

**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.

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**UNOPPOSED MOTION TO DISMISS WITHOUT PREJUDICE**

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COMES NOW the Plaintiff, Gary D. Fielder, and respectfully requests that this court issue an Order dismissing the above-referenced action without prejudice, with an Order that the parties pay their respective fees and costs.

AS GROUNDS THEREFOR, the Plaintiff states as follows:

1. On or about November 24, 2010, the Plaintiff, Gary D. Fielder (hereinafter referred to as “Mr. Fielder”), filed a First Amended Complaint for Injunctive Relief and Request for Permanent Restraining Order against, among others, the United States Department of Homeland

Security, and the Transportation Security Administration, both agencies of the United States Government.

2. On or about March 11, 2011, the Defendants, all represented by the U.S. Department of Justice, filed Defendants' Motion to Dismiss.

3. In its Motion, the Government argues that this court lacks jurisdiction over the above-referenced matter, as Mr. Fielder has somehow challenged an "Order" issued by the Transportation Security Administration.

4. One could colorably argue the referenced administrative policy does not constitute an Order.

5. Further, Mr. Fielder does not agree that the Order has a binding affect on him as a passenger, as much as it appears to be a guide for government employees to follow while screening.

6. Additionally, it is unclear how at this time Mr. Fielder could be challenging an Order which he has not seen or read.

7. Nonetheless, Mr. Fielder is desirous of a remedy to this most uncomfortable situation.

8. Mr. Fielder is not desirous of being at odds with the United States.

9. Mr. Fielder is further not interested in engaging in protracted litigation involving technical issues of jurisdiction and law.

10. Mr. Fielder is interested in being able to travel through the use of a commercial airline with his family without being required to submit to the scanning of his naked body, while receiving a blast of radiation, or in the alternative, having him and his family members touched all over their human bodies by government agents.

11. If this court lacks jurisdiction to order a government agency to comport with the Constitution, then so be it.

12. If, however, after the dismissal of this matter and the re-filing of a request in either the 10<sup>th</sup> Circuit or the D.C. Circuit, it is determined that those courts lack jurisdiction to address Mr. Fielder's concerns, Mr. Fielder would most certainly like the opportunity to come back to this Honorable Court to seek redress.

13. Accordingly, Mr. Fielder consents to the dismissal of this action without prejudice.

WHEREFORE, for the reasons stated above, the Plaintiff requests the court dismiss this matter without prejudice.

Respectfully submitted,

*s/ Gary D. Fielder*

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Gary D. Fielder, #19757  
LAW OFFICE OF GARY D. FIELDER  
5777 Olde Wadsworth Boulevard, #R700  
Arvada, CO 80002  
(303) 650-1505

Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 8<sup>th</sup> day of April, 2011, I electronically filed the foregoing **UNOPPOSED MOTION TO DISMISS WITHOUT PREJUDICE** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Tamara L. Ulrich  
U.S. Department of Justice  
[Tamara.Ulrich@usdoj.gov](mailto:Tamara.Ulrich@usdoj.gov)

*s/ Shelley Ricker, Legal Assistant*