No. 13-14053

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JONATHAN CORBETT,
Plaintiff-Appellant,

v.

TRANSPORTATION SECURITY ADMINISTRATION, UNITED STATES OF AMERICA, ALEJANDRO CHAMIZO, BROWARD COUNTY, and BROWARD SHERIFF'S OFFICE,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR DEFENDANTS-APPELLEES TRANSPORTATION SECURITY ADMINISTRATION, UNITED STATES OF AMERICA, AND ALEJANDRO CHAMIZO

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1-1, the undersigned counsel certifies that, to the best of her knowledge, the following constitutes a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal:

Bandstra, Hon. Ted E.

Bhattacharyya, Rupa

Broward County

Broward County Aviation Department

Broward Sheriff's Office

Capello, Frank

Chamizo, Alejandro

Coffey, Joni Armstrong

Cooper, Sharlene

Corbett, Jonathan

Delery, Stuart F.

Ferrer, Wifredo A.

Johnson, Jeh

Lenard, Hon. Joan

Lothman, Laura G.

McCarthy, Andrea W.

O'Sullivan, Hon. John J.

Pistole, John

Schultz, Anne R.

Stern, Mark B.

Swingle, Sharon

Teitler, Robert L.

Tjoflat, Hon. Gerald B.

Transportation Security Administration

Turnoff, William

United States

United States Department of Homeland Security

Yates, Robert D.

/s/ Sharon Swingle
Sharon Swingle
Counsel for Respondent

STATEMENT REGARDING ORAL ARGUMENT

Defendants-appellees the Transportation Security Administration, the United States of America, and Alejandro Chamizo respectfully request oral argument, to answer any questions that the Court may have about the disposition of claims brought against the defendants-appellees.

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JURISDICTIONAL STATEMENT

The district court issued an order on November 16, 2012, dismissing most of the claims against the defendants. D.Ct. Dkt. 69. The district court subsequently granted summary judgment to the defendants on the remaining claims on September 3, 2013. D.Ct. Dkt. 101. The plaintiff filed a timely notice of appeal on September 6, 2013. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Plaintiff Jonathan Corbett declined to be screened with a scanner using advanced imaging technology at a security checkpoint in the Fort Lauderdale-Hollywood International Airport. He also refused to agree to the alternate screening method, a manual pat-down. He alleges that he was briefly detained at the screening site following his refusal, and that TSA employees searched his luggage, asked him several questions, and provided a copy of his identification and boarding pass to an officer with the Broward Sheriff's Office before telling him he was free to leave. Following this incident, the plaintiff filed a Freedom of Information Act (FOIA) request with TSA, which provided numerous documents but withheld certain information. The questions presented as they relate to the federal defendants are:

1. Whether the district court erred in dismissing on qualified immunity grounds the Fourth Amendment claims brought against TSA agent Alejandro Chamizo in his individual capacity.

2. Whether the district court erred in holding that it lacked jurisdiction over the claims against the United States under the Federal Tort Claims Act, 28 U.S.C. § 1346.

3. Whether the district court erred in holding that plaintiff failed to state a valid claim under the Privacy Act, 5 U.S.C. § 552a(e), in light of the absence of any allegation of actual harm or a request to amend or access any government record.

4. Whether the district court erred in holding that plaintiff's allegations of an unlawful conspiracy between the United States and the Broward Sheriff's Office were too speculative and conclusory to state a valid claim under *Ashcroft v. Iqbal,* 556 U.S. 662 (2009).

5. Whether the district court erred in granting summary judgment to TSA on the plaintiff's FOIA claim, based on its conclusions that TSA's detailed affidavit established the adequacy of the search for responsive documents; that Sensitive Security Information barred from public disclosure by federal law was properly withheld under FOIA Exemption 3; and that the names and faces of TSA screeners involved in the incident were properly withheld on privacy grounds under FOIA Exemptions 6 and 7(C).

STATEMENT OF THE CASE

A. Statement of Facts.

Pro se plaintiff Jonathan Corbett brought this action after an incident at a security checkpoint at the Fort Lauderdale-Hollywood International Airport, Florida. Complaint 3. By federal law, TSA is charged with the responsibility for civil aviation security, 49 U.S.C. § 114(d), including the requirement to screen "all passengers and property" before boarding to ensure that no passenger is "carrying unlawfully a dangerous weapon, explosive, or other destructive substance." *Id.* §§ 44901(a), 44902(a)(1), 44904(a), (e).

Plaintiff presented himself for security screening prior to boarding a flight, and was allegedly directed to a lane with a scanner using "advanced imaging technology."[1] Complaint 4. Plaintiff was given the choice between being screened with the scanner or instead being screened with a manual pat-down. Complaint 4. Plaintiff opted for a pat-down but insisted that the screener could "not touch his genitals or buttocks." Complaint 4. The TSA screener called for a supervisor, and plaintiff reiterated to the supervisor that plaintiff "would not permit the manual touching of his genitals or buttocks." Complaint 5.

The TSA supervisor then allegedly called for a TSA manager, Alejandro Chamizo. First Amended Complaint, D.Ct. Dkt. 20 (Complaint) 5. Plaintiff alleges that Mr. Chamizo told him that he would be "forcibly searched" and "arrested" if he would not consent to a full pat-down. Complaint 5. While Mr. Chamizo was speaking to plaintiff, two TSA employees searched his luggage. Compliant 6. Plaintiff alleges that the TSA employees looked through his identification and credit cards, and flipped through the pages of one of his books, over plaintiff's objections. Complaint 6. Plaintiff also alleges that TSA employees photocopied his driver's license and boarding pass, and provided them to the Broward Sheriff's Office, which checked for

[1] Plaintiff has filed several actions challenging the lawfulness of TSA's screening methods for airport security checkpoints, including the agency's use of advanced imaging technology scanners. The most recent challenge, *Corbett v. Transportation Safety Administration*, No. 12-15893 (11th Cir.), is currently pending before this Court.

any outstanding warrants. Complaint 7. Plaintiff does not allege that Mr. Chamizo conducted the search or the photocopying. At the conclusion of this encounter, which allegedly lasted approximately one hour, Corbett was denied access to his flight and left the security checkpoint. Complaint 1, 7.

