

## **Exhibit B**



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# Transcript of Matthew J. DeSarno, Designated Representative

**Date:** April 9, 2018

**Case:** El Hady, et al. -v- Kable, et al.

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Conducted on April 9, 2018

<p style="text-align: center;">1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF VIRGINIA</p> <p>3 ALEXANDRIA DIVISION</p> <p>4 -----X</p> <p>5 ANAS ELHADY, ET AL., :</p> <p>6 Plaintiffs, : Case No.:</p> <p>7 v. : 16-CV-00375</p> <p>8 CHARLES H. KABLE, DIRECTOR OF :</p> <p>9 THE TERRORIST SCREENING CENTER; :</p> <p>10 IN HIS OFFICIAL CAPACITY, ET AL.:</p> <p>11 Defendants. :</p> <p>12 -----X</p> <p>13 Deposition of The Federal Bureau of Investigations</p> <p>14 by and through its representative,</p> <p>15 MATTHEW J. DESARNO</p> <p>16 Washington, D.C.</p> <p>17 Monday, April 9, 2018</p> <p>18 10:06 a.m.</p> <p>19</p> <p>20 Job No.: 184986</p> <p>21 Pages: 1-399</p> <p>22 Reported by: Matthew Goldstein, RPR</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFFS, ANAS ELHADY, ET</p> <p>3 AL.:</p> <p>4 GADEIR ABBAS, ESQUIRE</p> <p>5 LENA MASRI, ESQUIRE</p> <p>6 CAROLYN HOMAN, ESQUIRE</p> <p>7 COUNCIL ON AMERICAN-ISLAMIC RELATIONS</p> <p>8 453 New Jersey Avenue, S.E.</p> <p>9 Washington, D.C. 20003</p> <p>10 202.488.0833</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANTS, CHARLES H. KABLE,</p> <p>13 DIRECTOR OF THE TERRORIST SCREENING CENTER;</p> <p>14 IN HIS OFFICIAL CAPACITY, ET AL.:</p> <p>15 AMY E. POWELL, ESQUIRE</p> <p>16 U.S. DEPARTMENT OF JUSTICE CIVIL DIVISION</p> <p>17 20 Massachusetts Avenue, NW</p> <p>18 Washington, D.C. 20530</p> <p>19 202.514.9836</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: center;">2</p> <p>1 Deposition of MATTHEW J. DESARNO, held at:</p> <p>2</p> <p>3</p> <p>4 Department of Justice</p> <p>5 20 Massachusetts Avenue, NW</p> <p>6 Washington, D.C. 20001</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to Notice, before Matthew Goldstein,</p> <p>12 RPR, Notary Public in and for the District of</p> <p>13 Columbia.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: center;">4</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 ALSO PRESENT:</p> <p>3 JAYME KANTOR, ESQ -</p> <p>4 FEDERAL BUREAU OF INVESTIGATION</p> <p>5</p> <p>6 CIPORA KLIONSKY, ESQ -</p> <p>7 FEDERAL BUREAU OF INVESTIGATION</p> <p>8</p> <p>9 KEVIN BOGUCKI, ESQ -</p> <p>10 TERRORIST SCREENING CENTER</p> <p>11</p> <p>12 JENNIFER GREENBAND, ESQ -</p> <p>13 TRANSPORTATION SECURITY ADMINISTRATION</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

