UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JONATHAN CORBETT,

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, et al.

Defendants.

No. 1:12-cv-20863-JAL

THE UNITED STATES' AND TRANSPORTATION SECURITY ADMINISTRATION'S MOTION TO DISMISS

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INTRODUCTION

Pro se plaintiff Jonathan Corbett is suing the United States, the Transportation and Security Administration (TSA), and TSA employee Alejandro Chamizo, in his individual capacity, for actions taken while the plaintiff was screened at a security checkpoint of an airport. This motion will address only the claims against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §1346(b)(1), and against TSA under the Privacy Act, 5 U.S.C. §552a, *et seq*.[1] The FTCA claims allege various intentional torts, including civil assault (Count 6), false arrest (Count 7), false light invasion of privacy (Count 8), intentional infliction of emotional distress (Count 9), and one claim for civil conspiracy (Count 19). The plaintiff also brings claims for alleged failures by TSA to meet agency requirements under the Privacy Act (Counts 10-16).[2] For the reasons set forth below, the United States and TSA respectfully move this Court to dismiss the plaintiff's amended complaint, with prejudice, under 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.[3]

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[1] Defendant Chamizo will file a separate motion to dismiss.

[2] The plaintiff also alleged a claim under the Freedom of Information Act (FOIA) (Count 17) and requested injunctive relief against TSA. But TSA responded to the plaintiff's FOIA request on June 25, 2012. *See* Cover letter to TSA's response to the plaintiff's FOIA request, Exhibit 1; *see also Odyssey Marine Exploration Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1169 (11th Cir. 2011) (noting that when a court considers a motion under Rule 12(b)(1), it "may consider extrinsic evidence"). Therefore, the plaintiff's request for injunctive relief is moot.

[3] This case is not the plaintiff's first challenge to TSA's screening procedures. In *Corbett v. United States*, 458 Fed. Appx. 866 (11th Cir. 2012), the plaintiff argued that TSA's Standard Operating Procedures violated the Fourth Amendment. Without addressing the merits of his challenge, the district court dismissed that case, concluding that it lacked subject-matter jurisdiction over the action; the Eleventh Circuit affirmed. *Id*. at 868. The plaintiff has filed a petition for certiorari before the Supreme Court and a new petition in the Eleventh Circuit directly attacking TSA's Standard Operating Procedures, both of which are pending.

RELEVANT FACTS[4]

On August 27, 2011, Jonathan Corbett arrived at Fort Lauderdale-Hollywood International Airport. Am. Compl. at ¶¶ 23. As is customary with all who wish to fly, the plaintiff voluntarily presented himself at the airport security checkpoint for pre-boarding security screening. *Id*. at ¶ 26. Once he entered the security checkpoint area, the plaintiff opted out of Advanced Imaging Technology (AIT), or whole-body imaging. *Id*. at ¶¶ 28-31. It is the official policy of TSA to permit travelers to opt out of AIT. Passengers who opt out are instead patted down by a TSA screener. Am. Compl. at ¶¶ 30-34. The plaintiff initially consented to the pat down, but tried to withdraw consent when TSA personnel explained that the procedure extended to sensitive areas of the body. *Id*. at ¶¶ 34-35. TSA employees then contacted the Behavior Detection Manager who was on duty at the time, Alejandro Chamizo. *Id*. at ¶ 41. Defendant Chamizo told the plaintiff that he would not be cleared to proceed past the security checkpoint if he did not consent to AIT or a pat-down search. *Id*. at ¶ 44. The plaintiff again declined both procedures. *Id*. at ¶ 38. Defendant Chamizo then told the plaintiff that he could not leave the secured-screening area until TSA cleared him and his accessible property in light of his refusal. *Id.* at ¶ 47. TSA employees screened the plaintiff's personal belongings, including a backpack, bag of books, and credit cards. *Id* at. ¶¶ 50-52, 56. The agents also made copies of his identification and boarding pass and shared that information with the state-law-enforcement officer on-site. *Id.* at ¶¶ 66, 70. The plaintiff does not

[4] For purposes of this motion to dismiss, all well-pleaded facts alleged in the amended complaint are accepted as true. *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006). Although the allegations in the amended complaint are "viewed in the light most favorable to the plaintiff," *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007), "factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp v. Twombly*, 550 U.S 544, 545 (2007).

allege that TSA employees touched him at any point during the encounter. After he was cleared, the plaintiff left the security-screening area and he exited the airport. *Id*. at ¶ 73.