Two days later, plaintiff sent a letter to TSA. D. Ct. Dkt. 37-2. Plaintiff asserted that the TSA screeners had acted unlawfully and claimed entitlement to $1 million in damages. *Id.* Plaintiff also asked that the letter be treated as a formal FOIA request for notes, reports, or other documentation relating to the incident; any correspondence between TSA and any other party relating to the incident; and any "audio, video, and/or photographic records" taken at or around the checkpoint at the time of his search. *Id.* Corbett alleges that TSA did not formally respond to his request, but that he was told in a telephone call that TSA did not have any videos because it does not operate the cameras in the Fort Lauderdale-Hollywood airport. Complaint 7. He also alleges that he submitted a similar request for video evidence to the Broward Sheriff's Office, and that the Broward Sheriff's Office responded that no video existed and that, even if it did, "we have been informed by the TSA that this * * * would have constituted Sensitive Security Information." Complaint 8.

B. Procedural History.

Plaintiff brought this action in district court. His first amended complaint lists 21 claims for relief, 18 of which are brought against a federal defendant. Plaintiff brought five claims against TSA employee Alejandro Chamizo "in his individual

capacity," alleging that the search and detention of plaintiff at the airport security checkpoint violated plaintiff's Fourth Amendment rights. Complaint 9-11. Plaintiff also brought claims against the United States under the Federal Tort Claims Act for assault, false arrest, invasion of privacy, and intentional infliction of emotional distress. *Id.* at 11-13. Plaintiff brought a Privacy Act claim against TSA, asserting that the agency violated the Act when it photocopied plaintiff's driver's license and boarding pass and provided them to the Broward Sheriff's Office. *Id.* at 13. Plaintiff also brought a FOIA claim against TSA. *Id.* at 13. Finally, plaintiff brought a civil conspiracy claim against the United States and Broward Sheriff's Office, alleging that the "TSA and Broward conferred with each other regarding Broward's response to Corbett's Public Records Act request" and that, "[a]s a result of this collusion, Broward intentionally lied to Corbett regarding the existence of responsive records." *Id.* at 14.

The district court dismissed most of the claims against the defendants under Federal Rules of Civil Procedures 12(b)(1) and/or 12(b)(6) in November 2012. 11/16/2012 Order, D.Ct. Dkt. 69. The court ruled that the claims against Alejandro Chamizo are barred by qualified immunity, because the plaintiff's allegations fail to establish a violation of any clearly established constitutional right. *Id.* at 9-14. The court reasoned that airport screening searches are administrative searches that are permissible under the Fourth Amendment without a warrant or individualized suspicion. *Id.* at 11-12. The court also recognized that, under the caselaw of this and

other circuits, "[o]nce a traveler presents himself for screening at an airport security checkpoint, he may not avoid being searched by retreating and attempting to leave." *Id.* at 12. The court noted that "agents may briefly detain a traveler for purposes of completing a security search," and that the Ninth Circuit has recognized, in evaluating the lawfulness of an airport search, that explosives "may be disguised as a simple piece of paper or cardboard," or hidden in "a laptop, book, magazine, deck of cards, or packet of photographs." *Id.* at 12. Finally, the district court noted that the "subjective motive on the part of the individual searcher" is constitutionally irrelevant to the lawfulness of an administrative search. *Id.* at 13. Applying these principles, the court held that the constitutional claims were barred by qualified immunity because "it would not be clear to an officer in Chamizo's position that detaining Plaintiff and inspecting his belongings would be unconstitutional." *Id.* at 13-14. The court also noted that the allegation that a search was motivated by retaliatory intent does not state a valid independent claim under the Fourth Amendment. *Id.* at 14.

The district court also dismissed the tort claims against the United States. The court noted that the waiver of sovereign immunity in the Federal Tort Claims Act does not apply to claims arising out of "assault, battery, false imprisonment, false arrest, [or] libel," unless the claim is asserted against "investigative or law enforcement officers of the United States Government." *Id.* at 15-16 (quoting 28 U.S.C. § 2680(h)). The court agreed with "the prevailing conclusion" of other district courts that TSA agents are not "'investigative or law enforcement officers' for

purposes of Section 2680(h)." *Id.* at 16. As the court reasoned, the limited, consensual administrative searches performed by TSA screeners are not akin to the "traditional law enforcement functions" that Congress intended to be covered by § 2680(h). *Id.* at 16-18. The court held that the FTCA's exception for intentional torts bars not only the plaintiff's claims of assault and false arrest, but also his claims for invasion of privacy and intentional infliction of emotional distress, which are based on the same underlying governmental conduct. *Id.* at 18-19.

The district court also dismissed the plaintiff's Privacy Act claims against TSA. *Id.* at 19-23. The court reasoned that plaintiff had not alleged any actual damages that would be a basis for monetary relief, nor did he seek the limited injunctive relief available under the Privacy Act, *i.e.,* amendment of or access to a government record. *Id.* at 22-23.

Finally, the district court dismissed the conspiracy claim brought against the United States and Broward County, alleging that the defendants unlawfully conspired to deny his request for records to Broward County. *Id.* at 28-29. The court noted that Broward County needed to consult with TSA to determine whether records requested by plaintiff constituted Sensitive Security Information, which cannot be publicly disclosed under Federal law. *Id.* at 29. The court held that plaintiff's bare allegations of collusion and wrongful intent were "too nonspecific and insufficient" to sustain a reasonable inference of an unlawful conspiracy. *Id.* at 29.

The court declined, however, to dismiss the FOIA claim against TSA, reasoning that the claim was not moot in light of plaintiff's assertion that additional materials were subject to disclosure and that certain redactions in documents produced to him were unjustified. *Id.* at 24-26.

