

**Nos. 20-1119, 20-1311**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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ANAS ELHADY et al.

*Plaintiffs – Appellees,*

v.

CHARLES H. KABLE IV, Director of the Terrorist Screening Center, in his  
official capacity, et al.

*Defendants – Appellants.*

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United States District Court  
for the Eastern District of Virginia, Alexandria Division  
(1:16-cv-00375-AJT-JFA)

---

**JOINT APPENDIX**

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APPEAL,CLOSED,JURY

**U.S. District Court  
Eastern District of Virginia – (Alexandria)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00375-AJT-JFA**

Elhady et al v. Piehota et al  
Assigned to: District Judge Anthony J Trenga  
Referred to: Magistrate Judge John F. Anderson  
Case in other court: 4th Circuit, 20-01311  
Cause: 42:1981 Civil Rights

Date Filed: 04/05/2016  
Date Terminated: 12/19/2019  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

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**Plaintiff**

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**Plaintiff**

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**Plaintiff**

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**Defendant**

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 PRO SE

Date Filed	#	Docket Text
04/05/2016	<u>1</u>	COMPLAINT against G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota ( Filing fee \$ 400, receipt number 14683058121) filed by Murat Frljuckic, John Doe No. 2, Michael Edmund Coleman, Samir Anwar, Anas Elhady, Adnan Khalil Shaout, John Doe No. 3, Shahir Anwar, Osama Hussein Ahmed, Wael Hakmeh, Saleem Ali, John Doe No. 1, Ahmad Ibrahim Al Halabi. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Civil Cover Sheet, # <u>6</u> Letter, # <u>7</u> Receipt)(jlan) (Entered: 04/06/2016)
05/04/2016	<u>2</u>	Motion to appear Pro Hac Vice by Lena Masri and Certification of Local Counsel Gadeir Abbas Filing fee \$ 75, receipt number 0422-4972544. by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Samir Anwar, Shahir Anwar, Michael Edmund Coleman, Anas Elhady, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, Adnan Khalil Shaout. (Abbas, Gadeir) (Entered: 05/04/2016)
05/04/2016	<u>3</u>	Motion to appear Pro Hac Vice by Shereef Akeel and Certification of Local Counsel Gadeir Abbas Filing fee \$ 75, receipt number 0422-4972720. by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Samir Anwar, Shahir Anwar, Michael Edmund Coleman, Anas Elhady, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, Adnan Khalil Shaout. (Abbas, Gadeir) (Entered: 05/04/2016)

05/05/2016	<u>4</u>	ORDER granting <u>2</u> Motion for Pro hac vice. Signed by District Judge Anthony J Trenga on 05/05/16. (pmil, ) (Entered: 05/05/2016)
05/05/2016	<u>5</u>	ORDER granting <u>3</u> Motion for Pro hac vice. Signed by District Judge Anthony J Trenga on 05/05/16. (pmil, ) (Entered: 05/05/2016)
06/22/2016	<u>6</u>	Summons Issued for service by Certified Mail as to James G. Kennedy, Christopher M. Piehota, U.S. Attorney and U.S. Attorney General (pmil, ) (Entered: 06/23/2016)
07/01/2016	<u>7</u>	Summons Issued for service by Certified Mail as to G. Clayton Grigg, Steven Mabeus, Matthew G. Olsen. (pmil, ) (Entered: 07/01/2016)
07/05/2016	<u>8</u>	SUMMONS Returned Executed as to U.S. Atty; served on 7/5/2016, answer due 9/6/2016. (pmil, ) (Entered: 07/05/2016)
08/30/2016	<u>9</u>	Consent MOTION for Extension of Time to File Answer <i>until September 2, 2016</i> , Consent MOTION for Leave to File Excess Pages by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 08/30/2016)
08/30/2016	<u>10</u>	NOTICE by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota re <u>9</u> Consent MOTION for Extension of Time to File Answer <i>until September 2, 2016</i> Consent MOTION for Leave to File Excess Pages of <i>Submission Without Argument</i> (Sher, R.) (Entered: 08/30/2016)
08/30/2016	<u>11</u>	ORDER granting <u>9</u> Motion for Extension of Time to Answer and Motion for Leave to File Excess Pages. Signed by Magistrate Judge John F. Anderson on 8/30/2016. (rban, ) (Entered: 08/30/2016)
09/02/2016	<u>12</u>	MOTION to Dismiss for Failure to State a Claim , MOTION to Dismiss for Lack of Jurisdiction by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Exhibit Fourth Circuit Opinion in Mohamed v. Holder)(Sher, R.) (Entered: 09/02/2016)
09/02/2016	<u>13</u>	Memorandum in Support re <u>12</u> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction filed by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 09/02/2016)
09/06/2016		Notice of Correction re: <u>12</u> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (pmil, ) (Entered: 09/06/2016)
09/06/2016	<u>14</u>	SCHEDULING ORDER: Initial Pretrial Conference set for 9/28/2016 at 11:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. Final Pretrial Conference set for 1/19/2017 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. Discovery due by 1/13/2017. Signed by District Judge Anthony J Trenga on 9/06/2016. (Attachments: # <u>1</u> magistrate consent, # <u>2</u> pretrial notice) (jall) ( <b>VACATED AND DISCOVERY STAYED PER ORDER OF AJT 09/21/16</b> Modified on 9/21/2016 to add text(pmil, ). (Entered: 09/06/2016)
09/15/2016	<u>15</u>	Emergency MOTION to Vacate <u>14</u> Scheduling Order, by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Exhibit)(Sher, R.) (Entered: 09/15/2016)
09/15/2016	<u>16</u>	Memorandum in Support re <u>15</u> Emergency MOTION to Vacate <u>14</u> Scheduling Order, filed by G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 09/15/2016)
09/16/2016	<u>17</u>	MOTION to Vacate <u>12</u> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Samir Anwar, Shahir Anwar, Michael Edmund Coleman, Anas Elhady, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, Adnan Khalil Shaout. (Abbas, Gadeir) (Entered: 09/16/2016)

09/16/2016		Notice of Correction re: <u>15</u> Emergency MOTION to Vacate <u>14</u> Scheduling Order, . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (pmil, ) (Entered: 09/16/2016)
09/16/2016		Notice of Correction re: <u>17</u> MOTION to Vacate <u>12</u> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (pmil, ) (Entered: 09/16/2016)
09/16/2016	<u>18</u>	Waiver of re <u>17</u> MOTION to Vacate <u>12</u> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction <i>Oral Argument</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Samir Anwar, Shahir Anwar, Michael Edmund Coleman, Anas Elhady, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, Adnan Khalil Shaout (Abbas, Gadeir) (Entered: 09/16/2016)
09/20/2016	<u>19</u>	NOTICE of Appearance by Lauren A. Wetzler on behalf of G. Clayton Grigg, James G. Kennedy, Steven Mabeus, Matthew G. Olsen, Christopher M. Piehota (Wetzler, Lauren) (Entered: 09/20/2016)
09/20/2016	<u>20</u>	Notice of Hearing Date <i>09/30/2016</i> re <u>15</u> Emergency MOTION to Vacate <u>14</u> Scheduling Order, , <u>16</u> Memorandum in Support (Wetzler, Lauren) (Entered: 09/20/2016)
09/21/2016		Set Deadlines as to <u>15</u> Emergency MOTION to Vacate <u>14</u> Scheduling Order, . Motion Hearing set for 9/30/2016 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (klau, ) (Entered: 09/21/2016)
09/21/2016	<u>21</u>	ORDER that the Court's <u>14</u> Scheduling Order be, and the same hereby is, VACATED, together with all scheduled conferences and deadlines referred to therein; and all discovery STAYED, pending further Order of the Court; the hearing on depts' Emergency Motion to Vacate the Scheduling Order, currently noticed by depts for 09/30/16 at 10:00 a.m. be, and the same hereby is, CANCELLED; on or before 09/23/16, pltf's file any amended complaint, in response to which deft shall answer, move or otherwise respond in accordance with the applicable rules. Signed by District Judge Anthony J Trenga on 09/21/16. (pmil, ) (Entered: 09/21/2016)
09/23/2016	<u>22</u>	AMENDED COMPLAINT against All Defendants, filed by Murat Frljuckic, John Doe No. 2, Michael Edmund Coleman, Samir Anwar, Anas Elhady, Adnan Khalil Shaout, John Doe No. 3, Shahir Anwar, Osama Hussein Ahmed, Wael Hakmeh, Saleem Ali, John Doe No. 1, Ahmad Ibrahim Al Halabi. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Abbas, Gadeir) (Entered: 09/23/2016)
10/07/2016	<u>23</u>	Joint MOTION for Extension of Time to File Answer re <u>22</u> Amended Complaint, <i>and to Establish a Briefing and Hearing Schedule for the Defendants' Anticipated Motion to Dismiss</i> by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 10/07/2016)
10/11/2016	<u>24</u>	ORDER that the parties' <u>23</u> Joint MOTION to Establish a Briefing and Hearing Schedule for the Defendants' Anticipated Motion to Dismiss be, and the same hereby is, GRANTED, together with all deadlines referred to therin. Signed by District Judge Anthony J Trenga on 10/11/16. (pmil, ) (Entered: 10/11/2016)
11/03/2016	<u>25</u>	Consent MOTION for Leave to File Excess Pages by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 11/03/2016)
11/03/2016	<u>26</u>	NOTICE by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota re <u>25</u> Consent MOTION for Leave to File Excess Pages <i>of Waiver of Oral Hearing</i> (Sher, R.) (Entered: 11/03/2016)
11/04/2016	<u>27</u>	ORDER – It is hereby ORDERED that Defendants' Consent Motion to File Excess Pages <u>25</u> be, and the same hereby is, GRANTED. Defendants' memorandum in support of their motion to dismiss is to be no longer than fi fly–five pages and Plaintiffs' response brief is to be no longer than fifty–five pages. Signed by District Judge Anthony J Trenga on 11/4/16. (gwalk, ) (Entered: 11/04/2016)

11/04/2016	<u>28</u>	MOTION to Dismiss for Failure to State a Claim by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Exhibit Unpublished Opinion in Mohamed v. Holder, # <u>2</u> Exhibit)(Sher, R.) (Entered: 11/04/2016)
11/04/2016	<u>29</u>	Memorandum in Support re <u>28</u> MOTION to Dismiss for Failure to State a Claim filed by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 11/04/2016)
11/04/2016	<u>30</u>	Notice of Hearing Date of <i>Friday January 6, 2017</i> re <u>28</u> MOTION to Dismiss for Failure to State a Claim (Sher, R.) (Entered: 11/04/2016)
11/07/2016		Set Deadlines as to <u>28</u> MOTION to Dismiss for Failure to State a Claim . Motion Hearing set for 1/6/2017 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (clar, ) (Entered: 11/07/2016)
12/02/2016	<u>31</u>	RESPONSE in Opposition re <u>28</u> MOTION to Dismiss for Failure to State a Claim filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 12/02/2016)
12/02/2016	<u>32</u>	MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 12/02/2016)
12/05/2016	<u>33</u>	Notice of Hearing Date set for 01/06/2017 re <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> (Abbas, Gadeir) (Entered: 12/05/2016)
12/05/2016		Set Deadlines as to <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> . Motion Hearing set for 1/6/2017 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (dest, ) (Entered: 12/05/2016)
12/05/2016		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> (dest, ) (Entered: 12/05/2016)
12/15/2016	<u>34</u>	Consent MOTION for Leave to File Excess Pages by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 12/15/2016)
12/15/2016	<u>35</u>	NOTICE by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota re <u>34</u> Consent MOTION for Leave to File Excess Pages <i>of Submission Without a Hearing</i> (Sher, R.) (Entered: 12/15/2016)
12/16/2016	<u>36</u>	ORDER granting <u>34</u> Consent Motion to File Excess Pages; Defts' reply brief shall be no longer than twenty-six pages and otherwise filed in accordance with applicable rules. Signed by District Judge Anthony J Trenga on 12/15/16. (pmil, ) (Entered: 12/16/2016)
12/16/2016	<u>37</u>	REPLY to Response to Motion re <u>28</u> MOTION to Dismiss for Failure to State a Claim filed by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Sher, R.) (Entered: 12/16/2016)
12/16/2016	<u>38</u>	Memorandum in Opposition re <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> filed by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G.

		Olsen, Christopher M. Pehota. (Sher, R.) (Entered: 12/16/2016)
12/22/2016	<u>39</u>	REPLY to Response to Motion re <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 12/22/2016)
12/27/2016	<u>40</u>	ORDER that the hearing on Defendants' Motion to Dismiss the Amended Complaint [Doc. No. 28), currently scheduled for Friday, January 6, 2017 at 10:00 a.m., be, and the same hereby is, CONTINUED to Friday, January 13, 2017 at 10:00 a.m.. Signed by District Judge Anthony J Trenga on 12/27/16. (klau, ) (Entered: 12/27/2016)
12/27/2016		Reset Deadlines as to <u>28</u> MOTION to Dismiss for Failure to State a Claim . Motion Hearing set for 1/13/2017 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (klau, ) (Entered: 12/27/2016)
01/04/2017	<u>41</u>	ORDER – ORDERED that the hearing on the pending motion for a protective order (Docket no. 32) is also continued from January 6, 2017 to January 13, 2017. Counsel shall plan to present any argument on the motion for a protective order before the undersigned following the hearing on the motion to dismiss before the District Judge. Signed by Magistrate Judge John F. Anderson on 01/04/2017. (wgar, ) (Entered: 01/04/2017)
01/04/2017		Reset Deadlines as to <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> . Motion Hearing reset for 1/13/2017 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 01/04/2017)
01/12/2017	<u>42</u>	ORDER – The hearing on the pending motion for a protective order (Docket no. 32) to be heard before the undersigned is rescheduled from Friday, January 13, 2017 at 10:00 a.m. to 10:30 a.m. Signed by Magistrate Judge John F. Anderson on 01/12/2017. (wgar, ) (Entered: 01/12/2017)
01/12/2017		Reset Deadlines as to <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> . Motion Hearing reset for 1/13/2017 at 10:30 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 01/12/2017)
01/12/2017	<u>43</u>	NOTICE by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Abbas, Gadeir) (Entered: 01/12/2017)
01/13/2017	<u>44</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 1/13/2017 re <u>32</u> MOTION for Protective Order <i>and to Keep the Names of Unidentified Plaintiffs Under Seal</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motion for a protective order argued and GRANTED. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 01/13/2017)
01/13/2017	<u>45</u>	ORDER, for the reasons stated from the bench, granting <u>32</u> Motion for Protective Order for the pretrial proceedings in this case. ORDERED the Doe plaintiffs may proceed anonymously through the pretrial proceedings in this case, but shall provide defendants with their identities for use during this litigation. The defendants shall not disclose the identities of the Doe plaintiffs absent further Order of the Court. Signed by Magistrate Judge John F. Anderson on 01/13/2017. (wgar, ) (Entered: 01/13/2017)

01/13/2017	<u>46</u>	Minute Entry for proceedings held before District Judge Anthony J Trenga: Motion Hearing held on 1/13/2017 re <u>28</u> MOTION to Dismiss for Failure to State a Claim filed by James G. Kennedy, James Comey, Steven Mabeus, R. Gil Kerlikowske, Matthew G. Olsen, Peter Neffenger, Christopher M. Piehota, G. Clayton Grigg. Appearances of Counsel for Pltf. and Deft. Motion argued and TAKEN UNDER ADVISEMENT. Order to follow. (Court Reporter R. Montgomery.) (jall) (Entered: 01/13/2017)
09/05/2017	<u>47</u>	MEMORANDUM OPINION AND ORDER that Defts' <u>28</u> Motion to Dismiss the Amended Complaint be, and the same hereby is, GRANTED IN PART and DENIED IN PART; it is GRANTED as to Pltfs claims for a violation of substantive due process (Count III), the Equal Protection Clause (Count IV), and the non-delegation doctrine (Count V), and these claims are hereby DISMISSED; and it is otherwise denied (see Order for details). Signed by District Judge Anthony J Trenga on 09/05/17. (pmil, ) (Entered: 09/05/2017)
09/05/2017	<u>48</u>	SCHEDULING ORDER: Initial Pretrial Conference set for 9/27/2017 at 11:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. Final Pretrial Conference set for 1/18/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. Discovery due by 1/12/2018. Signed by District Judge Anthony J Trenga on 9/05/2017. (Attachments: # <u>1</u> magistrate consent, # <u>2</u> pretrial notice) (jall) (Entered: 09/05/2017)
09/15/2017	<u>49</u>	Consent MOTION for Extension of Time to File Answer by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 09/15/2017)
09/15/2017	<u>50</u>	ORDER granting <u>49</u> Motion for Extension of Time to Answer. ORDERED the Answer to the Amended Complaint will be due on or before October 4, 2017. NO FURTHER ENLARGEMENTS WILL BE GRANTED. Signed by Magistrate Judge John F. Anderson on 09/15/2017. (wgar, ) (Entered: 09/15/2017)
09/20/2017	<u>51</u>	<i>Joint Proposed</i> Discovery Plan by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota.(Wetzler, Lauren) (Entered: 09/20/2017)
09/27/2017	<u>52</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Initial Pretrial Conference held on 9/27/2017. Appearances of counsel for plaintiffs and defendants. The scope of discovery issues requires briefing and oral argument. Discovery Plan approved in part. Order to issue. (wgar, ) (Entered: 09/27/2017)
09/27/2017	<u>53</u>	Order Rule 16(b) Scheduling Order – Pursuant to the Rule 16(b) Conference it is ordered that: The Joint Discovery Plan filed by the parties is approved in part and shall control discovery to the extent of its application unless further modified by the court. Signed by Magistrate Judge John F. Anderson on 09/27/2017. SEE ORDER FOR FURTHER DETAILS. (wgar, ) (Entered: 09/27/2017)
10/04/2017	<u>54</u>	ANSWER to Complaint by G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota.(Wetzler, Lauren) (Entered: 10/04/2017)
10/20/2017	<u>55</u>	MOTION for Protective Order by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 10/20/2017)
10/20/2017	<u>56</u>	Memorandum in Support re <u>55</u> MOTION for Protective Order filed by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota. (Attachments: # <u>1</u> Exhibit All Exhibits)(Wetzler, Lauren) (Entered: 10/20/2017)

10/20/2017	<u>57</u>	Notice of Hearing Date set for 10/27/2017 re <u>55</u> MOTION for Protective Order (Wetzler, Lauren) (Entered: 10/20/2017)
10/23/2017		Set Deadlines as to <u>55</u> MOTION for Protective Order . Motion Hearing set for 10/27/2017 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 10/23/2017)
10/23/2017		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>55</u> MOTION for Protective Order (clar, ) (Entered: 10/23/2017)
10/25/2017	<u>58</u>	NOTICE by James Comey, G. Clayton Grigg, James G. Kennedy, R. Gil Kerlikowske, Steven Mabeus, Peter Neffenger, Matthew G. Olsen, Christopher M. Piehota ( <i>Substitution of Defendants</i> ) (Wetzler, Lauren) (Entered: 10/25/2017)
10/25/2017	<u>59</u>	RESPONSE in Opposition re <u>55</u> MOTION for Protective Order filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 10/25/2017)
10/27/2017	<u>60</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 10/27/2017 re <u>55</u> MOTION for Protective Order filed by James G. Kennedy, James Comey, Steven Mabeus, R. Gil Kerlikowske, Matthew G. Olsen, Peter Neffenger, Christopher M. Piehota, G. Clayton Grigg. Appearances of counsel for plaintiffs and defendants. Motion argued and <u>55</u> MOTION for Protective Order – GRANTED IN PART/DENIED IN PART. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 10/27/2017)
10/27/2017	<u>61</u>	ORDER, for the reasons stated from the bench, <b>granting in part and denying in part</b> <u>55</u> Motion for Protective Order. ORDERED Defendants' motion is granted as to information underlying watchlisting determinations and information in defendants' possession regarding plaintiffs unrelated to watchlisting. Defendants' motion is denied as to plaintiffs' watchlist status and information regarding how broadly the watchlist is disseminated. Signed by Magistrate Judge John F. Anderson on 10/27/2017. (wgar, ) (Entered: 10/27/2017)
11/06/2017	<u>62</u>	TRANSCRIPT of motion hearing held on 10-27-2017 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 12/6/2017. Redacted Transcript Deadline set for 1/8/2018. Release of Transcript Restriction set for 2/5/2018.(linnell, norman)</b> (Entered: 11/06/2017)
11/10/2017	<u>63</u>	MOTION to Compel <i>and for Extension of Discovery Deadlines</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 11/10/2017)
11/13/2017		Notice of Correction re <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (acha, ) (Entered: 11/13/2017)
11/13/2017	<u>64</u>	Notice of Hearing Date re <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> (Abbas, Gadeir) (Entered: 11/13/2017)
11/14/2017		Set Deadlines as to <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> . Motion Hearing set for 11/17/2017 at 10:00 AM in Alexandria Courtroom 501 before

		Magistrate Judge John F. Anderson. (Attorney has been notified to file an Amended Notice of Hearing for an appropriate Friday Docket – Filed Untimely) <b>Deadlines Terminated</b> (clar, ) (Entered: 11/14/2017)
11/14/2017		Notice of Correction re <u>64</u> Notice of Hearing Date. The filing user has been notified to file an Amended Notice of Hearing Date, as the Notice of Hearing Date set an untimely hearing. (clar, ) (Entered: 11/14/2017)
11/14/2017		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> (clar, ) (Entered: 11/14/2017)
11/21/2017	<u>65</u>	Opposition to <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit (All exhibits))(Wetzler, Lauren) (Entered: 11/21/2017)
11/24/2017	<u>66</u>	Notice of Hearing Date set for 12/01/2017 re <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> , Notice of Correction (Abbas, Gadeir) (Entered: 11/24/2017)
11/27/2017		Reset Deadlines as to <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> . Motion Hearing set for 12/1/2017 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 11/27/2017)
12/01/2017	<u>67</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Motion Hearing held on 12/1/2017 re <u>63</u> MOTION to Compel <i>and for Extension of Discovery Deadlines</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motion argued and <u>63</u> MOTION to Compel – GRANTED IN PART/DENIED IN PART. Discovery due 2/23/18. Initial Expert Disclosures due: 1/12/18, Rebuttal Expert Disclosures due: 2/9/18. Final Pretrial Conference set for 3/15/18 at 10:00 a.m. Parties request to notice a motion for Thursday, December 7, 2017 – GRANTED. Parties to notice motion for 12/7/17 at 11:00 a.m. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 12/01/2017)
12/01/2017	<u>68</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part <u>63</u> Motion to Compel. ORDERED Defendants' production, a complete privilege log, and written responses in response to plaintiffs' first and second sets of requests for production are due by <b>December 22, 2017</b> . Discovery is now due <b>February 23, 2018</b> . Initial expert disclosures are due <b>January 12, 2018</b> , with rebuttal expert disclosures due <b>February 9, 2018</b> . The final pretrial conference will be held on <b>Thursday, March 15, 2018 at 10:00 a.m.</b> Signed by Magistrate Judge John F. Anderson on 12/01/2017. (wgar, ) (Main Document 68 replaced on 12/1/2017) (wgar, ). (Entered: 12/01/2017)
12/01/2017		Reset Scheduling Order Deadlines: Final Pretrial Conference reset for 3/15/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (wgar, ) (Entered: 12/01/2017)
12/01/2017	<u>69</u>	MOTION to Quash by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 12/01/2017)
12/01/2017	<u>70</u>	Notice of Hearing Date set for 12/7/17 re <u>69</u> MOTION to Quash (Wetzler, Lauren) (Entered: 12/01/2017)
12/01/2017	<u>71</u>	Memorandum in Support re <u>69</u> MOTION to Quash filed by Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit Index & A-K, # <u>2</u> Errata M)(Wetzler, Lauren) (Entered: 12/01/2017)
12/01/2017	<u>72</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray re <u>71</u> Memorandum in Support, (Attachments: # <u>1</u> Exhibit L -- part 1, # <u>2</u>

		Exhibit L -- part 2)(Wetzler, Lauren) (Entered: 12/01/2017)
12/04/2017		Set Deadlines as to <u>69</u> MOTION to Quash . Motion Hearing set for 12/7/2017 at 11:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 12/04/2017)
12/04/2017		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>69</u> MOTION to Quash (clar, ) (Entered: 12/04/2017)
12/06/2017	<u>73</u>	RESPONSE in Opposition re <u>69</u> MOTION to Quash filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 12/06/2017)
12/07/2017	<u>74</u>	ORDER– It is hereby ORDERED that defendants' motion to quash is granted. Signed by Magistrate Judge John F. Anderson on 12/7/2017. See order for further details. (acha, ) (Entered: 12/07/2017)
12/07/2017	<u>75</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 12/7/2017 re <u>69</u> MOTION to Quash filed by David Pecoske, Deborah Moore, Christopher Wray, Kelli Ann Burriesci, Timothy P. Groh, Kevin K. McAleenan, Nicholas J. Rasmussen, Charles H. Kable. Appearance of counsel for plaintiffs and defendants. Motion argued and <u>69</u> MOTION to Quash – GRANTED. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 12/07/2017)
01/05/2018	<u>76</u>	MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 01/05/2018)
01/05/2018	<u>77</u>	Notice of Hearing Date set for 01/12/2018 re <u>76</u> MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> (Abbas, Gadeir) (Entered: 01/05/2018)
01/08/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>76</u> MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> (klau, ) (Entered: 01/08/2018)
01/08/2018		Set Deadlines as to <u>76</u> MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> . Motion Hearing set for 1/12/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (klau, ) (Entered: 01/08/2018)
01/10/2018	<u>78</u>	Joint MOTION for Extension of Time to File Response/Reply as to <u>76</u> MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> , MOTION to Continue <i>Hearing on 76 MOTION for Extension of Time to Complete Discovery</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 01/10/2018)
01/10/2018	<u>79</u>	ORDER granting <u>78</u> Motion for Extension of Time to File Response/Reply ; granting <u>78</u> Motion to Continue. ORDERED that Defendants' deadline by which to respond to Plaintiffs' pending Motion for Extension of All Discovery Deadlines, Dkt. No. 76, is extended through and including January 17, 2018, at 5:00 p.m.; and it is further ORDERED that hearing on the Motion for Extension of All Discovery Deadlines is continued to January 19, 2018, at 10:00 a.m. Signed by Magistrate Judge John F. Anderson on 01/10/2018. (wgar, ) (Entered: 01/10/2018)
01/10/2018		Reset Deadlines as to <u>76</u> MOTION for Extension of Time to Complete Discovery <i>and Extend All Discovery Deadlines</i> . Motion Hearing reset for 1/19/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, )

		(Entered: 01/10/2018)
01/12/2018	<u>80</u>	MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>81</u>	Notice of Hearing Date set for 1/19/18 re <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> (Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>82</u>	Memorandum in Support re <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4–14, # <u>5</u> Exhibit 15, # <u>6</u> Exhibit 17, part 1, # <u>7</u> Exhibit 17, part 2)(Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>83</u>	EXHIBIT 17, <i>part 3 in Support of 82 Memorandum in Support of Motion to Compel</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 18, # <u>2</u> Exhibit 19, # <u>3</u> Exhibit 20, part 1, # <u>4</u> Exhibit 20, part 2)(Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>84</u>	EXHIBIT 21 to <u>82 Memorandum in Support of Motion to Compel</u> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 22, # <u>2</u> Exhibit 23, part 1, # <u>3</u> Exhibit 23, part 2, # <u>4</u> Exhibit 24, # <u>5</u> Exhibit 25)(Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>85</u>	EXHIBIT 26 to <u>82 Memorandum in Support of Motion to Compel</u> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 27, # <u>2</u> Exhibit 28, part 1, # <u>3</u> Exhibit 28, part 2)(Wetzler, Lauren) (Entered: 01/12/2018)
01/12/2018	<u>86</u>	EXHIBIT 28, <i>part 3 to 82 Memorandum in Support of Motion to Compel</i> by Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 29, part 1, # <u>2</u> Exhibit 29, part 2, # <u>3</u> Exhibit 30, # <u>4</u> Exhibit 31, # <u>5</u> Exhibit 32, # <u>6</u> Exhibit 33)(Wetzler, Lauren) (Entered: 01/12/2018)
01/16/2018		Set Deadlines as to <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> . Motion Hearing set for 1/19/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 01/16/2018)
01/16/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> (clar, ) (Entered: 01/16/2018)
01/17/2018	<u>87</u>	RESPONSE to Motion re <u>76</u> MOTION for Extension of Time to Complete Discovery and Extend All Discovery Deadlines filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 01/17/2018)
01/17/2018	<u>88</u>	RESPONSE in Opposition re <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit)(Abbas, Gadeir) (Entered: 01/17/2018)
01/18/2018	<u>89</u>	REPLY to Response to Motion re <u>80</u> MOTION to Compel <i>Document Production, Interrogatories, and Deposition Testimony</i> filed by Kelli Ann Burriesci, Timothy P.

		Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 01/18/2018)
01/18/2018	<u>90</u>	EXHIBIT 34 to <u>89</u> Reply to Response to Motion to Compel by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 35, # <u>2</u> Exhibit 36, # <u>3</u> Exhibit 37, # <u>4</u> Exhibit 38, # <u>5</u> Exhibit 39, # <u>6</u> Exhibit 40, # <u>7</u> Exhibit 41, # <u>8</u> Exhibit 42, # <u>9</u> Exhibit 43, # <u>10</u> Exhibit 44)(Wetzler, Lauren) (Entered: 01/18/2018)
01/19/2018	<u>91</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 1/19/2018 re <u>76</u> MOTION for Extension of Time to Complete Discovery and Extend All Discovery Deadlines filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly, <u>80</u> MOTION to Compel Document Production, Interrogatories, and Deposition Testimony filed by Christopher Wray, Kelli Ann Burriesci, Nicholas J. Rasmussen, Charles H. Kable, David Pecoske, Deborah Moore, Timothy P. Groh, Kevin K. McAleenan. Appearances of counsel for plaintiffs and defendants. Motions argued and <u>76</u> MOTION for Extension of Time to Complete Discovery – DENIED WITHOUT PREJUDICE; <u>80</u> MOTION to Compel – GRANTED IN PART/DENIED IN PART. Orders to follow. (Tape #FTR.)(wgar, ) (Entered: 01/19/2018)
01/19/2018	<u>92</u>	ORDER, for the reasons stated from the bench, denying without prejudice <u>76</u> Motion for Extension of Time to Complete Discovery. Signed by Magistrate Judge John F. Anderson on 01/19/2018. (wgar, ) (Entered: 01/19/2018)
01/19/2018	<u>93</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part <u>80</u> Motion to Compel. Signed by Magistrate Judge John F. Anderson on 01/19/2018. (wgar, ) (Entered: 01/19/2018)
02/01/2018	<u>94</u>	TRANSCRIPT of motions hearing held on 1–19–2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703–549–4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/5/2018. Redacted Transcript Deadline set for 4/3/2018. Release of Transcript Restriction set for 5/2/2018.(linnell, norman)</b> (Entered: 02/01/2018)
02/01/2018	95	TRANSCRIPT of motions hearing held on 1–19–2018 before Judge Liam O'Grady. Court reporter Norman Linnell, telephone number 703–549–4626. Modified on 2/1/2018 to remove duplicate document per Court Reporter Norman Linnell (ltun). (Entered: 02/01/2018)
02/02/2018	<u>96</u>	MOTION for Protective Order by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 02/02/2018)
02/02/2018	<u>97</u>	Notice of Hearing Date set for 02/09/2018 re <u>96</u> MOTION for Protective Order (Abbas, Gadeir) (Entered: 02/02/2018)
02/05/2018		Set Deadlines as to <u>96</u> MOTION for Protective Order . Motion Hearing set for 2/9/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 02/05/2018)

02/05/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>96</u> MOTION for Protective Order (clar, ) (Entered: 02/05/2018)
02/05/2018		Notice of Correction re <u>96</u> MOTION for Protective Order The filing user has been notified to file the document separately for each motion relief in the future. (clar, ) (Entered: 02/05/2018)
02/07/2018	<u>98</u>	Memorandum in Opposition re <u>96</u> MOTION for Protective Order filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/07/2018)
02/09/2018	<u>99</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 2/9/2018 re <u>96</u> MOTION for Protective Order filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motion argued and MOTION for Protective Order – GRANTED IN PART/DENIED IN PART. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 02/09/2018)
02/09/2018	<u>100</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part <u>96</u> Motion for Protective Order. As discussed during the hearing, the information relating to JD1 that is the subject of this motion shall not be made public without prior approval of the court and that information is only to be used by the defendants for the purpose of this litigation. Signed by Magistrate Judge John F. Anderson on 02/09/2018. (wgar, ) (Entered: 02/09/2018)
02/09/2018	<u>101</u>	MOTION for Protective Order <i>Regarding 30(b)(6) Deposition</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>102</u>	Memorandum in Support re <u>101</u> MOTION for Protective Order <i>Regarding 30(b)(6) Deposition</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit (Combined))(Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>103</u>	Notice of Hearing Date set for 2/16/18 re <u>101</u> MOTION for Protective Order <i>Regarding 30(b)(6) Deposition</i> (Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>104</u>	MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking <i>30(b)(6) Deposition</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>105</u>	Notice of Hearing Date set for 2/16/18 re <u>104</u> MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking <i>30(b)(6) Deposition</i> (Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>106</u>	MOTION to Compel <i>the Production of Documents</i> , MOTION to Strike <i>Testimony</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>107</u>	Memorandum in Support re <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testimony</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>108</u>	Notice of Hearing Date set for 2/16/18 re <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testimony</i> (Wetzler, Lauren) (Entered: 02/09/2018)
02/09/2018	<u>109</u>	MOTION for Protective Order by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2,

		Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit Combined Exhibits)(Abbas, Gadeir) (Entered: 02/09/2018)
02/09/2018	<u>110</u>	Notice of Hearing Date set for 02/16/2018 re <u>109</u> MOTION for Protective Order (Abbas, Gadeir) (Entered: 02/09/2018)
02/12/2018		Set Deadlines as to <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testmony</i> , <u>109</u> MOTION for Protective Order , <u>104</u> MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking 30(b)(6) Deposition, <u>101</u> MOTION for Protective Order Regarding 30(b)(6) Deposition. Motion Hearing set for 2/16/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 02/12/2018)
02/12/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>101</u> MOTION for Protective Order Regarding 30(b)(6) Deposition, <u>104</u> MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking 30(b)(6) Deposition, <u>109</u> MOTION for Protective Order , <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testmony</i> (clar, ) (Entered: 02/12/2018)
02/12/2018	<u>111</u>	TRANSCRIPT of motion hearing held on 2-9-2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/14/2018. Redacted Transcript Deadline set for 4/16/2018. Release of Transcript Restriction set for 5/14/2018.(linnell, norman)</b> (Entered: 02/12/2018)
02/14/2018	<u>112</u>	RESPONSE in Opposition re <u>101</u> MOTION for Protective Order Regarding 30(b)(6) Deposition filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Abbas, Gadeir) (Entered: 02/14/2018)
02/14/2018	<u>113</u>	RESPONSE in Opposition re <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testmony</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Abbas, Gadeir) (Entered: 02/14/2018)
02/14/2018	<u>114</u>	Memorandum in Opposition re <u>109</u> MOTION for Protective Order filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Wetzler, Lauren) (Entered: 02/14/2018)
02/14/2018	<u>115</u>	RESPONSE in Opposition re <u>104</u> MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking 30(b)(6) Deposition filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 02/14/2018)