Transcript of Matthew J. DeSarno, Designated Representative 2 (5 to 8)  
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<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF MATTHEW J. DESARNO PAGE</p> <p>3</p> <p>4 By MR. ABBAS 7</p> <p>5 By MS. POWELL 116</p> <p>6 By MR. ABBAS 117</p> <p>7 By MS. POWELL 120</p> <p>8 By MR. ABBAS 121</p> <p>9 By MS. POWELL 184</p> <p>10 By MR. ABBAS 185</p> <p>11 By MS. POWELL 259</p> <p>12 By MR. ABBAS 260</p> <p>13 By MS. POWELL 323</p> <p>14 By MR. ABBAS 323</p> <p>15 By MS. POWELL 324</p> <p>16 By MR. ABBAS 325</p> <p>17 By MS. POWELL 383</p> <p>18 By MR. ABBAS 384</p> <p>19 By MS. POWELL 390</p> <p>20 By MR. ABBAS 391</p> <p>21 By MS. POWELL 393</p> <p>22 By MR. ABBAS 393</p>	<p>1 P R O C E E D I N G S</p> <p>2 Whereupon,</p> <p>3 MATTHEW J. DESARNO,</p> <p>4 being first duly sworn or affirmed to testify to</p> <p>5 the truth, the whole truth, and nothing but the</p> <p>6 truth, was examined and testified as follows:</p> <p>7 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Please state your full legal name for</p> <p>10 the record.</p> <p>11 <b>A. Matthew J. DeSarno.</b></p> <p>12 Q. Mr. DeSarno, why are you here today?</p> <p>13 <b>A. I'm here for a deposition related to</b></p> <p>14 <b>the -- testifying on behalf of the FBI related to</b></p> <p>15 <b>a watchlisting suit.</b></p> <p>16 Q. You understand that your testimony today</p> <p>17 is binding on the agency?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. What is the Watchlisting Advisory</p> <p>20 Council?</p> <p>21 <b>A. The Watchlisting Advisory Council is an</b></p> <p>22 <b>advisory council made up of the member agencies</b></p>
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<p>1 By MS. POWELL 394</p> <p>2 By MR. ABBAS 394</p> <p>3 E X H I B I T S</p> <p>4 (Attached)</p> <p>5 DESARNO DEPOSITION EXHIBIT PAGE</p> <p>6</p> <p>7 Exhibit A Notice of 30(b)(6) Deposition of Defendant FBI 44</p> <p>8 Exhibit B Overview of the U.S. Government's Watchlisting Process and Procedures 237</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 <b>involved in the U.S. government watchlisting</b></p> <p>2 <b>process. The advisory council meets I believe</b></p> <p>3 <b>quarterly to discuss gaps in the watchlisting</b></p> <p>4 <b>process, improvements to the watchlisting process,</b></p> <p>5 <b>and to provide recommendations to the Homeland</b></p> <p>6 <b>Security Council as part of the NCS for proposed</b></p> <p>7 <b>modifications to watchlisting guidelines.</b></p> <p>8 Q. Who created the Watchlisting Advisory</p> <p>9 Council?</p> <p>10 MS. POWELL: Objection; vague.</p> <p>11 MR. ABBAS: I withdraw my question.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. What is the FBI's role in the</p> <p>14 Watchlisting Advisory Council?</p> <p>15 <b>A. The FBI is one of the member agencies</b></p> <p>16 <b>who sits on the Council. And we send a</b></p> <p>17 <b>representative to the advisory council meetings.</b></p> <p>18 Q. Are all representatives to the</p> <p>19 Watchlisting Advisory Council coequal?</p> <p>20 <b>A. Meaning do they all have equal vote; is</b></p> <p>21 <b>that the question?</b></p> <p>22 Q. That was not the question.</p>