After further proceedings, the district court granted summary judgment to TSA on the FOIA claim, which was the last remaining claim brought against the federal defendants. 9/3/2013 Order, D.Ct. Dkt. 101. The court noted that TSA had initiated a search for responsive documents and had also requested documents generated by Fort Lauderdale-Hollywood Airport personnel. *Id.* at 2. TSA had also obtained video surveillance footage from the security checkpoint. *Id.* TSA provided documents and video footage to plaintiff, but withheld certain information under FOIA Exemptions 3, 6, and/or 7(c).[2] *Id.* at 3-4. Specifically, TSA had redacted from documents produced to plaintiff certain Sensitive Security Information, *i.e.*, information relating to the selection criteria for enhanced passenger screening and the

[2] FOIA's Exemption 3 exempts from disclosure records that are "specifically exempted from disclosure by [another] statute" if the relevant statute "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue" or "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Exemption 6 exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552(b)(6). And Exemption 7 exempts "records or information compiled for law enforcement purposes" where, *inter alia*, the production of the records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. *Id.* § 552(b)(7)(C).

enhanced screening procedures used by TSA. *Id.* at 3. TSA had also redacted the names of TSA employees or state law enforcement officers involved in the incident with plaintiff, and had blurred the faces of the individuals on video footage, based on the agency's determination that the individuals had a privacy interest in their personal identifying information and that there was minimal public interest in disclosure of this information. *Id.* at 3-4.

The district court held that TSA was authorized to withhold Sensitive Security Information under FOIA Exemption 3, reasoning that 49 U.S.C. § 114(r) requires the TSA to prescribe regulations prohibiting the disclosure of sensitive information related to transportation security. 9/3/2013 Order, D.Ct. Dkt. 101, at 10. The district court held that the withheld information − "criteria used for enhanced passenger-screening" and "the enhanced screening procedures employed by TSA" − was designated by TSA as Sensitive Security Information under its regulations and falls within the scope of Section 114(r), which courts have uniformly held qualifies as a withholding statute for purposes of Exemption 3. *Id.* at 10-12. The district court held that plaintiff's challenge to TSA's designation of the information as SSI was not properly before it, but was reviewable only through a petition for review in the court of appeals under 49 U.S.C. § 46110. *Id.* at 11-12.

The district court also held that TSA properly withheld identifying information about TSA employees and law enforcement officials involved in the incident under FOIA Exemption 6. *Id.* at 12-15. Balancing "the individual's right of privacy against

the basic policy of opening agency action to the light of public scrutiny," the district court reasoned that low-level TSA employees have a substantial privacy interest in not being subjected to harassment or stigmatization, whereas there is no public interest in learning the names of lower-echelon employees, which would not shed light on how TSA performs its statutory duties. *Id.* at 13-15. The court also held in the alternative that the names of police officers were properly withheld under Exemption 7(C), for the same reasons that Exemption 6 applies. *Id.* at 15-16.

Finally, the district court rejected plaintiff's challenge to the adequacy of TSA's search for responsive documents. *Id.* at 16-17. Plaintiff had offered no evidence that the search was inadequate, and his speculation that there might be more responsive documents was inadequate to rebut the agency's showing that its search was reasonable. *Id.* at 17.

SUMMARY OF THE ARGUMENT

I. The district court properly dismissed plaintiff's constitutional claims against TSA officer Alejandro Chamizo, who was sued in his individual capacity. The Fourth Amendment permits airport screening searches, and the court correctly held that the alleged conduct did not violate any clearly established standard. As the court also explained, Mr. Chamizo did not conduct the search himself, and his alleged retaliatory motive is not actionable.

II. The district court correctly dismissed the Federal Tort Claims Act claims against the United States, ruling that TSA screeners are not "investigative or law

enforcement officers of the United States." TSA screeners do not have any separate grant of authority to execute searches, to seize evidence, or to make arrests. Their delegated authority to conduct administrative searches does not bring them within 28 U.S.C. § 2680(h)'s "law enforcement" exception to the bar on intentional torts. The district court also correctly held that the intentional tort exception bars plaintiff's claims for invasion of privacy and intentional infliction of emotional distress, which are based on the same conduct as his claims of false arrest and assault.

III. The court properly dismissed the Privacy Act claims because plaintiff did not allege any actual damage nor a violation for which injunctive relief is available under 5 U.S.C. § 552a(g).

IV. The court correctly held that plaintiff's claim of civil conspiracy, which is based solely on allegations of lawful conduct and speculative assertions of collusion, is legally insufficient.

V. The court also properly entered summary judgment on the plaintiff's FOIA claims against TSA. Plaintiff's speculation that additional documents should have been discovered does not undermine the agency's showing that the search was adequate. The district court correctly held that the agency properly withheld identifying information about the TSA screeners involved in the incident with the plaintiff under Exemptions 6 and/or 7(c). There is no public interest in that private information, disclosure of which could subject the individuals to harassment or personal scrutiny.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's dismissal of claims under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). *See Houston v. Marod Supermarkets, Inc.,* 733 F.3d 1323, 1328 (11th Cir. 2013); *American Dental Ass'n v. Cigna Corp.,* 605 F.3d 1283, 1288 (11th Cir. 2010). Although the well-pleaded factual allegations in the complaint are taken as true, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal,* 556 U.S. at 678. While the pleadings of pro se litigants are "liberally construed," *Tannenbaum v. United States,* 148 F.3d 1262, 1263 (11th Cir. 1998), they must still comply with procedural rules, *see McNeil v. United States,* 508 U.S. 106, 113 (1993), which include the pleading standard set out in Federal Rule of Civil Procedure 8(a). Rule 8(a) requires "more than an un-adorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal,* 556 U.S. at 678. The district court's grant of summary judgment is also reviewed *de novo. See Black Warrior Riverkeeper, Inc. v. Black Warrior Minerals, Inc.*, 734 F.3d 1297, 1300 (11th Cir. 2013).

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST INDIVIDUAL DEFENDANT ALEJANDRO CHAMIZO AS BARRED BY QUALIFIED IMMUNITY

A. Qualified immunity shields government officials from personal liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v.*

Fitzgerald, 457 U.S. 800, 818 (1982). The doctrine is intended to provide government officials with "breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. Al-Kidd,* 131 S. Ct. 2074, 2085 (2011). Properly applied, it protects "all but the plainly incompetent or those who knowingly violate the law." *Id.* (quoting *Malley v. Briggs,* 475 U.S. 335, 341 (1986)).