02/15/2018	<u>116</u>	Joint MOTION for Extension of Time to Complete Discovery <i>as to Noticed Depositions</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 02/15/2018)
02/15/2018	<u>117</u>	REPLY to Response to Motion re <u>101</u> MOTION for Protective Order <i>Regarding 30(b)(6) Deposition</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/15/2018)
02/15/2018	<u>118</u>	REPLY to Response to Motion re <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testimony</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/15/2018)
02/16/2018	<u>119</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 2/16/2018 re <u>101</u> MOTION for Protective Order <i>Regarding 30(b)(6) Deposition</i> filed by David Pecoske, Deborah Moore, Christopher Wray, Kelli Ann Burriesci, Timothy P. Groh, Kevin K. McAleenan, Nicholas J. Rasmussen, Charles H. Kable, <u>104</u> MOTION for Extension of Time for the Limited Purpose of Plaintiff Taking <i>30(b)(6) Deposition</i> filed by David Pecoske, Deborah Moore, Christopher Wray, Timothy P. Groh, Kelli Ann Burriesci, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable, <u>116</u> Joint MOTION for Extension of Time to Complete Discovery <i>as to Noticed Depositions</i> filed by David Pecoske, Deborah Moore, Christopher Wray, Timothy P. Groh, Kelli Ann Burriesci, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable, <u>109</u> MOTION for Protective Order filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly, <u>106</u> MOTION to Compel <i>the Production of Documents</i> MOTION to Strike <i>Testimony</i> filed by Kelli Ann Burriesci, Nicholas J. Rasmussen, Charles H. Kable, David Pecoske, Deborah Moore, Timothy P. Groh, Kevin K. McAleenan. Appearances of counsel for plaintiffs and defendants. Motions argued and <u>101</u> MOTION for Protective Order – GRANTED; <u>104</u> MOTION for Extension of Time – DENIED as MOOT; <u>106</u> MOTION to Compel – DENIED; MOTION to Strike – GRANTED; <u>109</u> MOTION for Protective Order – DENIED; <u>116</u> MOTION for Extension of Time – GRANTED. Orders to follow. (Tape #FTR.)(wgar, ) (Entered: 02/20/2018)
02/16/2018	<u>120</u>	ORDER, for the reasons stated from the bench, denying <u>109</u> Motion for Protective Order. Signed by Magistrate Judge John F. Anderson on 02/16/2018. (wgar, ) (Entered: 02/20/2018)
02/16/2018	<u>121</u>	ORDER, for the reasons stated from the bench, granting <u>101</u> Motion for Protective Order. ORDERED as to limiting the topics noticed for the Fed. R. Civ. P. 30(b)(6) deposition to the eight (8) topics proposed by defendants. Additionally, plaintiffs are given leave to serve one additional interrogatory regarding the legal authority that the Terrorist Screening Center relies upon to operate and disseminate the Terrorist Screening Database. Signed by Magistrate Judge John F. Anderson on 02/16/2018. (wgar, ) (Entered: 02/20/2018)
02/16/2018	<u>122</u>	ORDER, for the reasons stated from the bench, denying <u>106</u> Motion to Compel; granting <u>106</u> Motion to Strike. Signed by Magistrate Judge John F. Anderson on 02/16/2018. (wgar, ) (Entered: 02/20/2018)
02/16/2018	<u>123</u>	ORDER, for the reasons stated from the bench, denying as moot <u>104</u> Motion for Extension of Time to File; granting <u>116</u> Motion for Extension of Time to Complete Discovery. ORDERED that the discovery deadline is extended until <b>March 23, 2018</b> for the limited purpose of conducting additional depositions which have already been noticed as of the date of this order. The parties shall still appear before the District Judge at <b>10:00 a.m. on March 15, 2018</b> for the final pretrial conference. The Fed. R. Civ. P. 26(a)(3) disclosures will no longer be due by March 15, 2018, and the District Judge will set a new date for those disclosures to be due at the final pretrial conference. Signed by Magistrate Judge John F. Anderson on 02/16/2018. (wgar, ) (Entered: 02/20/2018)

02/25/2018	<u>124</u>	TRANSCRIPT of motions hearing held on 2-16-2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/27/2018. Redacted Transcript Deadline set for 4/27/2018. Release of Transcript Restriction set for 5/29/2018.(linnell, norman) (Entered: 02/25/2018)</b>
03/09/2018	<u>125</u>	Consent MOTION for Extension of Time to Take FBI 30(b)(6) Deposition by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/09/2018)
03/09/2018	<u>126</u>	Notice of Hearing Date set for 3/16/18 re <u>125</u> Consent MOTION for Extension of Time to Take FBI 30(b)(6) Deposition (Wetzler, Lauren) (Entered: 03/09/2018)
03/09/2018	<u>127</u>	MOTION for Protective Order to Limit Topics of Rule 30(b)(6) Depositions by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/09/2018)
03/09/2018	<u>128</u>	Memorandum in Support re <u>130</u> MOTION for Protective Order to Limit Topics of Rule 30(b)(6) Depositions filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit (Combined))(Wetzler, Lauren) Modified docket entry relationship on 3/12/2018 (clar, ). (Entered: 03/09/2018)
03/09/2018	<u>129</u>	Notice of Hearing Date set for 3/16/18 re <u>130</u> MOTION for Protective Order to Limit Topics of Rule 30(b)(6) Depositions, <u>128</u> Memorandum in Support, (Wetzler, Lauren) Modified docket entry relationship on 3/12/2018 (clar, ). (Entered: 03/09/2018)
03/09/2018	<u>130</u>	MOTION for Protective Order to Limit Topics of 30(b)(6) Depositions (CORRECTED) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/09/2018)
03/12/2018	<u>131</u>	ORDER granting <u>125</u> Motion for Extension of Time to File. ORDERED that the discovery period in this action is extended for the limited and exclusive purpose of allowing Plaintiffs to depose Federal Bureau of Investigation Deputy Assistant Director Matthew DeSarno on April 9, 2018. Signed by Magistrate Judge John F. Anderson on 03/12/2018. (wgar, ) (Entered: 03/12/2018)
03/12/2018		Set Deadlines as to <u>130</u> MOTION for Protective Order to Limit Topics of 30(b)(6) Depositions (CORRECTED). Motion Hearing set for 3/16/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 03/12/2018)
03/12/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>130</u> MOTION for Protective Order to Limit Topics of 30(b)(6) Depositions (CORRECTED) (clar, ) (Entered: 03/12/2018)
03/12/2018	<u>132</u>	Motion to appear Pro Hac Vice by Carolyn Homer and Certification of Local Counsel Gadeir Abbas Filing fee \$ 75, receipt number 0422-5985556. by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/12/2018)
03/12/2018	<u>133</u>	Motion to appear Pro Hac Vice by Ahmed Mohamed and Certification of Local Counsel Gadeir Abbas Filing fee \$ 75, receipt number 0422-5985568. by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar,

		Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/12/2018)
03/14/2018	<u>134</u>	ORDER granting <u>132</u> Motion for Pro hac vice for Carolyn Myrle Homer. Signed by District Judge Anthony J Trenga on 3/14/2018. (acha, ) (Entered: 03/14/2018)
03/14/2018	<u>135</u>	ORDER granting <u>133</u> Motion for Pro hac vice for Ahmed Mohsen Mohamed. Signed by District Judge Anthony J Trenga on 3/14/2018. (acha, ) (Entered: 03/14/2018)
03/14/2018	<u>136</u>	MOTION Set Summary Judgment Briefing Schedule , MOTION for Leave to File Excess Pages by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/14/2018)
03/14/2018	<u>137</u>	RESPONSE in Opposition re <u>130</u> MOTION for Protective Order <i>to Limit Topics of 30(b)(6) Depositions (CORRECTED)</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit)(Abbas, Gadeir) (Entered: 03/14/2018)
03/14/2018	<u>138</u>	Memorandum in Support re <u>136</u> MOTION Set Summary Judgment Briefing Schedule MOTION for Leave to File Excess Pages filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A)(Wetzler, Lauren) (Entered: 03/14/2018)
03/15/2018	<u>139</u>	MOTION to Compel by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit Combined)(Abbas, Gadeir) Modified on 4/17/2018 to remove term date (acha, ). (Entered: 03/15/2018)
03/15/2018	<u>140</u>	Minute Entry for proceedings held before District Judge Anthony J Trenga: Final Pretrial Conference held on 3/15/2018. Appearances of Counsel for Plaintiff and Defendant. The Court orders that all Summary Judgment Motions are to be filed by 5/14/2018; oppositions by 6/13/2018; and replies to be filed by 6/27/2018. <b>SUMMARY JUDGMENT HEARING</b> set for 7/10/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. <b>JURY TRIAL</b> set for 8/6/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. <b>STATUS CONFERENCE before Trial</b> set for 8/6/2018 at 9:00 AM before District Judge Anthony J Trenga, to address any preliminary matters. (Court Reporter n/a.)(jall) (Entered: 03/15/2018)
03/15/2018	<u>141</u>	REPLY to Response to Motion re <u>130</u> MOTION for Protective Order <i>to Limit Topics of 30(b)(6) Depositions (CORRECTED)</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 16)(Wetzler, Lauren) (Entered: 03/15/2018)
03/15/2018	<u>142</u>	MOTION to Strike <u>139</u> MOTION to Compel by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/15/2018)
03/15/2018	<u>143</u>	Memorandum in Support re <u>142</u> MOTION to Strike <u>139</u> MOTION to Compel filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan,

		Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 03/15/2018)
03/15/2018	<u>144</u>	Notice of Hearing Date set for 3/23/18 re <u>143</u> Memorandum in Support, <u>142</u> MOTION to Strike <u>139</u> MOTION to Compel (Wetzler, Lauren) (Entered: 03/15/2018)
03/16/2018		Set Deadlines as to <u>142</u> MOTION to Strike <u>139</u> MOTION to Compel . Motion Hearing set for 3/23/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 03/16/2018)
03/16/2018	<u>145</u>	Notice of Hearing Date set for 03/23/2018 re <u>139</u> MOTION to Compel (Abbas, Gadeir) (Entered: 03/16/2018)
03/16/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>142</u> MOTION to Strike <u>139</u> MOTION to Compel (clar, ) (Entered: 03/16/2018)
03/16/2018	<u>146</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 3/16/2018 re <u>130</u> MOTION for Protective Order <i>to Limit Topics of 30(b)(6) Depositions (CORRECTED)</i> filed by David Pekoske, Deborah Moore, Christopher Wray, Kelli Ann Burriesci, Timothy P. Groh, Kevin K. McAleenan, Nicholas J. Rasmussen, Charles H. Kable. Appearances of counsel for plaintiffs and defendants. Motion argued and <u>130</u> MOTION for Protective Order – GRANTED IN PART/DENIED IN PART. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 03/16/2018)
03/16/2018	<u>147</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part <u>130</u> Motion for Protective Order. Signed by Magistrate Judge John F. Anderson on 03/16/2018. (wgar, ) (Entered: 03/16/2018)
03/16/2018		Notice of Correction re <u>139</u> MOTION to Compel . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument and correctly file the motion and memorandum separately. (acha, ) (Entered: 03/16/2018)
03/19/2018	<u>148</u>	TRANSCRIPT of motions hearing held on 3–16–2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703–549–4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 4/18/2018. Redacted Transcript Deadline set for 5/21/2018. Release of Transcript Restriction set for 6/18/2018.(linnell, norman)</b> (Entered: 03/19/2018)
03/19/2018	<u>149</u>	ORDER– It is hereby ORDERED that defendant's <u>142</u> Motion to Strike is denied without prejudice to defendant's ability to argue the delay in opposition to plaintiff's motion to compel. Signed by Magistrate Judge John F. Anderson on 3/19/2018. (acha, ) (Entered: 03/19/2018)
03/19/2018	<u>150</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>139</u> MOTION to Compel <i>and to Continue Hearing</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/19/2018)
03/20/2018		Set/Reset Deadlines as to <u>139</u> MOTION to Compel . Motion Hearing set for 3/23/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 03/20/2018)
03/20/2018	<u>151</u>	ORDER granting <u>150</u> Motion for Extension of Time to File Response/Reply. The opposition to Plaintiffs' Motion to Compel shall be due April 16, 2018, Plaintiff's reply shall be due April 30, 2018, and the hearing shall be continued until May 4, 2018 at 10:00 a.m. Signed by Magistrate Judge John F. Anderson on 03/20/2018. (wgar, ) (Entered: 03/20/2018)

03/20/2018		Reset Deadlines as to <u>139</u> MOTION to Compel . Motion Hearing reset for 5/4/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 03/20/2018)
03/23/2018	<u>152</u>	MOTION to Compel <i>Appearance of Three Plaintiffs at Depositions</i> , MOTION for Extension of Time to Complete Discovery <i>as to the Three Plaintiffs' Depositions</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/23/2018)
03/23/2018	<u>153</u>	Notice of Hearing Date set for 03/30/18 re <u>152</u> MOTION to Compel <i>Appearance of Three Plaintiffs at Depositions</i> MOTION for Extension of Time to Complete Discovery <i>as to the Three Plaintiffs' Depositions</i> (Wetzler, Lauren) (Entered: 03/23/2018)
03/23/2018	<u>154</u>	Memorandum in Support re <u>152</u> MOTION to Compel <i>Appearance of Three Plaintiffs at Depositions</i> MOTION for Extension of Time to Complete Discovery <i>as to the Three Plaintiffs' Depositions</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit (Combined))(Wetzler, Lauren) (Entered: 03/23/2018)
03/23/2018	<u>155</u>	MOTION for Extension of Time To Conduct <i>JD3's Deposition</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/23/2018)
03/23/2018	<u>156</u>	Notice of Hearing Date set for 03/30/2018 re <u>155</u> MOTION for Extension of Time To Conduct <i>JD3's Deposition</i> (Abbas, Gadeir) (Entered: 03/23/2018)
03/26/2018		Set Deadlines as to <u>155</u> MOTION for Extension of Time To Conduct <i>JD3's Deposition</i> , <u>152</u> MOTION to Compel <i>Appearance of Three Plaintiffs at Depositions</i> MOTION for Extension of Time to Complete Discovery <i>as to the Three Plaintiffs' Depositions</i> . Motion Hearing set for 3/30/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 03/26/2018)
03/28/2018	<u>157</u>	RESPONSE to Motion re <u>155</u> MOTION for Extension of Time To Conduct <i>JD3's Deposition</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Levenson, Rebecca) (Entered: 03/28/2018)
03/28/2018	<u>158</u>	RESPONSE in Opposition re <u>152</u> MOTION to Compel <i>Appearance of Three Plaintiffs at Depositions</i> MOTION for Extension of Time to Complete Discovery <i>as to the Three Plaintiffs' Depositions</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/28/2018)
03/29/2018	<u>159</u>	ORDER– It is hereby ORDERED that defendants' <u>152</u> motion to compel is granted in part, denied in part and that plaintiffs' <u>155</u> motion for an extension of time for the purpose of conducting the deposition of John Doe 3 is granted. John Doe 1 and Mahmoud Eraqi shall file their notice of dismissal with prejudice by no later than April 6, 2018. The hearing scheduled for Friday, March 30, 2018 is cancelled. Signed by Magistrate Judge John F. Anderson on 3/29/2018. (See order for further details.) (acha, ) (Entered: 03/29/2018)
04/02/2018	<u>160</u>	Joint MOTION Clarification of Summary Judgment Page Limits by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/02/2018)

04/03/2018	<u>161</u>	ORDER– The Court, having reviewed the parties' <u>160</u> Motion for Clarification, hereby clarifies that summary judgment briefing page limits shall be extended as requested by the parties. Signed by District Judge Anthony J Trenga on 04/03/2018. (See order for further details.) (acha, ) (Entered: 04/03/2018)
04/06/2018	<u>162</u>	Consent MOTION for Extension of Time to File Response/Reply by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/06/2018)
04/06/2018	<u>163</u>	Waiver of re <u>162</u> Consent MOTION for Extension of Time to File Response/Reply ( <i>Oral Argument Waiver</i> ) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray (Wetzler, Lauren) (Entered: 04/06/2018)
04/06/2018	<u>164</u>	STIPULATION of Dismissal for <i>Mahmoud Eraqi</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/06/2018)
04/06/2018	<u>165</u>	STIPULATION of Dismissal for <i>John Doe 1</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/06/2018)
04/13/2018	<u>166</u>	Joint MOTION for Leave to File Excess Pages by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/13/2018)
04/13/2018	<u>167</u>	Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/13/2018)
04/13/2018	<u>168</u>	Notice of Hearing Date set for 4/20/2018 re <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> (Abbas, Gadeir) (Entered: 04/13/2018)
04/13/2018	<u>169</u>	Memorandum in Support re <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit s A – I in support of Plaintiffs' Second Motion to Compel)(Abbas, Gadeir) (Entered: 04/13/2018)
04/16/2018		Set Deadlines as to <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> . Motion Hearing set for 4/20/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 04/16/2018)
04/16/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> (clar, ) (Entered: 04/16/2018)
04/16/2018	<u>170</u>	NOTICE by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald

		Thomas re <u>169</u> Memorandum in Support,, <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> (Attachments: # <u>1</u> Updated Memorandum in Support of Plaintiff's Second Motion to Compel Adding FBI Deposition Transcript Page Numbers, # <u>2</u> Exhibit D to Plaintiff's Second Motion to Compel containing FBI Deposition Excerpts)(Abbas, Gadeir) (Entered: 04/16/2018)
04/16/2018	<u>171</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/16/2018)
04/17/2018	<u>172</u>	ORDER granting <u>171</u> Motion for Extension of Time to File Response/Reply. ORDERED that Defendants shall file a memorandum in opposition to Plaintiffs' pending April 13 Motion to Compel by no later than April 27, 2018; ORDERED that Plaintiffs shall file a reply memorandum, if any, by no later than May 3, 2018, in support of this same motion; ORDERED that the hearing on the plaintiffs' second motion to compel (Docket no. 167) is rescheduled from April 20, 2018 to May 11, 2018 at 10:00 a.m. before the undersigned. Signed by Magistrate Judge John F. Anderson on 04/17/2018. (wgar, ) (Entered: 04/17/2018)
04/17/2018		Reset Deadlines as to <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> . Motion Hearing reset for 5/11/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 04/17/2018)
04/17/2018	<u>173</u>	ORDER– The Court, having reviewed the parties' <u>166</u> Joint Motion to Extend Page Limits for Motion to Compel Briefing, hereby grants the motion for good cause shown. It is hereby ORDERED that Defendants shall have leave to file a memorandum of no more than 45 pages in opposition to Plaintiff's pending Motion to Compel; and it is further ORDERED that Plaintiffs shall have leave to file a reply memorandum of no more than 35 pages in support of this same motion. Signed by District Judge Anthony J Trenga on 04/17/2018. (acha, ) (Entered: 04/17/2018)
04/17/2018	<u>174</u>	ORDER– It is hereby ORDERED that Defendant's <u>162</u> Motion be, and the same hereby is, GRANTED. The opposition to Plaintiff's <u>139</u> Motion to Compel shall be due April 23, 2018, the reply shall be due May 3, 2018, and the hearing on the Motion to Compel, currently scheduled before Judge Anderson on May 4, 2018 at 10:00a.m. be, and the same hereby is, CONTINUED to Tuesday, May 8, 2018 at 2:00p.m. before the undersigned. Signed by District Judge Anthony J Trenga on 04/17/2018. (acha, ) Modified on 4/17/2018 to add text (acha, ). (Entered: 04/17/2018)
04/17/2018		Set/Reset Deadlines as to <u>139</u> MOTION to Compel . Motion Hearing set for 5/8/2018 at 02:00 PM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (acha, ) (Entered: 04/17/2018)
04/20/2018	<u>175</u>	MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> by Mark Amri. (Attachments: # <u>1</u> Exhibit)(Abbas, Gadeir) (Entered: 04/20/2018)
04/20/2018	<u>176</u>	Notice of Hearing Date re <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> (Abbas, Gadeir) (Entered: 04/20/2018)
04/23/2018		Set Deadlines as to <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> . Motion Hearing set for 4/27/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 04/23/2018)
04/23/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> (clar, ) (Entered: 04/23/2018)
04/23/2018	<u>177</u>	ORDER– Accordingly, the hearing on plaintiff's <u>175</u> motion for limited discovery is continued to <b>10:00 a.m. on Friday, May 4, 2018</b> , with the opposition due by April 27, 2018, and the reply due by May 2, 2018. Signed by Magistrate Judge John F. Anderson on 04/23/2018. (acha, ) (Entered: 04/23/2018)
04/23/2018		Set/Reset Deadlines as to <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> . Replies due by 5/2/2018. Motion Hearing set for

		5/4/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. Opposition due by 4/27/2018. (acha, ) Modified on 4/26/2018 to correct entry (acha, ). (Entered: 04/23/2018)
04/23/2018	<u>178</u>	RESPONSE in Opposition re <u>139</u> MOTION to Compel filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit 16, # <u>18</u> Exhibit 17, # <u>19</u> Exhibit 18, # <u>20</u> Exhibit 19, # <u>21</u> Exhibit 20, # <u>22</u> Exhibit 21, # <u>23</u> Exhibit 22, # <u>24</u> Exhibit 23, # <u>25</u> Exhibit 24)(Wetzler, Lauren) (Entered: 04/23/2018)
04/23/2018	<u>179</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray re <u>178</u> Response in Opposition to Motion., of <i>Lodging Ex Parte, In Camera Declarations</i> (Wetzler, Lauren) (Entered: 04/23/2018)
04/25/2018	<u>180</u>	Joint MOTION for Leave to File Excess Pages <i>as to Plaintiffs' Second Motion to Compel</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/25/2018)
04/26/2018	<u>181</u>	ORDER– With respect to the jury trial in this case scheduled to begin on August 6, 2018, the Court orders as follows: On <b>Monday, August 6, 2018</b> , the Court will convene at <b>9:00 a.m.</b> to address any preliminary matters, and trial will begin with jury selection at 10:00 a.m. Thereafter, beginning on Tuesday, August 7, 2018 and through the remainder of trial, the Court will begin trial at 9:30 a.m., although counsel should be present by 9:00 a.m., unless otherwise informed by the Court. Signed by District Judge Anthony J Trenga on 4/26/2018 (See order for further details). (acha, ) (Entered: 04/26/2018)
04/26/2018	<u>182</u>	ORDER– The Court, having reviewed the parties' Joint Motion to Extend Page Limits for Opposition and Reply to Plaintiffs' Second Motion to Compel, hereby GRANTS in part the motion for good cause shown. It is hereby ORDERED that Defendants' opposition shall be no more than 40 pages, and Plaintiffs' reply brief shall be no more than 30 pages. Signed by Magistrate Judge John F. Anderson on 04/26/2018. (acha, ) (Entered: 04/26/2018)
04/26/2018		Set/Reset Deadlines as to <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> . Motion Hearing set for 5/4/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. Opposition due by 4/27/2018. (acha, ) (Entered: 04/26/2018)
04/27/2018	<u>183</u>	NOTICE of Voluntary Dismissal by Mahmoud Eraqi (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>184</u>	NOTICE of Voluntary Dismissal by John Doe No. 1 (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>185</u>	Consent MOTION for Extension to <i>Reset the 5/8 and 5/11 Hearings</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>186</u>	MOTION for Extension to <i>File for Summary Judgment</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/27/2018)

04/27/2018	<u>187</u>	Opposition to <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Wetzler, Lauren) (Entered: 04/27/2018)
04/27/2018	<u>188</u>	Consent MOTION for Extension of Time for Summary Judgment Briefing by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 04/27/2018)
04/27/2018	<u>189</u>	Notice of Hearing Date set for 05/04/2018 re <u>186</u> MOTION for Extension to File for Summary Judgment (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>190</u>	Waiver of re <u>188</u> Consent MOTION for Extension of Time for Summary Judgment Briefing (Waiver of Oral Argument) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray (Wetzler, Lauren) (Entered: 04/27/2018)
04/27/2018	<u>191</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of Submission of Declarations In Camera, Ex Parte (Wetzler, Lauren) (Entered: 04/27/2018)
04/27/2018	<u>192</u>	MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>193</u>	Notice of Hearing Date set for 05/04/2018 re <u>192</u> MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> (Abbas, Gadeir) (Entered: 04/27/2018)
04/27/2018	<u>194</u>	So Ordered re <u>184</u> Notice of Voluntary Dismissal filed by John Doe No. 1. Signed by District Judge Anthony J Trenga on 04/27/2018. (See order for further details). (acha, ) (Entered: 04/27/2018)
04/27/2018	<u>195</u>	So Ordered re <u>183</u> Notice of Voluntary Dismissal filed by Mahmoud Eraqi. Signed by District Judge Anthony J Trenga on 4/27/2018. (See order for further details). (acha, ) (Entered: 04/27/2018)
04/27/2018	<u>196</u>	Opposition to <u>167</u> Second MOTION to Compel Discovery Related to 30(b)(6) Depositions filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 22, # <u>23</u> Exhibit 23, # <u>24</u> Exhibit 24, # <u>25</u> Exhibit 25)(Wetzler, Lauren) (Entered: 04/27/2018)
04/30/2018		Set Deadlines as to <u>186</u> MOTION for Extension to File for Summary Judgment. Motion Hearing set for 5/4/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (clar, ) (Entered: 04/30/2018)
04/30/2018		Set Deadlines as to <u>192</u> MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> . Motion Hearing set for 5/4/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 04/30/2018)
04/30/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>192</u> MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> (clar, ) (Entered: 04/30/2018)

04/30/2018		Notice of Correction re <u>185</u> Consent MOTION for Extension to <i>Reset the 5/8 and 5/11 Hearings</i> . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (acha, ) (Entered: 04/30/2018)
04/30/2018	<u>197</u>	ORDER – At the request of the plaintiffs and with the consent of the defendants, the hearing on plaintiffs' second motion to compel (Docket no. 167) is continued from Friday, May 11, 2018 to <b>10:00 a.m. on Friday, May 18, 2018</b> . Signed by Magistrate Judge John F. Anderson on 04/30/2018. (wgar, ) (Entered: 04/30/2018)
04/30/2018		Reset Deadlines as to <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> . Motion Hearing reset for 5/18/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar, ) (Entered: 05/01/2018)
04/30/2018	<u>198</u>	ORDER– It is hereby ORDERED that Plaintiff's Consent Motion to Reset Hearing Dates Regarding the Pending Motions to Compel [Doc. No. 185] be, and the same hereby is, GRANTED in part and DENIED in part as follows: (1) the hearing on Plaintiff's Motion to Compel [Doc. No. 139] be, and the same hereby is, CONTINUED from Tuesday, May 8, 2018 at 2:00 p.m. to Friday, May 18, 2018 at 10:00a.m.; and (2) the Motion is otherwise DENIED as moot. Signed by District Judge Anthony J Trenga on 04/30/2018. (See order for further details). (acha, ) (Entered: 05/01/2018)
04/30/2018		Set/Reset Deadlines as to <u>139</u> MOTION to Compel . Motion Hearing set for 5/18/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (acha, ) (Entered: 05/01/2018)
04/30/2018	<u>199</u>	ORDER– It is hereby ORDERED that Plaintiff's <u>186</u> Motion to Extend the Summary Judgment Deadline be, and the same hereby is, GRANTED; and the parties shall file their motions for summary judgment within thirty (30) days after the Court's ruling on the pending Motions to Compel Doc. Nos. <u>139</u> , <u>167</u> ; and it is further ORDERED that Defendants' <u>188</u> Consent Motion to Extend Deadline for Parties to File Summary Judgment Motions be, and the same hereby is, DENIED as moot; and it is further ORDERED that the hearing on Plaintiffs' Motion to Extend the Summary Judgment Deadline Doc. No. <u>186</u> , currently scheduled for Friday, May 4, 2018 at 10:00 be, and the same hereby is, CANCELLED. Signed by District Judge Anthony J Trenga on 04/30/2018. (acha, ) (Entered: 05/01/2018)
05/01/2018	<u>200</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>139</u> MOTION to Compel , <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 05/01/2018)
05/01/2018	<u>201</u>	Waiver of re <u>200</u> Consent MOTION for Extension of Time to File Response/Reply as to <u>139</u> MOTION to Compel , <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions (Waiver of Oral Argument)</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Abbas, Gadeir) (Entered: 05/01/2018)
05/02/2018	<u>202</u>	ORDER granting <u>200</u> Motion for Extension of Time to File Response/Reply. Plaintiffs shall file their replies no later than May 8, 2018. Signed by Magistrate Judge John F. Anderson on 05/02/2018. (wgar, ) (Entered: 05/02/2018)
05/02/2018	<u>203</u>	RESPONSE in Opposition re <u>192</u> MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10)(Wetzler, Lauren) (Entered: 05/02/2018)

05/02/2018	<u>204</u>	REPLY to Response to Motion re <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> filed by Mark Amri. (Abbas, Gadeir) (Entered: 05/02/2018)
05/04/2018	<u>205</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Motion Hearing held on 5/4/2018 re <u>192</u> MOTION for Discovery <i>re Experts and NCTC Deposition on Watchlisting Advisory Council</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly, <u>175</u> MOTION for Discovery <i>re Punitive Screening During Amri's Travel to his Deposition</i> filed by Mark Amri. Appearances of counsel for plaintiffs and defendants. Motions argued and <u>175</u> MOTION for Discovery – DENIED; <u>192</u> MOTION for Discovery – DENIED without prejudice. Orders to follow. (Tape #FTR.)(wgar, ) (Entered: 05/04/2018)
05/04/2018	<u>206</u>	ORDER, for the reasons stated from the bench, denying <u>175</u> Motion for Discovery. Signed by Magistrate Judge John F. Anderson on 05/04/2018. (wgar, ) (Entered: 05/04/2018)
05/04/2018	<u>207</u>	ORDER, for the reasons stated from the bench, denying without prejudice <u>192</u> Motion for Discovery. Signed by Magistrate Judge John F. Anderson on 05/04/2018. (wgar, ) (Entered: 05/04/2018)
05/08/2018	<u>208</u>	Reply to Motion re <u>139</u> MOTION to Compel <i>Written Discovery</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit s A – R in Support of Plaintiffs' Reply to their First Motion to Compel)(Abbas, Gadeir) (Entered: 05/08/2018)
05/08/2018	<u>209</u>	Reply to Motion re <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions (includes Reply Exhibit A)</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 05/08/2018)
05/15/2018	<u>210</u>	Joint MOTION to Vacate <i>Summary Judgment Hearing and Trial Date</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 05/15/2018)
05/17/2018	<u>211</u>	TRANSCRIPT of motions hearing held on 5-4-2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 6/18/2018. Redacted Transcript Deadline set for 7/17/2018. Release of Transcript Restriction set for 8/15/2018.(linnell, norman)</b> (Entered: 05/17/2018)
05/18/2018	<u>212</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Motion Hearing held on 5/18/2018 re <u>167</u> Second MOTION to Compel <i>Discovery Related to 30(b)(6) Depositions</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Baby Doe 2, Muhammad Yahya Khan, Samir Anwar, Zuhair

		El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motion argued and <u>167</u> Second MOTION to Compel Discovery Related to 30(b)(6) Depositions – GRANTED IN PART/DENIED IN PART and TAKEN UNDER ADVISEMENT IN PART. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 05/18/2018)
05/18/2018	<u>213</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part, taking under advisement in part <u>167</u> Motion to Compel. Signed by Magistrate Judge John F. Anderson on 05/18/2018. (wgar, ) (Entered: 05/18/2018)
05/18/2018	<u>214</u>	Minute Entry for proceedings held before District Judge Anthony J Trenga: Motion Hearing held on 5/18/2018 re <u>139</u> MOTION to Compel filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of Counsel for Plaintiffs and Defendants. Motion argued and TAKEN UNDER ADVISEMENT. The Court orders the defendants to provide the documents in Exhibit A redacted of any information they believe is privileged or classified. The Court also orders the defendants produce for the Courts in camera ex parte inspection, these documents. The Court is not going to require, even in in the ex parte submission, the classified names of the countries that are part of the sharing agreements be provided. Those can be redacted even in the Courts copy. The Court will review those and then proceed from there. (Court Reporter R. Montgomery.) (jall) (Entered: 05/21/2018)
05/21/2018	<u>215</u>	TRANSCRIPT of motions hearing held on 5-18-2018 before Mag. Judge Anderson. Court reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 6/20/2018. Redacted Transcript Deadline set for 7/23/2018. Release of Transcript Restriction set for 8/20/2018.(linnell, norman)</b> (Entered: 05/21/2018)
05/21/2018	<u>216</u>	TRANSCRIPT of proceedings held on 5/18/18 ( <u>167</u> Plaintiffs' Second Motion to Compel), before Judge Anthony J. Trenga, Court Reporter/Transcriber Rhonda Montgomery, Telephone number 703-299-4599. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 6/20/2018. Redacted Transcript Deadline set for 7/23/2018. Release of Transcript Restriction set for 8/20/2018.(montgomery, rhonda)</b> (Entered: 05/21/2018)
05/25/2018	<u>217</u>	ORDER that the Court <b>GRANTS</b> the parties' <u>210</u> Joint Motion to Vacate Oral Argument and Trial Dates. Both the (1) hearing date of 07/10/18, on the parties' anticipated cross-motions for summary judgment, and (2) the trial date of 08/06/18, are hereby VACATED. The Court will reschedule these dates at such time in the future as the schedule for the briefing of the parties' summary judgment motions is firmly established. Signed by District Judge Anthony J Trenga on 05/25/18. (pmil, ) (Entered: 05/25/2018)