Subsequent to the events at the airport, the plaintiff filed a request with both TSA and Broward County for video footage from the security checkpoint. *Id*. at ¶¶ 74-75. The plaintiff alleges that both TSA and Broward County responded to the request for video production—TSA stated that it did not have possession of the video evidence because it did not operate the cameras and Broward County stated that evidence "did not exist" or, alternately, that it was "not disclosable." *Id*. at ¶ ¶ 77-79, 84. The plaintiff filed administrative FTCA claims with TSA that were "deemed presented" on September 2, 2011. *Id*. at. ¶ 15, n.2. Those claims remain pending. The plaintiff now sues various parties, including the United States and TSA.

DISCUSSION

I. THIS COURT LACKS JURISDICTION OVER THE FTCA CLAIMS.

a. Sovereign immunity bars claims for intentional torts committed by TSA employees.

The plaintiff's FTCA claims against the United States must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1). Because the United States has not waived sovereign immunity for the intentional torts alleged by the plaintiff, this Court lacks subject-matter jurisdiction over his claims. Sovereign immunity shields the federal government and its agencies from suit. *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999); *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Without an applicable waiver of sovereign immunity, courts lack jurisdiction over claims against the United States. *See Meyer*, 510 U.S. at 475 (The "terms of [the United States'] consent to be sued in any court define that court's jurisdiction to entertain the suit") (internal citation omitted); *United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic

that the United States may not be sued without its consent and that the existence of consent is a prerequisite of jurisdiction"); *see also Nguyen v. United States*, 556 F.3d 1244, 1251 (11th Cir. 2009).

The FTCA is a limited waiver of sovereign immunity, making the federal government liable to the same extent as a private party for certain torts committed by federal employees acting within the scope of their employment. 28 U.S.C. §§ 1346(b)(1), 28 U.S.C. § 2674; *United States v. Orleans*, 425 U.S. 807, 813 (1976). The United States' waiver must be "unequivocally expressed" and consent "will not be implied." *Lane v. Pena*, 518 U.S. 187, 192 (1996). Moreover, a waiver of sovereign immunity is "strictly construed . . . in favor of the sovereign." *Id* (citing *United States v. Williams*, 514 U.S. 527, 531 (1995) (noting that when confronted with a possible waiver of the federal government's sovereign immunity, courts "construe ambiguities in favor of immunity")). The FTCA's waiver of sovereign immunity explicitly exempts intentional torts. 28 U.S.C. § 2680(h) (retaining immunity in cases involving "[a]ny claim arising out of assault, battery, false imprisonment, false arrest . . . libel [and] slander"). The plaintiff's claims for civil assault and false arrest are not cognizable under the FTCA because they are barred by the intentional-tort exception.[5]

Congress has carved out a limited exception to this exception, and permits lawsuits for intentional torts committed by "investigative or law enforcement officers." *Id*. The FTCA defines an "investigative or law enforcement officer as [an officer] of the United States who is empowered

[5] As to the claims for false light invasion of privacy and intentional infliction of emotional distress, they should also be dismissed because they are derivative of the civil assault and false arrest claims asserted by the plaintiff that are barred under §2680(h). As such, they are not actionable under the FTCA. *O'Ferrell v. United States*, 253 F.3d 1257, 1265-66 (11th Cir. 2001) (citing *Metz v. United States*, 788 F.2d 1528, 1534 (11th Cir. 1986)).

by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." *Id* (internal quotation marks omitted). "[A]irport security screeners do not constitute investigative or law enforcement officials within the meaning of the FTCA."[6] *Coulter v. Department of Homeland Security*, No. 074894, 2008 WL 4416454 * 7 (D.N.J. Sept. 24, 2008) (internal citation omitted); *see also Matsko v. United States*, 372 F.3d 556, 560 (3d Cir. 2004) ("[E]mployees of administrative agencies, no matter what investigative conduct they are involved in, do *not* come within the § 2840(h) exception.") (emphasis added). Airport security screeners are not law enforcement officers because they "d[o] not have the authority to execute searches, seize evidence, or make arrests for violation of federal law." *Coulter*, 2008 WL 4416454 *7 (*citing Welch v. Huntleigh USA Corp.*, No. 04-663, 2005 WL 1864296 *5 (D. Or. Aug. 4, 2005)). "The FTCA's legislative history indicates that the investigative or law enforcement official exception was not intended to apply to airport security screeners," *id*. at *8, because these screeners do not the authority to arrest individuals, and must therefore "call law enforcement officers to search, seize, and arrest individuals if illegal items are found." *Id.* at *7.[7] Accordingly, the United States retains immunity for any claim for intentional torts arising out of the plaintiff's detention by TSA officers. These jurisdictionally-barred claims must be dismissed.