The determination whether conduct violates a clearly established right "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Brosseau v. Haugen,* 543 U.S. 194, 198 (2004) (quotation marks and citation omitted). In order for the official to lose the protections of qualified immunity, "existing precedent must have placed the statutory or constitutional question *beyond debate*." *Al-Kidd,* 131 S. Ct. at 2083 (emphasis added).

Furthermore, because a government official may only be held personally liable under *Bivens* "for his or her own misconduct," the plaintiff must allege that "each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal,* 556 U.S. at 676. The plaintiff must also show that the constitutional right was clearly established at the time of the challenged conduct. *Al-Kidd,* 131 S. Ct. at 2080.

B. The district court correctly held that plaintiff's allegations did not establish that Alejandro Chamizo had violated any clearly established Fourth Amendment right.

It is well-established that airport screening searches are permissible administrative searches for which no warrant or individualized suspicion is required

under the Fourth Amendment. *See, e.g., United States v. Aukai,* 497 F.3d 955, 958-962 (9th Cir. 2007) (en banc); *United States v. Hartwell*, 436 F.3d 174, 179-181 (3d Cir. 2006); *United States v. Doe*, 61 F.3d 107, 109-110 (1st Cir. 1995); *Singleton v. Comm'r*, 606 F.2d 50, 51-52 (3d Cir. 1979); *United States v. Skipwith*, 482 F.2d 1272, 1275-1277 (5th Cir. 1973); *see also Nat'l Treas. Emp. Union v. Von Raab,* 489 U.S. 656, 675 n.3 (1989) (recognizing that courts have consistently upheld airport screening searches conducted without individualized suspicion as reasonable under the Fourth Amendment); *City of Indianapolis v. Edmond*, 531 U.S. 32, 47-48 (2000) (emphasizing that the Court's holding "does not affect the validity of * * * searches at places like airports * * * where the need for such measures to ensure public safety can be particularly acute"); *Chandler v. Miller*, 520 U.S. 305, 323 (1997) (reiterating that "where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable' − for example, searches now routine at airports").

Plaintiff nevertheless claims that the search of his luggage was impermissible because screeners thumbed through his books and looked at the name on his credit cards, which he argues is outside the scope of a permissible airport search for threats to aviation security. Pl. Br. 15-17. The argument fails at the threshold, because Mr. Chamizo did not conduct the search, *see* Complaint 6, and cannot be liable for the actions of third parties such as the TSA screeners who conducted the search while Mr. Chamizo was speaking to plaintiff. *See Iqbal,* 556 U.S. at 676; *Gonzalez v. Reno,* 325

F.3d 1228, 1234 (11th Cir. 2003). This is all the more true here, as there is no allegation that Mr. Chamizo directed the other TSA employees to search plaintiffs' belongs, and Mr. Chamizo cannot be held liable merely because he is a TSA manager. *See Iqbal,* 556 U.S. at 676. In any event, a reasonable airport screener could believe that it was constitutionally permissible to confirm that a passenger does not have identification in other names (when additional identification cards are found during a bag search) and that books and other similar belongings are not being used to conceal prohibited items. As the Ninth Circuit has emphasized, "thin, flat explosives called 'sheet explosives' may be disguised as a simple piece of paper or cardboard, and may be hidden in just about anything, including a laptop, book, magazine, deck of cards, or packet of photographs." *United States v. McCarty,* 648 F.3d 820, 825 (9th Cir. 2005).[3] Plaintiff argues that this is factually erroneous, Pl. Br. 17, but the relevant question for purposes of qualified immunity is whether any reasonable official would have known that his conduct was unlawful. As the district court correctly concluded, plaintiff's allegations don't satisfy that standard.

[3] Plaintiff cites *United States v. Fofana,* 620 F. Supp. 2d 857 (S.D. Ohio 2009), for the proposition that a reasonable screener could not have believed it lawful to look through his credit cards and his books. Pl. Br. 16-17; *see also* Complaint 6. The federal defendants-appellees respectfully disagree with the analysis in *Fofana,* which would not in any event be sufficient to deny Mr. Chamizo qualified immunity. *See Leslie v. Hancock Cnty. Bd. of Educ.*, 720 F.3d 1338, 1345 (11th Cir. 2013) (in determining whether a constitutional violation is clearly established for purposes of qualified immunity, the Court "look[s] to law as decided by the Supreme Court, the Eleventh Circuit, or the Supreme Court of Georgia").

Plaintiff also argues that his detention pending a search of his belongings violated the Constitution because, "at some point during the inspection," Mr. Chamizo allegedly "became aware that the inspection would not turn up weapons or explosives, but continued it anyway for the purpose of 'teaching [plaintiff] a lesson.'" Pl. Br. 17-18. Again, the argument fails because Mr. Chamizo is not alleged to have conducted or even directed the search, and cannot be personally liable based on his knowledge of and acquiescence in the allegedly wrongful conduct of third parties. *See Iqbal,* 556 U.S. at 677. In any event, his allegedly wrongful subjective motivation would not render an otherwise permissible administrative search clearly unconstitutional. *See McCarty,* 648 F.3d at 832-835 (holding that, so long as the programmatic purposes motivating an administrative search scheme are constitutionally permissible, "the subjective motive of the individual conducting the search" is irrelevant). Furthermore, and as this Court has recognized, there is no independent claim under the Fourth Amendment for an allegedly retaliatory search. *See Wood v. Kesler,* 323 F.3d 872, 883 (11th Cir. 2003).

Plaintiff cites no authority for his apparent belief that an airport search lasting approximately one hour is clearly unconstitutional. *Cf. United States v. Flores-Montano,* 541 U.S. 149, 155 & n.3 (2004) (rejecting Fourth Amendment challenge to hour-long border search and reasoning that searches lasting 1-2 hours "are to be expected"). Plaintiff's assertion that Mr. Chamizo's behavior was so egregious that

he should have known it was unconstitutional even in the absence of governing caselaw (Pl. Br. 19-20) is utterly without support in precedent or common sense.