05/29/2018	<u>218</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Lodging Documents for Ex Parte, In Camera Review</i> (Wetzler, Lauren) (Entered: 05/29/2018)
06/08/2018	<u>219</u>	STATUS REPORT ( <i>Joint</i> ) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 06/08/2018)
07/13/2018	<u>220</u>	Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 07/13/2018)
07/13/2018	<u>221</u>	Notice of Hearing Date re <u>220</u> Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> (Abbas, Gadeir) (Entered: 07/13/2018)
07/13/2018	<u>222</u>	STATUS REPORT ( <i>Joint</i> ) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 07/13/2018)
07/13/2018	<u>223</u>	Memorandum in Support re <u>220</u> Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit s A – E in support of Plaintiffs' Third Motion to Compel)(Abbas, Gadeir) (Entered: 07/13/2018)
07/13/2018	<u>224</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray ( <i>Withdrawal of Law Enforcement Privilege Assertion as to TSCD0003</i> ) (Wetzler, Lauren) (Entered: 07/13/2018)
07/13/2018	<u>225</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Lodging Document for Ex Parte, In Camera Review</i> (Wetzler, Lauren) (Entered: 07/13/2018)
07/16/2018		Set Deadlines as to <u>220</u> Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> . Motion Hearing set for 8/17/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 07/16/2018)
07/16/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>220</u> Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> (clar, ) (Entered: 07/16/2018)
07/30/2018	<u>226</u>	ORDERED that Defendants shall file their opposition to Plaintiffs' Third Motion to Compel on or before 8/8/2018; that Plaintiffs shall file their reply memorandum in support of the same on or before 8/15/2015; that the Court has rescheduled the hearing on Plaintiffs' Third Motion to Compel to 8/24/2018. Signed by Magistrate Judge John F. Anderson on 7/30/2018. (rban, ) (Entered: 07/30/2018)
07/30/2018		Set/Reset Deadlines as to <u>220</u> Third MOTION to Compel <i>re: Watchlisting Advisory Council documents</i> . Responses due by 8/8/2018 Replies due by 8/15/2018. Motion Hearing set for 8/24/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (rban, ) (Entered: 07/30/2018)
08/01/2018	<u>227</u>	MOTION to Compel ( <i>Fourth</i> ) <i>re: TSA's Quiet Skies Program</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 08/01/2018)

08/01/2018	<u>228</u>	Notice of Hearing Date re <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> (Abbas, Gadeir) (Entered: 08/01/2018)
08/01/2018	<u>229</u>	Memorandum in Support re <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit A–J in support of Fourth Motion to Compel re: Quiet Skies)(Abbas, Gadeir) (Entered: 08/01/2018)
08/02/2018		Set Deadlines as to <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> . Motion Hearing set for 8/24/2018 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 08/02/2018)
08/02/2018		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> (clar, ) (Entered: 08/02/2018)
08/08/2018	<u>230</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray ( <i>of Lodging Declaration for In Camera, Ex Parte Review</i> ) (Wetzler, Lauren) (Entered: 08/08/2018)
08/08/2018	<u>231</u>	RESPONSE in Opposition re <u>220</u> Third MOTION to Compel re: <i>Watchlisting Advisory Council documents</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A (Redacted Groh Declaration))(Wetzler, Lauren) (Entered: 08/08/2018)
08/15/2018	<u>232</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray ( <i>of Lodging Declaration for In Camera, Ex Parte Review</i> ) (Levenson, Rebecca) (Entered: 08/15/2018)
08/15/2018	<u>233</u>	Consent MOTION for Leave to File a Redacted Public Version of the Froemling Declaration on or Before August 17, 2018 by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Levenson, Rebecca) (Entered: 08/15/2018)
08/15/2018	<u>234</u>	Memorandum in Opposition re <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Levenson, Rebecca) (Entered: 08/15/2018)
08/15/2018	<u>235</u>	REPLY to Response to Motion re <u>220</u> Third MOTION to Compel re: <i>Watchlisting Advisory Council documents</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 08/15/2018)
08/16/2018	<u>236</u>	ORDER granting <u>233</u> Consent Motion for Leave to File a Redacted Public Version of the Froemling Declaration. Defts shall file a redacted public version of the Declaration of Hao–Y Froemling, originally submitted to the Court on 08/15/18 in camera and ex parte, on or before 5:00 p.m. on 08/17/18; Pltf's shall file a reply memorandum in support of their Fourth Motion to Compel on or before 08/22/18. Signed by Magistrate Judge John F. Anderson on 08/16/18. (pmil, ) (Entered: 08/16/2018)
08/16/2018	<u>237</u>	REPLY to Response to Motion re <u>220</u> Third MOTION to Compel re: <i>Watchlisting Advisory Council documents [Corrected]</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh,

		John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit)(Abbas, Gadeir) (Entered: 08/16/2018)
08/16/2018	<u>238</u>	Consent MOTION for Leave to File <i>Supplemental Briefing re: First Motion to Compel and Redacted Documents</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 08/16/2018)
08/17/2018	<u>239</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Filing of Redacted Declaration</i> (Attachments: # <u>1</u> Exhibit A)(Levenson, Rebecca) (Entered: 08/17/2018)
08/20/2018	<u>240</u>	ORDER re Supplemental Briefing Re: Defendants' Redactions on Documents Sought by Plaintiffs' First Motion to Compel. Signed by District Judge Anthony J Trenga on 8/20/2018. (rban, ) (Entered: 08/21/2018)
08/21/2018		Set/Reset Deadlines as to <u>238</u> Consent MOTION for Leave to File <i>Supplemental Briefing re: First Motion to Compel and Redacted Documents</i> . Motion Hearing set for 9/21/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (rban, ) (Entered: 08/21/2018)
08/21/2018	<u>241</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Lodging Documents for Ex Parte, In Camera Review</i> (Attachments: # <u>1</u> Exhibit A)(Wetzler, Lauren) (Entered: 08/21/2018)
08/22/2018	<u>242</u>	REPLY to Response to Motion re <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit A-G in support of MTC4 Reply re: Quiet Skies)(Abbas, Gadeir) (Entered: 08/22/2018)
08/24/2018	<u>243</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Motion Hearing held on 8/24/2018 re <u>227</u> MOTION to Compel ( <i>Fourth</i> ) re: <i>TSA's Quiet Skies Program</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Baby Doe 2, Muhammad Yahya Khan, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly, <u>220</u> Third MOTION to Compel re: <i>Watchlisting Advisory Council documents</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, Ahmad Ibrahim Al Halabi, Osama Hussein Ahmed, John Doe No. 2, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motions argued and <u>220</u> Third MOTION to Compel – TAKEN UNDER ADVISEMENT; <u>227</u> MOTION to Compel ( <i>Fourth</i> ) – GRANTED IN PART/DENIED IN PART. Orders to follow. (Tape #FTR.)(wgar, ) (Entered: 08/24/2018)
08/24/2018	<u>244</u>	ORDER, for the reasons stated from the bench, taking under advisement <u>220</u> Motion to Compel. Signed by Magistrate Judge John F. Anderson on 08/24/2018. (wgar, ) (Entered: 08/24/2018)
08/24/2018	<u>245</u>	ORDER, for the reasons stated from the bench, granting in part and denying in part <u>227</u> Motion to Compel. Plaintiffs are permitted to take a two-hour deposition of the TSA to ask any follow-up questions based on the disclosures contained in the Declaration of Hao-Y Tran Froemling (Docket no. 239-1). The motion is otherwise denied. Signed by Magistrate Judge John F. Anderson on 08/24/2018. (wgar, )

		(Entered: 08/24/2018)
08/30/2018	<u>246</u>	TRANSCRIPT of motions hearing held on 8–24–2018 before Mag. Judge Anderson. Court Reporter Norman Linnell, telephone number 703–549–4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 10/1/2018. Redacted Transcript Deadline set for 10/30/2018. Release of Transcript Restriction set for 11/28/2018.(linnell, norman) (Entered: 08/30/2018)
09/04/2018	<u>247</u>	Consent MOTION for Extension of <i>Supplemental Briefing Deadlines Regarding Redacted Documents</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El–Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 09/04/2018)
09/04/2018	<u>248</u>	Waiver of re <u>247</u> Consent MOTION for Extension of <i>Supplemental Briefing Deadlines Regarding Redacted Documents (Oral Argument Waiver)</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El–Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Abbas, Gadeir) (Entered: 09/04/2018)
09/05/2018		Notice of Correction re <u>247</u> Consent MOTION for Extension of <i>Supplemental Briefing Deadlines Regarding Redacted Documents</i> . The filer has been notified to file a proposed order. (acha, ) (Entered: 09/05/2018)
09/05/2018	<u>249</u>	NOTICE by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El–Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas re <u>247</u> Consent MOTION for Extension of <i>Supplemental Briefing Deadlines Regarding Redacted Documents</i> , Notice of Correction ( <i>Filing of Proposed Order</i> ) (Attachments: # <u>1</u> Proposed Order Granting Extension of Supplemental Briefing deadlines)(Abbas, Gadeir) (Entered: 09/05/2018)
09/05/2018	<u>250</u>	ORDER– It is hereby ORDERED that the parties' <u>247</u> Consent Motion to Extend Deadlines for Supplemental Briefing Re: Defendants' Redactions on Documents Sought by Plaintiffs' First Motion to Compel be and the same hereby is, GRANTED, together with all deadlines referred to therein; and it is further ORDERED that a hearing on the supplemental briefing currently scheduled for September 21, 2018, be and the same hereby is, CONTINUED to Friday, September 28, 2018 at 10:00a.m.Signed by District Judge Anthony J Trenga on 9/5/2018. (See order for further details). (acha, ) (Entered: 09/05/2018)
09/05/2018		Set/Reset Deadlines as to <u>238</u> Consent MOTION for Leave to File <i>Supplemental Briefing re: First Motion to Compel and Redacted Documents</i> . Motion Hearing set for 9/28/2018 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (acha, ) (Entered: 09/05/2018)
09/05/2018	<u>251</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen of <i>Filing Supplemental Declaration in Opposition to Plaintiffs' Third Motion to Compel</i> (Attachments: # <u>1</u> Declaration)(Wetzler, Lauren) (Entered: 09/05/2018)
09/10/2018	<u>252</u>	ORDER– It is hereby OREDERED that <u>220</u> plaintiff's Motion to Compel is denied. Signed by Magistrate Judge John F. Anderson on 9/10/2018. (See order for further

		details). (acha, ) (Entered: 09/10/2018)
09/11/2018	<u>253</u>	Memorandum in Support re <u>247</u> Consent MOTION for Extension of <i>Supplemental Briefing Deadlines Regarding Redacted Documents</i> , <u>238</u> Consent MOTION for Leave to File <i>Supplemental Briefing re: First Motion to Compel and Redacted Documents</i> , <u>139</u> MOTION to Compel ( <i>First</i> ) filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Declaration of Fairly and Huber Re Stats, # <u>2</u> TSC Declaration of Groh re Arrest Encounters, # <u>3</u> Index of Redacted Documents In Dispute with Supplemental Exhibit Numbers, # <u>4</u> Exhibit Supplemental Exhibits 1–3, # <u>5</u> Supplemental Exhibits 4–5, # <u>6</u> Supplemental Exhibits 6–10, # <u>7</u> Supplemental Exhibits 11–15, # <u>8</u> Supplemental Exhibits 16–20, # <u>9</u> Supplemental Exhibits 21–26, # <u>10</u> Supplemental Exhibit 27, # <u>11</u> Supplemental Exhibits 28–30, # <u>12</u> Supplemental Exhibits 31–32, # <u>13</u> Supplemental Exhibits 33–35)(Abbas, Gadeir) (Entered: 09/11/2018)
09/25/2018	<u>254</u>	Response to <u>253</u> Memorandum in Support,,,,, filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Wetzler, Lauren) (Entered: 09/25/2018)
09/28/2018	<u>255</u>	Minute Entry for proceedings held before District Judge Anthony J Trenga: Motion Hearing held on 9/28/2018 re <u>238</u> Consent MOTION for Leave to File <i>Supplemental Briefing re: First Motion to Compel and Redacted Documents</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Baby Doe 2, Muhammad Yahya Khan, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Counsel enter their appearances and present arguments. The Court has taken the motion under advisement. Order to follow. (Court Reporter R. Montgomery.) (dzir) Modified on 9/28/2018 (dzir, ). (Entered: 09/28/2018)
10/04/2018	<u>256</u>	TRANSCRIPT of proceedings held on 9/28/18, before Judge Anthony J. Trenga, Court Reporter/Transcriber Rhonda Montgomery, Telephone number 703–299–4599. <b>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 11/5/2018. Redacted Transcript Deadline set for 12/4/2018. Release of Transcript Restriction set for 1/2/2019.(montgomery, rhonda) (Entered: 10/04/2018)</b>
10/12/2018	<u>257</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray re <u>254</u> Response, (Attachments: # <u>1</u> Groh Declaration)(Wetzler, Lauren) (Entered: 10/12/2018)
01/04/2019	<u>258</u>	ORDER– It is hereby ORDERED that Plaintiff's First Motion to Compel Doc. <u>139</u> be, and the same hereby is, GRANTED to the extent that within 14 days of this order, Defendant the Terrorist Screening Center shall provide a supplemental answer to Plaintiff's Interrogatory Number 30; and the Motion is otherwise DENIED without prejudice; and it is further ORDERED that the parties shall file cross motions for summary judgment on or before Monday, February 4, 2019, with subsequent briefing in accordance with the Court's Local Rules, and that a hearing on any summary judgment motions filed shall take place on March 14, 2019 at 10 a.m. Signed by District Judge Anthony J Trenga on 1/4/2019. (See order for further details). (acha, ) (Entered: 01/04/2019)

01/08/2019	<u>259</u>	Joint MOTION for Extension <i>as to Deadlines in the Court's January 4, 2019 Order (Dkt. No. 258)</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 01/08/2019)
01/17/2019	<u>260</u>	ORDER granting in part and denying in part <u>259</u> Motion for Extension of Time to File. The Motion is GRANTED to the extent that the deadlines for Defendant TSC's supplemental interrogatory response, the parties' summary judgment motions, and the summary judgment hearing are extended by three weeks; and the Motion is otherwise DENIED. Signed by District Judge Anthony J Trenga on 01/17/2019. (dvanm, ) (Entered: 01/17/2019)
01/17/2019		Alexandria Set/Reset Hearings: Summary Judgment Hearing set for 4/4/2019 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (acha, ) (Entered: 02/25/2019)
02/15/2019	<u>261</u>	MOTION to Compel <i>re: Private Dissemination</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 02/15/2019)
02/15/2019	<u>262</u>	Memorandum in Support re <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit A (Supplemental Interrogatory Resposne), # <u>2</u> Exhibit B (Excerpts of FBI Deposition on Private Dissemination), # <u>3</u> Exhibit C (TSA Quiet Skies Deposition))(Abbas, Gadeir) (Entered: 02/15/2019)
02/15/2019	<u>263</u>	Notice of Hearing Date for 2/22/2019 re <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> (Abbas, Gadeir) (Entered: 02/15/2019)
02/19/2019	<u>264</u>	MOTION for Extension of Time to File for Summary Judgment by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Proposed Order)(Abbas, Gadeir) (Entered: 02/19/2019)
02/19/2019	<u>265</u>	Waiver of re <u>264</u> MOTION for Extension of Time to File for Summary Judgment Oral Argument by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Abbas, Gadeir) (Entered: 02/19/2019)
02/19/2019		Set Deadlines as to <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> . Motion Hearing set for 2/22/2019 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 02/19/2019)
02/19/2019		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> (clar, ) (Entered: 02/19/2019)
02/19/2019	<u>266</u>	RESPONSE to Motion re <u>264</u> MOTION for Extension of Time to File for Summary Judgment filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1)(Wetzler, Lauren) (Entered: 02/19/2019)

02/19/2019	<u>267</u>	ORDER granting <u>264</u> MOTION for Extension of Time to File for Summary Judgment. Signed by District Judge Anthony J Trenga on 2/19/2019. (See order for further details). (acha, ) (Entered: 02/19/2019)
02/20/2019	<u>268</u>	RESPONSE in Opposition re <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Wetzler, Lauren) (Entered: 02/20/2019)
02/21/2019	<u>269</u>	REPLY to Response to Motion re <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 02/21/2019)
02/22/2019	<u>270</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson:Motion Hearing held on 2/22/2019 re <u>261</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Appearances of counsel for plaintiffs and defendants. Motion argued and <u>261</u> MOTION to Compel – GRANTED IN PART. Order to follow. (Tape #FTR.)(wgar, ) (Entered: 02/22/2019)
02/22/2019	<u>271</u>	ORDER, for the reasons stated from the bench, granting in part <u>261</u> Motion to Compel. Defendants shall provide a supplemental response to plaintiffs by Friday, March 1, 2019. Counsel for plaintiffs shall have the opportunity to view the list of private entity names at a government facility by Monday, February 25, 2019. It is further ORDERED that the motion for summary judgment briefing schedule is modified. Any motions for summary judgment shall be filed by Monday, March 11, 2019, any response briefs shall be filed by Monday, March 25, 2019, and any reply briefs shall be filed by Monday, April 1, 2019. This order does not affect the date of the hearing before the District Judge on the motions for summary judgment, which remains scheduled for Thursday, April 4, 2019. Signed by Magistrate Judge John F. Anderson on 02/22/2019. (wgar, ) (Entered: 02/22/2019)
02/25/2019	<u>272</u>	TRANSCRIPT of motions hearing held on 2-22-2019 before Mag. Judge Anderson. Court Reporter Norman Linnell, telephone number 703-549-4626. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/27/2019. Redacted Transcript Deadline set for 4/29/2019. Release of Transcript Restriction set for 5/28/2019.(linnell, norman) (Entered: 02/25/2019)</b>
02/25/2019	<u>273</u>	Emergency MOTION Status Conference by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/25/2019)
02/25/2019	<u>274</u>	ORDER granting <u>273</u> Emergency MOTION Status Conference by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. Signed by Magistrate Judge John F. Anderson on 2/25/2019. (See order for further details). (acha, ) (Entered: 02/25/2019)
03/01/2019	<u>275</u>	MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan,

		Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 03/01/2019)
03/01/2019	<u>276</u>	Memorandum in Support re <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Wetzler, Lauren) (Entered: 03/01/2019)
03/01/2019	<u>277</u>	Notice of Hearing Date set for 3/8/2019 re <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> (Wetzler, Lauren) (Entered: 03/01/2019)
03/01/2019	<u>278</u>	Notice of Under Seal Filing LCvR5 (B) by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas <i>Motion to Compel re: Private Dissemination</i> (Abbas, Gadeir) (Entered: 03/01/2019)
03/01/2019	<u>279</u>	Sealed Memorandum in Support re <u>278</u> Notice of Under Seal Filing LCvR5 (B),. (Abbas, Gadeir) (Entered: 03/01/2019)
03/01/2019	<u>280</u>	Notice of Hearing Date for March 8, 2019 re <u>279</u> Sealed Memorandum in Support, <u>278</u> Notice of Under Seal Filing LCvR5 (B), (Abbas, Gadeir) (Entered: 03/01/2019)
03/04/2019	<u>281</u>	Sealed Memorandum in Support re <u>279</u> Sealed Memorandum in Support, <u>278</u> Notice of Under Seal Filing LCvR5 (B),. (Abbas, Gadeir) (Entered: 03/04/2019)
03/05/2019		Set Deadlines as to <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> . Motion Hearing set for 3/8/2019 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 03/05/2019)
03/05/2019		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> (clar, ) (Entered: 03/05/2019)
03/05/2019		Notice of Correction re <u>278</u> Notice of Under Seal Filing LCvR5 (B), An incomplete, illegible, or incorrect document was filed. The filing user has been notified to refile the document.(clar, ) (Entered: 03/05/2019)
03/05/2019		Notice of Correction re <u>280</u> Notice of Hearing Date, <u>279</u> Sealed Memorandum in Support. The filing user has been notified to refile the documents. (clar, ) (Entered: 03/05/2019)
03/05/2019	<u>282</u>	MOTION to Compel <i>re: Private Dissemination</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/05/2019)
03/05/2019	<u>283</u>	Notice of Hearing Date set for 3/8/2019 re <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> (Abbas, Gadeir) (Entered: 03/05/2019)
03/05/2019	<u>284</u>	Notice of Under Seal Filing LCvR5 (B) by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas re <u>282</u> MOTION to Compel <i>re: Private Dissemination (Supporting memoranda submitted under seal due to Court's Attorney Eyes Only order at February 22, 2019 hearing)</i> (Abbas, Gadeir) (Entered: 03/05/2019)

03/05/2019		Set Deadlines as to <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> . Motion Hearing set for 3/8/2019 at 10:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (clar, ) (Entered: 03/05/2019)
03/05/2019		MOTIONS REFERRED to Magistrate Judge: Anderson. <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> (clar, ) (Entered: 03/05/2019)
03/05/2019	<u>285</u>	Sealed Memorandum in Support re <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> . (Attachments: # <u>1</u> Supplemental Memorandum in Support following receipt of additional information from Defendants)(Abbas, Gadeir) (Entered: 03/05/2019)
03/05/2019	<u>286</u>	EXHIBIT A <i>re: Motion to Compel (Public 2/22/2019 Transcript)</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Abbas, Gadeir) (Entered: 03/05/2019)
03/06/2019	<u>287</u>	Opposition to <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16)(Wetzler, Lauren) (Entered: 03/06/2019)
03/06/2019	<u>288</u>	RESPONSE in Opposition re <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> filed by Donald Thomas. (Abbas, Gadeir) (Entered: 03/06/2019)
03/07/2019	<u>289</u>	ORDER – The court is scheduled to hear two motions on Friday, March 8, 2019, concerning the private entities who have been provided with access to NCIC information. (Docket nos. 275, 282). Counsel for the defendants shall be prepared to address what, if any, restrictions are placed on a private entity on disclosing that it has been given access to NCIC information. While the materials referenced by the defendants firmly establish restrictions placed on a private entity concerning the use of NCIC information, it is unclear what, if any, restrictions are placed on the private entity concerning it having access to that information. To be clear, the issue concerns the disclosure of the fact that the entity has access to NCIC information and not the restrictions on the use of the NCIC information. Signed by Magistrate Judge John F. Anderson on 03/07/2019. (wgar, ) (Entered: 03/07/2019)
03/07/2019	<u>290</u>	REPLY to Response to Motion re <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit 1)(Wetzler, Lauren) (Entered: 03/07/2019)
03/07/2019	<u>291</u>	REPLY to Response to Motion re <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/07/2019)
03/08/2019	<u>292</u>	Minute Entry for proceedings held before Magistrate Judge John F. Anderson: Motion Hearing held on 3/8/2019 re <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly, <u>275</u> MOTION for Protective Order <i>Regarding Law Enforcement Privileged Information</i> filed by Christopher Wray, Kelli Ann

		Burriesci, Nicholas J. Rasmussen, Charles H. Kable, David Pecoske, Deborah Moore, Timothy P. Groh, Kevin K. McAleenan. Appearances of counsel for plaintiffs and defendants. Motions argued and <u>275</u> MOTION for Protective Order – GRANTED IN PART; <u>282</u> MOTION to Compel – DENIED. Orders to follow. (Tape #FTR.)(wgar, ) (Entered: 03/08/2019)
03/08/2019	<u>293</u>	ORDER, for the reasons stated from the bench, granting in part <u>275</u> Motion for Protective Order. ORDERED that the court will enter a protective order that modifies the proposed protective order submitted by the defendants to address certain issues raised by the plaintiffs. Signed by Magistrate Judge John F. Anderson on 03/08/2019. (wgar, ) (Entered: 03/08/2019)
03/08/2019	<u>294</u>	ORDER, for the reasons stated from the bench, denying <u>282</u> Motion to Compel. This ruling is without prejudice to the District Judge requiring the list to be produced, in camera if necessary, during the summary judgment stage of the proceedings. Signed by Magistrate Judge John F. Anderson on 03/08/2019. (wgar, ) (Entered: 03/08/2019)
03/08/2019	<u>295</u>	ORDER, for the reasons stated from the bench, ORDERED that plaintiffs' motion to seal is denied. Plaintiffs shall file their memorandum in support and supplemental memorandum in the public record. Signed by Magistrate Judge John F. Anderson on 03/08/2019. (wgar, ) (Entered: 03/08/2019)
03/08/2019	<u>296</u>	PROTECTIVE ORDER GOVERNING ACCESS TO, HANDLING OF, AND DISPOSITION OF INFORMATION IN THE ORI LIST. Signed by Magistrate Judge John F. Anderson on 03/08/2019. SEE ORDER FOR FURTHER DETAILS. (wgar, ) (Entered: 03/08/2019)
03/08/2019	<u>297</u>	Memorandum in Support re <u>282</u> MOTION to Compel <i>re: Private Dissemination</i> filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Supplement Memorandum in Support following receipt of additional information from Defendants [ REFILED publicly pursuant to Court Order])(Abbas, Gadeir) (Entered: 03/08/2019)
03/11/2019	<u>298</u>	MOTION for Summary Judgment by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 03/11/2019)
03/11/2019	<u>299</u>	Memorandum in Support re <u>298</u> MOTION for Summary Judgment filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit 16, # <u>18</u> Exhibit 17, # <u>19</u> Exhibit 18, # <u>20</u> Exhibit 19, # <u>21</u> Exhibit 20, # <u>22</u> Exhibit 21, # <u>23</u> Exhibit 22, # <u>24</u> Exhibit 23, # <u>25</u> Exhibit 24, # <u>26</u> Exhibit 25, # <u>27</u> Exhibit 26, # <u>28</u> Exhibit 27, # <u>29</u> Exhibit 28, # <u>30</u> Exhibit 29, # <u>31</u> Exhibit 30, # <u>32</u> Exhibit 31, # <u>33</u> Exhibit 32, # <u>34</u> Exhibit 33, # <u>35</u> Exhibit 34, # <u>36</u> Exhibit 35, # <u>37</u> Exhibit 36, # <u>38</u> Exhibit 37, # <u>39</u> Exhibit 38, # <u>40</u> Exhibit 39, # <u>41</u> Exhibit 40)(Wetzler, Lauren) (Entered: 03/11/2019)
03/11/2019	<u>300</u>	EXHIBIT by Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray.. (Attachments: # <u>1</u> Exhibit 41, # <u>2</u> Exhibit 42, # <u>3</u> Exhibit 43, # <u>4</u> Exhibit 44, # <u>5</u> Exhibit 45, # <u>6</u> Exhibit 46, # <u>7</u> Exhibit 47, # <u>8</u> Exhibit 48)(Wetzler, Lauren) (Entered: 03/11/2019)
03/11/2019	<u>301</u>	EXHIBIT by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable.. (Attachments: # <u>1</u> Exhibit 49, # <u>2</u> Exhibit 50, # <u>3</u> Exhibit 51, # <u>4</u> Exhibit 52, # <u>5</u> Exhibit 53, # <u>6</u> Exhibit 54, # <u>7</u> Exhibit 55, # <u>8</u> Exhibit 56, # <u>9</u> Exhibit 57, # <u>10</u> Exhibit 58)(Wetzler, Lauren) (Entered: 03/11/2019)
03/11/2019	<u>302</u>	Notice of Hearing Date set for 04/04/2019 re <u>298</u> MOTION for Summary Judgment (Wetzler, Lauren) (Entered: 03/11/2019)

03/11/2019	<u>303</u>	MOTION for Summary Judgment by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Proposed Order)(Abbas, Gadeir) (Entered: 03/11/2019)
03/11/2019	<u>304</u>	Memorandum in Support re <u>303</u> MOTION for Summary Judgment filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/11/2019)
03/12/2019	<u>305</u>	EXHIBIT <i>s</i> (with Index) re: <i>Plaintiffs' MSJ</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 1A, # <u>3</u> Exhibit 1B, # <u>4</u> Exhibit 2, # <u>5</u> Exhibit 2A, # <u>6</u> Exhibit 3, # <u>7</u> Exhibit 3A, # <u>8</u> Exhibit 3B, # <u>9</u> Exhibit 4, # <u>10</u> Exhibit 4A, # <u>11</u> Exhibit 5, # <u>12</u> Exhibit 5A, # <u>13</u> Exhibit 5B, # <u>14</u> Exhibit 6, # <u>15</u> Exhibit 7, # <u>16</u> Exhibit 7A, # <u>17</u> Exhibit 8, # <u>18</u> Exhibit 8A, # <u>19</u> Exhibit 8B, # <u>20</u> Exhibit 9, # <u>21</u> Exhibit 9A, # <u>22</u> Exhibit 9B, # <u>23</u> Exhibit 9C, # <u>24</u> Exhibit 10, # <u>25</u> Exhibit 10A)(Abbas, Gadeir) (Entered: 03/12/2019)
03/12/2019	<u>306</u>	EXHIBIT <i>s</i> re: <i>Plaintiffs MSJ</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Attachments: # <u>1</u> Exhibit 11A, # <u>2</u> Exhibit 12, # <u>3</u> Exhibit 12A, # <u>4</u> Exhibit 13, # <u>5</u> Exhibit 13A, # <u>6</u> Exhibit 14, # <u>7</u> Exhibit 14A, # <u>8</u> Exhibit 14B, # <u>9</u> Exhibit 15, # <u>10</u> Exhibit 16, # <u>11</u> Exhibit 16A, # <u>12</u> Exhibit 17, # <u>13</u> Exhibit 17A, # <u>14</u> Exhibit 17B, # <u>15</u> Exhibit 18, # <u>16</u> Exhibit 18A, # <u>17</u> Exhibit 18B, # <u>18</u> Exhibit 19, # <u>19</u> Exhibit 19A, # <u>20</u> Exhibit 20, # <u>21</u> Exhibit 21, # <u>22</u> Exhibit 21A, # <u>23</u> Exhibit 22, # <u>24</u> Exhibit 22A, # <u>25</u> Exhibit 23, # <u>26</u> Exhibit 23A, # <u>27</u> Exhibit 24, # <u>28</u> Exhibit 25, # <u>29</u> Exhibit 26, # <u>30</u> Exhibit 27, # <u>31</u> Exhibit 28, # <u>32</u> Exhibit 29)(Abbas, Gadeir) (Entered: 03/12/2019)
03/12/2019	<u>307</u>	EXHIBIT <i>s</i> re: <i>Plaintiffs MSJ</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Attachments: # <u>1</u> Exhibit 31, # <u>2</u> Exhibit 32, # <u>3</u> Exhibit 33, # <u>4</u> Exhibit 34, # <u>5</u> Exhibit 35, # <u>6</u> Exhibit 36, # <u>7</u> Errata 37, # <u>8</u> Exhibit 38, # <u>9</u> Exhibit 39, # <u>10</u> Exhibit 40, # <u>11</u> Exhibit 41, # <u>12</u> Exhibit 42, # <u>13</u> Exhibit 43, # <u>14</u> Exhibit 44, # <u>15</u> Exhibit 45, # <u>16</u> Exhibit 46, # <u>17</u> Exhibit 47, # <u>18</u> Exhibit 48, # <u>19</u> Exhibit 49, # <u>20</u> Exhibit 50)(Abbas, Gadeir) (Entered: 03/12/2019)
03/12/2019	<u>308</u>	EXHIBIT <i>s</i> re: <i>Plaintiffs MSJ</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Attachments: # <u>1</u> Exhibit 51, # <u>2</u> Exhibit 52, # <u>3</u> Exhibit 53, # <u>4</u> Exhibit 54, # <u>5</u> Exhibit 55, # <u>6</u> Exhibit 56, # <u>7</u> Exhibit 57, # <u>8</u> Exhibit 58, # <u>9</u> Exhibit 59, # <u>10</u> Exhibit 60, # <u>11</u> Exhibit 61, # <u>12</u> Exhibit 62, # <u>13</u> Exhibit 63, # <u>14</u> Exhibit 64, # <u>15</u> Exhibit 65, # <u>16</u> Exhibit 66, # <u>17</u> Exhibit 67, # <u>18</u> Exhibit 68, # <u>19</u> Exhibit 69, # <u>20</u> Exhibit 70, # <u>21</u> Exhibit 71, # <u>22</u> Exhibit 72, # <u>23</u> Exhibit 73, # <u>24</u> Exhibit 74, # <u>25</u> Exhibit 75, # <u>26</u> Exhibit 76, # <u>27</u> Exhibit 77, # <u>28</u> Exhibit 78, # <u>29</u> Exhibit 79, # <u>30</u> Exhibit 80, # <u>31</u> Exhibit 81, # <u>32</u> Exhibit 82, # <u>33</u> Exhibit 83)(Abbas, Gadeir) (Entered: 03/12/2019)

03/12/2019		Set Deadlines as to <u>303</u> MOTION for Summary Judgment . Motion Hearing set for 4/4/2019 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (clar, ) (Entered: 03/12/2019)
03/13/2019		Notice of Correction re <u>303</u> MOTION for Summary Judgment . The filing user has been notified to file a Notice of Hearing Date or a Notice of Waiver of Oral Argument. (acha, ) (Entered: 03/13/2019)
03/13/2019	<u>309</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Submission of Corrected Summary Judgment Exhibit</i> (Attachments: # <u>1</u> Exhibit 52 (Corrected))(Wetzler, Lauren) (Entered: 03/13/2019)
03/13/2019	<u>310</u>	Notice of Hearing Date set for 4/4/2019 re <u>303</u> MOTION for Summary Judgment (Abbas, Gadeir) (Entered: 03/13/2019)
03/14/2019		Set Deadlines as to <u>298</u> MOTION for Summary Judgment . Motion Hearing set for 4/4/2019 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (clar, ) (Entered: 03/14/2019)
03/25/2019	<u>311</u>	Memorandum in Opposition re <u>303</u> MOTION for Summary Judgment filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit Index of Defendants' Additional Exhibits, # <u>2</u> Exhibit 59, # <u>3</u> Exhibit 60, # <u>4</u> Exhibit 61, # <u>5</u> Exhibit 62, # <u>6</u> Exhibit 63, # <u>7</u> Exhibit 64, # <u>8</u> Exhibit 65, # <u>9</u> Exhibit 66, # <u>10</u> Exhibit 67, # <u>11</u> Exhibit 68)(Wetzler, Lauren) (Entered: 03/25/2019)
03/25/2019	<u>312</u>	NOTICE by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray of <i>Lodging</i> (Wetzler, Lauren) (Entered: 03/25/2019)
03/25/2019	<u>313</u>	Memorandum in Opposition re <u>298</u> MOTION for Summary Judgment filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/25/2019)
03/26/2019	<u>314</u>	EXHIBIT <i>s (with Index) re: Plaintiffs' Opposition to Defendants' MSJ</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas.. (Attachments: # <u>1</u> Exhibit 84, # <u>2</u> Exhibit 85, # <u>3</u> Exhibit 86, # <u>4</u> Exhibit 87, # <u>5</u> Exhibit 88, # <u>6</u> Exhibit 89, # <u>7</u> Exhibit 90, # <u>8</u> Exhibit 91, # <u>9</u> Exhibit 92, # <u>10</u> Exhibit 93)(Abbas, Gadeir) (Entered: 03/26/2019)
03/26/2019	<u>315</u>	RESPONSE in Opposition re <u>298</u> MOTION for Summary Judgment [ <i>CORRECTED</i> ] filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 03/26/2019)
04/01/2019	<u>316</u>	REPLY to Response to Motion re <u>298</u> MOTION for Summary Judgment filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Index of Reply Exhibits, # <u>2</u> Exhibit 69, # <u>3</u> Errata 70, # <u>4</u> Exhibit 71)(Wetzler, Lauren) (Entered: 04/01/2019)
04/01/2019	<u>317</u>	REPLY to Response to Motion re <u>303</u> MOTION for Summary Judgment filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe

		No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/01/2019)
04/03/2019	<u>318</u>	Consent MOTION for Electronic Device Application <i>to support access to voluminous record during Summary Judgment hearing</i> by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Abbas, Gadeir) (Entered: 04/03/2019)
04/03/2019	<u>319</u>	ORDER granting <u>318</u> Consent MOTION for Electronic Device Application to support access to voluminous record during Summary Judgment hearing. Signed by District Judge Anthony J Trenga on 4/3/2019. (See order for further details). (acha, ) (Entered: 04/03/2019)
04/03/2019	<u>320</u>	NOTICE by Michael Edmund Coleman re <u>316</u> Reply to Response to Motion, of <i>Re-Opening DHS TRIP</i> (Abbas, Gadeir) (Entered: 04/03/2019)
04/04/2019	<u>321</u>	Minute Entry for proceedings held before District Judge Anthony J. Trenga:Summary Judgment Motion Hearing held on 4/4/2019 re <u>298</u> MOTION for Summary Judgment filed by David Pekoske, Deborah Moore, Christopher Wray, Kelli Ann Burriesci, Timothy P. Groh, Kevin K. McAleenan, Nicholas J. Rasmussen, Charles H. Kable, <u>303</u> MOTION for Summary Judgment filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Baby Doe 2, Saleem Ali, Muhammad Yahya Khan, John Doe No. 1, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Counsel appeared for Plaintiff and Defendant. Motions argued and taken under advisement. Order to follow. (Court Reporter R. Montgomery)(dzir) (Entered: 04/04/2019)
06/24/2019	<u>322</u>	TRANSCRIPT of proceedings held on 4/4/19 ( <u>298</u> <u>303</u> Cross-Motions for Summary Judgment), before Judge Anthony J. Trenga, Court Reporter/Transcriber Rhonda Montgomery, Telephone number 703-299-4599. <b>NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 7/24/2019. Redacted Transcript Deadline set for 8/26/2019. Release of Transcript Restriction set for 9/23/2019.(montgomery, rhonda) (Entered: 06/24/2019)</b>
09/04/2019	<u>323</u>	MEMORANDUM AND OPINION and ORDER denying <u>298</u> Motion for Summary Judgment and granting <u>303</u> Motion for Summary Judgment. Signed by District Judge Anthony J Trenga on 9/4/2019. (See order for further details). (acha, ) (Entered: 09/04/2019)
09/05/2019	<u>324</u>	NOTICE of Appearance by Justin Mark Sadowsky on behalf of Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Sadowsky, Justin) (Entered: 09/05/2019)
09/10/2019	<u>325</u>	Amicus/Notice 66-Judge Anthony John Trenga rules that(the Legislation that created) the Terrorism Watch List is Unconstitutional by David Andrew Christenson. (Attachments: # <u>1</u> Attachment #1, # <u>2</u> Attachment #2, # <u>3</u> Attachment #3, # <u>4</u> Envelope)(acha, ) (Entered: 09/10/2019)
09/13/2019	<u>326</u>	Amicus/Notice 67 by David Andrew Christenson. (acha, ) (Main Document 326 replaced on 9/17/2019) per AJT 9/17/2019 Order(acha, ). (Entered: 09/13/2019)

09/16/2019	<u>327</u>	Amicus–Notice 68 by David Andrew Christenson (Attachments: # <u>1</u> Attachment #1, # <u>2</u> Attachment #2, # <u>3</u> Attachment #3, # <u>4</u> Attachment #4, # <u>5</u> Envelope)(acha, ) (Main Document 327 replaced on 9/17/2019) (acha, ). (Attachment 1 replaced on 9/17/2019) (acha, ). (Attachment 2 replaced on 9/17/2019) (acha, ). (Attachment 3 replaced on 9/17/2019) (acha, ). (Attachment 4 replaced on 9/17/2019) (acha, ). (Attachment 5 replaced on 9/17/2019) (acha, ). Modified on 9/17/2019 to remove per 9/17/2019 court order (acha, ). (Entered: 09/16/2019)
09/17/2019	<u>328</u>	ORDER– It is hereby ORDERED that pro se movant David Andrew Christenson's Motion for Leave to File Motion to Intervene [Doc. No. 325–1] be, and the same hereby is, DENIED; and it is further ORDERED that since movant is not a party to these proceedings, no additional submissions from the movant shall be docketed in this case; and it is further ORDERED that the movant's September 13, 2019 [Doc. No. <u>326</u> ] and September 16, 2019 [Doc. No. <u>327</u> ] submissions shall be removed from the docket. Signed by District Judge Anthony J Trenga on 9/17/2019. (See order for further details).(acha, ) (Entered: 09/17/2019)
09/20/2019	<u>329</u>	Joint MOTION for Extension of Time for Supplemental Briefing on Remedy by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 09/20/2019)
09/24/2019	<u>330</u>	ORDERED that the deadlines for supplemental briefing are extended such that the supplemental remedy briefs are due on or before October 25, 2019, and the reply briefs are due on or before November 22, 2019. Signed by District Judge Anthony J. Trenga on 9/24/2019. (dzir) (Entered: 09/24/2019)
10/25/2019	<u>331</u>	Memorandum of Law Regarding Remedies filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Exhibit Supplemental Declaration of Michael J. Orlando)(Levenson, Rebecca) (Entered: 10/25/2019)
10/25/2019	<u>332</u>	Memorandum of Law Regarding Remedies to <u>323</u> Order on Motion for Summary Judgment, filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El–Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Masri, Lena) (Entered: 10/25/2019)
11/22/2019	<u>333</u>	Response to <u>332</u> Memorandum,, filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Supplemental Declaration)(Wetzler, Lauren) (Entered: 11/22/2019)
11/22/2019	<u>334</u>	Reply to <u>331</u> Memorandum, filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El–Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Masri, Lena) (Entered: 11/22/2019)
12/04/2019	<u>335</u>	ORDER– It is hereby ORDERED that within 10 days of the date of this Order, the Government file a statement that identifies with specifically those facts recited in the Court's September 4, 2019 Order [Doc. No. 323], as to which it contends there is a genuine factual dispute, with a specific supporting reference to the existing summary judgment record; and it is further ORDERED that a hearing on the parties' supplemental briefing as to remedies be, and the same hereby is SCHEDULED for Thursday, December 18, 2019, at 10:00 a.m. Signed by District Judge Anthony J Trenga on 12/4/2019. (See order for further details). (acha, ) (Entered: 12/04/2019)
12/04/2019		Set Deadlines/Hearings Supplemental Briefing as to remedies set for 12/18/2019 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (acha, ) (Entered: 12/04/2019)

12/13/2019	<u>336</u>	Consent MOTION to Continue <i>December 18, 2019 Hearing</i> by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 12/13/2019)
12/16/2019	<u>337</u>	ORDER granting <u>336</u> Consent MOTION to Continue December 18, 2019 Hearing by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. Signed by District Judge Anthony J Trenga on 12/16/2019. (See order for further details). (acha, ) (Entered: 12/16/2019)
12/16/2019	<u>338</u>	Response to <u>335</u> Order., ( <i>Statement of Disputed Facts</i> ) filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pekoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 12/16/2019)
12/18/2019	<u>339</u>	MOTION to Withdraw as Attorney ( <i>Carolyn M. Homer</i> ) by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Attachments: # <u>1</u> Proposed Order)(Masri, Lena) (Entered: 12/18/2019)
12/18/2019	<u>340</u>	Waiver of re <u>339</u> MOTION to Withdraw as Attorney ( <i>Carolyn M. Homer</i> ) ( <i>Waiver of Hearing</i> ) by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas (Masri, Lena) (Entered: 12/18/2019)
12/18/2019	<u>341</u>	ORDER – It is hereby ORDERED pursuant to Fed. R. Civ. P. 54(b) that final judgment be, and the same hereby is, ENTERED against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non–delegation doctrine claim), which claims the Court dismissed on September 5, 2017 [Doc. No. 47] and as to which the Court expressly determines there is no just cause for delay; and it is further ORDERED pursuant to 28 U.S.C. § 2201 that a declaratory judgment be, and the same hereby is, ENTERED in favor of the Plaintiffs and against Defendants in connection with their procedural due process claim in Count I and their Administrative Procedure Act claim in Count III, and the Court declares, as set forth in its Memorandum Opinion and Order dated September 4, 2019 [Doc. No. <u>323</u> ], that (1) Plaintiffs, or at least some of them, have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests; and it is further ORDERED that to the extent the Court's declaratory judgment and declaration of rights entered herein pursuant to 28 U.S.C. § 2201 with respect to Plaintiffs' procedural due process claim in Count I and their Administrative Procedure Act claim in Count III does not constitute a final appealable judgment, the Court hereby certifies pursuant to 28 U.S.C. § 1292(b) that the Court's declaration of rights involves a controlling question of law as to which there is substantial ground for difference of opinion and therefore an immediate appeal from this Order may materially advance the ultimate termination of the litigation; and it is further ORDERED that Defendants shall disclose those revised procedures to the Court for its review as to their constitutional adequacy, as well as the status of the named Plaintiffs with respect to any TSDB listing after a review under those revised procedures; and within forty–five (45) days of the date of this Order shall file a status report as to these revised DHS TRIP procedures and Defendants' review of any Plaintiffs' placement on the TSDB under those revised procedures; and it is further ORDERED that, notwithstanding any appeals, this action shall continue as appropriate pursuant to 28 U.S.C § 2202 and 28 U.S.C § 1292(b) with respect to any remaining claims or further necessary or proper relief based on the declarations and orders contained herein. Signed by District Judge Anthony J Trenga on 12/18/2019. (See order for further details). (acha, ) (Entered: 12/18/2019)

12/19/2019	<a href="#">342</a>	RULE 58 Judgment is hereby entered pursuant to Fed.R.Civ.P.54(b) against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non-delegation doctrine claim), which claims the Court dismissed on September 5, 2017 and it is further pursuant to 28 U.S.C. § 2201 that a declaratory judgment be, and the same hereby is ENTERED in favor of the Plaintiffs and against Defendants in connection with their procedural due process claim in Count 1 and their Administrative Procedure Act claim in Count III. This is a final judgment with respect to the claims designated herein. Signed by Clerk on 12/19/2019. (See order for further details) (acha, ) (Entered: 12/19/2019)
12/19/2019	<a href="#">343</a>	ORDER granting re <a href="#">339</a> MOTION to Withdraw as Attorney ( <i>Carolyn M. Homer</i> ) filed by Wael Hakmeh, Mark Amri, Shahir Anwar, Murat Frljuckic, Michael Edmund Coleman, Mahmoud Eraqi, Yaseen Kadura, Adnan Khalil Shaout, Donald Thomas, Ausama Elhuzayel, John Doe No. 2, Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Baby Doe 2, Muhammad Yahya Khan, Samir Anwar, Zuhair El-Shwehdi, John Doe No. 3, Hassan Fares, John Doe No. 4, Anas Elhady, Ibrahim Awad, Hassan Shibly. Signed by Magistrate Judge John F. Anderson on 12/19/2019. (See order for further details). (acha, ) (Entered: 12/19/2019)
12/20/2019	<a href="#">344</a>	MOTION to Vacate <a href="#">341</a> Order,,,,,,,,,,,,, ( <i>Partial Vacatur in Light of Ten-Day Deadline</i> ) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <a href="#">1</a> Proposed Order)(Wetzler, Lauren) (Entered: 12/20/2019)
12/20/2019	<a href="#">345</a>	Memorandum in Support re <a href="#">344</a> MOTION to Vacate <a href="#">341</a> Order,,,,,,,,,,,,, ( <i>Partial Vacatur in Light of Ten-Day Deadline</i> ) filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 12/20/2019)
12/20/2019	<a href="#">346</a>	Waiver of re <a href="#">344</a> MOTION to Vacate <a href="#">341</a> Order,,,,,,,,,,,,, ( <i>Partial Vacatur in Light of Ten-Day Deadline</i> ) ( <i>Waiver of Hearing</i> ) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray (Wetzler, Lauren) (Entered: 12/20/2019)
12/26/2019	<a href="#">347</a>	RESPONSE to Motion re <a href="#">344</a> MOTION to Vacate <a href="#">341</a> Order,,,,,,,,,,,,, ( <i>Partial Vacatur in Light of Ten-Day Deadline</i> ) filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Mahmoud Eraqi, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Masri, Lena) (Entered: 12/26/2019)
12/27/2019	<a href="#">348</a>	ORDERED that the Motion <a href="#">344</a> be, and the same hereby is, GRANTED; and it is further ORDERED that the Courts Order dated December 18, 2019 <a href="#">341</a> together with the final judgment entered in connection therewith pursuant to Fed. R. Civ. P. 58 be, and the same hereby are, VACATED; and in its place, it is hereby ORDERED pursuant to Fed. R. Civ. P. 54(b) that final judgment be, and the same hereby is, ENTERED against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non-delegation doctrine claim), which claims the Court dismissed on September 5, 2017 <a href="#">47</a> and as to which the Court expressly determines there is no just cause for delay. Signed by District Judge Anthony J Trenga on 12/27/2019. (see order for further details) (dvanm, ) (Entered: 12/27/2019)
12/27/2019	<a href="#">349</a>	RULE 58 JUDGMENT. Signed by District Judge Anthony J Trenga on 12/27/2019. (dvanm, ) (Entered: 12/27/2019)
01/31/2020	<a href="#">350</a>	NOTICE OF APPEAL by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen. (Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<a href="#">351</a>	MOTION to Stay by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <a href="#">1</a> Proposed Order)(Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<a href="#">352</a>	Memorandum in Support re <a href="#">351</a> MOTION to Stay filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 01/31/2020)

		01/31/2020)
01/31/2020	<u>353</u>	Notice of Hearing Date (2/7/20) re <u>351</u> MOTION to Stay (Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<u>354</u>	MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Attachments: # <u>1</u> Proposed Order)(Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<u>355</u>	Memorandum in Support re <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<u>356</u>	Notice of Hearing Date re <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) (Wetzler, Lauren) (Entered: 01/31/2020)
01/31/2020	<u>357</u>	Transmission of Notice of Appeal to US Court of Appeals re <u>350</u> Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (acha, ) (Entered: 01/31/2020)
02/03/2020		Set Deadlines as to <u>351</u> MOTION to Stay , <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) . Motion Hearing set for 2/7/2020 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. (clar, ) (Entered: 02/03/2020)
02/03/2020	<u>358</u>	USCA Case Number 20-1119 4th Circuit, M. Radday, Case Manager for <u>350</u> Notice of Appeal filed by David Pecoske, Timothy P. Groh, Kelli Ann Burriesci, Deborah Moore, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable. (acha, ) (Entered: 02/03/2020)
02/05/2020	<u>359</u>	ORDER- It is hereby ORDERED that the hearing on the Motions <u>351</u> , <u>354</u> currently scheduled for Friday, February 7, 2020 at 10:00 a.m. be, and the same hereby, is CONTINUED to Friday, February 14, 2020 at 10:00 a.m.; and it is further ORDERED that Plaintiff's are directed to respond to Defendants' Motions by Wednesday, February 12, 2020.Motion Hearing set for 2/14/2020 at 10:00 AM in Alexandria Courtroom 701 before District Judge Anthony J Trenga. Signed by District Judge Anthony J Trenga on 2/5/2020. (See order for further details). (acha, ) Copies sent as directed in the order. (Entered: 02/05/2020)
02/10/2020	<u>360</u>	STATUS REPORT by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/10/2020)
02/12/2020	<u>361</u>	Opposition to <u>351</u> MOTION to Stay filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Masri, Lena) (Entered: 02/12/2020)
02/12/2020	<u>362</u>	Opposition to <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) filed by Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, Ibrahim Awad, Baby Doe 2, Michael Edmund Coleman, Zuhair El-Shwehdi, Anas Elhady, Ausama Elhuzayel, Hassan Fares, Murat Frljuckic, Wael Hakmeh, John Doe No. 2, John Doe No. 3, John Doe No. 4, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, Donald Thomas. (Masri, Lena) (Entered: 02/12/2020)
02/13/2020	<u>363</u>	REPLY to Response to Motion re <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren)

		(Entered: 02/13/2020)
02/13/2020	<u>364</u>	REPLY to Response to Motion re <u>351</u> MOTION to Stay filed by Kelli Ann Burriesci, Timothy P. Groh, Charles H. Kable, Kevin K. McAleenan, Deborah Moore, David Pecoske, Nicholas J. Rasmussen, Christopher Wray. (Wetzler, Lauren) (Entered: 02/13/2020)
02/14/2020	<u>365</u>	Minute Entry for proceedings held before District Judge Anthony J. Trenga: Motion Hearing held on 2/14/2020 re <u>354</u> MOTION to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. 1292(b) filed by David Pecoske, Deborah Moore, Christopher Wray, Kelli Ann Burriesci, Timothy P. Groh, Kevin K. McAleenan, Nicholas J. Rasmussen, Charles H. Kable, <u>351</u> MOTION to Stay filed by David Pecoske, Deborah Moore, Christopher Wray, Timothy P. Groh, Kelli Ann Burriesci, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable. Counsel appeared for Plaintiff and Defendant. Motions argued. Defendant's Motion to Stay <u>351</u> is denied. Defendant's Motion to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal <u>354</u> is granted. Order to follow. (Court Reporter Pat Kaneshiro-Miller)(dzir) (Entered: 02/14/2020)
02/14/2020	<u>366</u>	ORDER- It is hereby ORDERED that Defendants' Motion to Stay [Doc. No. <u>351</u> ] be, and the same hereby is, DENIED for the reasons stated in open court; and it is further ORDERED that Defendants' Motion to Re-Certify the Court's Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. § 1292(b) [Doc. No. <u>354</u> ] be, and the same hereby is, GRANTED; and it is further ORDERED that Defendants submit to the Court the information and revised procedures identified in its Order dated December 27, 2019 [Doc. No. 3481 within ninety (90) days of the date of this Order, and to the extent the Defendants contend that this information and revised procedures should be placed, in whole or in part, under seal or submitted ex parte or in camera. Signed by District Judge Anthony J Trenga on 2/14/2020. (See order for further details). (acha, ) (Entered: 02/14/2020)
02/20/2020	<u>367</u>	TRANSCRIPT of proceedings held on February 14, 2020, before Judge Anthony Trenga, Court Reporter/Transcriber Patricia Kaneshiro-Miller, Telephone number 703 299-2100. <b>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.vaed.uscourts.gov">www.vaed.uscourts.gov</a> Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 3/23/2020. Redacted Transcript Deadline set for 4/21/2020. Release of Transcript Restriction set for 5/20/2020.(Kaneshiro-Miller, Patricia) (Entered: 02/20/2020)</b>
02/25/2020	<u>368</u>	USCA Case Number 20-154 4th Circuit for <u>350</u> Notice of Appeal filed by David Pecoske, Timothy P. Groh, Kelli Ann Burriesci, Deborah Moore, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable. (acha, ) (Entered: 02/25/2020)
03/17/2020	<u>369</u>	USCA Case Number 20-1311 4th Circuit for <u>350</u> Notice of Appeal ( <b>Rule 5 Petition granted by 4CCA in 20-154</b> ) filed by David Pecoske, Timothy P. Groh, Kelli Ann Burriesci, Deborah Moore, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable. (acha, ) (Entered: 03/17/2020)
03/17/2020	<u>370</u>	ORDER of USCA as to <u>350</u> Notice of Appeal filed by David Pecoske, Timothy P. Groh, Kelli Ann Burriesci, Deborah Moore, Nicholas J. Rasmussen, Kevin K. McAleenan, Charles H. Kable. The court consolidates Case No. 20-1119 and Case No. 20-1311. (acha, ) (Entered: 03/17/2020)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANAS ELHADY; )  
BABY DOE 2, by his next friend, Father Doe 2; )  
YASEEN KADURA; )  
OSAMA HUSSEIN AHMED; )  
AHMAD IBRAHIM AL HALABI; )  
MICHAEL EDMUND COLEMAN; )  
Wael HAKMEH; )  
HASSAN SHIBLY; )  
AUSAMA ELHUZAYEL; )  
DONALD THOMAS; )  
MURAT FRLJUCKIC; )  
IBRAHIM AWAD; )  
MARK AMRI; )  
ADNAN KHALIL SHAOUT; )  
SALEEM ALI; )  
SHAHIR ANWAR; )  
SAMIR ANWAR; )  
MUHAMMAD YAHYA KHAN; )  
HASSAN FARES; )  
ZUHAIR EL-SHWEHDI; )  
MAHMOUD ERAQI; )  
JOHN DOE NO. 1; )  
JOHN DOE NO. 2; )  
JOHN DOE NO. 3; and, )  
JOHN DOE NO. 4; )

Plaintiffs, )

v. )

CHRISTOPHER M. PIEHOTA, Director of the )  
Terrorist Screening Center; in his official )  
capacity; )

STEVEN MABEUS, Principal Deputy )  
Director of the Terrorist Screening Center; )  
in his official capacity; )

G. CLAYTON GRIGG, Deputy Director of )  
Operations of the Terrorist Screening )  
Center; in his official capacity; )

Case No. 16-cv-00375

Hon. Anthony J. Trenga

FIRST COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF AND JURY DEMAND

**JAMES G. KENNEDY**, Director, Transportation Security Redress (OTSR), Transportation Security Administration (TSA), United States Department of Homeland Security (DHS), and Director of the DHS Traveler Redress Inquiry Program (DHS TRIP); in his official capacity; )  
 )  
**MATTHEW G. OLSEN**, Director of the National Counterterrorism Center, in his official capacity; )  
 )  
**PETER NEFFENGER**, Administrator, Transportation Security Administration (TSA), United States Department of Homeland Security (DHS); in his official capacity; )  
 )  
**JAMES COMEY**, Director, Federal Bureau of Investigation (FBI); in his official capacity; )  
 )  
**R. GIL KERLIKOWSKE**, Director, United States Customs and Border Protection; in his official capacity; )  
 )  
 Defendants. )

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**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs, **Anas Elhady; Baby Doe 2**, by his Next Friend, Father Doe 2; **Yaseen Kadura; Osama Hussein Ahmed; Ahmad Ibrahim Al Halabi; Michael Edmund Coleman; Wael Hakmeh; Hassan Shibly; Ausama Elhuzayel; Donald Thomas; Murat Frljuckic; Ibrahim Awad; Mark Amri; Adnan Khalil Shaout; Saleem Ali; Shahir Anwar; Samir Anwar; Muhammad Yahya Khan; Hassan Fares; Zuhair El-Shwehdi; Mahmoud Eraqi; John Doe No. 1; John Doe No. 2; John Doe No. 3 and John Doe No. 4** for themselves and on behalf of all others similarly situated, through their attorneys, Council on American-Islamic Relations, Michigan (“CAIR-MI”), The Law Office of Gadeir Abbas, and Akeel and Valentine, PLC, state as follows:

## **Introduction**

1. Our federal government is imposing an injustice of historic proportions upon the Americans who have filed this action, as well as thousands of other Americans. Through extra-judicial and secret means, the federal government is ensnaring individuals into an invisible web of consequences that are imposed indefinitely and without recourse as a result of the shockingly large federal terror watch list that now include hundreds of thousands of individuals.

2. Indeed, many Americans, including children, end up on these secret federal terror watch list – which the Defendants have named the Terrorist Screening Database (“TSDB”) – based on mere guesses, hunches, and conjecture and even simply based on matters of race, ethnicity, national origin, religion or the exercise of their constitutional rights.

3. These consequences include the inability to fly on airplanes, to go through security without having all screeners receive a message for the remainder of a listee’s life that she is a “known or suspected terrorist,” to obtain licenses, to exercise their Second Amendment right to own a firearm, and to be free from the unimaginable indignity and real-life danger of having their own government communicate to hundreds of thousands of federal agents, private contractors, businesses, state and local police, the captains of seafaring vessels, and foreign governments all across the world that they are a violent menace.

4. And unfortunately, the federal government has designed its federal terror watch list to be accountability-free. Persons placed on the federal terror watch list have no means of removing themselves or challenging the basis for their inclusion. Indeed, people

on the federal terror watch lists only learn of their placement when they feel the web of consequences burdening their lives and aspirations, and they never learn why.

5. Media accounts have made clear that the secret federal terror watch list is the product of bigotry and misguided, counterproductive zeal. Americans are dumped onto the watch list without being charged, convicted, or in some stomach-churning cases, even subject to an ongoing investigation.

6. Instead, two recently leaked government documents and a governmental report, which include the March 2013 Watchlisting Guidance (Exhibit 2), the Directorate of Terrorist Identities (DTI): Strategic Accomplishments 2013 (Exhibit 3), and the Department of Justice's March 2014 Audit of the Federal Bureau of Investigation's Management of Terrorist Watchlist (Exhibit 4) reveal that the care the federal government takes in creating its federal terror watch list is void of proper processing, which in turn results in life-altering consequences that flow from these illegal actions.

7. In fact, upon information and belief, Dearborn, a city of less than 100,000 and a place Arab Americans and Muslim Americans have called home for generations, contains the second highest concentration of Americans on the federal government's watch list. Moreover, there have been more than 1.5 million nominations to the federal terror watch list since 2009 and that, in 2013 for example, the Terrorist Screening Center converted 98.96 percent of those nominations into watch list placements.

8. Upon information and belief, evidence also shows that the federal government uses guilt-by-association presumptions to place family members and friends of listed persons on the watch list.

9. Moreover, travel to Muslim majority countries—travel that American Muslims are very likely to engage in—is also a basis for watch list placement.

10. In 2009, the federal government made 227,932 nominations to its federal terror watch list. In 2013, that number more than doubled at an alarming and dangerous rate to 468,749.

11. Recently, a federal court judge observed in *Gulet Mohamed v. Eric R. Holder, Jr., et al.* (United States District Court, Eastern District of Virginia, Case No. 11-cv-00050 (2011)), that “[a] showing of past or ongoing unlawful conduct does not seem to be required,... But the Court has little, if any, ability to articulate what information is viewed by TSC as sufficiently ‘derogatory’ beyond the labels it has provided the Court. In sum, the No Fly List assumes that there are some American citizens who are simply too dangerous to be permitted to fly, no matter the level of pre-flight screening or on-flight surveillance and restraint, even though those citizens cannot be legally arrested, detained, or otherwise restricted in their movements or conduct.” *See* United States District Court, Eastern District of Virginia, Case No. 11-cv-00050 (2011); Dkt. 70 at 19; attached as Memorandum Opinion (Exhibit 1).

12. Moreover, the Court went on to find that “[i]nclusion on the No Fly List also labels an American citizen a disloyal American who is capable of, and disposed toward committing, war crimes, and one can easily imagine the broad range of consequences that might be visited upon such a person if that stigmatizing designation were known by the general public... The process of nomination to the No Fly List is based on a suspected level of future dangerousness that is not necessarily related to any unlawful conduct.” *See* United

States District Court, Eastern District of Virginia, Case No. 11-cv-00050 (2011); Dkt. 70 at 14, 17; attached as Memorandum Opinion (Exhibit 1).

### **Parties**

13. Plaintiff Anas Elhady is a 22 year old United States Citizen and a Muslim residing in Wayne County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

14. Plaintiff Baby Doe 2 is a 1-year-old United States Citizen toddler born to an American Muslim family, residing in Wayne County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled. Plaintiff Baby Doe 2 brings this action by and through his next friend, Father Doe 2.

15. Plaintiff Yaseen Kadura is a 26 year old United States Citizen and a Muslim residing in Cook County, Illinois. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

16. Plaintiff Osama Hussein Ahmed is a 24 year old United States Citizen and a Muslim residing in Wayne County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

17. Plaintiff Ahmad Ibrahim Al Halabi is a 37 year old United States Citizen and a Muslim residing in Wayne County, Michigan. Venue is proper because a substantial part of

the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

18. Plaintiff Michael Edmund Coleman is a 44 year old United States Citizen and a Muslim residing in Wayne County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

19. Plaintiff Wael Hakmeh is a 37 year old United States Citizen and a Muslim residing in Oakland County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

20. Plaintiff Hassan Shibly is a 29-year-old United States Citizen and a Muslim residing in Hillsborough County, Florida. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

21. Plaintiff Ausama Elhuzayel is a 40-year-old United States Citizen and a Muslim residing in Orange County, California. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

22. Plaintiff Donald Thomas is a 29-year-old United States Citizen and a Muslim residing in Sacramento County, California. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

23. Plaintiff Murat Frljuckic is a 37-year-old United States Citizen and a Muslim residing in Oakland County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

24. Plaintiff Ibrahim Awad is a 23-year-old United States Citizen and a Muslim residing in Oakland County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

25. Plaintiff Mark Amri is a 36-year-old United States Citizen and a Muslim residing in San Bernardino County, California. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

26. Plaintiff Adnan Khalil Shaout is a 55 year old United States Citizen and a Muslim residing in Jordan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

27. Plaintiff Saleem Ali is a 43 year old United States Citizen and a Muslim residing in Wayne County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

28. Plaintiff Shahir Anwar is a 36 year old United States Citizen and a Muslim residing in Macomb County, Michigan. Venue is proper because a substantial part of the

events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

29. Plaintiff Samir Anwar is a 29 year old United States Citizen and a Muslim residing in Macomb County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

30. Plaintiff Muhammad Yahya Khan is a 46-year-old United States Citizen and a Muslim residing in Oakland County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

31. Plaintiff Hassan Fares is a 33-year-old United States Citizen and a Muslim residing in Jefferson Parish, Louisiana. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

32. Plaintiff Zuhair El-Shwehdi is a 58-year-old United States Citizen and a Muslim residing in Montgomery County, Ohio. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

33. Plaintiff Mahmoud Eraqi is a 22-year-old United States Citizen and a Muslim residing in Macomb County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

34. Plaintiff John Doe No. 1 is a 51 year old United States Citizen and a Muslim residing in Washtenaw County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

35. Plaintiff John Doe No. 2 is a 38 year old United States Citizen and a Muslim residing in Oakland County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

36. Plaintiff John Doe No. 3 is a 55 year old United States Citizen and a Muslim residing in Washtenaw County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

37. Plaintiff John Doe No. 4 is a 23-year-old United States Citizen and a Muslim residing in Macomb County, Michigan. Venue is proper because a substantial part of the events or omissions giving rise to his claims occurred within this district which is where the federal terror watch list is compiled.

38. Defendant Christopher M. Piehota is the current Director of the Terrorist Screening Center (“TSC”). Defendant Piehota was appointed in April, 2013. Defendant Piehota develops and maintains the federal government’s consolidated Terrorism Screening Database (the “watch list”), and accepts nominations of Plaintiffs and other similarly situated American citizens made to the federal terror watch list. Defendant Piehota also oversees the dissemination of the stigmatizing label attached to Plaintiffs and other similarly situated American citizens of “known or suspected terrorists” to state and local authorities, foreign

governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals. Defendant Piehota is being sued in his official capacity, only.

39. Defendant Steven Mabeus is the current Principal Deputy Director of the Terrorist Screening Center (“TSC”). Defendant Mabeus was appointed in October, 2013. Defendant Mabeus develops and maintains the federal government’s consolidated Terrorism Screening Database (the “watch list”), and accepts nominations of Plaintiffs and other similarly situated American citizens made to the federal terror watch list. Defendant Mabeus also oversees the dissemination of the stigmatizing label attached to Plaintiffs and other similarly situated American citizens of “known or suspected terrorists” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals. Defendant Mabeus is being sued in his official capacity, only.

40. Defendant G. Clayton Grigg is the current Deputy Director of Operations of the Terrorist Screening Center (“TSC”). Defendant Grigg began serving in September, 2013. Defendant Grigg developed and maintained the federal government’s consolidated Terrorism Screening Database (the “watch list”), and accepted nominations of Plaintiffs and other similarly situated American citizens made to the federal terror watch list. Defendant Grigg also oversaw the dissemination of the stigmatizing label attached to Plaintiffs and other similarly situated American citizens of “known or suspected terrorists” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among

other official and private entities and individuals. Defendant Grigg is being sued in his official capacity, only.

41. Defendant James Kennedy is the Director of the Office of Transportation Security Redress (OTSR), Transportation Security Administration (TSA), United States Department of Homeland Security (DHS). Defendant Kennedy also serves as the Director of the DHS Traveler Inquiry Program (DHS TRIP). Defendant Kennedy is responsible for overseeing DHS TRIP, the administrative complaint process to challenge nominations of Plaintiffs and other similarly situated American citizens made to the federal terror watch list, and coordinating with other government agencies, including the Terrorism Screening Center, to resolve the complaint. Defendant Kennedy is being sued in his official capacity, only.

42. Defendant Matthew G. Olsen is Director of the National Counterterrorism Center (“NCTC”). Defendant Olsen is responsible for the nominations that resulted in the placement of Plaintiffs and other similarly situated American citizens on the federal terror watch list. Olsen is being sued in his official capacity, only.

43. Defendant Peter Neffenger is Administrator of the Transportation Security Administration (“TSA”). Defendant Neffenger oversaw the dissemination of the stigmatizing label attached to Plaintiffs and other similarly situated American citizens of “known or suspected terrorists” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals. Neffenger is being sued in his official capacity, only.

44. Defendant James Comey is Director of the Federal Bureau of Investigation (“FBI”). Defendant Comey is responsible for nominations of Plaintiffs and other similarly situated American citizens made to the federal terror watch list. Comey is being sued in his official capacity, only.

45. Defendant R. Gil Kerlikowski is Director of the United States Customs and Border Protection (“CBP”). Defendant Kerlikowski is responsible for receiving and implementing the federal terror watch list. Kerlikowski is being sued in his official capacity, only.

### **Jurisdiction and Venue**

46. Under U.S. Const. Art. III §2, this Court has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), *et seq.*, 5 U.S.C. § 702, 5 U.S.C. § 706, the United States Constitution, and federal common law.

47. This action seeks declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § § 2201-02, Rules 57 and 65 of the Federal Rules of Civil Procedure, and pursuant to the general, legal, and equitable powers of this Court.

48. This action also seeks damages pursuant to 28 U.S.C. § 1343(a)(4) and 28 U.S.C. § 1357.

49. A substantial part of the unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the Eastern District of Virginia.

50. Venue is proper under 42 U.S.C. § 1391(e) as to all Defendants because Defendants are officers or employees of agencies of the United States sued in their individual

capacities and because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

### **Factual Background**

#### **The Federal Government's Terrorist Watch List**

51. In September, 2003, Attorney General John Ashcroft established the Terrorist Screening Center ("TSC") to consolidate the government's approach to terrorism screening. The TSC, which is administered by the FBI, develops and maintains the federal government's consolidated Terrorism Screening Database (the "watch list"). TSC's consolidated watch list is the federal government's master repository for suspected international and domestic terrorist records used for watch list related screening.

52. The watch list has two primary components: the Selectee List and the No-Fly List. Persons on the Selectee List, including many of Plaintiffs, are systematically subject to extra screening at airports and land border crossings, and often find "SSSS" on their boarding passes printed by airline employees which is marked to indicate a passenger's watch list status to airline employees and screeners. Persons on the No-Fly List, including the remainder of Plaintiffs, are prevented from boarding flights that fly into, out of, or even through United States airspace.

53. TSC disseminates records from its terrorist watch list to other government agencies that in turn use those records to identify listed persons. For example, applicable TSC records are provided to TSA for use by airlines in pre-screening passengers and to CBP for use in screening travelers entering the United States by land.