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[6] Indeed, the plaintiff concedes that "the [TSA] employee who detained [him] was not a law enforcement officer." Am. Comp. at ¶ 117.

[7] Acknowledging the need for officers who have the ability to search, seize, and arrest to be present at airports, Congress enacted 49 U.S.C.§ 44922. This statute allows for the deputization of state and local law enforcement officers in limited circumstances and discusses their status under the FTCA. *Id*. at § 44922(e). If TSA screeners were permitted to carry out the same duties as law enforcement officers (ie…search, seize, or arrest), this temporary deputization of state or local law enforcement would not be necessary. This supports a reading that the United States has not waived its sovereign immunity for intentional torts committed by TSA screeners because they are not law enforcement personnel.

b. The plaintiff has not administratively exhausted his claim for civil conspiracy.

The plaintiff also alleges a claim for civil conspiracy under the FTCA. *See* Am. Compl. at ¶ 15. In support, the plaintiff argues that the TSA's and Broward County's failure to produce video footage from his airport screening amounts to a civil conspiracy. But "[a] federal court does not have jurisdiction over a suit under the FTCA unless the claimant first files an administrative claim with the appropriate agency . . . within two years from the time the claim accrues . . . accompanied by a claim for money damages in a sum certain." *Turner ex rel. Turner v. United States*, 514 F.3d 1194, 1200 (11th Cir. 2008) (internal quotation marks and citation omitted). "The FTCA requires that *each* claim . . . meet the prerequisite for maintaining suit against the government." *Id.* (emphasis in the original). Although the plaintiff arguably filed an administrative claim for other torts alleged in his complaint,[8] he failed to do so for civil conspiracy. *See* FTCA administrative claim, Exhibit 2.[9] Because the plaintiff has failed to exhaust the administrative-remedy requirement for his civil-conspiracy claim, this court must dismiss the claim for lack of jurisdiction. *See Dalrymple v. United States*, 460 F.3d 1318, 1324 (11th Cir. 2006) (citing 28 U.S.C. § 2675, 28 U.S.C. § 2401(b); 28 C.F.R. § 14.2(a)).

[8] This Court may also conclude that it lacks subject-matter jurisdiction for all of the plaintiff's FTCA claims. Although the plaintiff filed a written request for an administrative remedy, as required by 28 U.S.C. § 2401(b) and 28 C.F.R. § 14.2, he did not articulate his claims or a definite sum for *each* claim. *See Dalrymple v. United States*, 460 F.3d 1318, 1325 (11th Cir. 2006) (citing *Keene Corp. v. United States*, 700 F.2d 836, 842 (2d Cir. 1983) ("where separate claims are aggregated under the FTCA, the claimant must present the government with a definite damage amount for each claim)).

[9] When a court considers a motion under Rule 12(b)(1), "the district court is not obligated to take the allegations in the complaint as true." *Odyssey Marine Exploration Inc.*, 657 F.3d at 1169 . Additionally, the court is not limited to the allegations in the complaint and "may consider extrinsic evidence." *Id.*

II. THE PLAINTIFF FAILS TO PLAUSIBLY ALLEGE CLAIMS AGAINST THE UNITED STATES.

Even if this Court concludes that it has jurisdiction over the FTCA claims, they should still be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain more than "labels and conclusions, [and] a formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 696 (internal quotation marks omitted). Under the FTCA, the claims are subject to the law of the place where the act occurred—here, Florida. *See Denson v. United States*, 574 F.3d 1318, 1336 (11th Cir. 2009). As explained more fully below, the plaintiff's allegations are wholly lacking in any legal foundation and do not state a claim for which relief can be granted. Thus, his FTCA claims should be dismissed.

a. The plaintiff fails to state a plausible claim against the United States for civil assault.