C. Plaintiff argues that the district court abused its discretion in dismissing his claims against Mr. Chamizo on the ground of qualified immunity without first deciding whether the allegations in the amended complaint establish a constitutional violation. But the Supreme Court held in *Pearson v. Callahan*, 555 U.S. 223 (2009), that a district court has flexibility to do precisely that. *Id.* at 238-239. As the *Pearson* Court noted, there are circumstances in which it may be inadvisable to reach the constitutional question, such as "[w]hen qualified immunity is asserted at the pleading stage," and "the precise factual basis for the plaintiff's claim or claims may be hard to identify." *Id.* Furthermore, considering an unsettled constitutional question where it is unnecessary to do so "departs from the general rule of constitutional avoidance." *Id.* at 241.

Plaintiff also contends that he should have been permitted to proceed with a claim for declaratory relief against Mr. Chamizo. Pl. Br. 23-24. But declaratory relief must run against an officeholder in his official capacity, and plaintiff's claims were brought against Mr. Chamizo in his individual capacity. *See ACLU v. Finch,* 638 F.2d 1336, 1342 (5th Cir. Unit. A 1981); *Feit v. Ward,* 886 F.2d 848, 856-857 (7th Cir. 1989). Furthermore, in order to seek declaratory relief, the plaintiff must establish Article III standing, which requires a showing that "there is a substantial

likelihood that he will be injured in the future." *Walden v. Centers for Disease Control & Prevention,* 669 F.3d 1277, 1284 (11th Cir. 2012) (quotation marks and citation omitted). Plaintiff did not even attempt to make this showing, and the district court did not abuse its discretion in denying his belated and inadequate request for leave to amend his complaint yet again.

II. THE DISTRICT COURT CORRECTLY DISMISSED THE TORT CLAIMS AGAINST THE UNITED STATES

A. Plaintiff's Assault and False Arrest Claims Are Barred by the FTCA's Intentional Torts Exception.

The Federal Tort Claims Act waives the sovereign immunity of the United States for certain torts committed by its employees while acting within the scope of their employment, but not for claims arising out of certain intentional torts, including "assault, battery, false imprisonment, [or] false arrest." 28 U.S.C. § 2680(h).[4] The Act creates an exception to that bar "with regard to acts or omissions of investigative or law enforcement officers of the United States," defined as an "officer of the United States who is empowered by law to execute searches, to seize evidence, or to make

[4] "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 * * * 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) (quotation marks and citation omitted). It is arguable whether plaintiff's barebones letter to TSA, *see* D. Ct. Dkt. 37-2, satisfies this standard. As noted below (at pp. 26, *infra*), plaintiff did not file any administrative claim for civil conspiracy, which was not mentioned in his letter, and the district court accordingly lacked subject matter jurisdiction over that claim.

arrests for violations of Federal law." *Id.*; *see generally Millbrook v. United States,* 133 S. Ct. 1441, 1443 (2013).

In enacting § 2680(h), "Congress intended to waive sovereign immunity for the torts of false arrest and false imprisonment only in limited circumstances." *Solomon v. United States,* 559 F.2d 309, 310 (5th Cir. 1977). As the Senate Report on the bill explained, it was intended to respond to raids carried out by federal narcotics agents, in which agents entered "houses without warrants in violation of the Federal 'no-knock' statute, kicked in the doors without warnings, shouting obscenities, and threatening the occupants with drawn weapons," only to discover that they had entered the wrong houses, with the occupants left with no effective legal remedy. S. Rep. No. 93-588, reprinted in 1974 U.S.C.C.A.N. 2789, 2790 (1973).

The district court correctly held that TSA screeners are not "investigative or law enforcement officers" within the meaning of § 2680(h), and that plaintiff's assault and false arrest claims are thus barred.

Section 2680(h)'s exception for "investigative or law enforcement officers" "focuses on the *status* of persons whose conduct may be actionable, not the types of activities that may give rise to a tort claim against the United States." *Millbrook*, 133 S. Ct. at 1445. The exception requires that an employee must be "an officer of the United States" who is "empowered by law" to search, seize, or arrest. The use of the term "officer" suggests that the provision does not apply without distinction to all federal employees who conduct searches, seize evidence, or make arrests. In addition,

the phrase "empowered by law" appears to require that the officer has a separate legal grant of authority to carry out the search, seizure, and/or arrest. *See, e.g., Celestine v. United States*, 841 F.2d 851, 853 (8th Cir. 1988) (relying on the fact that police officers are empowered under 38 U.S.C. § 218 (1987) to enforce laws and conduct arrests in holding that the officers come within § 2680(h); *Caban v. United States,* 671 F.2d 1230, 1234 & n.4 (2d Cir. 1982) (relying on the fact that INS agents have a statutory grant of authority in 8 U.S.C. §§ 1225(a) (1982) and 1357 to carry out searches and arrests to conclude that they come within § 2680(h)).

TSA screeners are not authorized by federal law to seize evidence or to make arrests for violations of Federal law. Nor do TSA screeners execute searches pursuant to search warrants. Congress vested the TSA Administrator with broad responsibility for aviation security, 49 U.S.C. §§ 114, 44901-44903, but did not grant individuals hired as TSA screeners independent authority to conduct a search, seizure, or arrest.