54. Upon information and belief, Defendants disseminated the records of each of the Plaintiffs from its terrorist watch list to other government agencies, including the TSA

for use by airlines in pre-screening Plaintiffs, and CBP for use in screening Plaintiffs upon entering the United States.

55. Upon information and belief, Defendants disseminated the records pertaining to each of the Plaintiffs from its terrorist watch list to foreign governments with the purpose and hope that those foreign governments will constrain the movement of the Plaintiffs in some manner.

56. Upon information and belief, Defendants' intention in disseminating watch list records, including those of Plaintiffs and similarly situated American citizens, as widely as possible is to constrain Plaintiffs' movements, not only within the United States, but abroad as well. For example, some countries detain individuals listed on the federal terror watch list who enter their borders, question those individuals at the behest of United States officials, or altogether prevent those individuals from even entering those countries.

57. Thus, while the TSC maintains and controls the database of suspected terrorists, it is the front-line agencies like the TSA that carry out the screening function. In the context of air travel, when individuals make airline reservations and check in at airports, the front-line screening agency, like TSA and CBP, conducts a name-based search of the individual, including each of the Plaintiffs, to determine whether he or she is on a watch list.

58. While agencies throughout the federal government utilize the federal terror watch list to conduct screening, listed persons are subject to a comprehensive portfolio of consequences that cover large aspects of their lives.

59. Indeed, Defendants disseminated the federal terror watch list to both government authorities and private corporations and individuals with the purpose and hope

that these entities and/or individuals will impose consequences on those individuals Defendants have listed, including each of the Plaintiffs.

60. Upon information and belief, the status of Plaintiffs and similarly situated American citizens as known or suspected terrorists on the federal terror watch list diminishes and even imperils their ability to access the financial system.

61. Defendants have provided access to the federal terror watch list, and banks have closed the bank accounts of individuals listed on the federal terror watch list and financial companies have declined to allow some listed individuals to make wire transfers.

62. Moreover, upon information and belief, the citizenship and green card applications of Plaintiffs and similarly situated American citizens are delayed indefinitely due to an "FBI name check" and not adjudicated, thereby denying Plaintiffs and similarly situated American citizens of the rights the flow from citizenship, including the ability to travel freely as a United States citizen and to sponsor for lawful permanent residency immediate relatives living abroad.

63. Among the entities and individuals that the federal government disseminates its federal terror watch list are state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among others.

64. In fact, two days after this action was filed, Defendant Piehota, Director of the Terrorist Screening Center, gave an exclusive interview to CNN and stated the following, in relevant part:

It's concerning that our partners don't use all of our data. We provide them with tools. We provide them with support, and I would find it concerning that they don't use these tools to help

screen for their own aviation security, maritime security, border screening, visas, things like that for travel.<sup>1</sup>

65. Defendant Piehota went on to state that the United States shares its federal terror watch list with the European Union, but that European Union countries don't systematically utilize it to identify suspected terrorists or screen migrants coming.

66. Upon information and belief, because the names of Plaintiffs and similarly situated American citizens are included on the federal terror watch list, their names were disseminated to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals.

67. Because the federal government disseminates its federal terror watch list to foreign governments, listed persons, including Plaintiffs and similarly situated American citizens, are often not allowed to enter other nations. This is because the United States is telling other nations, without any modicum of due process, that thousands of its own citizens are "known or suspected terrorists."

68. The federal government, through Defendants, disseminates its federal terror watch list to state and local police officers, including Plaintiffs, which allows those officers to query the names of persons, if for example, the listed individual is pulled over for routine traffic violations.

69. Disseminating the federal terror watch list to state and local police officers creates a dangerous situation insofar as the federal terror watch list effectively directs state

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<sup>1</sup> First on CNN: Top U.S. intel official: Europe not taking advantage of terror tracking tools, CNN, *available at*: <http://www.cnn.com/2016/04/07/politics/christopher-piehota-us-intel-europe-terror-tracking/>

and local officers to treat thousands of Americans, including Plaintiffs, charged or convicted with no crime yet listed as a “known or suspected terrorist” and as extremely dangerous.

70. With the advent and deployment of automatic license plate readers by police departments across the country, local and state authorities have relied heavily upon a driver’s watch list status as the basis of a traffic stop, including Plaintiffs and similarly situated American citizens.

71. Being on the federal terror watch list can prevent listed persons, including Plaintiffs and similarly situated American citizens, from purchasing a gun. For example, New Jersey passed a law in 2013 that banned persons on the federal terror watch list from owning guns. Additionally, Connecticut is in the process of setting up an institutional mechanism to prevent individuals whose names are included on the federal terror watch list, such as Plaintiffs, from being able to buy a gun in the state of Connecticut.

72. Accordingly, Plaintiffs and similarly situated American citizens are unable to purchase guns in states that ban persons on the federal terror watch list from owning guns.

73. Because the federal government conducts a security risk assessment that includes querying the federal terror watch list prior to issuing a license to commercial drivers to transport hazardous materials, being on the federal terror watch list can prevent listed persons, including Plaintiffs and similarly situated American citizens, from obtaining or renewing their Hazmat license.

74. Being on the federal terror watch list can also prevent listed persons, including Plaintiffs and similarly situated American citizens, from accompanying minors or passengers with disabilities to their gate, from working at an airport, or working for an airline insofar as listed persons are not allowed to enter so-called “sterile areas” of airports.

75. Being on the federal terror watch list can also result in the listing of the false stigmatizing label of “known or suspected” terrorist on the criminal records of Plaintiffs and similarly situated American citizens, information that is publicly accessible to the general public.

76. Defendants make the federal terror watch list available to municipal courts, which then make bail determinations based on an individual’s status on the watch list.

77. Being on the federal terror watch list can also result in the denial or revocation of a Federal Aviation Administration (FAA) license of Plaintiffs and similarly situated American citizens.

78. Although TSA, CBP, and other agencies may use the records provided by the TSC, it is the TSC that maintains and controls the database of suspected terrorists.

79. Two government entities are primarily responsible for “nominating” individuals for inclusion in the terrorist watch list—Defendants NCTC and FBI. The NCTC, which is managed by the Office of the Director of National Intelligence, relies on information from other federal departments and agencies when including alleged known or suspected international terrorists in its Terrorist Identities Datamart Environment (“TIDE”) database. The NCTC reviews TIDE entries and recommends specific entries to the TSC for inclusion in the watch list. TIDE is the main source of all international terrorist information included in the watch list.

80. Defendant FBI, in turn, nominates to the watch list individuals with what it characterizes as suspected ties to domestic terrorism.

81. Defendant TSC makes the final decision on whether a nominated individual meets the minimum requirements for inclusion into the watch list as a known or suspected

terrorist. TSC also decides which screening systems will receive the information about that individual.

82. Former Director of the Terrorism Screening Center Healy has testified that in evaluating whether an individual meets the criteria for inclusion on the consolidated watch list, the TSC determines whether the nominated individual is “reasonably suspected” of having possible links to terrorism. According to the TSC, “reasonable suspicion requires articulable facts which, taken together with rational inferences, reasonably warrant the determination that an individual is known or suspected to be or has been engaged in conduct constituting, in preparation for, in and of or related to terrorism and terrorist activities.”

83. Defendants have not stated publicly the entirety of what standards or criteria are applied to determine whether an American citizen on the consolidated watch list will be placed on the No-Fly List, Selectee List (“SSSS”) or other list that is distributed to the TSA, CBP or other screening agencies.

84. The standards for watch list inclusion do not evince even internal logic. Defendants define a “suspected terrorist” as an “individual who is reasonably suspected to be, or have been, engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities based on articulable and reasonable suspicion.” In other words, Defendants place American citizens on the federal terror watch list based upon a “reasonable suspicion” that they are “reasonably suspected” of nefarious activities. This “reasonable suspicion” based on a “reasonable suspicion” standard does not even contain internal logic.

85. The federal government utilizes guilt-by-association as a basis for watch list inclusion. For example, the immediate relative of listed persons can be listed without any

derogatory information—other than the bonds of family. Nonetheless, such designation suggests that the immediate relative is him or herself engaged in nefarious activities.

86. Being a known associate—a friend, colleague, fellow community member, etc.—of a listed individual can also provide a basis for watch list inclusion.

87. Even if an American citizen is acquitted of terrorism charges or those charges are otherwise dismissed, the federal government retains for itself the authority to continue to include them in the watch list.

88. For reasons unknown, Defendants also place what they call “non-investigatory subjects” on the federal terror watch list, American citizens that they have chosen not to investigate.

89. Defendants place individuals on the federal terror watch list without any information regarding an individual’s intended target.

90. Defendants place individuals on the Selectee List without any information that they pose a threat to aviation.

91. Defendants place individuals on the No Fly List without any information that they pose a threat to aviation.

92. Under these practices and standards, the number of records in the consolidated watch list has swelled. Over 1.5 million nominations to the watch list have been submitted by federal agencies since fiscal 2009.

93. In 2013, Defendant TSC accepted 98.96 percent of all nominations made.

94. Because of these loose standards and practices, the federal terror watch list’s rate of growth has increased. In fiscal 2009, there were 227,932 nominations to the watch list. In fiscal 2013, there were 468,749 nominations.

95. Upon information and belief, in 2001, there were 16 people who the federal government systematically prevented from flying. In 2013, that number increased to 47,000.

96. Once an American citizen has been placed on the watch list, the individual remains on the list until the agency that supplied the initial information in support of the nomination determines the individual should be removed.

97. A 2007 GAO report found that TSC rejects only approximately one percent of all nominations to the watch list.<sup>2</sup> As such, the watch list is growing at a rate of approximately 20,000 entries per year.

98. At a March 10, 2010 Senate Homeland Security Committee hearing, Russel E. Travers, Deputy Director of the National Counterterrorism Center, stated that “[t]he entire federal government is leaning very far forward on putting people on list,” and that the watch list is “getting bigger, and it will get even bigger.”

99. The federal terror watch list also disproportionately targets American Muslims.

100. Defendants have utilized the watch list, not as a tool to enhance aviation and border security, but as a bludgeon to coerce American Muslims into becoming informants or forgoing the exercise of their rights, such as the right to have an attorney present during law enforcement questioning.

101. Public examples of this phenomenon abound. *See Latif v. Holder*, 2014 U.S. Dist. LEXIS 85450, \*19 (D. Or. June 24, 2014) (an FBI agent told Steven Washburn that he “would help remove Washburn's name from the No-Fly List if he agreed to speak to the FBI”);

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<sup>2</sup> See United States Government Accountability Office Report to Congressional Requesters entitled *Terrorist Watch List Screening: Opportunities Exist to Enhance Management Oversight, Reduce Vulnerabilities in Agency Screening Processes, and Expand Use of the List*, GAO-08-110, October 2007, at 22.

*Id.* at \*21-22 (FBI agents told Ibraheim Mashal that “his name would be removed from the No-Fly List and he would receive compensation if he helped the FBI by serving as an informant.”); *Id.* at \*22-23 (FBI agents offered Amir Meshal “the opportunity to serve as a government informant in exchange for assistance in removing his name from the No-Fly List.”). *See also Fikre v. FBI*, 2014 U.S. Dist. LEXIS 73174 (D. Or. May 29, 2014) (Emirati officials told Yonas Fikre that he “could not travel to the United States by air because he is on the No-Fly List” and an FBI agent told Fikre that “the FBI could take steps to remove [him] from the No-Fly List if he agreed to be an informant.”); *Tanveer v. Holder, et. al.*, No. 13-cv-6951, Dkt. 15 (April 22, 2014) (Naveed Shinwari “declined to act as an informant for the Federal Bureau of Investigation and to spy on [his] own American Muslim communities and other innocent people.”).

102. Almost all publicly known instances of Americans being placed on the watch list regard Muslims or persons who could be mistaken for Muslims.

103. Additionally, government records show that Dearborn, Michigan—which is 40 percent Arab—is disproportionately represented on the federal terror watch list. In fact, Dearborn is among the top five cities in the country, alongside Chicago, Houston, New York, and San Diego, represented on the federal terror watch list.

104. Due to Dearborn’s significant population of Muslims, it has earned a reputation as the “Muslim Capital of America.” In fact, almost all publicly known instances of Americans being placed on the watch list regard Muslims or persons who could be mistaken for Muslims.

105. Defendants’ 2013 Watchlisting Guidance also indicates that “[t]ravel for no known lawful or legitimate purpose to a locus of terrorist activity” can be a basis for being

listed. While a “locus of Terrorist Activity” is not defined by the document, upon information and belief, it likely includes any place where many Muslims reside.

106. The federal terror watch list’s inclusion standards are so permissive and pliable and the selectee list’s efficacy is at best fleetingly marginal that the inclusion standards themselves violate Plaintiffs procedural and substantive due process.

107. The federal terror watch list diminishes, rather than enhances, our national security because the number of innocent Americans on the list is becoming so voluminous that the purpose of having a list is significantly undermined as all are being treated as the same.

108. The consequences of being on the federal terror watch list are meted out publically. Members of the public can witness the extra screening to which individuals on the federal terror watch list are subject, including being pulled out of their car at gunpoint, being ordered to leave one’s vehicle with one’s hands held above his/her head, among other stigmatizing measures.

109. Because travel is regularly done with family, friends, and community and professional contacts, a person’s watch list status is revealed to travel companions. Travel companions come to learn of a person’s watch list status based on how screeners treat a listee.

110. In practice, frontline screeners disclose the status of individuals on the federal terror watch list to state and local authorities, as well as airline employees, and they do so in a manner that other members of the traveling public can hear.

111. The operation of the federal terror watch list enlists air carriers to assist the federal government in tracking the passenger on the federal terror watch list.

112. Defendants apply the federal terror watch list against Muslim Americans in a manner that is different from how it uses its list against people of other faith backgrounds.

113. Defendants use impermissible and inaccurate religious profiles in compiling the federal terror watch list.

114. Defendants who contributed to the placement of Plaintiffs and similarly situated American citizens on the federal terror watch list knew that their actions violated clearly established federal law.

115. Defendants knew at the time they acted unlawfully that Supreme Court precedent required that, whenever a citizen is deprived of a liberty interest, the federal government must at least provide the deprived with some form of notice that a deprivation occurred.

**The Federal Government's Terrorist Watch List  
Is No More Effective Than a List of Randomly Selected Individuals**

116. Defendants' ability to watch list persons, including Plaintiffs, who pose a threat of terrorism can be measured and described using a quantitative analysis based on factual allegations made in this Complaint as well as publicly available information describing the current operation of the federal terror watch list.

117. Upon information and belief, the federal government has placed approximately one million persons on the federal terror watch list over the last ten years.

118. Moreover, based on the University of Maryland's Global Terrorism Database, a project funded in part by the Department of Homeland Security, there have been less than 250 terrorist acts inside the United States over the last decade. These terrorist acts were perpetrated by less than 250 persons.

119. Only one of these perpetrators was designated on the federal terror watch list by the federal government prior to their criminal conduct. This single person designated on the federal terror watch list, however, was removed from the federal terror watch list prior to perpetrating the terrorist attack.

120. Upon information and belief, in order to designate a person on the federal terror watch list, the federal government must first have information about that person. Because the federal government does not possess information on every person in the world, existing law enforcement and intelligence practices produce a subset of persons who the federal government can then screen against the federal terror watch list's inclusion standards.

121. The precise size of this subset is unknown, however a survey of law enforcement and intelligence practices indicates that the size of this subset is greater than 50 million people.

122. Upon information and belief, the practices that produce this subset exclude some persons who do pose a threat of terrorism and include some persons who do not pose a threat of terrorism.

123. Upon further information and belief, the federal government does not screen the entire subset of people known to it. Moreover, Defendants do not make individual determinations as to whether each person about whom they know should be placed on the federal terror watch list.

124. In order to designate a person on the federal terror watch list, a federal government official must make a nomination and a TSC official must accept the nomination.

125. Upon information and belief, TSC officials accept nominations at a rate above 95 percent.

126. Based on the facts alleged in this Complaint and the publicly known processes of the federal terror watch list, a quantitative analysis can be constructed to measure and describe the performance of the federal terror watch list.

127. A quantitative analysis demonstrates that, in order to accomplish the federal terror watch list's stated objectives, Defendants must have at least some greater-than-random ability to identify future terrorists. This is due to the nature of the processes Defendants utilize to place persons on the federal terror watch list and the size of the population Defendants can—if they so choose—screen against the federal terror watch list's inclusion standards.

128. A quantitative analysis also demonstrates that Defendants' watch listing system would perform similarly if inclusion on the watch list was done via random selection instead of the existing inclusion standards Defendants utilize.

129. A quantitative analysis therefore indicates that Defendants have no ability to watch list persons whose placement on the watch list would further Defendants' stated objectives.

#### **Inadequacy of the DHS Traveler Redress Inquiry Program Process**

130. The government entities and individuals involved in the creation, maintenance, support, modification and enforcement of the federal terror watch list, including Defendants, have not provided travelers, including Plaintiffs and similarly situated American citizens, with a fair and effective mechanism through which they can challenge the TSC's decision to place them on the terrorist watch list.

131. An individual, including Plaintiffs and similarly situated American citizens, who has been prevented or hindered from travel by being placed on the federal terror watch list has no clear avenue for redress, because no single government entity is responsible for removing an individual from the list. The TSC, which is administered by the FBI, does not accept redress inquiries from the public, nor does it directly provide final disposition letters to individuals on the selectee list, including Plaintiffs on the selectee list and similarly situated American citizens, who have submitted redress inquiries. The NCTC which manages the TIDE list does not accept redress inquiries from the general public.

132. Individuals who seek redress after having been included in the terrorist watch list must submit an inquiry through the DHS Traveler Redress Inquiry Program (“DHS TRIP”). DHS TRIP provides individuals with a “Redress Control Number.”

133. DHS TRIP is the only redress “process” available to individuals included on the terrorist watch list.

134. DHS TRIP submits traveler complaints to the TSC, which determines whether any action should be taken. The TSC has not provided any publicly available information about how it makes that decision. The TSC is the final arbiter of whether an individual’s name is retained on or removed from the watch list, including those of Plaintiffs and similarly situated American citizens.

135. The TSC makes a determination regarding a particular individual’s status on the watch list, including Plaintiffs and similarly situated American citizens, and DHS in turn responds to the individual with a standard form letter that neither confirms nor denies the existence of any terrorist watch list records relating to the individual. The letters do not set

forth any basis for inclusion in a terrorist watch list, do not state whether the government has resolved the complaint at issue.

136. The government does not provide an American citizen with any opportunity to confront, or to rebut, the grounds for his or her possible inclusion on the watch list. As such, DHS TRIP offers no meaningful review of the watch list designation and in effect shields the TSC's actions with respect to the individual nominations or classes of nominations from meaningful review by any independent authority.

137. Moreover, the government's own internal audits of the system point to serious flaws. For example, a March 2008 DOJ Office of the Inspector General report entitled *Audit of the U.S. Department of Justice Terrorism Watchlist Nomination Processes* found significant problems with the nomination and removal process.

138. Thus, the only "process" available to such individuals is to submit their names and other identifying information to a government entity that has no authority to provide redress and to hope that an unspecified government agency corrects an error or changes its mind.

139. All Plaintiffs are United States Citizens.

140. None have been charged, arrested or convicted of a terrorism-related offense.

141. As alleged below, each of the Plaintiffs and similarly situated American citizens are designated on the watch list.

#### **Plaintiff Anas Elhady**

142. Mr. Anas Elhady is routinely referred to secondary inspection, handcuffed and detained by CBP at land border crossings when he attempts to re-enter the United States from Canada.

143. CBP officers routinely subject him to a prolonged detention and questioning for approximately four to twelve hours each time.

144. Moreover, he is routinely asked questions about his religious beliefs and practices, what sect of Islam he belongs to, what mosque he prays in, among other things.

145. Moreover, every time Mr. Elhady travels by air, his boarding pass is stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

146. Mr. Elhady filed a redress request through DHS TRIP.

147. On May 11, 2015, Mr. Elhady received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

148. Shortly afterwards, Mr. Elhady was again referred to secondary inspection, handcuffed and detained by CBP at the border stop at the Ambassador Bridge Port of Entry in Detroit, Michigan, for approximately six hours when he attempted to re-enter the United States after a brief vacation in Canada.

149. After the CBP officers confiscated Mr. Elhady's jacket and shoes, they detained him in a small, freezing cold holding cell with bright lights.

150. After several hours, Mr. Elhady knocked on the door repeatedly and begged for someone to help him. His pleas for help were ignored.

151. Afterwards, his body began shaking uncontrollably and he fell unconscious.

152. CBP officers finally opened the door and woke him up.

153. Mr. Elhady repeatedly begged for an ambulance to take him to the hospital, but his pleas were ignored.

154. Finally, Mr. Elhady was taken to an ambulance, only to be handcuffed to the bed inside the ambulance.

155. Mr. Elhady was taken to a local hospital, where he was handcuffed to a chair in the waiting room of the hospital.

156. After being attended to by nurses and physicians, and prescribed the medication that he needed, Mr. Elhady was again handcuffed to a chair inside a vehicle and transported back to the Ambassador Bridge.

157. On December 2, 2015, FBI Special Agent Josh Allen contacted Mr. Elhady and informed him that his phone was being tapped and that all his calls were being listened to by the FBI.

158. Mr. Elhady's boarding pass continues to be stamped with the "SSSS" designation when travels by air, indicating that he has been designated as a "known or suspected terrorist."

159. Additionally, every time Mr. Elhady travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

160. At no time was Mr. Elhady given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

161. Moreover, at no time was Mr. Elhady given notice of the deprivation of his liberty interests or violation of his constitutional rights.

162. Upon information and belief, Mr. Elhady remains on the federal terror watch list.

163. Upon information and belief, Mr. Elhady's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

164. Upon information and belief, because Mr. Elhady is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Baby Doe 2**

165. Baby Doe 2 is a 1-year-old toddler.

166. He was eleven-months-old when his boarding pass was first stamped with the "SSSS" designation, indicating that he had been designated as a "known or suspected terrorist."

167. While passing through airport security, he was subjected to extensive searches and pat downs.

168. Baby Doe 2 and his father, whose boarding pass was also stamped with the "SSSS" designation, were detained for hours and questioned regarding the existence of any affiliations with terror groups.

169. At no time was Baby Doe 2, or his parents, given notice of the factual basis for his placement on the federal terror watch list, and at no time was he or his parents offered a meaningful opportunity to contest his designation.

170. Moreover, at no time was Baby Doe 2, or his parents, given notice of the deprivation of his liberty interests or violation of his constitutional rights.

171. Upon information and belief, Baby Doe 2's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, familial status—based upon his father's or other family member's designation—or First Amendment protected activities).

172. Upon information and belief, because Baby Doe 2 is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Yaseen Kadura**

173. On September 22, 2012, Mr. Yaseen Kadura was surrounded by eight armed CBP officers, handcuffed and detained in a holding cell for nearly eight hours at the Peace Bridge Port of Entry in Port Huron, Michigan, when he attempted to re-enter the United States after a brief trip to Canada.

174. CBP officers confiscated his phone and informed Mr. Kadura that his phone was being forwarded to ICE and would be returned to him in 24 to 48 hours.

175. Upon information and belief, the CBP officers downloaded the data from his phone.

176. On October 22, 2012, Mr. Kadura appeared at Chicago O'Hare International Airport, in order to travel to Libya.

177. Mr. Kadura had previously purchased a plane ticket for a Turkish Airlines flight to Istanbul, and he was to then fly to Libya from Istanbul on Turkish Airlines. Mr. Kadura presented himself at the Turkish Airlines ticket counter hours before his flight.

178. Turkish Airlines personnel were unable to check Mr. Kadura in for his flight and did not issue him a boarding pass.

179. The Turkish Airlines personnel informed Mr. Kadura that he was on the No-Fly List and that he could not board his flight.

180. Before Mr. Kadura was denied the ability to board his flight on October 22, 2012, he did not receive any notice, from a government agency or anyone else, that he would be unable to board his flight or that his name was placed on the No Fly List. Mr. Kadura had been able previously to board flights in the United States without difficulty.

181. On or about November 14, 2012, Special Agent Arkin Fout, Homeland Security Investigations (“HSI”), Immigration and Customs Enforcement, directly contacted Mr. Kadura and harassed and intimidated him in an attempt to coerce him into arranging an “informal meeting” at an undisclosed location without the presence of his attorney.

182. Special Agent Fout proceeded to pressure Mr. Kadura into becoming an informant in Libya.

183. Special Agent Fout indicated that if Mr. Kadura wanted to remove his name from the No-Fly List, it would be nearly impossible for him to do so unless he agreed to work as an informant in Libya.

184. Upon information and belief, Mr. Kadura’s name was added to the No-Fly List in order to leverage his status on the federal terror watch list to put pressure on Mr. Kadura to act as an informant in Libya.

185. On multiple occasions, some of the same of Mr. Kadura's family members were traveling with him; and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

186. On November 30, 2012, Mr. Kadura filed a complaint through DHS TRIP.

187. On May 8, 2013, Mr. Kadura received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

188. Mr. Kadura filed a timely DHS TRIP appeal on June 5, 2013.

189. Because Mr. Kadura did not received a response to his DHS TRIP appeal, Mr. Kadura filed a federal lawsuit, along with four other Muslim Americans, on August 14, 2014 seeking his removal from the federal terror watch list or any other database that burdens or prevents him from flying or entering the United States across the border. (United States District Court, Eastern District of Michigan, Case No. 14-cv-13128 (2014)).

190. On September 4, 2015, Mr. Kadura's attorney received a response to the DHS TRIP appeal that stated "As you requested in connection with Mr. Kadura's redress inquiry challenging the redress process, DHS TRIP reevaluated Mr. Kadura's redress inquiry and is now providing a new determination in accordance with the newly enhanced procedures. At this time the U.S. Government knows of no reason Mr. Kadura should be unable to fly."

191. On January 15, 2016, Mr. Kadura attempted to check in online for his commercial flight to New York, however he was unable to check in.

192. Mr. Kadura appeared later that day at Chicago O'Hare International Airport in order to board his commercial flight to New York.

193. Mr. Kadura was unable to check in at the kiosk stationed at the airport. He approached an airline representative to be checked in manually, and after speaking on the

phone with a Department of Homeland Security (“DHS”) representative for nearly an hour, his boarding pass was stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

194. He was then taken into a special security room by a number of TSA agents for a private security check before he was allowed to board his flight.

195. Upon information and belief, Defendant TSC disseminated the stigmatizing label of “known or suspected terrorist” attached to Mr. Kadura to Western Union or other private entities or individuals, and as a result, he is unable to conduct wire transfers at any Western Union branch.

196. At no time was Mr. Kadura given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

197. Moreover, at no time prior to April, 2015 was Mr. Kadura given notice of the deprivation of his liberty interests or violation of his constitutional rights.

198. Upon information and belief, Mr. Kadura remains on the federal terror watch list.

199. Upon information and belief, Mr. Kadura’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

200. Upon information and belief, because Mr. Kadura is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments,

private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Osama Hussein Ahmed**

201. On or about February or March, 2011, Mr. Osama Ahmed appeared at the Detroit Metropolitan Airport, upon returning home on a commercial flight from Yemen.

202. Mr. Ahmed was escorted from the gate to an interrogation room and interrogated by FBI agents for approximately six to seven hours.

203. The FBI agents confiscated his USB drive that he had with him, and upon information and belief, downloaded the information from his USB drive.

204. Several days later, FBI agents, including Special Agent Joel Kelso, appeared at Mr. Ahmed's home.

205. The FBI agents took him to a nearby bd's Mongolian Grill, and attempted to recruit Mr. Ahmed into becoming an informant in Yemen.

206. The FBI agents tried to entice Mr. Ahmed, who was only 18 years old at the time, into becoming an informant by offering to teach him how to sky dive, among other things.

207. Special Agent Kelso informed Mr. Ahmed that his name was on the No-Fly List, and that if he cooperated, his name would be removed from the list.

208. On April 29, 2011, Mr. Ahmed filed a complaint through DHS TRIP.

209. On May 2, 2011, Mr. Ahmed's attorney spoke with Special Agent Kelso who informed her at that time that there was no basis to include Mr. Ahmed on the No-Fly List, and that he would make arrangements to remove his name from the federal terror watch list.

210. On May 10, 2011, Special Agent Kelso informed his attorney that Mr. Ahmed's name was removed from the No-Fly List.

211. As a result of being added to the No-Fly List, Mr. Ahmed was unable to apply for employment at the airport where his brother was employed at the time until his name was removed from the No-Fly List.

212. Upon information and belief, Mr. Ahmed's name was added to the No-Fly List in order to leverage his status on the federal terror watch list to put pressure on Mr. Ahmed to act as an informant in Yemen.

213. On or about 2015, Mr. Ahmed's boarding passes are now stamped with the "SSSS" designation, indicating that he has been once again designated as a "known or suspected terrorist."

214. At no time was Mr. Ahmed given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

215. Moreover, at no time was Mr. Ahmed given notice of the deprivation of his liberty interests or violation of his constitutional rights.

216. Upon information and belief, Mr. Ahmed remains on the federal terror watch list.

217. Upon information and belief, Mr. Ahmed's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

218. Upon information and belief, because Mr. Ahmed is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Ahmad Ibrahim Al Halabi**

219. Every time Mr. Ahmad Al Halabi travels by air, since 2004, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

220. Moreover, Mr. Al Halabi is frequently unable to board his flights until he is “cleared” by DHS to board the flight, a process that oftentimes takes hours.

221. Moreover, Mr. Al Halabi has missed his flights and incurred additional expenses on multiple occasions after having been subjected to prolonged searches and interrogations.

222. On June 25, 2014, Mr. Al Halabi was surrounded by armed CBP officers, handcuffed in front of his children and detained in a freezing cold holding cell for approximately two to three hours and in the waiting area for another three to four hours at the Ambassador Bridge port of entry in Detroit, Michigan, when he attempted to re-enter the United States after a brief vacation in Canada.

223. CBP officers confiscated his phone, and upon information and belief, the CBP officers downloaded the data from his phone.

224. On multiple occasions, some of the same of Mr. Halabi's family members were traveling with him, and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

225. Mr. Al Halabi no longer travels by air nor does he travel to Canada by land unless absolutely necessary for business purposes in order to avoid being subjected to the above treatment.

226. Mr. Al Halabi filed multiple redress requests through DHS TRIP.

227. Mr. Al Halabi received multiple letters as described in paragraph 135 above and was assigned multiple Redress Control Numbers.

228. At no time was Mr. Al Halabi given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

229. Moreover, at no time was Mr. Al Halabi given notice of the deprivation of his liberty interests or violation of his constitutional rights.

230. Mr. Al Halabi's boarding passes continue to be stamped with the "SSSS" designation every time he travels by air.

231. Additionally, every time Mr. Al Halabi travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

232. Upon information and belief, Mr. Al Halabi remains on the federal terror watch list.

233. Upon information and belief, Mr. Al Halabi's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race,

ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

234. Upon information and belief, because Mr. Al Halabi is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Michael Edmund Coleman**

235. On or about May 2, 2015, Mr. Michael Edmund Coleman appeared at the Detroit Metropolitan Airport, in order to board a commercial flight for his trip to Doha International Airport.

236. Mr. Coleman was unable to check in online or at a kiosk stationed at the airport.

237. He approached an airline representative to be checked in manually, and after speaking on the phone with a DHS representative to obtain clearance before he could fly, his boarding pass was stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

238. During Mr. Coleman’s flight connection at the Philadelphia International Airport, Mr. Coleman was unable to board his next flight until he was once again “cleared” by DHS to board the flight.

239. Mr. Coleman filed a redress request through DHS TRIP.

240. As of the date of this filing, Mr. Coleman has not received a response from DHS, nor has he been assigned a Redress Control Number.

241. Mr. Coleman's boarding passes continue to be stamped with the "SSSS" designation every time he travels by air.

242. Additionally, every time Mr. Coleman travels by air, he is referred to secondary inspection and subjected to prolonged searches, questioning and chemical testing.

243. Mr. Coleman is frequently interrogated about his religious activities.

244. At no time was Mr. Coleman given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

245. Moreover, at no time was Mr. Coleman given notice of the deprivation of his liberty interests or violation of his constitutional rights.

246. Upon information and belief, Mr. Coleman remains on the federal terror watch list.

247. Mr. Coleman limits travels by air and by land to Canada when necessary for business purposes in order to avoid being subjected to the above treatment.

248. Upon information and belief, Mr. Coleman's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

249. Upon information and belief, because Mr. Coleman is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Dr. Wael Hakmeh**

250. On or about April, 2014, Dr. Wael Hakmeh appeared at Chicago O'Hare International Airport upon returning on a flight from a business trip in Turkey.

251. He was referred to secondary screening and subjected to a prolonged interrogation.

252. Additionally, to the best of his recollection, in June, 2014, his boarding pass was stamped with the "SSSS" designation for the first time, indicating that he was designated as a "known or suspected terrorist."

253. On or about October, 2014, Dr. Hakmeh appeared to have been removed from the watch list, as his boarding pass for his flight was not stamped with the "SSSS" designation.

254. However, in January, 2016, Dr. Hakmeh's boarding pass was again stamped with the "SSSS" designation.

255. On or about June, 2016, Dr. Wael Hakmeh appeared at San Diego International Airport to return home after taking a medical course in San Diego.

256. Before passing through the TSA security checkpoint, Dr. Hakmeh expressed medical and privacy concerns regarding the full-body millimeter wave scanner and requested to be screened by a metal detector instead.

257. TSA agents informed Dr. Hakmeh that he was required to be screened by both the full-body millimeter scanner and metal detector in accordance with security protocol. As a result, he complied.

258. Nonetheless, despite having already been screened by both the full-body millimeter scanner and metal detector, a San Diego police officer approached Dr. Hakmeh after he passed through security, and in the midst of an inspection of each of the items he

was carrying, and threatened to charge Dr. Hakmeh with a misdemeanor and arrest him for refusing to pass through the full-body millimeter scanner.

259. On multiple occasions, Dr. Hakmeh's family members were traveling with him, and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

260. At no time was Dr. Hakmeh given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

261. Moreover, at no time was Dr. Hakmeh given notice of the deprivation of his liberty interests or violation of his constitutional rights.

262. Upon information and belief, Dr. Hakmeh remains on the federal terror watch list.

263. Dr. Hakmeh no longer connects through Chicago O'Hare International Airport to Detroit Metropolitan Airport when returning home to Michigan from overseas travel. Rather, Dr. Hakmeh drives from Chicago O'Hare International Airport for approximately five hours to his home in Wayne County, Michigan each time in order to avoid being subjected to the above treatment at multiple airports and risk arriving late to his place of employment.

264. Upon information and belief, Dr. Hakmeh's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

265. Upon information and belief, because Dr. Hakmeh is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation

as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Hassan Shibly**

266. Mr. Hassan Shibly is the Chief Executive Director of the Council on American-Islamic Relations, Florida (CAIR-FL), a chapter of the nation’s largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist.

267. Mr. Shibly often serves as a consultant on Islam for, among other private entities, law enforcement and other government agencies.

268. Upon information and belief, since at least 2010 until 2015, oftentimes when Mr. Shibly traveled by air, his boarding pass was stamped with the “SSSS” designation.