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<p style="text-align: right;">109</p> <p>1 So if someone is on the watchlist, I don't know  2 that information that put them on that watchlist,  3 I don't know whether it did or did not come from  4 TSA. I don't know what information may have come  5 from TSA. There may be information from TSA in  6 lots of investigative case files and lots of  7 watchlisting nominations. I don't know what  8 information did or did not come from TSA.  9 BY MR. ABBAS:  10 Q. Is it your understanding -- TSDB  11 information is not SSI protected; correct?  12 MS. POWELL: Objection; calls for a  13 legal conclusions.  14 Q. Who owns TSDB information?  15 MS. POWELL: Objection; vague.  16 Q. The FBI has no position as to who owns  17 TSDB information?  18 MS. POWELL: Objection; vague.  19 THE WITNESS: I mean, it's my opinion  20 that TSC owns TSDB information.  21 BY MR. ABBAS:  22 Q. Great. Okay.</p>	<p style="text-align: right;">111</p> <p>1 prior testimony. If I'm wrong, tell me I'm wrong.  2 THE WITNESS: Yeah, I would not  3 characterize it as the FBI -- the whole FBI has  4 access to the whole TSDB, that is not accurate.  5 BY MR. ABBAS:  6 Q. Does the FBI have access to the  7 identifying information of the TSDB?  8 MS. POWELL: Objection; vague and  9 misleading.  10 THE WITNESS: The FBI has the access,  11 the TSDB pushes information to the FBI in  12 Sentinel, in the case management system, and in  13 NCIC. That information can be viewed if queried  14 in those systems.  15 BY MR. ABBAS:  16 Q. So when an act of terrorism happens  17 inside the United States --  18 <b>A. Yes.</b>  19 Q. -- the FBI has the ability to determine  20 whether the perpetrator of the act of terrorism  21 was or was not in the TSDB at the time they commit  22 an act of terrorism; correct?</p>
<p style="text-align: right;">110</p> <p><b>1 A. The TSC is an interagency function.</b>  2 Q. And the FBI possess TSDB information it  3 gets from TSC; correct?  4 MS. POWELL: Objection; vague,  5 misleading.  6 THE WITNESS: I think I previously  7 testified to the ways that TSC pushes TSDB  8 information to the FBI.  9 BY MR. ABBAS:  10 Q. Okay. So TSDB status is shared by TSC  11 with the FBI and other agencies; correct?  12 MS. POWELL: Objection; vague,  13 misleading.  14 THE WITNESS: TSDB status?  15 BY MR. ABBAS:  16 Q. Yes. Whether someone is or is not in  17 the TSDB -- I'll just withdraw it.  18 The FBI knows -- has access to the  19 entire contents of the TSDB; correct?  20 MS. POWELL: Objection; mischaracterizes  21 prior testimony.  22 MR. ABBAS: I'm not referring to his</p>	<p style="text-align: right;">112</p> <p><b>1 A. Yes.</b>  2 Q. And the FBI could query the NCIC to  3 determine whether the perpetrator of the act of  4 terrorism inside the United States was or was not  5 in the TSDB at the time they committed their act  6 of terrorism; correct?  7 MS. POWELL: Objection; mischaracterizes  8 prior testimony, vague.  9 THE WITNESS: So I previously testified  10 that if an act of terrorism occurs, the FBI will  11 absolutely be interested in whether or not the  12 person was watchlisted.  13 BY MR. ABBAS:  14 Q. And you could query the NCIC to  15 determine whether the person was watchlisted;  16 correct?  17 MS. POWELL: Objection; mischaracterizes  18 prior testimony, vague, and misleading.  19 THE WITNESS: That's accurate.  20 BY MR. ABBAS:  21 Q. Okay. Is the NCIC -- does the NCIC  22 contain SSI information?</p>

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1 MS. POWELL: Objection; calls for a  
 2 legal conclusion.  
 3 THE WITNESS: I don't know.  
 4 BY MR. ABBAS:  
 5 Q. Okay.  
 6 **A. That's a legal call. I don't know.**  
 7 Q. Fair. Okay.  
 8 Is it the FBI's position that the status  
 9 of individuals on the watchlist is SSI  
 10 information?  
 11 MS. POWELL: Objection; calls for a  
 12 legal conclusion. There is, in fact, a TSA reg on  
 13 this.  
 14 MR. ABBAS: Go ahead.  
 15 THE WITNESS: Yeah, I don't have -- I  
 16 don't know the answer to that. That's a legal  
 17 question.  
 18 BY MR. ABBAS:  
 19 Q. Who aside from law enforcement agencies  
 20 have access to NCIC?  
 21 **A. I don't know of any people that are not**  
 22 **affiliated with a law enforcement agency that have**

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1 **access to NCIC.**  
 2 Q. Do any private entities have access to  
 3 NCIC?  
 4 **A. I'm not aware of any private entities**  
 5 **that have carte blanche access to NCIC or have law**  
 6 **enforcement access to NCIC.**  
 7 Q. Does any private entity have any type of  
 8 access to NCIC?  
 9 **A. Not that I'm aware of.**  
 10 Q. Okay.  
 11 **A. I'm not aware of any.**  
 12 Q. So when you said "carte blanche," that's  
 13 where I'm -- is there some access that private  
 14 entities are given?  
 15 **A. Not that I'm aware of inside NCIC, no.**  
 16 **But as I testified previously, NCIC pulls in from**  
 17 **a lot of different systems and some of those may**  
 18 **have some private access to a specific system that**  
 19 **NCIC's pulling from, but I don't know of any**  
 20 **private entities that have access to NCIC.**  
 21 Q. Does the NCIC provide access to any  
 22 private databases?