Indeed, even the directive to the TSA Administrator to ensure that security screening of passengers and their baggage is conducted at airports, 49 U.S.C. § 44901(a), provides that the screening shall be carried out "by a Federal Government employee (as defined in section 2105 of Title 5, United States Code)" or under the supervision of "Federal personnel," 49 U.S.C. § 44901(a), (b), *not* by a federal "officer" – the term used in § 2680(h). *Cf.* 5 U.S.C. §§ 2104, 2105 (separately defining an "officer" and "employee" of the United States). Congress also authorized the TSA Administrator to permit private screening companies to conduct screening if, *inter alia,*

TSA "provide[s] Federal Government supervisors to oversee all screening * * * and provide[s] Federal Government law enforcement officers at the airport." 49 U.S.C. § 44920(e). Similarly, Congress makes the TSA Administrator responsible for carrying out security screening at airports, 49 U.S.C. § 114(e), and separately authorizes the TSA Administrator to "designate an employee of the Transportation Security Administration or other federal agency to serve as a law enforcement officer" who is empowered to seize evidence and make arrests. 49 U.S.C. § 114(p). This further suggests that Congress understood TSA screeners and their supervisors *not* to be law enforcement officers − the conclusion reached by the large majority of district courts to have reached this question. *See Walcott v. United States*, No. 13-CV-3303, 2013 WL 5708044, *2 (E.D.N.Y. Oct. 18, 2013); *Weinraub v. United States,* 927 F. Supp. 2d 258, 262-265 (E.D. N.C. 2012); *Coulter v. DHS,* No. 07-4894(JAG) 2008 WL 4416454, at *9 (D.N.J. Sep. 24, 2008); *Hartwell v. United States,* No. 06-cv-121-SML, at 6 (C.D. Cal. Aug. 16, 2006); *Welch v. Huntleigh USA Corp.*, No. 04-663 KI, 2005 WL 1864296, at *5 (D. Or. Aug. 4, 2005).

B. Plaintiff's Invasion of Privacy And Intentional Infliction Of Emotional Distress Claims Are Likewise Barred by the Intentional Torts Exception.

As this Court made clear in *Metz v. United States,* 788 F.2d 1528 (11th Cir. 1986), *cert. denied,* 479 U.S. 530, the intentional tort exception in the FTCA in not limited to claims specifically denominated as one of the enumerated torts, but encompasses any claims "arising out of" the torts. 788 F.2d at 1532-1533. If "the underlying

governmental conduct which constitutes an excepted cause of action is 'essential' to plaintiff's claim," it is barred even if it is a distinct cause of action. *Id.* at 1534.

Plaintiff's claim of invasion of privacy is based on the alleged harm resulting from his detention and search at the airport security checkpoint, Complaint 11-12, *i.e.,* the same underlying government conduct that is the basis for his claims of assault and false arrest, which are barred by § 2680(h). *See Metz,* 788 F.2d at 1534-1535; *O'Ferrell v. United States,* 253 F.3d 1257, 1265-1266 (11th Cir. 2001). Similarly, plaintiff's claim of intentional infliction of emotional distress is based on plaintiff's alleged subjection to an unlawful search and seizure, Complaint 12-13, *i.e.,* the same alleged wrongdoing that constitutes assault and false arrest. *See Metz,* 788 F.2d at 1535; *O'Ferrell,* 253 F.3d at 1265-1266.

Plaintiff claims that his infliction of emotional distress claim is not barred by § 2680(h) because TSA could have been "invasive, demeaning, and unnecessary" without seizing and searching him. Pet. Br. 29. But the only government conduct he alleges as the basis for his claims is the same conduct that is also claimed to be assault and false arrest, and his claims thus fall outside the scope of the statute.

III. THE DISTRICT COURT PROPERLY HELD THAT PLAINTIFF FAILS TO STATE A CLAIM UNDER THE PRIVACY ACT

Plaintiff's Privacy Act claim against TSA is predicated on allegations that TSA, by photocopying plaintiff's driver's license and boarding pass, violated seven separate subsections of 5 U.S.C. § 552a(e). Complaint 13. But the provision under which

plaintiff has sued, the civil remedies provision of the Privacy Act, is limited in scope. *See generally Doe v. Chao,* 540 U.S. 614 (2004). Section 552a(g)(1) permits an individual to bring a civil action only when (A) an agency "makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection"; (B) an agency "refuses to comply with an individual request under subsection (d)(1) for access to a record"; (C) an agency fails to maintain a record concerning the individual with the necessary accuracy, relevance, timeliness, and completeness to assure fairness in a determination relating to the individual's qualifications, character, rights, or opportunities, or benefits to the individual, and a determination is made which is adverse to the individual; or (D) the agency fails to comply with "any other provision of this section" or any rule promulgated under the section "in such a way as to have an adverse effect on an individual."

The only subsection of § 552a(g)(1) that could even arguably apply to plaintiff's claims is the last one, but plaintiff has not alleged in his complaint that the Privacy Act violations he complains about have had *any* adverse effect on him.

Furthermore, as the district court held, the plaintiff has not shown that he is entitled to any relief under § 552a(g)(2). He must show actual damages resulting from the claimed violation to be eligible for money damages. S*ee FAA v. Cooper,* 132 S. Ct. 1441, 1453 (2012) (allegations of emotional distress insufficient to state a claim for actual damages under the Privacy Act); *Doe v. Chao,* 540 U.S. at 627. *Cooper* makes

clear that his vague assertion in a district court brief that the alleged violations were "quite distressing for [him]"[5] does not establish actual damage. *See Fitzpatrick v. IRS,* 665 F.2d 327, 330-331 (11th Cir. 1982); *Mitchell v. Dep't of Veterans Affairs,* 310 Fed. Appx. 351, 354, 2009 WL 282053, *3 (11th Cir. Feb. 6, 2009).

Nor does plaintiff allege either one of the "only two types of agency misconduct" for which injunctive relief is available, *i.e.*, "wrongful withholding of documents under subsection (d)(1) and wrongful refusal to amend an individual's record under subsection (d)(3)." *Clarkson v. IRS,* 678 F.2d 1368, 1375 n.11 (11th Cir. 1982).

Plaintiff argues that his complaint should have been construed as a request to "amend his records" under § 552a(g)(2), Pet. Br. 34. But that section applies only where a litigant has first filed a formal request with an agency to amend an agency record, identifying the information that the individual "believes is not accurate, relevant, timely, or complete." 5 U.S.C. § 552a(d)(2). Plaintiff never made such a request. Nor has he ever explained what information in TSA's possession is inaccurate, irrelevant, untimely, or incomplete.