The plaintiff alleges that the "threat" of a search at the security screening checkpoint caused him "apprehension . . . that harmful and offensive conduct was imminent" and rises to the level to a civil assault. Am Compl. at ¶¶ 112-115. To prove a claim for civil assault in Florida, the plaintiff must show an "intentional, *unlawful* offer of corporal injury to another by force, or exertion of force directed toward another under such circumstances as to create a *reasonable* fear of imminent peril." *Colony Ins. Co., v. Barnes*, 410 F. Supp. 2d 1137, 1142 (N.D. Fla. 2005) (citing *Lay v. Kramer*, 411 So.2d 1347, 1349 (Fla. Dist. Ct. App. 1982)) (emphasis added). Because the "threat" of a search at a security screening area is lawful, the plaintiff's claim for civil

assault fails. It is not disputed that the federal government has been tasked with security oversight for individuals engaged in aviation-related activities. *See* Am Compl. at ¶ 28.[10] The plaintiff voluntarily subjected himself to this screening procedure when he chose to fly and then presented himself at the security checkpoint.[11] Indeed, the plaintiff admitted that he has "traversed" TSA checkpoints "hundreds of times." *Id*. at ¶ 54. The fact that his person and his belongings were subject to a security screening could hardly have been unexpected. As such, his claim that he was apprehensive of "a harmful or offensive touching" is puzzling. *Id*. at. ¶ 114.

Nor was the plaintiff's "fear" reasonable. He is an experienced traveler who admits to regularly participating in the security-screening process. *Id*. at ¶ 54. In essence, the plaintiff requested the process that he now claims caused him "apprehension." *Id*. at ¶ 114. He voluntarily opted out of AIT—which does not involve any touching—in favor of the manual pat down. Moreover, it is simply not reasonable to conclude that every air traveler who presents himself at the security checkpoint of an airport, and chooses the manual pat-down alternative to AIT, has been assaulted. Because the plaintiff is unable to show that TSA's "threatened touching" was unlawful or that his fear was reasonable, his claim for civil assault should be dismissed.

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[10] Under the TSA regulations governing Civil Aviation Security, 49 C.F.R. § 1540, *et seq*., no one may "enter the sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property." 49 C.F. R. at § 1540.107, *see also* 49 U.S.C. § 44901 (permitting warrantless security screening of airline passengers and their carry-on baggage prior to boarding commercial airlines). The "sterile area" is defined as "a portion of the airport . . . to which . . . access is generally controlled by TSA . . . through the screening of persons and property." 49
C.F. R. § 1540.5.

[11] In light of recent history, the need for airport security searches to protect "public safety" is "particularly acute." *City of Indianapolis v. Edmond*, 531 U.S 32, 33 (2000).

b. The plaintiff fails to state a plausible claim against the United States for false arrest.

Under Florida law, false arrest is the "unlawful restraint of a person against that person's will." *Miami-Dade Cnty v. Asad,* 78 So.3d 660, 669 (Fla. Dist. Ct. App. 2012). In support of his claim for false arrest, the plaintiff asserts that after declining both AIT and a manual pat down, he was "not free to leave the security checkpoint," that "the employee who detained the plaintiff was not law enforcement and was not authorized to place [the plaintiff] under arrest," and that he "was at no point charged with a crime, nor has anyone ever articulated . . . what crime he may have committed that justified his arrest." Am. Compl. at ¶¶ 116-119. A To prove a claim for false arrest here, the plaintiff must adequately plead that his detention was "unlawful." This he cannot do.

The government has been tasked with airport security, which includes screening passengers and their property in a secured location before they are permitted to enter the "sterile area" of the terminal. 49 C.F.R. § 1540, *et seq*. Upon entering a secured area of an airport, a passenger may not attempt to modify the security procedures or withdraw his consent to be searched. *See* 49 C.F.R. §§ 1540.105(a)(1) and (2) (prohibiting an individual to "tamper or interfere with, . . . modify, [or] attempt to circumvent . . . any security system, measure or procedure" or to be present within a "secured area . . . without complying with the systems, measures, or procedures being applied to control access to, or prevent movement in such areas).[12] This policy prevents individuals from ferreting out vulnerabilities in the security process by

[12] Requiring that a potential passenger be allowed to revoke consent, "makes little sense in a post-911 world." *United States v. Aukai,* 497 F.3d 955, 960-61 (9th Cir. 2007) (en banc). Such a rule would "afford terrorists multiple opportunities to attempt to penetrate airport security by 'electing not to fly' on the cusp of detection until a vulnerable portal is found." *Id*. "Where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority . . . all that is required is the passengers election to attempt entry into the [sterile] area of the airport." *Id* at 961. (citing *United States v. Biswell,* 406 U.S. 311, 315 (1972)).

withdrawing consent to search on the "cusp of detection." *United States v. Aukai*, 497 F.3d 955, 960-61 (9th Cir. 2007) (en banc); *VanBrocklen v. United States*, No. 1:09-cv-312, 2009 WL 819382, at *7 (N. D. N.Y. March 26, 2009).

