BNB

GARY D. FIELDER,

Plaintiff,

v.

**JANET NAPOLITANO, in her official capacity
as Secretary of Homeland Security,**

**UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, an agency of
UNITED STATES OF AMERICA,**

**JOHN PISTOLE, in his official capacity as
Administrator of Transportation Security
Administration, and**

**TRANSPORTATION SECURITY
ADMINISTRATION, an agency of
UNITED STATES OF AMERICA,**

Defendants.

**JOINT MOTION TO VACATE THE MARCH 9, 2010
SCHEDULING/PLANNING CONFERENCE**

COME NOW all parties to move the Court to vacate the March 9, 2011 Scheduling Conference pending a Court ruling on Defendants' Motion to Dismiss. The reasons for the motion are as follows:

1) Plaintiff filed suit raising a Fourth Amendment claim against the screening procedures of the Transportation Security Authority (TSA).

2) On December 15, 2010, the Court issued a scheduling order setting a Rule 16(b)

Scheduling Conference and a Rule 26(f) planning meeting. The order set deadlines of February 16, 2011 for the parties to meet and confer, March 2, 2011 for the parties to submit a proposed scheduling order, March 2, 2011 for the parties to comply with mandatory disclosure requirements, March 2, 2011 for the parties to submit a Confidential Settlement Statement to the Court, and March 9, 2011 for a scheduling/planning conference.

3) On January 18, 2011, the United States Attorneys' Office was served with the Amended Complaint.

4) On February 15, 2011, the parties conferred by telephone in accordance with the Court's December 15, 2010 Scheduling Order.

5) Counsel for Defendants informed Plaintiff that Defendants intend to file a motion to dismiss for lack of jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1). Specifically, Defendants will be arguing that, pursuant to 49 U.S.C. § 46110, exclusive jurisdiction over orders of the TSA relating to aviation security lies with the courts of appeals.

6) Defendants' response to the Complaint is due on March 21, 2011, and Defendants intend to file their motion on or before that date.

7) The parties agree that it would be appropriate for the Court to decide whether it has jurisdiction over the instant case prior to moving forward with the March 9, 2011 Scheduling/Planning Conference and its related obligations.

Dated: February 28, 2011

Respectfully submitted,

/s/ Gary Fielder
Gary Fielder, 19757
5777 Olde Wadsworth
Suite R-700
Arvada, CO 80002
(303) 650-1505
fax (303) 650-1705
garyfielder@earthlink.net

Plaintiff

TONY WEST
Assistant Attorney General

JOHN F. WALSH
United States Attorney

SANDRA M. SCHRAIBMAN
Assistant Branch Director
Civil Division, Federal Program Branch

/s/ Tamara Ulrich
TAMARA L. ULRICH
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044
(202) 305-1432 (telephone)

Attorneys for Defendants