Plaintiff also argues that he should have been permitted to seek declaratory relief for the alleged Privacy Act violations. Pet. Br. 34. But no declaratory relief is

[5] Plaintiff's Opposition to Defendant United States of America and Transportation Security Administration's Motion to Dismiss and Cross-Motion for Leave to Amend, D.Ct. Dkt. 38, at 12.

available under § 552a(g) for the violations he alleges. "[S]ubsection (g)(1)(D) of the Privacy Act does not allow courts to grant injunctive or declaratory relief," but only provides for monetary relief. *Doe v. Chao,* 435 F.3d 492, 504 (4th Cir. 2006). The only other relief available under the Act is the injunctive relief in § 552a(g)(2) and (3), which are inapplicable on their face to plaintiff's claims. *See id.; Clarkson,* 678 F.2d at 1375 n.11.[6]

IV. PLAINTIFF'S CIVIL CONSPIRACY CLAIM WAS PROPERLY DISMISSED

Plaintiff's claim of civil conspiracy against TSA and Broward County, which was predicated on an alleged conspiracy to unlawfully refuse plaintiff's Public Records Act request for documents from Broward County, was also properly dismissed.

Plaintiff's amended complaint cites no source of law for his purported civil conspiracy case, although the district court treated the claim as if it were brought under Florida law. 11/16/2012 Order, D.Ct. Dkt. 69, at 28-29. He did not even attempt to identify a statutory waiver of the United States' sovereign immunity,

[6] Because the district court dismissed plaintiff's Privacy Act claims on this basis, it did not consider TSA's argument that the claims also fail because they allege agency conduct that constitutes a "routine use" of personal information and is thus permissible under 5 U.S.C. § 552a(b)(3). *See also* 69 Fed. Reg. 71,828, 71,829 (2004) (providing that TSA may routinely use records relating to passenger screening by, *inter alia,* providing records regarding individuals suspected of posing a risk to transportation security to federal, state, or local agencies). Should this Court conclude that the Privacy Act claims should not have been dismissed for the reasons given by the district court, it should remand to permit the district court to consider whether the dismiss the claims on this alternate ground.

however. Absent an applicable waiver, the district court lacks subject matter jurisdiction over a state-law conspiracy claim brought against the United States. The FTCA cannot provide the applicable waiver, because plaintiff did not bring a claim of civil conspiracy in his letter to TSA. *See* n.4, *supra.*

The claim also fails to satisfy applicable pleading standards. As the district court recognized, a claim for conspiracy under Florida law must "set forth clear, positive, and specific allegations of civil conspiracy"; "[g]eneral allegations of conspiracy are inadequate." *Id.* at 29 (citations omitted); *see also Bell Atlantic Co. v. Twombly,* 550 U.S. 544, 556-557 (2007) (holding that conclusory allegations of conspiracy and allegations of parallel conduct were legally insufficient). Plaintiff's allegations fail to meet that standard.

Plaintiff alleges that Broward County conferred with TSA regarding Broward County's response to plaintiff's request for documents. Complaint 14. As the district court properly recognized, however, Broward County "was essentially obligated to consult with TSA to determine whether the records quested by Plaintiff constituted sensitive security information" that could not be disclosed, and this alleged conduct did not evidence any wrongdoing. 11/16/2012 Order, D.Ct. Dkt. 69, at 29; *see* 49 C.F.R. § 1542.101(c) (requiring airport operators to restrict the disclosure of SSI and to refer all requests for SSI by other persons to TSA). The fact of consultation does not support any inference of unlawful conspiracy.

Plaintiff's additional allegations that "[a]s a result of this collusion, Broward intentionally lied to [plaintiff] regarding the existence of responsive records," and that "[t]he above effect was the intention of both parties," Complaint 14, are too speculative and conclusory to state a valid claim for conspiracy. *See Twombly,* 550 U.S. at 556-557; *Iqbal,* 556 U.S. at 678-680; *Young v. Kann,* 926 F.2d 1396, 1405 n.16 (3d Cir. 1991) (noting "longstanding rule" that bare allegation of collusion or conspiracy is inadequate to state a valid claim).

Plaintiff also argues in his brief that there must have been an unlawful conspiracy to withhold information from him because TSA initially indicated that the existence of video footage constituted Sensitive Security Information, but subsequently acknowledged that information. Pet. Br. 35-36. Allegations that TSA initially designated information as SSI that was subsequently determined not to contain SSI, and that Broward County provided a mistaken answer to plaintiff, do not establish unlawful conspiracy. The district court properly dismissed plaintiff's claim of civil conspiracy.

V. THE DISTRICT COURT CORRECTLY ENTERED SUMMARY JUDGMENT FOR TSA ON PLAINTIFF'S FREEDOM OF INFORMATION ACT CLAIM

Finally, the district court properly granted summary judgment to TSA on plaintiff's FOIA claim.

A. Plaintiff asserts that TSA's search for documents responsive to his FOIA request must have been inadequate because it did not discover any interagency communications or communications with Broward County. Pet. Br. 48.

As the district court properly recognized, "[t]he adequacy of an agency's search for documents requested under FOIA is judged by a reasonableness standard." 9/3/2013 Order, D.Ct. Dkt., at 16 (quoting *Lee v. U.S. Attorney for S. Dist. of Fla.*, 289 Fed. App'x 377, 380, 2008 WL 3524000, *2 (11th Cir. Aug. 14, 2008). The agency can meet its burden to show that its search was reasonably calculated to uncover all relevant documents by producing affidavits that are relatively detailed, nonconclusory, and submitted in good faith." *Karantsalis v. U.S. Dep't of Justice,* 635 F.3d 497, 500-501 (11th Cir. 2011), *cert. denied,* 132 S. Ct. 1141 (2012). The burden then shifts to the requester to show that the search was not reasonable or was not conducted in good faith. *Lee,* 289 Fed. App'x at 380, 2008 WL 3524000, at *2.

The government submitted a declaration from a TSA official that explained in detail the search procedures used and the results of that search. That submission was sufficient to meet the government's burden to show the adequacy of the search. *See Karantsalis,* 635 F.3d at 501. Plaintiffs' speculative assertion that additional documents must have existed does not undermine the government's showing. *See id; see also, e.g., Wilbur v. CIA,* 355 F.3d 675, 678 (D.C. Cir. 2004) ("the agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate

search"); *Grand Cent. P'ship, Inc. v. Cuomo,* 166 F.3d 473, 489 (2d Cir. 1999) ("an agency's search need not be perfect, but rather need only be reasonable").