269. However, FBI documents, obtained through a Freedom of Information Act Request (“FOIA”) request in 2011, revealed the FBI made a determination that Mr. Shibly does not have any nexus to terrorism whatsoever.

270. Nonetheless, Mr. Shibly routinely is unable to check in online or at a kiosk stationed at the airport, or print his boarding pass.

271. As a matter of practice, airline representatives routinely contact DHS representatives in order to obtain clearance before allowing Mr. Shibly to board his flights.

272. When traveling through land border crossings to re-enter the United States from Canada and air ports of entry, Mr. Shibly is also routinely referred to secondary inspection and detained by CBP.

273. On November 25, 2009, Mr. Shibly was handcuffed, detained, fingerprinted and photographed at the Peace Bridge Port of Entry in Port Huron, Michigan.

274. That day, a CBP officer confirmed that Mr. Shibly was not randomly selected. Rather, the officer advised Mr. Shibly that he was on a “list” and that he would receive the same treatment each time he crossed the border into the United States.

275. The following day, Mr. Shibly again attempted to cross into the United States, however, this time at the Lewiston-Queens Bridge in Lewiston, New York.

276. However, when the CBP officer swiped Mr. Shibly’s passport, he radioed “I have a 1022 at booth number one.”

277. Mr. Shibly was immediately surrounded by armed CBP officers who escorted him for a secondary inspection and prolonged questioning.

278. Mr. Shibly’s grandmother, who was with him at the time, fainted at the sight of what had transpired, and was carried to a hospital by an ambulance.

279. CBP officers searched through all his electronics on his possession and in his car, including, upon information and belief, his cell phone.

280. On at least one occasion, on August 6, 2013, at the Ambassador Bridge port of entry in Detroit, Michigan, Mr. Shibly was questioned by CBP regarding the mosque he attends.

281. On another occasion, on August 18, 2010, CBP officers at the John F. Kennedy International Airport asked Mr. Shibly about the holy sites he visited, whether he is part of “any Islamic tribes,” whether he has been to a “madrassah [Islamic school] or studied Islam full-time,” whether he attends a particular mosque, the Qur’an, and how many “gods” and “prophets” he believes in. After this line of questioning, a CBP officer told Mr. Shibly that they were asking these questions “to protect against bombs and terrorism.”

282. Approximately two years prior, Mr. Shibly was questioned by a different CBP officer, also at the John F. Kennedy International Airport, about whether he recruits people to join his faith.

283. Whenever Mr. Shibly was detained and subjected to prolonged questioning at land border crossings, he observed that at least 50% to 75% of the other individuals similarly detained were visibly Muslim.

284. During the time that Mr. Shibly was receiving the “SSSS” designation on his boarding pass, he became employed by Regional Elite, a wholly owned subsidiary of Delta Airlines, specifically during 2011.

285. In order to obtain his employment with Regional Elite, which required him to obtain access to sterile areas of the airport, Mr. Shibly was required to go extensive background checks, including an FBI background check.

286. During the period of his employment with Regional Elite, Mr. Shibly had unrestricted access to the sterile area of the airport in addition to planes to clean them.

287. Additionally, during the period of his employment with Regional Elite, Mr. Shibly was allowed to gain unrestricted access to planes to clean them in connection with his employment without having to undergo any additional security measures, detentions, or interrogations.

288. On the other hand, whenever Mr. Shibly traveled for personal reasons during the same time period, Mr. Shibly’s boarding passes continued to be marked with “SSSS,” and he continued to have to obtain clearance from a DHS representative to board his flights.

289. Moreover, during the time that Mr. Shibly’s boarding passes were marked with “SSSS” or that Mr. Shibly was required to obtain clearance from a DHS representative to

board his flights, he met with President Barack Obama and several high-ranking government officials (including Ms. Valerie Jarett, Senior Advisor to the President; Mr. Benjamin Rhodes, Deputy National Security Advisor for Strategic Communications for the President; Ms. Melissa Rogers, Special Assistant to the President and Executive Director of the White House Office of Faith-based and Neighborhood Partnerships; Ms. Cecilia Muñoz, Former Director of Intergovernmental Affairs; Mr. Richard Chávez, Senior Executive of the Department of Homeland Security; Mr. Gil Kerlikowske, Commissioner of the U.S. Customs and Border Protection; Mr. Kareem Shora, DHS Senior Policy Advisor; and Mr. David Gersten, DHS Office for Community Partnerships), numerous United States Congress members, and state and local representatives regarding Islam and civil rights issues facing Muslims.

290. In fact, on or about March, 2016, Mr. Shibly appeared at the Tampa International Airport in order to board his flight to Washington, D.C., where he was scheduled to meet with senior advisors to the President.

291. However, Mr. Shibly was delayed as a result of not being able to obtain DHS clearance to board his flight in time, and missed his flight as a result.

292. Neither in connection with his meeting with President Barack Obama nor in connection with his meetings with high level government officials was Mr. Shibly ever subjected to additional security measures, whether searches, questioning or prolonged detentions.

293. On multiple occasions, some of the same of Mr. Shibly's friends and/or family members were traveling with him; and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

294. Mr. Shibly filed a redress request through DHS TRIP.

295. On January 26, 2011, Mr. Shibly received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

296. At no time was Mr. Shibly given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

297. Moreover, at no time was Mr. Shibly given notice of the deprivation of his liberty interests or violation of his constitutional rights.

298. Upon information and belief, Mr. Shibly remains on the federal terror watch list.

299. Upon information and belief, Mr. Shibly's nomination to and designation on the watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

300. Upon information and belief, because Mr. Shibly is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Ausama Elhuzayel**

301. On or about April, 2016, Mr. Ausama Elhuzayel appeared at the Los Angeles International Airport in order to board his flight to Dominica.

302. Mr. Elhuzayel presented himself to check in for his flight when an agent in common clothes (the agency to which he belongs is unknown, however the agent

represented himself as a TSA agent) approached him and informed him that he had “bad news” for him and that he “was not going anywhere.”

303. A second armed agent (the agency to which the second agent belongs is also unknown) provided backup as Mr. Elhuzayel was escorted out of the airport to a shuttle to ensure that he left the airport.

304. One of the agents advised Mr. Elhuzayel to file a redress request through DHS TRIP.

305. Mr. Elhuzayel immediately filed a redress request through DHS TRIP.

306. As of the date of this filing, Mr. Elhuzayel has not received a response from DHS, nor has he been assigned a Redress Control Number.

307. At no time was Mr. Elhuzayel given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

308. Moreover, at no time was Mr. Elhuzayel given notice of the deprivation of his liberty interests or violation of his constitutional rights.

309. Upon information and belief, Mr. Elhuzayel remains on the federal terror watch list.

310. Upon information and belief, Mr. Elhuzayel’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association—based upon his association with Plaintiff Donald Thomas or other individuals—or First Amendment protected activities).

311. Upon information and belief, because Mr. Elhuzayel is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

### **Plaintiff Donald Thomas**

312. On April 26, 2016, two FBI agents, including FBI Agent Pat, met with Mr. Thomas at a Starbucks.

313. They questioned him about his religious beliefs – specifically, FBI Agent Pat asked Mr. Thomas “[w]hen does Islam promote violence?” and “[w]hat does jihad mean?”

314. The following day, on April 27, 2016, Mr. Donald Thomas appeared at the Sacramento International Airport in order to board his flight to Malaysia.

315. Prior to his flight, Mr. Thomas presented himself at the Delta Airlines ticket counter before his flight.

316. Delta Airlines personnel were unable to check Mr. Thomas in for his flight.

317. The personnel spoke on the phone with a DHS representative to obtain clearance to allow Mr. Thomas to board his flight.

318. Suddenly, at least two TSA Agents, one of which was armed and had his hand on his gun ready to shoot, and one Canine Enforcement Officer who was handling a canine, surrounded Mr. Thomas.

319. The Delta Airlines representative informed Mr. Thomas that he was on the No Fly List and would not be permitted to board his flight.

320. Mr. Thomas immediately left the airport, and as he was loading his suitcases, two FBI agents approached him, one of which was Agent Pat who had questioned him at Starbucks the day before.

321. Agent Pat advised Mr. Thomas to contact the Council on American-Islamic Relations (CAIR), as the organization may be able to help him in connection with his status on the No Fly List.

322. Prior to being added to the No Fly List, on at least two flights, Mr. Thomas' boarding passes were stamped with the "SSSS" designation, indicating that he had been designated as a "known or suspected terrorist."

323. Moreover, on or about February 1, 2016, Mr. Thomas was surrounded by at least four to five armed CBP officers and detained for eight to ten hours at the border stop at the Peace Bridge Port of Entry in Port Huron, New York, when he attempted to re-enter the United States after a brief trip to Canada.

324. CBP officers confiscated his phone, asked him for his password to access the phone, and upon information and belief, the CBP officers downloaded the data from his phone.

325. Mr. Thomas filed a redress request through DHS TRIP.

326. As of this date, Mr. Thomas has not received a final response from DHS.

327. At no time was Mr. Thomas given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

328. Moreover, at no time was Mr. Thomas given notice of the deprivation of his liberty interests or violation of his constitutional rights.

329. Upon information and belief, Mr. Thomas' nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association—based upon his association with Plaintiff Ausama Elhuzayel or other individuals—or First Amendment protected activities).

330. Upon information and belief, because Mr. Thomas is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Murat Frljuckic**

331. On or about October, 2012, Mr. Murat Frljuckic was referred to secondary inspection, handcuffed and detained by CBP at the border stop at the Blue Water Bridge Port of Entry in Port Huron, Michigan, when he attempted to re-enter the United States after a brief vacation in Canada.

332. CBP officers subjected him to a prolonged detention and questioning for approximately three to four hours.

333. Similarly, on or about August, 2014, Mr. Frljuckic was referred to secondary inspection, handcuffed and detained by CBP at the border stop at the Blue Water Bridge Port of Entry in Port Huron, Michigan, when he attempted to re-enter the United States after a brief vacation in Montenegro.

334. Moreover, every time Mr. Frljuckic travels by air, since approximately March or April, 2012, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

335. On multiple occasions, Mr. Frljuckic’s friends and/or family were traveling with him and were required to provide their contact information to U.S Customs Officers; and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

336. Mr. Frljuckic filed a redress request through DHS TRIP.

337. As of the date of this filing, Mr. Frljuckic has not received a response from DHS, nor has he been assigned a Redress Control Number.

338. Mr. Frljuckic’s boarding passes continue to be stamped with the “SSSS” designation every time he travels by air.

339. Additionally, every time Mr. Frljuckic travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

340. At no time was Mr. Frljuckic given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

341. Moreover, at no time was Mr. Frljuckic given notice of the deprivation of his liberty interests or violation of his constitutional rights.

342. Upon information and belief, Mr. Frljuckic remains on the federal terror watch list.

343. Mr. Frljuckic no longer travels by air nor does he travel to Canada by land in order to avoid being subjected to the above treatment.

344. Upon information and belief, Mr. Frljuckic's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

345. Upon information and belief, because Mr. Frljuckic is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Ibrahim Awad**

346. On June 30, 2016, Mr. Ibrahim Awad appeared at a Chevrolet car dealership located in Sterling Heights, Michigan to test drive and purchase a pickup truck.

347. However, when he requested to test drive the vehicle, a Chevrolet sales representative informed Mr. Awad that, although he was "not supposed to tell" Mr. Awad, upon inputting his information in the company's system, Mr. Awad's name showed up as being designated on the federal terror watch list.

348. The Chevrolet salesperson went on to advise Mr. Awad that because of a "new law," Mr. Awad was not permitted to test drive or purchase any vehicles until the dealership obtain clearance from the FBI allowing him to do so.

349. The Chevrolet salesperson told Mr. Awad to wait until he was able to obtain clearance from the FBI allowing Mr. Awad to test drive and purchase the pickup truck that Mr. Awad wanted to purchase.

350. Approximately thirty minutes later, the Chevrolet salesperson informed Mr. Awad that the FBI sent him an email providing Mr. Awad with clearance to test drive and purchase a vehicle.

351. Upon information and belief, Defendant TSC disseminated the stigmatizing label of “known or suspected terrorist” attached to Mr. Awad to the Chevrolet car dealership and other private entities or individuals, and as a result, he was unable to test drive or purchase a vehicle until the Chevrolet car dealership obtained FBI clearance allowing him to do so.

352. Upon information and belief, since 2013, Mr. Awad has been unable to check in online or at airport kiosks in order to obtain a boarding pass.

353. Moreover, since 2013, every time Mr. Awad presents himself at a ticket counter prior to his flight, airlines personnel are unable to check Mr. Awad in for his flight.

354. Rather, each time, the personnel contact a DHS representative to obtain clearance to allow Mr. Awad to board his flights.

355. Moreover, since 2013, Mr. Awad is also frequently referred to secondary inspections and subjected to prolonged detention and questioning at both the airport and at land border crossings.

356. On July 24, 2014, upon returning from a flight to Turkey, Mr. Awad was pulled aside at the John F. Kennedy International Airport by a man wearing a suit and tie, who upon information and belief was an FBI agent, and taken to an interrogation room, where he was detained and subjected to prolonged interrogation by New York Police Department officers.

357. The NYPD officers, upon information and belief, were part of a joint terrorism taskforce.

358. On or about May, 2015, Mr. Awad was questioned by FBI Agents Josh Hauxhurst and Hank Impola outside his home about his political opinions regarding the ongoing conflict in Syria, his position on the Assad regime, the Free Syria Army and ISIS, and his recent trip to Turkey.

359. The FBI Agents proceeded to pressure Mr. Awad into becoming an informant.

360. Upon information and belief, Mr. Awad's name was added to the federal terror watch list in order to leverage his status and put pressure on Mr. Awad to act as an informant.

361. At no time was Mr. Awad given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

362. Moreover, at no time was Mr. Awad given notice of the deprivation of his liberty interests or violation of his constitutional rights.

363. Upon information and belief, Mr. Awad remains on the federal terror watch list.

364. Upon information and belief, Mr. Awad's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

365. Upon information and belief, because Mr. Awad is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Mark Amri**

366. On January 21, 2016, Mr. Mark Amri appeared at the Ontario International Airport in Ontario, California in order to board his flight to Las Vegas, Nevada.

367. Prior to his flight, Mr. Amri presented himself at the Southwest Airlines ticket counter before his flight.

368. Southwest Airlines personnel were unable to check Mr. Amri in for his flight.

369. The personnel spoke on the phone with a DHS representative to obtain clearance to allow Mr. Amri to board his flight.

370. Mr. Amri overheard the personnel describe him on the phone, stating that “he looks ok.”

371. The Southwest Airlines representative informed Mr. Amri that he was on the No Fly List and would not be permitted to board his flight.

372. Mr. Amri filed a redress request through DHS TRIP.

373. On July 19, 2016, Mr. Amri received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

374. On August 4, 2016, Mr. Amri again appeared at the Ontario International Airport in Ontario, California in order to board his flight to San Francisco, California.

375. He approached an airline representative to be checked in manually, and after the airline personnel spoke on the phone multiple times with DHS representatives to obtain clearance before he could fly, his boarding pass was stamped with the “SSSS” designation, indicating that he was still designated as a “known or suspected terrorist.”

376. On September 1, 2016, Mr. Amri received a second letter from DHS stating that “the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly.”

377. At no time was Mr. Amri given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

378. Moreover, at no time was Mr. Amri given notice of the deprivation of his liberty interests or violation of his constitutional rights.

379. Upon information and belief, Mr. Amri’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

380. Upon information and belief, because Mr. Amri is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Adnan Khalil Shaout**

381. Every time Mr. Adnan Shaout travels by air, since 2004, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

382. Mr. Shaout is frequently interrogated about his religious beliefs and affiliation with religious groups during secondary inspections.

383. Moreover, Mr. Shaout is frequently unable to board his flights until he is “cleared” by DHS to board the flight, a process that oftentimes takes hours.

384. Moreover, TSA agents often confiscate his laptop, and upon information and belief, download information from his laptop.

385. On or about, June 23, 2011, while Mr. Shaout was sitting in the plane waiting for take-off, despite having been thoroughly screened by TSA, TSA agents removed Mr. Shaout from the plane and conducted another extensive pat down and search of his personal belongings.

386. The entire flight was delayed until the TSA agents completed this search.

387. Mr. Shaout no longer travels by air in the United States in order to avoid being subjected to the above treatment.

388. On multiple occasions, some of the same of Mr. Shaout’s family and/or friends were traveling with him; and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

389. Mr. Shaout filed a redress request through DHS TRIP.

390. On November 5, 2015, Mr. Shaout received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

391. Mr. Shaout’s boarding pass continues to be stamped with the “SSSS” designation when travels by air, indicating that he has been designated as a “known or suspected terrorist.”

392. Additionally, every time Mr. Shaout travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

393. At no time was Mr. Shaout given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

394. Moreover, at no time was Mr. Shaout given notice of the deprivation of his liberty interests or violation of his constitutional rights.

395. Upon information and belief, Mr. Shaout remains on the federal terror watch list.

396. Upon information and belief, Mr. Shaout's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

397. Upon information and belief, because Mr. Shaout is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Saleem Ali**

398. On or about October, 2012, Mr. Saleem Ali was referred to secondary inspection and detained by CBP at the border stop at the Ambassador Bridge, Detroit, Michigan, when he attempted to re-enter the United States after a brief vacation in Canada.

399. CBP officers confiscated his two phones, asked him for his passwords to access the two phones, and upon information and belief, the CBP officers downloaded the data from his phones.

400. CBP officers kept his phones and did not return them until the following day.

401. Moreover, every time Mr. Ali travels by air, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

402. Additionally, every time Mr. Ali travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

403. Mr. Ali filed a redress request through DHS TRIP.

404. Mr. Ali received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

405. At no time was Mr. Ali given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

406. Moreover, at no time was Mr. Ali given notice of the deprivation of his liberty interests or violation of his constitutional rights.

407. Upon information and belief, Mr. Ali remains on the federal terror watch list.

408. Upon information and belief, Mr. Ali’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

409. Upon information and belief, because Mr. Ali is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private

corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

### **Plaintiff Shahir Anwar**

410. Mr. Shahir Anwar is the brother of Plaintiff Mr. Samir Anwar.

411. Every time Mr. Anwar travels by air, since 2014, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

412. Additionally, every time Mr. Anwar travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

413. Mr. Anwar filed a redress request through DHS TRIP.

414. On March 23, 2015, Mr. Anwar received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

415. Mr. Anwar’s boarding passes continue to be stamped with the “SSSS” designation every time he travels by air.

416. At no time was Mr. Anwar given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

417. Moreover, at no time was Mr. Anwar given notice of the deprivation of his liberty interests or violation of his constitutional rights.

418. Upon information and belief, Mr. Anwar remains on the federal terror watch list.

419. Mr. Anwar no longer travels by air nor does he travel to Canada by land in order to avoid being subjected to the above treatment or the treatment experienced by his brother, Plaintiff Samir Anwar, described below.

420. Upon information and belief, Mr. Anwar's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, familial status—based upon his brother's or other family member's designation—or First Amendment protected activities).

421. Upon information and belief, because Mr. Anwar is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Samir Anwar**

422. Mr. Samir Anwar is the brother of Plaintiff Mr. Shahir Anwar.

423. Every time Mr. Anwar travels by air, his boarding pass is stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

424. Mr. Anwar filed a redress request through DHS TRIP.

425. On August 7, 2014, Mr. Anwar received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

426. On or about February 22, 2015, Mr. Anwar was referred to secondary inspection and detained by CBP at the border stop at the Blue Water Bridge Port of Entry in

Port Huron, Michigan, when he attempted to re-enter the United States after a brief trip to Canada.

427. Mr. Anwar handed a CBP officer the letter from DHS, however the CBP officer responded that the letter does not mean anything and does not have any impact on the situation.

428. CBP officers confiscated his phone, asked him for his password to access the phone, and upon information and belief, the CBP officers downloaded the data from his phone.

429. Moreover, Mr. Anwar was interrogated about his religious beliefs and religious affiliations.

430. Mr. Anwar's boarding pass continues to be stamped with the "SSSS" designation when travels by air, indicating that he has been designated as a "known or suspected terrorist."

431. Additionally, every time Mr. Anwar travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

432. At no time was Mr. Anwar given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

433. Moreover, at no time was Mr. Anwar given notice of the deprivation of his liberty interests or violation of his constitutional rights.

434. Upon information and belief, Mr. Anwar remains on the federal terror watch list.

435. Upon information and belief, Mr. Anwar's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, familial status—based upon his brother's or other family member's designation—or First Amendment protected activities).

436. Upon information and belief, because Mr. Anwar is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Muhammad Yahya Khan**

437. Every time Mr. Muhammad Yahya Khan travels by air, since approximately 2012, his boarding pass is stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

438. Additionally, every time Mr. Khan travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

439. Moreover, every time Mr. Khan returns to the United States on an international flight, CBP officers escort Mr. Khan from the gate, detain him, search his belongings and interrogate him.

440. As a result, Mr. Khan has missed at least two connecting flights.

441. On or about December, 2013, Mr. Khan was interrogated in his home by FBI agents about his religious practices and beliefs, including the mosque he attends, whether he

is a regular attendee at his mosque, whether his mosque preaches extremism, and whether he knows anyone affiliated with the Taliban.

442. Upon requesting their business cards, the FBI agents refused to provide Mr. Khan their business cards.

443. In 2012, Mr. Khan was referred to secondary inspection and detained by CBP at the border stop at the Blue Water Bridge, Port Huron, Michigan, when he attempted to re-enter the United States after a brief vacation in Canada.

444. Mr. Khan no longer travels by land into the United States in order to avoid being subjected to the above treatment.

445. Mr. Khan filed a redress request through DHS TRIP.

446. On July 14, 2015, Mr. Khan received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

447. Mr. Khan's boarding pass continues to be stamped with the "SSSS" designation when travels by air, indicating that he has been designated as a "known or suspected terrorist."

448. Additionally, every time Mr. Khan travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

449. At no time was Mr. Khan given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

450. Moreover, at no time was Mr. Khan given notice of the deprivation of his liberty interests or violation of his constitutional rights.

451. Upon information and belief, Mr. Khan remains on the federal terror watch list.

452. Upon information and belief, Mr. Khan's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

453. Upon information and belief, because Mr. Khan is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Hassan Fares**

454. On August 2, 2016, Mr. Fares' boarding pass was stamped with the "SSSS" designation for the first time, indicating that he was still designated as a "known or suspected terrorist."

455. After boarding his flight, a TSA agent removed Mr. Fares from the plane and required him to pass through airport security once again, although he had already underwent screening to get to his gate.

456. He was subjected to extensive searches and pat downs.

457. By the time Mr. Fares returned to the gate, he missed his flight.

458. Upon witnessing the above incidents, upon information and belief, his family learned of his status on the federal terror watch list.

459. At no time was Mr. Fares given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

460. Moreover, at no time was Mr. Fares given notice of the deprivation of his liberty interests or violation of his constitutional rights.

461. Upon information and belief, Mr. Fares remains on the federal terror watch list.

462. Upon information and belief, Mr. Fares' nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

463. Upon information and belief, because Mr. Fares is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff Zuhair El-Shwehdi**

464. Every time Mr. Zuhair El-Shwehdi travels by air, since at least 2011, his boarding pass is stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

465. Mr. Shwehdi is frequently unable to board his flights until he is "cleared" by DHS to board the flight, a process that can take hours.

466. Frequently, upon returning from a flight, Mr. El-Shwehdi is escorted from the gate or, on at least two occasions off of the plane from his seat, by FBI and/or TSA agents, before he is detained and subjected to prolonged questioning and searches of his person and belongings.

467. On November 22, 2013, upon landing at John F. Kennedy International Airport, the pilot announced over the loud speaker that all passengers should have their passports and boarding passes ready for inspection.

468. FBI and/or TSA agents boarded the plane and inspected the passengers' passports and boarding passes until they located Mr. El-Shwehdi, escorted him off of the plane, detained him and subjected him to prolonged questioning and searches of his person and belongings.

469. As a result, Mr. El-Shwehdi has missed flight connections and was forced to stay overnight at the airport on at least two separate occasions.

470. Moreover, El-Shwehdi was unable to attend two funerals of immediate relatives as a result of the above treatment.

471. TSA agents frequently confiscate his electronics, request his passwords, and upon information and belief, download information from them.

472. As a result, Mr. El-Shwehdi stopped carrying electronics with him during flights.

473. On multiple occasions, some of the same of Mr. El-Shwehdi's family members were traveling with him; and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

474. Mr. El-Shwehdi filed a redress request through DHS TRIP.

475. As of the date of this filing, Mr. El-Shwehdi has not received a response from DHS, nor has he been assigned a Redress Control Number.

476. At no time was Mr. El-Shwehdi given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

477. Moreover, at no time was Mr. El-Shwehdi given notice of the deprivation of his liberty interests or violation of his constitutional rights.

478. Upon information and belief, Mr. El-Shwehdi remains on the federal terror watch list.

479. Mr. El-Shwehdi no longer travels by air since 2013 in order to avoid being subjected to the above treatment.

480. Upon information and belief, Mr. El-Shwehdi's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

481. Upon information and belief, because Mr. El-Shwehdi is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff Mahmoud Eraqi**

482. On or about May 4, 2016, Mr. Mahmoud Eraqi's boarding pass was stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

483. That day, upon arriving at the Toronto Pearson International Airport, Mr. Eraqi was pulled aside by U.S. Customs officers, detained and subjected to questioning and searches of his person and belongings.

484. The U.S. Customs officers confiscated his phone and, upon information and belief, downloaded information from it.

485. Moreover, on or about one or two months prior to this filing, Mr. Eraqi was surrounded by 4-5 armed CBP officers, handcuffed and detained in a holding cell for nearly 5 hours at the Peace Bridge Port of Entry in Port Huron, Michigan, when he attempted to re-enter the United States after a brief trip to Canada.

486. One of the CBP officers advised Mr. Eraqi that he was flagged in their system as “armed and dangerous.”

487. During the above instances, Mr. Eraqi’s friends were traveling with him, and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

488. Upon information and belief, Mr. Eraqi remains on the federal terror watch list.

489. Upon information and belief, Mr. Eraqi’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

490. Upon information and belief, because Mr. Eraqi is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments,

private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff John Doe No. 1**

491. On or about January, 2015, Mr. John Doe No. 1's boarding pass was stamped with the "SSSS" designation, indicating that he had been designated as a "known or suspected terrorist."

492. Additionally, every time Mr. Doe No. 1 returns to the United States from international travel, Mr. Doe is subjected to prolonged detention and questioning.

493. Suddenly, shortly after Mr. Doe No. 1 was designated on the federal terror watch list, many of his individual and business bank accounts were closed without notice or an explanation of the reasons why they were being closed, including bank accounts at JPMorgan Chase Bank, TCF Bank and PNC Bank.

494. Upon information and belief, Defendant TSC disseminated the stigmatizing label of "known or suspected terrorist" attached to Mr. Doe No. 1 to JPMorgan Chase Bank, TCF Bank and PNC Bank, and as a result, his bank accounts were closed without notice.

495. Mr. Doe No. 1 filed a redress request through DHS TRIP.

496. As of the date of this filing, Mr. Doe No. 1 has not received a response from DHS, nor has he been assigned a Redress Control Number.

497. At no time was Mr. Doe No. 1 given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

498. Moreover, at no time was Mr. Doe No. 1 given notice of the deprivation of his liberty interests or violation of his constitutional rights.

499. Upon information and belief, Mr. Doe No. 1 remains on the federal terror watch list.

500. Upon information and belief, Mr. Doe No. 1's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

501. Upon information and belief, because Mr. Doe No. 1 is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

#### **Plaintiff John Doe No. 2**

502. On or about May, 2010, Mr. John Doe No. 2 appeared at the Detroit Metropolitan Airport upon returning on a flight from a trip to Turkey.

503. He was referred to secondary screening and subjected to a prolonged interrogation.

504. During his interrogation, CBP officers began looking through pictures on Mr. Doe No. 2's laptop and asked him questions about his place of worship, the religious leader at his mosque, whether Mr. Doe No. 2 knew anyone who was involved in terrorist activities, and whether he had information about other congregants at his place of worship.

505. Every time Mr. Doe No. 2 travels by air, since his May, 2010 trip, his boarding pass is stamped with the "SSSS" designation, indicating that he has been designated as a "known or suspected terrorist."

506. Additionally, every time Mr. Doe No. 2 travels by air, he is referred to secondary inspection and subjected to prolonged searches and questioning.

507. Mr. Doe No. 2 filed a redress request through DHS TRIP.

508. On January 19, 2016, Mr. Doe No. 2 received a letter as described in paragraph 135 above and was assigned a Redress Control Number.

509. At no time was Mr. Doe No. 2 given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

510. Moreover, at no time was Mr. Doe No. 2 given notice of the deprivation of his liberty interests or violation of his constitutional rights.

511. As of the date of this filing, it is unclear whether Mr. Doe No. 2 remains on the federal terror watch list.

512. Upon information and belief, Mr. Doe No. 2's nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

513. Upon information and belief, because Mr. Doe No. 2 is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a "known or suspected terrorist" to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff John Doe No. 3**

514. Every time Mr. John Doe No. 3 travels by air, since 2002, his boarding pass is stamped with the “SSSS” designation, indicating that he has been designated as a “known or suspected terrorist.”

515. In fact, in 2002, upon returning from an international flight, Mr. Doe No. 3 was escorted off of the plane by FBI agents, before he was interrogated and threatened by agents from different government agencies.

516. Mr. Doe No. 3 is frequently unable to board his flights until he is “cleared” by DHS to board the flight, a process that can take hours.

517. Moreover, Mr. Doe No. 3 is frequently called over the loud speakers at the airport after he has already reached the gate prior to take off to go back to security, only to be detained and subjected to further prolonged interrogations and searches.

518. Additionally, TSA agents confiscated his phones, requested his passwords, and upon information and belief, downloaded information from them.

519. On July 14, 2016, Mr. Doe No. 3 was surrounded by several armed CBP officers, handcuffed and detained for several hours at the border stop at the Sault Ste. Marie International Bridge, Michigan, when he attempted to re-enter the United States after a brief trip to Canada.

520. He was informed during that detention that he was surrounded by several armed CBP officers because he was flagged in their system as “armed and dangerous.”

521. On or about 2006, Mr. Doe No. 3’s JPMorgan Chase Bank was suddenly closed a few days after he opened it without notice or an explanation of the reasons why it was being closed.

522. Upon information and belief, Defendant TSC disseminated the stigmatizing label of “known or suspected terrorist” attached to Mr. Doe No. 3 to JPMorgan Chase Bank, and as a result, his bank account was closed without notice.

523. Mr. Doe No. 3 lost lucrative employment opportunities as a result of being designated as a “known or suspected terrorist.”

524. On multiple occasions, some of the same of Mr. Doe No. 3’s family members and/or friends were traveling with him, and upon witnessing the above incidents, upon information and belief, they learned of his status on the federal terror watch list.

525. Mr. Doe No. 3 filed a redress request through DHS TRIP.

526. As of the date of this filing, Mr. Doe No. 3 has not received a response from DHS, nor has he been assigned a Redress Control Number.

527. At no time was Mr. Doe No. 3 given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

528. Moreover, at no time was Mr. Doe No. 3 given notice of the deprivation of his liberty interests or violation of his constitutional rights.

529. Upon information and belief, Mr. Doe No. 3 remains on the federal terror watch list.

530. Mr. Doe No. 3 limits travels by air when necessary in order to avoid being subjected to the above treatment.

531. Upon information and belief, Mr. Doe No. 3’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race,

ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

532. Upon information and belief, because Mr. Doe No. 3 is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**Plaintiff John Doe No. 4**

533. On August 1, 2016, Mr. Doe No. 4 arrived at the Detroit Metropolitan Airport in order to board his flight to Morocco.

534. Prior to his flight, Mr. Doe No. 4 presented himself at the Delta Airlines ticket counter before his flight.

535. Delta Airlines personnel were unable to check Mr. Doe No. 4 in for his flight.

536. The personnel spoke on the phone with a DHS representative to obtain clearance to allow Mr. Doe No. 4 to board his flight.

537. The personnel, along with a Delta Airlines supervisor spoke with two men dressed in suits, who upon information and belief were FBI agents.

538. The Delta Airlines supervisor returned to the counter and informed Mr. Doe No. 4 that he was on the No Fly List and would not be permitted to board his flight.

539. Before Mr. Doe No. 4 was denied the ability to board his flight, he did not receive any notice, from a government agency or anyone else, that he would be unable to board his flight or that his name was placed on the No Fly List. Mr. Doe No. 4 had been able previously to board flights in the United States without difficulty.

540. On or about August 24, 2015, Mr. Doe No. 4 was involved in a minor car accident in Clinton Township, Michigan.

541. As he was providing his witness statement to the local police officer, the officer pulled up Mr. Doe No. 4's profile on his computer screen.

542. Mr. Doe No. 4 saw next to his name at the top of the officer's computer screen a warning in large, red block letters "Possible Terrorist," and a note to exercise caution.

543. On at least two separate occasions, while being pulled over for traffic stops, the police officers approached Mr. Doe No. 4 vehicle with their hand on their gun ready to shoot, as though they had information that Mr. Doe No. 4 was armed and extremely dangerous.

544. Upon information belief, Defendants, including Defendant TSC, disseminated the stigmatizing label of "known or suspected terrorist" attached to Mr. Doe No. 4 to the local police officers, and as a result, after running his license plate on an automatic license plate reader, they treated Mr. Doe No. 4 as armed and extremely dangerous.

545. On or about December 12, 2014, after having been pulled over while driving for a minor traffic violation by a local police officer in Warren, Michigan, the police officer conducted a search of Mr. Doe No. 4's vehicle.

546. Upon finding a broken Airsoft gun with an orange tip, the police officer immediately handcuffed Mr. Doe No. 4 and transported him to the local jail, where he was detained in a holding cell overnight.

547. While he was in his holding cell, he overheard police officers discussing his arrest, when one of the officers said that if he were the officer that had pulled him over, he would have shot and killed him.

548. Later that night, while Mr. Doe No. 4 was being fingerprinted, he saw paperwork in connection with his case next to him on the counter that contained the text “FBI Hold” and “no phone.”

549. The officer taking Mr. Doe No. 4’s fingerprints told Mr. Doe No. 4 that he must have “done something really bad to get the FBI involved,” and that he “thinks something is going down.”

550. Mr. Doe No. 4 filed a redress request through DHS TRIP.

551. As of this date, Mr. Doe No. 4 has not received a response from DHS.

552. Nonetheless, Mr. Doe No. 4 remains on the No Fly List.

553. Mr. Doe No. 4 is planning on traveling to Morocco for his engagement party as he is planning on becoming engaged to his fiancée.

554. However, Mr. Doe No. 4 is unable to travel to Morocco as a result of his placement on the No Fly List.

555. At no time was Mr. Doe No. 4 given notice of the factual basis for his placement on the federal terror watch list, and at no time was he offered a meaningful opportunity to contest his designation.