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1 **A. Not specifically through NCIC. I know**  
 2 **that in some states, you can access through a**  
 3 **portal -- through your state portal, you can**  
 4 **access a suite of tools which include NCIC and may**  
 5 **include something like LexisNexis or some public**  
 6 **records type system in the same portal, but I**  
 7 **don't think that they're part of NCIC, though.**  
 8 Q. Does the FBI regulate in any way which  
 9 private databases are made available through NCIC?  
 10 MS. POWELL: Objection; mischaracterizes  
 11 prior testimony.  
 12 THE WITNESS: They're not made available  
 13 through NCIC.  
 14 BY MR. ABBAS:  
 15 Q. You indicated that some --  
 16 **A. Different states have different**  
 17 **interfaces to the system. Some of those**  
 18 **interfaces include a menu of -- a menu of choices**  
 19 **and some of those choices are likely public**  
 20 **records checks and private systems as well.**  
 21 Q. Who decides what private systems are  
 22 included in those menu of choices that you're

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1 referring to?  
 2 **A. The FBI does not decide that.**  
 3 Q. So state and local authorities do?  
 4 **A. Yes, likely.**  
 5 Q. Okay. Great.  
 6 MR. ABBAS: 30 minutes for lunch?  
 7 MS. POWELL: Yes.  
 8 (Luncheon recess from the record.)  
 9 AFTERN OON SESSION  
 10 (1:00 p.m.)  
 11 THE REPORTER: So this is the court  
 12 reporter and we have been on the record for two  
 13 and hours nine minutes.  
 14 MS. POWELL: I propose asking a couple  
 15 of clarifying questions with respect to prior  
 16 testimony.  
 17 MATTHEW J. DESARNO,  
 18 having been previously sworn, resumed the  
 19 stand and testified further as follows:  
 20 EXAMINATION BY COUNSEL FOR THE DEFENDANTS  
 21 BY MS. POWELL:  
 22 Q. First, Mr. DeSarno, you previously

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1 testified that the FBI knows how many user  
2 accounts there are for NCIC. Can you explain what  
3 that means?  
4 **A. So that's how many individual ORIs**  
5 **exist, which an ORI is an originating record**  
6 **identifier. So an ORI can belong to a department**  
7 **or to a specific station to a terminal so the FBI**  
8 **can track the ORIs. And then it's up to the**  
9 **individual departments to issue access to the ORI**  
10 **and they have a responsibility to have an**  
11 **auditable process.**  
12 Q. All right.  
13 MR. ABBAS: Can I ask him a question on  
14 that?  
15 MS. POWELL: Sure.  
16 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  
17 BY MR. ABBAS:  
18 Q. So the FBI doesn't know how many  
19 individual persons as part of their state and  
20 local law enforcement responsibilities query the  
21 NCIC; correct?  
22 **A. I guess that's correct. I mean, I would**

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**1 imagine there is some process, some probably**  
**2 exhaustive, burdensome process that if they needed**  
**3 to know how many individual users had accessed**  
**4 each ORI, it's probably able to be found, but the**  
**5 tracking exists to the ORI.**  
6 Q. And ORI stands for what?  
7 **A. Originating record identifier.**  
8 Q. Does the number of -- does the FBI know  
9 the number of NCIS -- I'm sorry --  
10 MS. POWELL: That would be different.  
11 Q. Does the FBI know the number of NCIC  
12 inquiries that are made of NCIC?  
13 MS. POWELL: Objection; vague, but --  
14 Q. Do you know how many times the NCIC has  
15 been queried?  
16 MS. POWELL: Same objection.  
17 THE WITNESS: Yeah, I don't know. I  
18 mean, there is -- there are audit -- there's an  
19 audit unit and there are audit -- regular audits  
20 so I would expect that there are records of that,  
21 but I don't know the answer to it.  
22

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1 BY MR. ABBAS:  
2 Q. And just -- and that's fine.  
3 And just to clarify, does the -- I asked  
4 you if you knew, but let me ask -- you're here as  
5 the FBI.  
6 Does the FBI know how many times the  
7 NCIC database has been queried?  
8 MS. POWELL: Objection; scope and  
9 potentially vague.  
10 THE WITNESS: Yeah, I don't know.  
11 BY MR. ABBAS:  
12 Q. Does the FBI know how many times each  
13 individual -- I'm sorry.  
14 Does the FBI know how many NCIC queries  
15 are generated by each ORI?  
16 **A. I would expect that they do, but I**  
17 **haven't seen that audit report. But I -- I think**  
18 **that that is -- can be audited and confirmed.**  
19 Q. Okay. But today sitting here, you don't  
20 know?  
21 **A. I don't know specifically.**  
22 Q. Okay.