B. The district court also properly upheld TSA's withholding of limited identifying information about individual TSA employees, including their names and pictures of their faces, under FOIA Exemptions 6 and 7(C).

The Supreme Court has stressed that "disclosure of records regarding private citizens, identifiable by name, is not what the framers of the FOIA had in mind." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press,* 489 U.S. 749, 765 (1989). Although the statute establishes a public right of access to certain information in agency records, it protects an individual's privacy interest in restricting the disclosure of information concerning his or her person. *Id.* at 763-764.

The statutory provisions safeguarding individual privacy are principally set forth in Exemptions 6 and 7(C). Exemption 6 exempts from disclosure all "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). It thus protects personal information in personnel, medical, and "similar files" −a term that the Supreme Court has construed broadly to include all records containing information that "applies to a particular individual." *United States Dep't of State v. Washington Post Co.,* 456 U.S. 595, 602 (1982). Exemption 7(c) similarly exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * *

could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). The exemption is not confined to information compiled in the course of a criminal investigation, but applies more broadly. *See, e.g., Kimberlin v. United States Dep't of Justice,* 139 F.3d 944, 948 (D.C. Cir. 1998) (applying exception to information compiled in the course of investigation by agency's Office of Professional Responsibility), *cert. denied*, 525 U.S. 891.

The "primary purpose" of both exemptions "is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Judicial Watch, Inc. v. U.S. Dep't of Justice,* 365 F.3d 1108, 1124 (D.C. Cir. 2004) (quotation marks and citation omitted). To determine whether the potential privacy invasion is "unwarranted," the court balances the public interest in disclosure against the magnitude of intrusion on individual privacy interests. *Reporter's Committee*, 489 U.S. at 762 (Exemption 7(c)); *Department of State v. Ray,* 502 U.S. 164, 175 (1991) (Exemption 6).

Here, the disclosure of the names of individual TSA screeners and pictures of their faces would not serve any public interest, because it would not "contribut[e] significantly to public understanding of the operations or activities of the government." *U.S. Dep't of Defense v. FLRA,* 510 U.S. 487, 495 (1994) (internal quotation marks and citation omitted). Conversely, individual TSA screeners have a "substantial interest in the nondisclosure of their identities and their connection with [the incident involving petitioner] because of the potential for future harassment,

annoyance, or embarrassment." *Neely v. FBI,* 208 F.3d 461, 464-465 (4th Cir. 2000). The district court properly concluded that this balancing weighed in favor of the withholding of the identities of low-level TSA employees. 9/3/2013 Order, D.Ct. Dkt. 101, at 13-14.

As the court held in *Electronic Privacy Information Ctr. v. Department of Homeland Security,* 384 F. Supp. 2d 100 (D.D.C. 2005), although there is no "blanket exemption" for the names of all government employees in all records, TSA employees who work on security matters have a special need for privacy because of the "nature of their employment." *Id.* at 116. Because of their relationship with "security measures that may be unpopular," "TSA employees are likely to experience annoyance or harassment" if their identities are released. *Id.* at 116-117. In addition, the release of the identities of security personnel could itself have security implications, and could leave those individuals vulnerable to being sought ought by the media or disgruntled private individuals. *Id.* at 117. "This contact is the very type of privacy invasion that Exemption 6 is designed to protect." *Id.*; *see also Skurow v. U.S. Dep't of Homeland Security,* 892 F. Supp. 2d 319, 333 (D.D.C. 2012) (holding that redactions of the names and other contact information for TSA employees who responded to plaintiff's administrative complaint "were properly made pursuant to Exemption 6").

Petitioner argues that the withheld information cannot be withheld under Exemption 6 because the incident report and the surveillance videos are not "similar files" within the meaning of Exemption 6. Pet. Br. 42. But those records relate to a

specific security incident involving a passenger and TSA agents, and document the personal interactions between those individuals. They come within the statute's protection not "merely because the document identifies a federal employee," as petitioner mischaracterizes the government's position (at Pet. Br. 43). Rather, they describe (or display) the specific conduct undertaken by individual screeners in response to a passenger's refusal to undergo screening and the screener's conclusion that the passenger may pose a security threat, bringing them within the broad construction of "similar files" adopted by the Supreme Court. *See Washington Post Co.,* 456 U.S. at 602 (exemption covers all records containing information that "applies to a particular individual"). In addition, even if the identifying information could not be withheld under Exemption 6, it would still be protected under Exemption 7(C).

Petitioner also argues that the identities of screeners cannot be withheld under Exemption 7(c) because TSA screeners are not law enforcement officers, and accordingly its incident reports cannot have been created "for law enforcement purposes." Although petitioner is correct that TSA screeners are not law enforcement officers, Exemption 7(c) has been interpreted to apply more broadly to civil and administrative investigations. *See, e.g., Tax Analysts v. IRS,* 294 F.3d 71, 78-79 (D.C. Cir. 2002). The district court did not err in holding − like the U.S. District Court for the District of Columbia − that TSA records can come within the protection afforded by Exemption 7. *See Electronic Privacy Information Center,* 384 F. Supp.2d at 119

(upholding Exemption 7 withholding of documents prepared by TSA's Chief Privacy Officer).

Plaintiff also argues that TSA's withholding of identifying information about TSA employees involved in the incident with plaintiff violates a Department of Justice Guide to the Freedom of Information Act. Pet. Br. 42. That legal treatise, prepared by the Office of Information Privacy to provide guidance to Executive Branch agencies, does not impose any independent legal requirements on the government. As we have shown, TSA complied fully with its legal obligations under FOIA.

CONCLUSION

For the foregoing reasons, the decisions of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B) because it contains 8,377 words, excluding exempt material, according to the count of Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2013, I filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by electronic delivery. I served the brief by electronic delivery and first-class mail, postage prepaid, on:

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