

Case No. 1:08-CV-1902
Gwin, J.

it seems) that he “has been put on a terrorist watch list, or the equivalent thereof.” *Id.* ¶ 124. And he requests “an injunction to prevent further infringement of his liberties.” *Id.* ¶ 304.

The United States moves to dismiss Doe’s right-to-travel claim, arguing that Doe has failed to identify any waiver of the government’s sovereign immunity. *See* [Doc. [68-1](#), at 7-9]. Moreover, the United States says, if Doe is trying to invoke the sovereign-immunity waiver found in the Administrative Procedure Act (“the APA” or “the Act”), *see* [5 U.S.C. § 702](#), he has insufficiently pleaded the “final agency action” needed to state a claim under the Act, *see id.* [§ 704](#). *See* [Doc. [68-1](#), at 10-13]. Doe opposes the government’s motion. *See* [Doc. [72](#)].

Because Doe admits he brought this claim under the APA, *see id.* at 13-15, and because Doe has failed to plead “final agency action,” the Court reluctantly **GRANTS** the government’s motion.

I.

This Order resolves one small part of what might have been a much larger case. In a prior opinion, *see* [Doc. [56](#)], the Court detailed Doe’s other allegations against the government. The same is not necessary here. It’s sufficient to say that Doe—a United States citizen and Army veteran—has alleged dangerous mistreatment by his own government, beginning with a secret, torture-filled, and still-unexplained nine-month-long detention in an overseas military prison. (To the extent it matters, the government released Doe without charging him with, or even accusing him of, any wrongdoing. [Doc. [65](#), ¶ 129].)

Doe, “who loves his country and its ideals,” *id.* ¶ 129, might have accepted an apology from our government, had it ever offered one. But it didn’t. Instead, it branded Doe suspicious, added him to “a terrorist watch list,” and now harasses him at airports. Understandably, Doe wants this to stop.

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Nevertheless, Doe can't sue for removal from the government's blacklist—not yet at least. The APA generally limits this Court's review of “[a]gency action” to only “final agency action,” [5 U.S.C. § 704](#), that is, an action both “mark[ing] the consummation of the agency's decisionmaking process” and either determining “rights or obligations” or generating “legal consequences.” [Bennett v. Spear, 520 U.S. 154, 177-78 \(1997\)](#) (internal quotation marks omitted). And Doe alleges only that “[e]ach time [he] is detained, he petitions the Customs officers to remove him from the watchlist, but each such request is invariably denied.” [Doc. [65](#), ¶ 127]. Those denials—coming from “Customs officers [who] meet [Doe] as he disembarks from the plane,” [id.](#) ¶ 125—are hardly the “consummation” of Customs's decisionmaking process; they're front-line obedience by those without decisionmaking authority. With nothing else, Doe's complaint fails to plead final agency action and, accordingly, fails to state a claim under the APA.

II.

For these reasons, and in spite of Doe's appalling (and, candidly, embarrassing) allegations, the Court **GRANTS** the government's motion. If he's not already done so, Doe might consider the Department of Homeland Security's Traveler Redress Inquiry Program,^{4/} through which, for better or worse, he can get “final agency action.” *See also* [Latif v. Holder, 686 F.3d 1122 \(9th Cir. 2012\)](#).

IT IS SO ORDERED.

Dated: September 7, 2012

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{4/}<http://www.dhs.gov/dhs-trip>