556. Moreover, at no time was Mr. Doe No. 4 given notice of the deprivation of his liberty interests or violation of his constitutional rights.

557. Upon information and belief, Mr. Doe No. 4’s nomination to and designation on the federal terror watch list was made based solely upon a hunch (based upon his race, ethnicity, national origin, religious affiliation, guilt-by-association, or First Amendment protected activities).

558. Upon information and belief, because Mr. Doe No. 4 is included on the federal terror watch list, Defendants disseminated and are continuing to disseminate his designation as a “known or suspected terrorist” to state and local authorities (including the local police officers above), foreign governments, corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, among other official and private entities and individuals.

**COUNT I**  
**FAILURE TO PROVIDE POST-DEPRIVATION NOTICE AND HEARING IN VIOLATION OF**  
**THE FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS**  
**(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)**

559. The foregoing allegations are realleged and incorporated herein.

560. Each of the Plaintiffs and other similarly situated American citizens learned that he or she was placed on the federal terror watch list subsequent to being added on the federal terror watch list and sought to challenge such placement.

561. Defendants’ actions as described above in refusing to provide Plaintiffs and other similarly situated American citizens with any notice at all of their placement which deprived Plaintiffs and other similarly situated American citizens of constitutionally protected liberty interests.

562. Defendants’ actions in nominating Plaintiffs and other similarly situated American citizens to the federal terror watch list blatantly violate the requirement that “nominations’ must not be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities.” 49 U.S.C. § 114(h)(3).

563. Plaintiffs and other similarly situated American citizens have a liberty interest in traveling free from unreasonable burdens that are not reasonably tailored within, to, and from the United States, through land border crossings and over U.S. air space.

564. Plaintiffs and other similarly situated American citizens have a right to be free from false government stigmatization as individuals who are “known or suspected to be” terrorists, or who are otherwise associated with terrorist activity, when such harm arises in conjunction with the additional consequences that follow from being listed as well as the deprivation of their right to travel on the same terms as other travelers and/or the deprivation of their liberty interest under the Fifth Amendment in travel free from unreasonable burdens.

565. Plaintiffs and other similarly situated American citizens have a liberty interest in nonattainder (ie: the interest against being singled out for punishment without trial). Defendants’ actions have singled out Plaintiffs and others similarly situated for punishments that include, but are not limited to, inability to travel by air and unreasonable burdens placed upon traveling by air to and from the United States, over U.S. air space and at land border crossings, and false association with a list of individuals suspected of terrorism.

566. Plaintiffs and other similarly situated American citizens, having been burdened or prevented from boarding on commercial flights or entering the United States at land border crossings, having had their bank accounts closed, having been prevented from making wire transfers at financial institutions, having had their citizenship applications delayed indefinitely due to an “FBI name check,” having lost lucrative economic opportunities and suffering from other forms of financial harm, having been prevented from test driving or purchasing vehicles at a car dealership, and having sought to challenge their

placement on the federal terror watch list, are entitled to a constitutionally adequate legal mechanism that affords them notice of the reasons and bases for their placement on the federal terror watch list and a meaningful opportunity to contest their continued inclusion on the federal terror watch list. Defendants have even failed to provide the most basic ingredient of due process, which is notice that the government has deprived a person of their protected rights.

567. Moreover, Defendants have officially imposed on Plaintiffs and other similarly situated American citizens the stigmatizing label of “known or suspected terrorists” without a constitutionally adequate legal mechanism.

568. Further, Defendants disseminated the stigmatizing label attached to Plaintiffs and other similarly situated American citizens of “known or suspected terrorists” to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals.

569. By imposing on Plaintiffs and other similarly situated American citizens the stigmatizing label of “known or suspected terrorists” and by failing to provide Plaintiffs and others similarly situated with a constitutionally adequate legal mechanism, Defendants have deprived Plaintiffs and other similarly situated American citizens of their protected liberty interests, including but not limited to their liberty interests in traveling, freedom from false stigmatization, and nonattainder, and thus violated the constitutional rights of Plaintiffs and other similarly situated American citizens without affording them due process of law and will continue to do so into the future if Plaintiffs and other similarly situated American citizens are not afforded the relief demanded below.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

**COUNT II**  
**DEPRIVATION OF PROTECTED LIBERTIES IN VIOLATION OF FIFTH AMENDMENT**  
**RIGHT TO SUBSTANTIVE DUE PROCESS**  
**(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)**

570. The foregoing allegations are realleged and incorporated herein.

571. Because Plaintiffs and other similarly situated American citizens were listed by Defendants in a manner not narrowly tailored to a compelling interest, Defendants' actions as described above in including Plaintiffs and other similarly situated American citizens on a watch list that unreasonably burdens or prevents them from boarding commercial flights or entering the United States at land border crossings, are arbitrary and capricious, lack even a rational relationship to any legitimate government interest, and have unduly deprived Plaintiffs of constitutionally protected rights, including their liberty interests in travel, freedom from false stigmatization, and nonattainder.

572. Defendants' actions in nominating Plaintiffs and other similarly situated American citizens to the federal terror watch list blatantly violate the requirement that "nominations' must not be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities." 49 U.S.C. § 114(h)(3).

573. By placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, Defendants have placed an undue burden on their fundamental right of movement.

574. By placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, Defendants have treated Plaintiffs like second-class citizens.

575. Defendants' watch list lacks a compelling interest insofar as their true purpose is to provide law enforcement with a tool to coerce American Muslims into becoming informants.

576. Defendants' watch list are also not narrowly tailored insofar as the federal terror watch list are entirely and demonstrably ineffectual and obvious alternatives exist.

577. Defendants' actions in placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, officially imposing on Plaintiffs and other similarly situated American citizens the stigmatizing label of "known or suspected terrorists," and disseminating the stigmatizing label to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals, without a constitutionally adequate legal mechanism, are arbitrary and capricious, shock the conscience, violate the decencies of civilized conduct and are so brutal and offensive that they do not comport with the traditional ideas of fair play and decency.

578. Plaintiffs and other similarly situated American citizens, having been burdened or prevented from boarding on commercial flights or entering the United States at land border crossings, having had their bank accounts closed, having been prevented from making wire transfers at financial institutions, having had their citizenship applications delayed indefinitely due to an "FBI name check," having lost lucrative economic opportunities and suffering from other forms of financial harm, having been prevented from test driving or purchasing vehicles at a car dealership, and having sought to challenge their

placement on the federal terror watch list, are entitled to a constitutionally adequate legal mechanism that affords them notice of the reasons and bases for their placement on the federal terror watch list and a meaningful opportunity to contest their continued inclusion on the federal terror watch list. Defendants have even failed to provide the most basic ingredient of due process, which is notice that the government has deprived a person of their protected rights.

579. Because Plaintiffs and other similarly situated American citizens have not been charged with any crimes and are United States Citizens, Plaintiffs challenge their placement and the placement of others similarly situated American citizens on the federal terror watch list on a broad, as-applied basis.

580. Plaintiffs' substantive due process challenge is also facial, as there are no circumstances where their placement or the placement of others similarly situated on the federal terror watch list is narrowly tailored to achieve any compelling government interest.

581. Defendants have thus violated Plaintiffs' constitutional rights and the constitutional rights of other similarly situated American citizens without affording them due process of law and will continue to do so into the future if Plaintiffs and other similarly situated American citizens are not afforded the relief demanded below.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

**COUNT III**  
**UNLAWFUL AGENCY ACTION IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE**  
**ACT, 5 U.S.C. §§ 702, 706**  
**(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)**

582. The foregoing allegations are realleged and incorporated herein.

583. Defendants' actions in placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, officially imposing on Plaintiffs and other similarly situated American citizens the stigmatizing label of "known or suspected terrorists," and disseminating the stigmatizing label to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals, without a constitutionally adequate legal mechanism, were and are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

584. Defendants' actions in nominating Plaintiffs and other similarly situated American citizens to the federal terror watch list blatantly violate the requirement that "nominations' must not be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities." 49 U.S.C. § 114(h)(3).

585. Defendants' failure to provide Plaintiffs and other similarly situated American citizens, who had been unreasonably burdened or denied boarding on commercial flights or entering the United States across the border and sought to challenge their placement on the federal terror watch list, with a constitutionally adequate mechanism that affords them notice of the reasons and bases for their placement on the federal terror watch list and a

meaningful opportunity to contest their continued inclusion on the federal terror watch list is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

586. Because Plaintiffs and other similarly situated American citizens do not present a security threat to commercial aviation, Defendants' actions as described above including Plaintiffs and other similarly situated American citizens on the federal terror watch list that unreasonably burdens or prevents them from boarding commercial flights or entering the United States across the border, are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

587. Because Defendants' watch list is based on always-wrong, or in the alternative almost-always wrong, predictions of who among the innocent will engage in criminal conduct in the future, Defendants' federal terror watch list violates 5 U.S.C. § 706's prohibition on arbitrary government action.

588. Plaintiffs and other similarly situated American citizens are not required to exhaust the DHS TRIP process, under the holding in *Darby v. Cisneros*, 509 U.S. 137 (1993). See United States District Court, Eastern District of Virginia, Case No. 11-cv-00050 (2011); Dkt. 70 at 22; attached as Memorandum Opinion (Exhibit 4).

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

**COUNT IV**  
**VIOLATION OF THE FIFTH AMENDMENT**  
**TO THE UNITED STATES CONSTITUTION**  
**(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)**  
**(Equal Protection)**

589. The foregoing allegations are realleged and incorporated herein.

590. Defendants' actions in placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, officially imposing on Plaintiffs and other similarly situated American citizens the stigmatizing label of "known or suspected terrorists," and disseminating the stigmatizing label to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals, without a constitutionally adequate legal mechanism are discriminatory and constitute an action that targets religious conduct for distinctive treatment.

591. Defendants' actions in nominating Plaintiffs and other similarly situated American citizens to the federal terror watch list blatantly violate the requirement that "nominations' must not be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities." 49 U.S.C. § 114(h)(3).

592. By placing Plaintiffs and other similarly situated American citizens on the federal terror watch list, Defendants have treated Plaintiffs and other similarly situated American citizens like second-class citizens.

593. Defendants' above-described actions were motivated by the religious status of Plaintiffs and other similarly situated American citizens and on the basis of the constitutionally-protected free exercise of religion of Plaintiffs and other similarly situated American citizens.

594. Defendants' above-described actions have had a discriminatory effect upon and have disparately impacted Plaintiffs and other similarly situated American citizens who are Muslim American travelers, and not travelers of other faiths.

595. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the above-described treatment of Plaintiffs and other similarly situated American citizens does not serve a compelling state interest or a legitimate or public purpose, nor are they the least restrictive means or narrowly tailored to achieve any such interest.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

**COUNT V**  
**VIOLATION OF THE UNITED STATES CONSTITUTION**  
**(Non-Delegation)**

596. The foregoing allegations are realleged and incorporated herein.

597. Congress has not provided the Executive Branch with intelligible principles from which the Executive can implement its watch list schemes regarding civil aviation and national security.

598. Congress has not directed the Executive Branch to create either a No Fly List or a Selectee List.

599. Congress has not authorized the Executive Branch to utilize the federal terror watch list to encourage financial institutions to close bank accounts or ban wire transfers, to encourage car dealerships to restrict test drives or purchases of vehicles, or state and local

law enforcement to detain individuals based on their watch list status.

600. Congress has not authorized the Executive Branch to disseminate the terror watch list to local and state authorities, foreign countries, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals.

601. The Executive Branch's assignment of the watch listing function to TSC violates Congress' directive that TSA determine who belongs on federal terror watch lists and the consequences that flow from being on those lists.

602. Congress has not delegated to TSA the authority to create a process that can culminate in the removal of individuals from the TSDB.

603. In the alternative, Congress's delegation to TSA to create a redress process is defective because the Executive Branch has allocated watch list authority in a manner that prevents TSA from creating a redress process.

604. As a result, Defendants have illegally acted beyond their authority.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

### **Prayer for Relief**

WHEREFORE, Plaintiffs respectfully request:

1. A declaratory judgment that Defendants' policies, practices, and customs violate the Fifth Amendment to the United States Constitution and the Administrative Procedure Act;

2. A declaratory judgment that Defendants' policies, practices, and customs violate the non-delegation doctrine of the United States Constitution;
3. An injunction that:
  - a. requires Defendants to remedy the constitutional and statutory violations identified above, including the removal of Plaintiffs from any watch list or database that burdens or prevents them from flying or entering the United States across the border; and,
  - b. requires Defendants to provide individuals designated on the federal terror watch list with a legal mechanism that affords them notice of the reasons and bases for their placement on the federal terror watch list and a meaningful opportunity to contest their continued inclusion on the federal terror watch list;
4. A trial by jury;
5. An award of attorneys' fees, costs, and expenses of all litigation, pursuant to 28 U.S.C. § 2412; and,
6. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

NOW COME Plaintiffs, by and through their undersigned counsel, and hereby demand trial by jury of the above-referenced causes of action.

Respectfully submitted,

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Dated: September 23, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2016, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Virginia using the ECF System, which will send notification to the registered participants of the ECF System as listed on the Court's Notice of Electronic Filing.

/s/ Gadeir Abbas

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

ANAS ELHADY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
CHARLES H. KABLE, <i>et al.</i> ,	)	Civil Action No. 1:16-cv-375 (AJT/JFA)
<i>Director of the Terrorist Screening Center,</i>	)	
<i>in his official capacity</i>	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiffs are twenty-three United States citizens<sup>1</sup> who claim that because of their inclusion in the federal government’s Terrorist Screening Database (“TSDB”), referred to colloquially as “the Watchlist,” they have suffered a range of adverse consequences without a constitutionally adequate remedy.<sup>2</sup>

In *Mohamed v. Holder*, 2015 WL 4394958 (E.D. Va. July 16, 2015), the Court concluded that the Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”), as that process existed at the time, did not provide a constitutionally adequate remedy for a United States citizen who had been listed on the No Fly List, which is a subset of persons included in the TSDB who are prohibited from boarding a commercial aircraft that traverses U.S. airspace, and

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<sup>1</sup> These Plaintiffs are: (1) Anas Elhady; (2) Baby Doe 2, by his next friend, Father Doe 2; (3) Yaseen Kadura; (4) Osama Hussein Ahmed; (5) Ahmed Ibrahim Al Halabi; (6) Michael Edmund Coleman; (7) Wael Hakmeh; (8) Hassan Shibley; (9) Ausama Elhuzayel; (10) Donald Thomas; (11) Murat Frljuckic; (12) Ibrahim Awad; (13) Mark Amri; (14) Adnan Khalil Shaout; (15) Saleem Ali; (16) Shahir Anwar; (17) Samir Anwar; (18) Muhammad Yahya Khan; (19) Hassan Fares; (20) Zuhair El-Shwehdi; (21) John Doe 2; (22) John Doe 3; and (23) John Doe 4.  
<sup>2</sup> Plaintiffs bring their claims against the following Defendants in their official capacities based on their involvement in the administration of the TSDB: (1) the Director, Principal Deputy Director, and Deputy Director for Operations of the Terrorist Screening Center; (2) the Director of the Department of Homeland Security Traveler Redress Inquiry Program; (3) the Director of the National Counterterrorism Center; (4) the Administrator of the Transportation Security Administration; (5) the Director of the Federal Bureau of Investigation; and (6) the Acting Commissioner of United States Customs and Border Protection.

outlined what it considered to be the relevant considerations in assessing whether the subsequently revised DHS TRIP, which the Court concluded was not constitutionally deficient on its face, provided that constitutionally adequate remedy in its application to any particular case. *See id.* at \*8-9, 12-13.

An individual's listing in the TSDB, without more, does not prevent them from boarding flights, but that listing is disseminated to and used by federal, state, and foreign government agencies and officials to support various diplomatic and security functions and does trigger a variety of other consequences, including restrictions on an individual's ability to travel. In this action, the Court now considers whether DHS TRIP, as it currently applies to a listing in the TSDB, provides to these United States citizen Plaintiffs a constitutionally adequate opportunity to challenge their presumed inclusion in the TSDB. As the Court acknowledged in *Mohamed*, this constitutional inquiry presents unsettled issues whose resolution is complicated by the criteria used to compile the TSDB, and "the classified information that, of necessity, is used to determine whether a person satisfies that criteria." *Id.* at \*1.

Presently pending are the parties' cross-motions for summary judgment [Doc. Nos. 298 and 303] as to Plaintiffs' remaining claims: Count I of the Amended Complaint [Doc. No. 22], a Fifth Amendment procedural due process claim; and Count III, an Administrative Procedure Act ("APA") claim.<sup>3</sup> Underlying both of these claims is Plaintiffs' contention that they were denied a meaningful opportunity to challenge their presumed placement on the TSDB. Specifically, Plaintiffs claim that they were not provided notice of their placement on the Watchlist, or a meaningful opportunity to refute any derogatory information that was used to place them on the

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<sup>3</sup> The Court previously dismissed Plaintiffs' claims based on substantive due process (Count II), the Equal Protection Clause (Count IV), and the non-delegation doctrine (Count V). *Elhady v. Piehota*, 303 F. Supp. 3d 453, 468 (E.D. Va. 2017).

Watchlist, and that as a result of these constitutional violations, they have been denied their liberty interests in (1) international travel, (2) interstate travel; and (3) being free from false governmental stigmatization as a terrorist. *See generally*, [Doc. No. 304]. Defendants contend that Plaintiffs cannot establish with sufficient certainty an impending future injury sufficient to support standing. They further contend that even if Plaintiffs can establish standing, their claimed injuries resulting from placement on the TSDB do not constitute a deprivation of a liberty interest protected by the Due Process Clause, and that in any event, DHS TRIP, the review process by which an individual may request a review of their presumed placement on the TSDB, is constitutionally adequate to protect any limited liberty interests Plaintiffs may have, particularly given the Government's interest in combatting terrorism. *See generally*, [Doc. No. 299].

For the reasons stated herein, Plaintiff's Motion for Summary Judgment is GRANTED and Defendants' Motion for Summary Judgment is DENIED. Briefly summarized, the Court concludes that (1) Plaintiffs have established that they have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through which Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests.

### **I. Background**

Unless otherwise noted, the following facts are undisputed:

#### **A. The TSDB**

The Terrorism Screening Center ("TSC") is an interagency operation within the Federal Bureau of Investigation ("FBI") that also involves the Department of Homeland Security

(“DHS”), the National Counterterrorism Center (“NCTC”), the Transportation Security Administration (“TSA”), and United States Customs and Border Protection (“CBP”). *See* Pls.’ Statement of Material Facts ¶¶ 1-2, 4; *see also* Defs.’ Statement of Material Facts ¶¶ 3-7. The TSDB is a centralized collection of information about listed individuals, including biographic and biometric data, that is compiled and maintained by the TSC. The information contained in the TSDB, which is unclassified, is “updated continuously and disseminated around the country and world in real-time.” Pls.’ Statement of Material Facts ¶¶ 5, 7; Defs.’ Statement of Material Facts ¶ 12. As of June 2017, approximately 1.2 million individuals, including approximately 4,600 United States citizens or lawful permanent residents, were included in the TSDB. Pls.’ Statement of Material Facts ¶ 9; Pls.’ MSJ Ex. 74 at ¶ 4.

An individual may be “nominated” to the TSDB by a federal government agency or foreign government. Pls.’ Statement of Material Facts ¶ 8; Defs.’ Statement of Material Facts ¶ 16. Nominated individuals are added to the TSDB if their nomination is based “upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.” Pls.’ Statement of Material Facts ¶ 15; Defs.’ Statement of Material Facts ¶ 13; Pls.’ MSJ Ex. 62 at 4.

All nominations to the TSDB are reviewed by the TSC, which, in assessing whether an individual should be placed on the TSDB, must determine whether the United States Government has a “reasonable suspicion that the individual is a known or suspected terrorist.” Pls.’ Statement of Material Facts ¶ 12; Defs.’ Statement of Material Facts ¶ 18; *see also* Pls.’ MSJ Ex. 66 at 46-47. A “known terrorist” is defined as “an individual who has been (1) arrested,

charged by information, or indicted for, or convicted of, a crime related to terrorism and/or terrorist activities by the United States Government or foreign government authorities; or (2) identified as a terrorist or member of a terrorist organization pursuant to statute, Executive Order or international legal obligations pursuant to a United Nations Security Council Resolution.” Pls.’ Statement of Material Facts ¶ 13. A “suspected terrorist” is “an individual who is reasonably suspected to be engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and/or terrorist activities.” *Id.* ¶ 14.

In determining whether to accept, reject, or modify a nomination, the TSC may consider, but may not solely base its decision on, an individual’s race, ethnicity, religious affiliation, or “beliefs and activities protected by the First Amendment, such as freedom of speech, free exercise of religion, freedom of the press, freedom of peaceful assembly, and the freedom to petition the government for redress of stress of grievances.” Pls.’ Statement of Material Facts ¶¶ 17-18; Defs.’ Statement of Material Facts ¶ 13; *see also* Pls.’ MSJ Ex. 62 at 4. The TSC may also consider an individual’s travel history, associates, business associations, international associations, financial transactions, and study of Arabic as information supporting a nomination to the TSDB. Pls.’ Statement of Material Facts ¶ 19; *see also* Pls.’ MSJ Ex. 40 at ¶ 20; Pls.’ MSJ Ex. 50 at ¶ 9; Pls.’ MSJ Ex. 25 at 340:17-341:13, 343:21-344:14. An individual’s placement into the TSDB does not require any evidence that the person engaged in criminal activity, committed a crime, or will commit a crime in the future; and individuals who have been acquitted of a terrorism-related crime may still be listed in the TSDB. Pls.’ Statement of Material Facts ¶ 20; *see also* Pls.’ MSJ Ex. 25 at 323:6-9; Pls.’ MSJ Ex. 28 at 254:5-255:8, 261:9-21, 276:13-18. The

underlying information that supports an individual's inclusion in the TSDB is not included in the database. Pls.' Statement of Material Facts ¶ 7.

The TSC shares the TSDB with various "partners," including federal, state, and foreign government agencies and officials, who then use that information to support their screening, vetting, credentialing, diplomatic, military, intelligence, law enforcement, visa, immigration, and other security functions. Pls.' Statement of Material Facts ¶ 21; Pls.' MSJ Ex. 62 at 1-2, 5-6. These partners include CBP, which screens all individual travelers against the TSDB when they seek to enter the United States, *id.* ¶ 25; the Coast Guard, which, along with CBP, uses the TSDB to screen passenger and crew manifests for ships traveling through U.S. waters and seaports, *id.* ¶ 26; TSA, which screens air travelers against the TSDB and designates anyone on the list as "high-risk status," subjecting them to additional pre-boarding security screening,<sup>4</sup> *id.* ¶¶ 54, 59-63; the State Department, which uses the TSDB to screen individuals for visa waiver, visa, and passport eligibility, *id.* ¶ 90; United States Citizenship and Immigration Services ("USCIS"), which checks the TSDB status of individuals who apply for or may benefit from immigration, asylum, and naturalization benefits, *id.* ¶ 94; DHS, which, in conjunction with other agencies, uses the TSDB to screen TSC, TSA, and CBP employees and contractors,<sup>5</sup> private sector employees with transportation and infrastructure functions,<sup>6</sup> individuals with any form of airport

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<sup>4</sup> This advanced pre-boarding security screening typically includes screening of the person using Advanced Imaging Technology (a walk-through metal detector) and a pat-down, and screening of accessible property through a scanner, an explosives trace detection search, and physical search of the interior of the passenger's accessible property, electronics, and footwear. Defs.' Statement of Material Facts ¶ 8; Defs.' MSJ Ex. 1 ¶ 39. Travelers may also be subject to this additional screening for a variety of reasons other than their inclusion in the TSDB. Defs.' Statement of Material Facts ¶ 8.

<sup>5</sup> Some TSC and TSA contractors, including IBM, InfoZen, Stopso, and Sotera, are given TSDB access for this purpose. Pls.' Statement of Material Facts ¶ 98.

<sup>6</sup> This includes private sector employees in the airlines, airports, general aviation, port authorities, nuclear facilities, chemical facilities, and hazardous material transportation industries, as well as employees of private entities receiving Overseas Private Investment Corporation ("OPIC") loans and U.S. Agency for International Development ("U.S. AID") benefits and grants. Pls.' Statement of Material Facts ¶ 105. These private entities are required to block TSDB listees from accessing sensitive information or physical areas, potentially rendering TSDB listees ineligible for certain job responsibilities. *Id.* ¶ 106.

identification, and those applying for or maintaining Transportation Worker Identification Credentials, Federal Aviation Administration airman certificates, and hazardous material transportation licenses, *id.* ¶¶ 97-103, 105; and the Department of Defense (“DOD”), which uses the TSDB to screen individuals accessing military bases, *id.* ¶ 119.

The FBI, which administers the TSC, also uses the TSDB to conduct and facilitate law enforcement screening and investigations, and, for that purpose, shares TSDB information with more than 18,000 state, local, county, city, university and college, tribal, and federal law enforcement agencies and approximately 533 private entities<sup>7</sup> through its National Crime Information Center (“NCIC”) system, which these law enforcement agencies and private entities then use to screen individuals they encounter in traffic stops, field interviews, house visits, and municipal permit processes. *Id.* ¶¶ 107-110. The FBI also uses the TSDB to screen its own applicants and employees, and to conduct background checks on individuals seeking to purchase firearms or obtain firearm licenses. *Id.* ¶¶ 117-118. TSDB data is also shared with more than sixty foreign governments with which the TSC has entered into foreign partner arrangements, which, subject to their domestic laws and the restrictions in the agreements, use the information for terrorist screening purposes. *Id.* ¶ 121; Defs.’ Statement of Material Facts ¶ 32.

Individuals who are included in the TSDB, or who are misidentified as or near matches to TSDB listees, may experience “delay, inconvenience, or other difficulties at a point of screening where TSDB data is used to screen for terrorists,” including being denied boarding on international flights, being subject to secondary inspection, having their electronic devices and those of their travel companions subject to an advanced search, and, if they are a foreign

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<sup>7</sup> These private entities include the police and security forces of private railroads, colleges, universities, hospitals, and prisons, as well as animal welfare organizations; information technology, fingerprint databases, and forensic analysis providers; and private probation and pretrial services. Pls.’ Statement of Material Facts ¶ 109.

national, being denied admission to the United States. Pls.’ Statement of Material Facts ¶¶ 24, 28-29, 32-33, 138. Individuals who experience travel-related difficulties that they attribute to their wrongful inclusion in the TSDB may seek redress by submitting a Traveler Inquiry Form to DHS TRIP. Defs.’ Statement of Material Facts ¶¶ 15, 23. This submission triggers a review by DHS TRIP of the information submitted by the traveler, which, in 98% of cases, results in a determination that the claimed travel difficulties had no connection to an individual’s inclusion in the TSDB. *Id.* ¶ 24; Pls.’ Statement of Material Facts ¶ 129. In cases where the individual is a match to an identity in the TSDB, DHS TRIP refers the matter to the TSC Redress Office, which then conducts a review of the underlying information supporting the individual’s inclusion in the TSDB, including by consulting with the nominating agency or foreign government, to determine whether they should be removed.<sup>8</sup> Pls.’ Statement of Material Facts ¶ 131; Defs.’ Statement of Material Facts ¶ 26. After this inquiry is concluded, DHS TRIP sends the traveler a determination letter with the results of their redress inquiry, but does not disclose whether the traveler was, or is, included in the TSDB.<sup>9</sup> Defs.’ Statement of Material Facts ¶ 27.

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<sup>8</sup> The TSC Redress Office does not accept or respond to direct inquiries from individuals but does accept inquiries received from Congress through the FBI Office of Congressional Affairs as to the “adverse screening experience of a constituent.” Pls.’ Statement of Material Facts ¶¶ 129-130.

<sup>9</sup> This process differs from the separate redress process that has been put in place for U.S. persons who are on the No Fly List, a subset of the TSDB. A DHS TRIP complaint filed by a U.S. person on the No Fly List triggers a requirement that DHS TRIP, after referral to and consultation with TSC, must inform the individual if they are currently on the No Fly List, following which the individual may request additional information, including TSC’s unclassified summary of the information supporting their inclusion on the No Fly List, and submit additional information they consider potentially relevant to their No Fly List designation. Pls.’ Statement of Material Facts ¶ 133. Upon receipt of this information, TSC and the TSA Administrator make a final written determination as to whether the individual should remain on the No Fly List, and if an individual remains on the List, a final order is issued which is subject to judicial review. *Id.* ¶ 134. This process for those on the No Fly List was put in place pursuant to a court order in *Latif v. Holder*, 28 F. Supp. 3d 1134, 1161-62 (D. Or. 2014) requiring the Government to “fashion new procedures that provide Plaintiffs with the requisite due process . . . without jeopardizing national security.”

## B. The Individual Plaintiffs

The Plaintiffs are twenty-three U.S. citizens, none of whom have been formally notified by the Government that they are included in the TSDB.<sup>10</sup> Though some of the Plaintiffs were previously denied boarding on flights, none of them believe they are currently on the No Fly List. *Id.* ¶ 38. Rather, Plaintiffs are routinely subjected to additional screening when they fly on a commercial airplane and when they enter the United States at a land border or port, though the frequency and invasiveness of that secondary screening varies; and they contend that their inclusion in the TSDB can be inferred from a range of adverse consequences they have suffered, including, but not limited to, adverse land border crossing experiences, *see* Pls.’ Statement of Material Facts ¶¶ 35-47, adverse experiences with electronic searches at the border, *id.* at ¶¶ 48-53, adverse air travel experiences, *id.* at ¶¶ 68-86, and adverse immigration experiences, *id.* at ¶¶ 95-96. For example:

(1) When attempting to return to the United States by car after a brief trip to Canada in April 2015, Plaintiff Anas Elhady (“Elhady”) was surrounded by CBP officers, handcuffed, and then escorted to a room where he was held for more than ten hours and repeatedly interrogated about his family members and other associates. *Id.* ¶ 35; *see* Pls.’ MSJ Ex. 1 at 181-92. During this time, Elhady required emergency medical attention and was transported to a hospital, where he was administered Basic Life Support. Pls.’ Statement of Material Facts ¶ 36. Elhady was transported to and from the hospital in handcuffs. *Id.* On at least two prior occasions, Elhady was detained for approximately seven to eight hours when attempting to cross the border into the United States, and was handcuffed, stripped him of his belongings, kept in a cell, and prohibited

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<sup>10</sup> It is not the Government’s practice to inform an individual of their inclusion in the TSDB either in the first instance or in connection with the resolution of a DHS TRIP complaint. *See* Pls.’ Statement of Material Facts ¶¶ 122-24; Defs.’ Statement of Material Facts ¶ 27.

from contacting his attorney. *Id.* ¶ 37. Elhady has also had his phone confiscated multiple times at the U.S. border, been pressured to reveal its password to border agents, been questioned about its contents, and been told by an FBI agent that his cell phone conversations were being monitored. *Id.* ¶ 49. When Elhady attempted border-crossings, CBP officers told him, “Are you serious? Someone like you should have stopped crossing the border by now.” *Id.*; Pls.’ MSJ Ex. 1 at 152. As a result of these experiences, Elhady stopped crossing the border altogether and stopped flying for more than a year. *Id.* ¶ 35; Pls.’ MSJ Ex. 1 at 186-92, 194. Elhady submitted a DHS TRIP inquiry on January 27, 2015, and DHS TRIP issued a final determination letter in response to that inquiry on May 11, 2015. Defs.’ Statement of Material Facts ¶ 74; Defs.’ MSJ Ex. 4 ¶ 36.

(2) Like Elhady, Plaintiffs Kadura, al Halabi, Shibley, Frljuckic, and John Doe 3, among others, have been forcibly arrested (often at gunpoint) and detained for long hours in front of their family. Pls.’ Statement of Material Facts ¶¶ 37-47 (also noting similar experiences by El-Shwehdi, Coleman, Jhan, and Samir and Shair Anwar).

(3) In addition to Elhady, Plaintiffs Shaout, El-Shwehdi, John Doe 2, Samir Anwar, Ali, and Baby Doe have had their electronics and those of family members searched, seized, and copied. *Id.* ¶¶ 48-53.

(4) Some Plaintiffs, including Shibley, Amri, Hakmeh, Shaout, El-Schwehdi, Fares, Coleman, Thomas, Khan, Shahir Anwar, Baby Doe, and Kadura, have regularly and repeatedly had their travel disrupted by long and invasive secondary inspections, causing them to, on some occasions, miss connecting flights, and sometimes to avoid travel altogether. *Id.* ¶¶ 68-84. And on a few occasions, some Plaintiffs, including Ahmed, John Doe 4, Elhyuzayel, Thomas, Amri, and Kadura, have been denied the ability to even board flights. *Id.* ¶¶ 85-86.

Based on their experiences, most of the Plaintiffs have submitted an inquiry with DHS TRIP as to their Watchlist status.<sup>11</sup> Some of these Plaintiffs have received in response letters informing them that there is no reason they should not be able to fly, but containing no information concerning whether they remain listed within the TSDB. *See* Pls.’ MSJ Exs. 3A, 9C. Others have received acknowledgement letters neither confirming nor denying their status on the Watch List. *See* Pls.’ MSJ Exs. 1B, 5B, 8B, 11A, 14B, 16A, 17B, 18B.

### **C. Procedural History**

Plaintiffs brought this action on April 5, 2016 [Doc. No. 1] and filed an Amended Complaint [Doc. No. 22] on September 23, 2016, in which they allege that their presumed inclusion in the TSDB violates (1) procedural due process (Count I); (2) substantive due process (Count II); (3) the APA (Count III); (4) the Equal Protection Clause (Count IV); and (5) the non-delegation doctrine (Count V). Plaintiffs seek a declaratory judgment that Defendants’ challenged policies violate their constitutional rights and an injunction requiring the Defendants to remedy the alleged constitutional violations, including by providing “individuals designated on the [TSDB] with a legal mechanism that affords them notice of the reasons and bases for their placement on the [Watchlist] and a meaningful opportunity to contest their continued inclusion.” [Doc. No. 22 at 91-92].

Defendants moved to dismiss the Amended Complaint on November 4, 2016 on the grounds that Plaintiffs’ claims were not justiciable, and to the extent they were, Plaintiffs had failed to plead sufficient facts to make any of their claims plausible. [Doc. No. 28] (the “Motion to Dismiss”). By Memorandum Order dated September 5, 2017 [Doc. No. 47], the Court first concluded that Plaintiffs’ claims were justiciable, as Plaintiffs had adequately alleged a

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<sup>11</sup> The only Plaintiffs who have not sought redress through DHS TRIP are Awad, Baby Doe 2, Doe 3, Fares, and Hakmeh. Pls.’ MSJ Ex. 4 ¶ 22.

constitutional injury in fact sufficient for standing as to all of their claims. *Elhady v. Piehota*, 303 F. Supp. 3d 453, 462 (E.D. Va. 2017). The Court then concluded that Plaintiffs had not alleged facts sufficient to make plausible their claims based on substantive due process (Count II), the Equal Protection Clause (Count IV), and the non-delegation doctrine (Count V), but had alleged sufficient facts to allow their procedural due process (Count I) and APA (Count III) claims to proceed. *Id.* at 468.