Here, the plaintiff had already entered the secured checkpoint when he opted out of AIT. Am Compl at ¶¶ 29-31. Because the plaintiff had already entered the security-checkpoint area, his brief detention by TSA agents until he was cleared to return to the public area of the airport was not unlawful. Moreover, the plaintiff voluntarily presented himself at a security checkpoint for screening, opted out of AIT, and consented to a manual pat down by a TSA screener. *Id*. at ¶¶ 26, 28, 31-36. Although he attempted to withdraw his consent to be patted down, the TSA agents were constitutionally permitted to search his belongings. Because the plaintiff was not restrained unlawfully, his claim for false arrest must be dismissed.

c. The plaintiff fails to state a plausible claim against the United States of false light invasion of privacy.

The plaintiff also alleges a claim for false light invasion of privacy. *See* Am. Compl. at ¶¶ 120-126. But Florida does not recognize the tort of false light. *Jews for Jesus, Inc. v. Rapp*, 997 So.2d 1098, 1115 (Fla. 2008); *Lehtinen, Vargas & Riedi, P.A. v. Straub*, 3 So.3d 1187 (Fla. 2009) (reiterating that false light is not a viable tort in Florida). The FTCA waives sovereign immunity for the wrongful acts of federal employees "under circumstances where . . . a private person would be liable . . . in accordance with the law of the place where the act . . . occurred." 28 U.S.C. 1346(b)(1). Because Florida does not recognize the tort of false light, the plaintiff's claim must be dismissed.

d. The plaintiff fails to state a plausible claim against the United States for intentional infliction of emotional distress.

The plaintiff also brings a claim for intentional infliction of emotional distress and states in support that, as result of the allegedly unlawful search and seizure, he "has experienced, and continues to experience, serious emotional distress." Am. Compl. at ¶ 129. Under Florida law, a claim for intentional infliction of emotional distress requires a showing of four elements: 1) the conduct must be intentional or reckless; 2) it must be so outrageous as to "go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in civilized community;" and 3) it must cause emotional distress 4) that is severe. *Stewart v. Walker*, 5 So.3d 746, 749 (Fla. Dist. Ct. App. 2009).

At best, the plaintiff alleges that after voluntarily entering the security screening area, TSA agents detained him for "more than thirty minutes" after he refused both AIT and a manual pat down. Am. Compl. at ¶ 52. Further, he alleges that those same agents searched his credit cards, identification, and his book. *Id*. at ¶¶ 54, 55-59. After the search, he was permitted to leave the security area. *Id*. at ¶ 73. Not only do these allegations fail to show any action on the part of the TSA agents that would be considered to be "odious and utterly intolerable in the civilized community," they also fail to show any resulting "severe distress" by the plaintiff. Because the plaintiff's amended complaint does not plausibly allege a claim for intentional infliction of emotional distress, it must be dismissed.

e. The plaintiff fails to state a plausible claim against the United States for civil conspiracy.

Even if this court finds it has jurisdiction over the civil-conspiracy claim, it must be dismissed because the amended complaint does not state a plausible claim for relief. Under Florida

law, a claim for civil conspiracy requires: 1) an agreement between two or more parties; 2) to do an unlawful act or to do an act by unlawful means; 3) the doing of some "overt act" in pursuance of the conspiracy; and 4) damage to the plaintiff as a result of the act done under the conspiracy. *Eagletech ComCommc'ns, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So.3d 855, 864 (Fla. Dist. Ct. App. 2012). The allegations in the complaint must be specific because"[g]eneral allegations of conspiracy are inadequate." *Id*. at 863 (citation omitted).

In support of his claim, the plaintiff alleges that in response to his request for videotaped footage from the security checkpoint, TSA informed him that "it was not in possession of any video evidence because they do not operate any of the cameras at the security checkpoint." Am. Compl. at ¶¶ 77, 78. He also claims that Broward County confirmed that they owned the security cameras, but told him that the evidence did not exist or that it was "not disclosable" pursuant to TSA regulations. *Id*. at ¶¶ 78, 84. From these facts, the plaintiff concludes that "TSA and Broward [County] conferred with each other regarding Broward [County's] response to the plaintiff's request . . . and as a result of the collusion Broward [County] lied to the plaintiff." *Id*. at ¶¶143-145. These allegations fall short of the specific allegations that are required to adequately state a claim for civil conspiracy. The plaintiff's amended complaint fails to allege sufficient facts from which a "reasonable inference "could be drawn that the United States unlawfully conspired with Broward County to harm the plaintiff. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 545. And the plaintiff's amended complaint merely speculates that the parties engaged in conspiracy because neither party produced the requested video. There is no specific allegation of shared motive or agreed objective between TSA and Broward County to illegally withhold the video footage from the plaintiff. These conclusory allegations, without more, are not enough to survive a motion to

dismiss.