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1 MR. ABBAS: Okay.  
2 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)  
3 BY MS. POWELL:  
4 Q. And the second question was you  
5 previously testified that the TSDB is a tool to  
6 prevent terrorist attacks by providing a common  
7 operating picture and we objected to the provision  
8 of any specific examples. With that objection  
9 remaining in place and without sharing any  
10 privileged information, can you provide any other  
11 information about how the FBI uses it to prevent  
12 terrorist attacks?  
13 **A. Sure. So TSDB information combined in**  
14 **some cases with encounter information and other**  
15 **investigative information or intelligence, that**  
16 **body of information and evidence and intelligence**  
17 **combined with other potentially -- with other**  
18 **sources can inform investigative strategy,**  
19 **disruption strategy, prevention of terrorism**  
20 **strategy. So when taken together and combined**  
21 **with other information, it can help us to be more**  
22 **preventive in our work.**

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1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)

2 BY MR. ABBAS:

3 Q. In your answer, are you referring to

4 specific instances when TSDB information combined

5 with other information has prevented an act of

6 terrorism?

7 MS. POWELL: To the extent that's a

8 yes-or-no question --

9 MR. ABBAS: It is.

10 MS. POWELL: -- you can answer.

11 MR. ABBAS: It is a yes-or-no question.

12 THE WITNESS: No.

13 BY MR. ABBAS:

14 Q. Okay. Great.

15 Okay. Is the -- the FBI keeps track of

16 the number of times a person in the TSDB is

17 encountered with -- I'm sorry.

18 The FBI receives information about

19 encounters with persons on the TSDB from other

20 government agencies; correct?

21 MS. POWELL: Objection; vague.

22 THE WITNESS: In some instances, yes.

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1 BY MR. ABBAS:

2 Q. When a local police officer pulls

3 someone over and queries the TSDB -- I'm sorry.

4 When a local law enforcement pulls

5 someone over and queries NCIC, if that person that

6 was pulled over is in TSDB, does the FBI learn of

7 the local law enforcement traffic stop?

8 MS. POWELL: Objection; vague and

9 potentially misleading.

10 THE WITNESS: Not necessarily. If the

11 local law enforcement officer gets a hit to the

12 KST file, it would likely be directed to the TSC

13 to make a notification. So depending on what's in

14 that record typically the call would go to the

15 24-hour call center at the TSC. The TSC would

16 then make an assessment as to what to do with that

17 information.

18 In many instances if this occurs inside

19 the United States, there would be a notification

20 to the FBI, but there are instances where it may

21 not. The other -- I mean, the -- so that

22 basically explains a U.S. -- a continental U.S.

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1 traffic stop to the TSC for a decision, TSC would

2 push to FBI if applicable.

3 BY MR. ABBAS:

4 Q. How does the local law enforcement

5 officer know to contact the TSC if that local law

6 enforcement officer pulls over during a traffic

7 stop a TSDB listee?

**8 A. So if a local law enforcement officer**

**9 runs NCIC, the NCIC return from the KST will tell**

**10 the local law enforcement officer -- depending on**

**11 the entry would tell the local law enforcement**

**12 officer different things which would frequently**

**13 include contact the TSC. Part of that contact is**

**14 also to resolve the identity, whether or not this**

**15 person that's stopped is actually a match, an**

**16 identity match to a person on the TSDB.**

17 Q. Why is it of interest to the FBI whether

18 a local law enforcement officer has pulled over a

19 person that's listed in the TSDB?

20 MS. POWELL: Objection; vague,

21 potentially mischaracterizes prior testimony, and

22 misleading.

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1 MR. ABBAS: I'll withdraw the question.

2 BY MR. ABBAS:

3 Q. Is the FBI interested in tracking

4 encounters with TSDB listees?

5 MS. POWELL: Potentially calls for law

6 enforcement sensitive information.

7 You can answer at a level of generality.

8 THE WITNESS: I mean, as I testified

9 just previously, the encounter information when

10 combined with other investigative information can

11 inform strategies, disruption efforts, and other

12 investigative steps that are appropriate with

13 regards to specific terrorism subjects.

14 BY MR. ABBAS:

15 Q. Has an encounter with a TSDB listee ever

16 resulted in a terrorism-related arrest?

17 MS. POWELL: Objection.

18 I'm going to instruct the witness not to

19 answer on the grounds of the law enforcement

20 privilege, also vague and potentially misleading.

21 Q. Do you know whether an encounter with a

22 person in the TSDB has ever led to a