III. THE PLAINTIFF'S PRIVACY ACT CLAIMS AGAINST TSA SHOULD BE DISMISSED

The plaintiff also alleges that TSA committed numerous violations of the Privacy Act (The Act), 5 U.S.C. § 552a *et seq.*, when Defendant Chamizo copied the plaintiff's driver's license and boarding pass and shared those copies with the Broward County Sheriff's Office. Am. Compl. at ¶¶ 131-134. The Act dictates that, in specific circumstances, "no agency shall disclose any record . . . by any means of communication to any person" without the written consent of the individual to whom the record pertains. 5 U.S.C. § 552a(b). It also acts as limited waiver sovereign immunity by creating a private right of action, enabling citizens to sue the government when violations occur. *Id*. at § 552a(g)(1)(D). There are a number of exceptions to the Act, however, including what has been termed the "routine use exception." §§ 552a(b)(3); 552a(a)(7). Routine use is defined as, "the use of such record for a purpose which is compatible for the purpose for which it was collected."[13]

The plaintiff alleges that TSA violated the Act when it "collected personal information from [him], including photocopies of his driver's license and boarding pass" without his consent and shared the copy of his driver's license with the Broward County Sheriff's Office. Am Compl. at ¶¶ 66, 67, 70, 71, 131. But TSA's conduct is explicitly permitted by the routine-use exception of the Act. The officers reviewed information that was related to the plaintiff's screening and,

[13] The "routine use" of air traveler information by TSA is detailed at 70 Fed. Reg. 71828 (December 10, 2004), and it sets forth TSA's obligations under the Act. "Passengers undergoing screening of their person or property" are included, as is "information related to the screening of passengers and property–including information needed for the creation of security incident reports." *Id*. at 71829, DHS/TSA 001. Additionally, information can be given" to the appropriate state or local agency when relevant or necessary to (a) ensure safety and security in any mode of transportation; (b) enforce safety and security related regulations and requirements, and (e) oversee the implementation and ensure the adequacy of security measures at airports." *Id*.

because of his refusal to be screened, used it in creating a security-incident report. Moreover, the routine-use exception allows TSA to share information with local law enforcement to enforce safety-related requirements. Because TSA's reviewing, copying, and sharing the plaintiff's documents qualify as a routine use of records under both § 552a(b)(3) and 70 Fed. Reg. 71828, the plaintiff's Privacy Act claims must be dismissed.

The plaintiff also argues that he is entitled to $7,000 in statutory damages—$1,000 for each of the seven alleged violations—based on TSA's failure to meet certain requirements of the Act. Am Compl. at ¶¶131-134. Even if this Court concludes that TSA's actions were not a routine use, the plaintiff is still precluded from a statutory-damage award under *Doe v. Chao*, 540 U.S. 614 (2004). In *Chao*, the plaintiff similarly concluded that the Act "entitle[d] any plaintiff adversely affected by an intentional or willful violation to the $1,000 minimum on proof of nothing more than a statutory violation." 540 U.S. at 620. The Supreme Court disagreed, however, noting that this reading "is at odds with the traditional understanding that tort recovery requires not only wrongful act plus causation . . . , but proof of some harm for which damage can be reasonably assessed." *Id*. at 621. Ultimately, the Court held that proof of actual damages is required for an award under the Act. *Id*. at 621-22. Here, as in *Chao*, the plaintiff has not pled that he suffered any actual damages that would entitle him to a damages award under the Act and he cannot recover.

CONCLUSION

For the reasons stated above, this Court should dismiss the plaintiff's claims against the United States and TSA.

Dated: June 25, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JONATHAN CORBITT,

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, et al.

Defendants.

No. 1:12-cv-20863-JAL

[PROPOSED] ORDER

Upon consideration of the Unites States' and TSA's motion to dismiss, this Court finds that the plaintiff's claims against The United States and TSA should be dismissed, with prejudice. The motion to dismiss is **GRANTED**.

Dated this ___ day of _____, 2012.

_____
Joan A. Lenard
United States District Judge