Following an extensive period of discovery, during which the Court considered a variety of issues as to what information pertaining to the TSDB was protected by the law enforcement or state secrets privileges and was thus not required to be disclosed in discovery, *see e.g.*, [Doc. Nos. 258, 294], the parties filed the pending cross-motions for summary judgment as to the remaining procedural due process and APA claims on March 11, 2019. [Doc. Nos. 298 and 303]. The Court held a hearing on the Motions on April 4, 2019, at the conclusion of which it took the Motions under advisement.

## II. Legal Standard

Summary judgment is appropriate only if the record shows that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986); *Evans v. Techs. Apps. & Serv. Co.*, 80 F.3d 954, 958–59 (4th Cir.1996). “When cross-motions for summary judgment are before a court, the court examines each motion separately, employing the familiar standard under Rule 56. . . .” *Desmond v. PNGI Charles Town Gaming, LLC*, 630 F.3d 351, 354 (4th Cir. 2011).

With regard to each motion, the party seeking summary judgment has the initial burden to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,

325 (1986). A genuine issue of material fact exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). To defeat a properly supported motion for summary judgment, the non-moving party “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 247–48. Whether a fact is considered “material” is determined by the substantive law, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* at 248. On a motion for summary judgment, the facts shall be viewed, and all reasonable inferences drawn, in the light most favorable to the non-moving party. *Zenith*, 475 U.S. at 255; *see also Lettieri v. Equant Inc.*, 478 F.3d 640, 642 (4th Cir. 2007).

### III. Analysis

As this Court has previously held, Plaintiffs’ Administrative Procedure Act (“APA”) claim asserted in Count III “essentially conflate[s]” with Count I’s procedural due process claim, *Elhady*, 303 F. Supp. 3d at 467, and the same analysis therefore governs as to both claims. Defendants argue that (1) Plaintiffs’ claims are not justiciable; (2) Plaintiffs’ injuries attributable to their placement on the TSDB do not constitute a deprivation of a liberty interest protected by the Due Process Clause; and (3) DHS TRIP provides constitutionally adequate protection of any limited liberty interests Plaintiffs may have, particularly given the Government’s interest in combatting terrorism.

### A. Justiciability

As a threshold matter, Defendants argue that Plaintiffs' claims should be dismissed pursuant to Fed. R. Civ. P. 12(b) because they lack standing to bring their claims, notwithstanding the Court's earlier rulings at the motion to dismiss stage that Plaintiffs' due process and APA claims were justiciable, and that they had the requisite standing to pursue them. Defendants argue that based on the record before the Court at this stage, Plaintiffs cannot satisfy the injury in fact requirement for standing because they have failed to establish with sufficient certainty any impending future injury. *See* [Doc. No. 299 at 38]. Separately, Defendants argue that the claims of the individual Plaintiffs who have failed to exhaust their administrative remedies by completing the DHS TRIP process should be dismissed as unripe. *Id.* at 40-41.

As a general proposition, in order for a plaintiff to have standing, (1) they must have "suffered an injury in fact . . . which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "there must be a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations and quotation marks omitted). As the party invoking jurisdiction, the plaintiff bears the burden of establishing these elements. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). While the plaintiff "must demonstrate standing for each claim . . . and for each form of relief that is sought," *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (internal quotation marks and citation omitted), they are not required to demonstrate standing for each individual plaintiff, and a claim is justiciable if even a single plaintiff has standing to raise it, *Bostic v. Schaefer*, 760 F.3d 352, 370-71 (4th Cir. 2014).

At issue here is the first element of the standing inquiry, the existence of an “injury in fact.” Where, as here, a plaintiff seeks relief in the form of a forward-looking injunction, satisfying the injury in fact element requires them to demonstrate that they are “immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury [is] both real and immediate, not conjectural or hypothetical.” *Lebron v. Rumsfeld*, 670 F.3d 540, 560 (4th Cir. 2012) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.” *Id.* (internal quotation marks and citation omitted). What a plaintiff seeking forward-looking injunctive relief must demonstrate is the existence of a future “threatened injury [that is] certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 401 (2013) (internal quotation marks and citation omitted).

In *Mohamed v. Holder*, 995 F. Supp. 2d 520, 535 (E.D. Va. 2014), the Court concluded that the plaintiff’s inclusion in the No Fly List was sufficient to establish a future threatened injury that was “actual, concrete and particularized, and traceable to the defendants.” Here, while none of the Plaintiffs claims to currently be on the No Fly List, they have all either been informed of their inclusion in the broader TSDB or reasonably inferred it as a result of various experiences.<sup>12</sup> While the consequences of an individual’s inclusion in the TSDB are less straightforward and sometimes less transparent than the consequences of their inclusion in the

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<sup>12</sup> Plaintiff Ahmed was actually informed that he was on the No Fly List, though he is not on it at this time. See Pls.’ MSJ Ex. 4 at 27. Kadura was told by a DHS agent that, in exchange for becoming an informant, the agent would “fix [his] travel issues,” which he reasonably took to mean that he was on the Watchlist. Pls.’ Statement of Material Facts ¶ 48. Fares was informed by TSA agents that he “had been given this designation,” which meant he “needed to be subjected to additional questioning and screening.” Pls.’ MSJ Ex. 19 at 99. Frljukic was told by CBP agents that the nature of his border-crossing experiences was pre-determined, from which he reasonably inferred that he had disfavored Watchlist status. Pls.’ MSJ Ex. 11 at 82-84. Shibly was told that his repeated questioning regarding his Islamic faith was because “we have to protect against terrorism.” Pls.’ Statement of Material Facts ¶ 87. The Government does not disclose an individual’s inclusion in the TSDB, and it is only through statements like these and the Plaintiffs’ actual air travel and border crossing experiences that they could become aware of their Watchlist status.

No Fly List, Defendants concede that there is uncontradicted testimony that at least five of the Plaintiffs in this action – Amri, John Doe 3, Elhuzayel, El-Shwehdi, and Frljuckic – are regularly subjected to enhanced screening that they attribute to their inclusion in the TSDB. [Doc. No. 299 at 39, 45].

Plaintiffs have adequately established with sufficient certainty impending future injury that is “actual, concrete and particularized, and traceable to the defendants,” who administer the TSDB and use it in determining whether an individual is detained for additional screening. In that regard, because of the enhanced screening and other travel-related difficulties they have encountered, multiple Plaintiffs have refrained from exercising their movement-based rights, including their right to international travel. *See* Pls.’ Statement of Material Facts ¶¶ 36 (Elhady), 44 (Frljuckic), 45 (John Doe 3), 46, 77 (El-Shwehdi), 47 (Coleman, Khan, and Anwar), 83 (Kadura), 84 (Baby Doe 2). As the Court recognized in *Mohamed v. Holder*, 266 F. Supp. 3d 868, 875 (E.D. Va. 2017), these Plaintiffs’ “decision not to engage in international travel because of the difficulties [they] reasonably expect to encounter upon return to the United States is sufficient to demonstrate standing.”

Defendants argue that the claims of Plaintiffs Awad, Baby Doe 2, Doe 3, Fares, and Hakmeh should be dismissed as unripe for adjudication because they have failed to exhaust their administrative remedies by completing the DHS TRIP process. [Doc. No. 299 at 40-41]. The “basic rationale” of the ripeness doctrine is “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Ostergren v. Cuccinelli*, 615 F.3d 263, 288 (4th Cir. 2010) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). The court assesses ripeness by “balanc[ing] the fitness of the issues for judicial decision with the hardship to the parties of withholding court consideration.” *Id.* (quoting *Miller*

*v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006)). A case is not ripe when “problems such as the inadequacy of the record . . . or ambiguity in the record . . . will make [the] case unfit for adjudication on the merits.” *Ostergren*, 615 F.3d at 288; *Reg’l Mgmt. Corp. v. Legal Servs. Corp.*, 186 F.3d 457, 465 (4th Cir. 1999).

In *Mohamed*, 995 F. Supp. at 535, the Court concluded that the plaintiff’s challenge to his inclusion in the No Fly List was ripe despite his failure to exhaust DHS TRIP’s administrative requirements because “there is nothing ‘hypothetical’ about [Plaintiff’s] claims, which attack the constitutionality of the No Fly List.” The Court further observed that “[t]he DHS TRIP process is already established, and [Plaintiff’s] participation in the process would not provide the Court with more information about how the process works than the Court already possesses or could be presented at trial.” *Id.* at 535-36. For substantially the same reasons, the claims brought by the Plaintiffs who have not exhausted their DHS TRIP remedies in this action are nevertheless ripe for adjudication. Plaintiffs’ claims are therefore justiciable.

#### **B. The Procedural Due Process Claim**

Whenever a person is deprived of “liberty or property interests within the meaning of the Due Process Clause,” procedural due process mandates “constraints on governmental decisions.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The strength and scope of those constraints vary “as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Nevertheless, there are “basic requirements” that procedural due process, in each instance, demands, including notice and a meaningful opportunity to be heard. *D.B. v. Cardall*, 826 F.3d 721, 743 (4th Cir. 2016). In *Mathews*, 424 U.S. at 335, the Supreme Court outlined the applicable analysis for procedural due process claims as follows:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action;

second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*See also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“The *Mathews* calculus [] contemplates a judicious balancing of these concerns, through an analysis of the risk of an erroneous deprivation of the private interest if the process were reduced and the probable value, if any, of additional or substitute procedural safeguards.”) (internal citations omitted).

For the purposes of the *Mathews* constitutional analysis, the Court concludes based on undisputed facts that Plaintiffs’ liberty interests implicated by their inclusion in the TSDB, though weaker than those implicated by placement on the No Fly List, are nevertheless strong; and the Government’s interest in securing the United States borders and aviation system from terrorist threats is compelling. The Court also concludes that the administrative process used to place a person on the TSDB has an inherent, substantial risk of erroneous deprivation; and that additional procedures, similar to those made available to individuals on the No Fly List following *Latif v. Holder*, 28 F. Supp. 3d 1134 (D. Or. 2014), would reduce the risk of erroneous inclusion in the TSDB and all the resulting consequences.

### **1. Plaintiff’s Movement-Related Interests**

Central to the *Mathews* analysis is the parties’ characterization of the nature of the movement-related liberty interests at stake. Plaintiffs characterize their movement-related liberty interest as the right to international travel, which this Court recognized as a protected liberty interest in *Mohamed v. Holder*, 2015 WL 4394958 at \*6. Plaintiffs assert that their inclusion in the TSDB has had the practical effect of preventing them from exercising their right to travel internationally, in some instances by denying them boarding on international flights, and in

others by imposing consequences so severe that Plaintiffs have stopped exercising the right. [Doc. No. 304 at 51]. Relying on the Court’s prior ruling that government actions that “actually deter” travel can create an unreasonable burden that deprives someone of their liberty interest in travel, Plaintiffs contend that their liberty interest in international travel is sufficient to trigger due process requirements. *See Elhady*, 303 F. Supp. 3d at 463.

Defendants, on the other hand, characterize Plaintiffs’ claimed liberty interest as the “right to travel through airports or across borders without screening or delay,” which they assert is insufficient to trigger due process requirements. [Doc. No. 299 at 43]. While Defendants concede that “there is some procedurally protected interest in travel and that outright bans on all means of travel would trigger due process requirements,” they assert that inclusion in the TSDB does not constitute such an outright ban on all means of travel. *Id.* Instead, Defendants characterize inclusion in the TSDB as merely subjecting Plaintiffs to “[i]nconvenience, inspections, or delay” when they travel, and point to various cases where courts have recognized that a traveler does not have a constitutional right to travel without encountering such burdens. *Id.* at 43, 45-47; *see, e.g., Beydoun v. Sessions*, 871 F.3d 459, 468 (6th Cir. 2017) (added security burdens imposed by placement on the Selectee List did not constitute a constitutional violation because plaintiffs “were not prohibited from flying altogether or from traveling by means other than an airplane”); *Gilmore v. Gonzalez*, 435 F.3d 1125, 1137 (9th Cir. 2006) (plaintiff “does not possess a fundamental right to travel by airplane even though it is the most convenient mode of travel for him”); *Cramer v. Skinner*, 931 F.2d 1020, 1031 (5th Cir. 1991) (“Minor restrictions on travel simply do not amount to the denial of a fundamental right that can be upheld only if the Government has a compelling justification.”).

The general right of free movement is a long recognized, fundamental liberty. *See Kent v. Dulles*, 357 U.S. 116, 125 (1958) (“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.”); *Zemel v. Rusk*, 381 U.S. 1, 15 (1965); *see also Kerry v. Din*, 135 S. Ct. 2128, 2133 (2015) (plurality opinion, Scalia, J.) (referencing Blackstone’s recognition that “the ‘personal liberty of individuals’ protected under the Magna Carta ‘consist[ed] in the power of locomotion, of changing situation, or removing one’s person to whatsoever place one’s own inclination may direct; without imprisonment or restraint.’”). Courts have also recognized a protected liberty interest in traveling internationally. *See Kent*, 357 U.S. at 126 (“Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our scheme of values.”). As this Court stated in *Mohamed*, “[i]t must be recognized that a meaningful right of travel in today’s world cannot be understood as cleanly divided between interstate and international travel or a right without any correlative rights with respect to the usual and available means in a modern society.” 2015 WL 4394958 at \*6.

While inclusion in the TSDB does not constitute a total ban on international travel in the same way that inclusion on the No Fly List does, the wide-ranging consequences of an individual’s Watchlist status render it more closely analogous to the No Fly List than to the types of regulations that courts have found to be reasonable regulations that still facilitated access and use of means of travel. *See, e.g. Gilmore*, 435 F.3d at 1137. This Court previously held that government actions that “actually deter” travel can create such an unreasonable burden that they constitute, in practical terms, a ban. *See Elhady*, 303 F. Supp. 3d at 463. Here, several Plaintiffs refrain from exercising their right of international travel because of the treatment they have been

subjected to due to their Watchlist status when attempting to fly internationally or cross the border into the United States. For example, Plaintiff Elhady, who was handcuffed in public view while attempting to cross the U.S.-Canada border on three separate occasions and once had to be rushed to the hospital and administered emergency Basic Life Support after being detained for hours at the border, now refrains from exercising his right of international travel to avoid similar experiences. *See* Pls.’ MSJ Ex. 1 at 150, 156, 165-177, 186-190, 194, 269; Pls.’ MSJ Ex. 1A at 4. Other Plaintiffs, including Frljuckic, Pls.’ MSJ Ex. 11 at 84, El-Shwehdi, Pls.’ MSJ Ex. 20 at 200, 204, 206, Coleman, Pls.’ MSJ Ex. 6 at 57, Khan, Pls.’ MSJ Ex. 18 at 93, Shahir Anwar, Pls.’ MSJ Ex. 16 at 66, Amri, Pls.’ MSJ Ex. 16 at 126, and Fares, Pls.’ Ex. 19 at 104, have all avoided international travel to varying degrees due to negative experiences with border crossings and air travel that they attribute to their inclusion in the TSDB.

Inclusion in the TSDB also burdens an individual’s right to interstate travel, which, as this Court observed in *Mohamed*, 266 F. Supp. 3d at 877, is well established as a fundamental right. The right accords all persons the freedom to travel domestically “uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). Here, several Plaintiffs have chosen not to exercise their right to travel domestically due to negative experiences while flying domestically that they attribute to their Watchlist status. These Plaintiffs include Khan, who avoids flying domestically and drives instead as a result of experiences that have contributed to “psychological trauma” associated with air travel. Pls.’ MSJ Ex. 18 at 74-84, 148-49, 158-66. Plaintiffs El-Shwehdi and Hakmeh have also chosen on various occasions to avoid domestic flights as a result of their domestic air travel experiences. Pls.’ MSJ Ex. 20 at 33, 43-44, 67 (El-Shwehdi); Pls.’ MSJ Ex. 7 at 68-69 (Hakmeh). Inclusion in the TSDB accordingly imposes a substantial burden on

Plaintiffs' exercise of their rights to international travel and domestic air travel, thus constituting a deprivation of Plaintiffs' liberty interests that requires some measure of due process.

## 2. Plaintiff's Reputational Interests

Coupled with Plaintiffs' movement-related rights are their reputational interests and claims of reputational harm resulting from their placement on the TSDB. A person has certain rights with respect to governmental defamation that alters or extinguishes a right or status previously recognized by state law, known as a "stigma-plus." *Paul v. Davis*, 424 U.S. 693, 711 (1976). "[A] plaintiff bringing a stigma-plus claim under *Paul* must allege both a stigmatic statement and a state action that distinctly altered or extinguished his legal status." *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012) (internal quotation marks omitted). The "plus" factor can be any "other government action adversely affecting the plaintiff's interests." *Doe v. Dep't of Pub. Safety ex rel. Lee*, 271 F.3d 38, 55 (2d Cir. 2001) *rev'd on other grounds*, *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003). The stigmatic statement is any statement that "might seriously damage [the plaintiff's] standing and associations in his community." *Bd. of Regents v. Roth*, 408 U.S. 564, 573 (1972). Because the defamatory statement must affect one's standing in the community, some type of dissemination or publication of the statement must be shown.

In *Mohamed*, 995 F. Supp. 2d at 529, the Court discussed "the broad range of consequences that might be visited upon [a person on the No Fly List] if that stigmatizing designation were known by the general public." The Court concluded that a person's listing on the No Fly List, in and of itself, does not infringe on any protected liberty interest, but left open the question of whether the broader dissemination of the No Fly List would satisfy the public disclosure prong of a stigma-plus claim. *See id.* at 528. Subsequently, in the context of a motion

for summary judgment as to the plaintiff's procedural due process claim in *Mohamed*, the Court acknowledged that:

“[A] person's placement on the No Fly List would likely become known over time to persons beyond government agencies or the airlines, with accompanying adverse consequences visited upon a restricted person. For example, any member of the general public who would actually witness a person being excluded from boarding might draw an adverse inference concerning that person's reputation. More likely to inflict reputational harm are other scenarios not hard to imagine where a person's inability to fly would become known to those outside of government and have adverse consequences, such as to a person's actual or prospective employer who would call upon that person to travel by air, or to extended family members whom a person might not be able to visit except through air travel, or to members of religious, professional or social organizations in which participation might require air travel.

2015 WL 4394958 at \*6. Accordingly, the Court concluded that while Mohamed's constitutionally protected reputational interests implicated by his No Fly List status were “not as strong as his travel related interests, . . . they underscore[d] the need overall for strong procedural protections for Mohamed's travel related rights.” *Id.*

Here, Plaintiffs' reputational interests implicated by their inclusion in the TSDB are substantial because of the extent to which TSDB information is disseminated, both in terms of the numbers of entities who have access to it and the wide range of purposes for which those entities use the information, including purposes far removed from border security or the screening of air travelers. For example, TSDB information is used in the screening of government employees and contractors, for which purpose access to the TSDB is provided to certain large private contractors to screen certain employees, as well as private sector employees with transportation and infrastructure functions. Pls.' Statement of Material Facts ¶¶ 97-103, 105-06.

Additionally, and significantly, the FBI shares an individual's TSDB status with over 18,000 state, local, county, city, university and college, tribal, and federal law enforcement

agencies and approximately 533 private entities for law enforcement purposes. *Id.* ¶¶ 107-110. These private entities include the police and security forces of private railroads, colleges, universities, hospitals, and prisons, as well as animal welfare organizations; information technology, fingerprint databases, and forensic analysis providers; and private probation and pretrial services. *Id.* ¶ 108. The dissemination of an individual’s TSDB status to these entities would reasonably be expected to affect any interaction an individual on the Watchlist has with law enforcement agencies and private entities that use TSDB information to screen individuals they encounter in traffic stops, field interviews, house visits, municipal permit processes, firearm purchases, certain licensing applications, and other scenarios. For example, Plaintiffs might experience in other interactions with law enforcement agencies or affiliated private entities the same kinds of encounters they complain about at the border – being surrounded by police, handcuffed in front of their families, and detained for many hours. In short, placement on the TSDB triggers an understandable response by law enforcement in even the most routine encounters with someone on the Watchlist that substantially increases the risk faced by that individual from the encounter. Based on these reputational harms, the Court concludes, as it did in *Mohamed*, 2015 WL 4394958 at \*6, that while Plaintiffs’ constitutionally protected reputational interests implicated by their TSDB status are not as strong as their travel related interests, they “underscore the need overall for strong procedural protections for Mohamed’s travel related rights.” *Id.*

### **3. Risk of Erroneous Deprivation**

The second *Mathews* factor looks to “the risk of an erroneous deprivation of [the liberty] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” 424 U.S. at 335. Here, Plaintiffs argue that the nature of the Defendants’

procedures give rise to a high likelihood of mistaken determinations and erroneous placements on the TSDB and that additional procedures would reduce that risk, without impairing legitimate governmental interests, even where there are national security concerns, reflecting the sentiments expressed in *Mohamed*, 2015 WL 4394958 at \*7, as well as such cases as *Hamdi v. Rumsfeld*, 542 U.S. at 528 (holding unconstitutional the government procedures used to determine whether an American citizen may be detained as an “enemy combatant” since they did not sufficiently provide notice of the facts for that classification and an opportunity to rebut those factual assertions before a neutral decision maker).

*Matthews* establishes that the “nature of the relevant inquiry” is, ultimately, “central to the evaluation of any administrative process” aimed at determining that scheme’s risk of erroneous deprivation. 424 U.S. at 343. An administrative inquiry that is “sharply focused and easily documented” will have a lower risk of erroneous deprivation than an inquiry that involves a “wide variety of information” and raises issues of “witness credibility and veracity.” *Id.* at 343-44. Determinations that, by their nature, are “fact-specific” present a “grave risk of erroneous deprivation.” *Weller v. Dep’t of Soc. Servs. for City of Baltimore*, 901 F.2d 387, 395 (4th Cir. 1990).

The nature of Defendants’ inquiry, as reflected in the TSDB inclusion standard they adopted, presents such a “grave risk of erroneous deprivation.” *Id.* There is no evidence, or contention, that any of these plaintiffs satisfy the definition of a “known terrorist.” None have been convicted, charged or indicted for any criminal offense related to terrorism, or otherwise. Rather, Plaintiffs are included in the TSDB because they have been labeled as “suspected terrorists,” a determination that this Court has found “to be based to a large extent on subjective judgments.” *Mohamed*, 995 F. Supp. 2d at 531. This inclusion standard is satisfied by

demonstrating a reasonable suspicion that an individual is “engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and/or terrorist activities.” Pls.’ Statement of Material Facts ¶ 12. But as this Court observed in *Mohamed*, this inclusion standard makes it easy to imagine “completely innocent conduct serving as the starting point for a string of subjective, speculative inferences that result in a person’s inclusion.” 995 F. Supp. 2d at 532. This situation is compounded by the fact that, as in *Mohamed*, “the Court has little, if any, ability to articulate what information is viewed by the TSC as sufficiently ‘derogatory’ beyond the labels it has provided the Court.” *Id.* Moreover, under the TSDB’s inclusion standard, the TSC may consider a wide range of factors in determining whether an individual belongs on the Watchlist, including an individual’s “race, ethnicity, or religious affiliation,” beliefs and activities protected by the First Amendment, travel history, personal and professional associations, and financial transactions. Pls.’ Statement of Material Facts ¶¶ 18-19. The vagueness of the standard for inclusion in the TSDB, coupled with the lack of any meaningful restraint on what constitutes grounds for placement on the Watchlist, constitutes, in essence, the “absence of any ascertainable standard for inclusion and exclusion,” which “is precisely what offends the Due Process Clause.” *See Smith v. Goguen*, 415 U.S. 566, 578 (1974).

The Defendants contend that there are sufficient safeguards to protect against the risk of erroneous deprivation since two agencies – the nominating agency and TSC – must review the nomination to ensure that there is sufficient supporting information, and the supporting information requires concrete criteria to be met. They further contend that the risk of erroneous deprivation is low because Plaintiffs may seek redress for their erroneous inclusion in the TSDB through DHS TRIP. But it is undisputed that there is no independent review of a person’s

placement on the TSDB by a neutral decisionmaker, and when coupled with the limited disclosures and opportunity to respond by a person who requests that his status be reviewed, there exists a substantial risk of erroneous deprivation, regardless of the internal procedures used to determine whether a nomination to the TSDB is accepted.<sup>13</sup>

Nor is DHS TRIP, as it currently exists, a sufficient safeguard because, in the context of individuals challenging their placement on the TSDB rather than on the No Fly List, it is a black box – individuals are not told, even after filing, whether or not they were or remain on the TSDB watchlist and are also not told the factual basis for their inclusion. *See* Pls.’ Statement of Material Facts ¶ 124; *see also Latif*, 28 F. Supp. 3d at 1154-61 (explaining why DHS TRIP process failed constitutional muster as applied to individuals on the No Fly List, and mandating changes to that process that have subsequently been made). Accordingly, the Court concludes that the risk of erroneous deprivation of Plaintiff’s travel-related and reputational liberty interests is high, and the currently existing procedural safeguards are not sufficient to address that risk.

#### **4. The Government’s Interest**

The third prong of the *Mathews* inquiry looks to “the Government’s interest, including the function involved and the fiscal and administrative burdens that [any] additional or substitute procedural requirement would entail.” 424 U.S. at 335. Here, there can be no doubt that there is a profound, fundamental, and compelling Government interest in preventing terrorist attacks, including by maintaining and protecting information necessary to prevent such attacks. *See Haig v. Agee*, 453 U.S. 280, 307 (1981) (“[N]o governmental interest is more compelling than the security of the Nation.”); *Wayte v. United States*, 470 U.S. 598, 612 (1985) (“Unless a society has the capability and will to defend itself from the aggressions of others, constitutional

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<sup>13</sup> As the Court previously observed in *Mohamed*, the Court has been presented with little information as to the internal procedures used to determine whether a nomination to the TSDB is accepted. *See* 995 F. Supp. 2d at 532.

protections of any sort have little meaning.”); *Mohamed*, 2015 WL 4394958, at \*5 (“[T]he government’s interest in protecting the safety of commercial aircraft is compelling[.]”). The question, then, is what kind of remedy can be fashioned to adequately protect a citizen’s constitutional rights while not unduly compromising public safety or national security.

Here, Plaintiffs seek additional procedural requirements in the form of notice of their placement on the TSDB and the reasons for it, and a meaningful opportunity to challenge their inclusion. In the context of a due process claim, so long as the deprivation of a right at issue is greater than a “de minimis” deprivation, “some form of notice and hearing . . . is required.” *Fuentes v. Shevin*, 407 U.S. 67, 90 n.21 (1972); *Cardall*, 826 F.3d at 743 (4th Cir. 2016) (finding that the basic requirements of procedural due process are (1) “notice of the reasons for the deprivation,” (2) some information regarding the “evidence against” the person injured, and (3) “an opportunity to present [the deprived person’s] side of the story.”). “[A]ssessing the adequacy of a particular form of notice requires balancing the interest of the State against the individual interest sought to be protected.” *Jones v. Flowers*, 547 U.S. 220, 229 (2006) (internal quotation marks and citation omitted).

Given the effects that pre-deprivation notice of an individual’s inclusion in the TSDB would have on the Government’s compelling interest in combating terrorism, a balancing of the respective interests does not weigh in favor of pre-deprivation notice. *See GRF v. O’Neill*, 315 F.3d 748, 754 (7<sup>th</sup> Cir. 2002) (“Risks of error rise when hearings are deferred, but these risks must be balanced against the potential for loss of life if assets should be put to violent use.”). Pre-deprivation notice and hearing could alert an individual, and through him or her, others, whom the Government suspects of terrorist activity, and thereby compromise ongoing investigations and endanger those persons involved in those investigations. *See Ibrahim v. DHS*,

62 F. Supp. 2d 909, 930 (N.D. Cal. 2014) (“[T]he Executive Branch must be free to maintain its watchlists in secret, just as federal agents must be able to maintain in secret its investigations into organized crime, drug trafficking organizations, prostitution, child-pornography rings, and so forth. To publicize such investigative details would ruin them.”). For these reasons, the Court concludes that so long as post-deprivation notice and hearing are sufficiently robust, pre-deprivation notice and hearing are not constitutionally required. *See Gilbert v. Homar*, 520 U.S. 924, 930 (1997) (“[O]n many occasions, [] where a State must act quickly, or where it would be impractical to provide pre-deprivation process, post-deprivation process satisfies the requirements of the Due Process Clause.”); *see also Holy Land Found. For Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57 (D.D.C. 2002), *aff’d*, 333 F.3d 156, 163-64 (D.C. Cir. 2003) (holding that pre-deprivation process is not constitutionally required within the context of immediate asset blocking to prevent financial assistance to terrorism); *but cf. Haramain Islamic Found. v. Dep’t of Treasury*, 686 F.3d 965 (9th Cir. 2011) (where there are no national security concerns, OFAC must provide a Specially Designated Global Terrorist designee a “timely” statement of reasons for the investigation); *Nat’l Council of Resistance of Iran v. Dep’t of State*, 251 F.3d 192 (D.C. Cir. 2001) (absent adequate showing to the court that earlier notification would impinge on security and foreign policy goals, target organizations for Foreign Terrorist Organization designation must receive pre-deprivation notice that they are under consideration for designation, the unclassified portions of the administrative record relied on in making the determination and an opportunity to rebut the administrative record). The Government has taken the position that the DHS TRIP process as it currently applies to challenges to inclusion in the TSDB is sufficiently robust and adequate, and that the DHS TRIP process applicable to challenges to the No Fly List should not be extended to challenges to inclusion in the TSDB

because the disclosure of an individual’s TSDB status and/or the reasons for their placement on the Watchlist would impair the Government’s “strong interest in protecting sensitive and classified information related to terrorism,” as well as its “interest in preventing acts of terrorism through the maintenance of an effective watchlisting system.” *See* [Doc. No. 299 at 58-60].<sup>14</sup>

DHS TRIP, in its current form, provides no notice concerning whether a person has been included or remains in the TSDB, what criteria was applied in making that determination, or the evidence used to determine a person’s TSDB status. Nor does the DHS TRIP process provide the Plaintiffs with an opportunity to rebut the evidence relied upon to assign them TSDB status. Given the consequences that issue out of a person’s inclusion in the TSDB, the Court concludes that DHS TRIP, as it currently applies to an inquiry or challenge concerning inclusion in the TSDB, does not provide to a United States citizen a constitutionally adequate remedy under the Due Process Clause.

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<sup>14</sup> This Court has previously found that the DHS TRIP process did not provide sufficient post deprivation notice and process to U.S. citizens on the No Fly List. *See Mohamed*, 2015 WL 4394958 at \*5 (adopting analysis in *Latif*, 28 F. Supp. 3d at 1161-62, as to inadequacy of DHS TRIP process). Pursuant to a court order in *Latif*, a case involving a similar challenge to the No Fly List, the DHS TRIP process has since been modified with regard to only U.S. citizens on the No Fly List. The court in *Latif* directed the Government to “fashion new procedures that provide Plaintiffs with the requisite due process described herein without jeopardizing national security” which must include “notice . . . to permit each Plaintiff to submit evidence relevant to the reasons for their respective inclusions on the No-Fly List” and “any responsive evidence that Plaintiffs submit in the record to be considered at both the administrative and judicial stages of review,” which may involve providing the plaintiffs “with unclassified summaries of the reasons for their respective placement on the No-Fly List or disclose the classified reasons to properly-cleared counsel.” 28 F. Supp. 3d at 1161-62. The Government revised its DHS TRIP procedures so that U.S. citizens on the No Fly List can seek redress through DHS TRIP by filing a complaint that triggers a requirement that DHS TRIP, after referral to and consultation with the TSC, inform the individual if they are currently on the No Fly List, following which the individual may request additional information, including TSC’s unclassified summary of the information supporting their inclusion on the No Fly List, and submit additional information they consider potentially relevant to their No Fly List designation. Pls.’ Statement of Material Facts ¶ 133. Upon receipt of this information, TSC and the TSA Administrator make a final written determination as to whether the individual should remain on the No Fly List, and if an individual remains on the List, a final order is issued which is subject to judicial review. *Id.* ¶ 134. In *Mohamed*, the Court reviewed that revised procedure and concluded that it was not facially unconstitutional. 2015 WL 4394958 at \*13. Rather, the Court recognized that the constitutional adequacy of that process would need to be assessed based on its application in any particular case and outlined the relevant considerations in making that assessment. *See id.*

### C. Plaintiffs' Remedy<sup>15</sup>

Before ruling further as to the appropriate relief in this case, the Court directs the parties to file supplemental briefing as to what they contend is the appropriate remedy, including whether the post-*Latif* changes to DHS TRIP should apply, including those procedures the Court has outlined for assessing the adequacy of that revised DHS TRIP process in a particular case; and if not, why not. The Court also directs the parties to address in their supplemental briefing whether Plaintiffs are entitled to any other remedies with regard to their APA claim, which the parties have represented is coextensive with the procedural due process claim.

### IV. Conclusion

For the above reasons, the Court concludes that the TSDB fails to provide constitutionally sufficient procedural due process, and thereby also violates the Administrative Procedures Act. Plaintiffs are therefore entitled to judgment as a matter of law on Counts I and III of their Amended Complaint, and it is hereby

ORDERED that Plaintiffs' Motion for Summary Judgment [Doc. No. 303] be, and the same hereby is, GRANTED to the extent that the Court concludes that the DHS TRIP process currently applicable to any inquiries concerning the TSDB does not satisfy the Due Process Clause; and Defendants' Motion for Summary Judgment [Doc. No. 298] be, and the same hereby is, DENIED; and it is further

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<sup>15</sup> Plaintiffs seek as a remedy for these constitutional violations a declaratory judgment in their favor, as well as injunctive relief that

(a) requires Defendants to remedy the constitutional and statutory violations identified above, including the removal of Plaintiffs from any watch list or database that burdens or prevents them from flying or entering the United States across the border; and, (b) requires Defendants to provide individuals designated on the federal terror watch list with a legal mechanism that affords them notice of the reasons and bases for their placement on the federal terror watch list and a meaningful opportunity to contest their continued inclusion on the federal terror watch list.

[Doc. No. 22 at 92].

ORDERED that the parties are to submit any additional briefing as to the outstanding issues to be resolved in this matter within 30 days of the date of this Order, with replies to each other's positions filed within 14 days thereafter.

The Clerk is directed to forward copies of this Order to all counsel of record.

  
\_\_\_\_\_  
/s/  
Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
September 4, 2019

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

ANAS ELHADY <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

In their Amended Complaint for Injunctive and Declaratory Relief and Jury Demand [Doc. No. 22], Plaintiffs claim that they are included in the Government’s Terrorist Screening Database, referred to colloquially as the Government’s Terrorist Watchlist (the “TSDB”), which they allege subjects them to additional screening at airports and border crossings and other adverse consequences and have challenged their inclusion in the TSDB on the grounds that it violates (1) procedural due process (Count I), (2) substantive due process (Count II), (3) the Administrative Procedure Act (Count III), (4) the Equal Protection Clause (Count IV), and (5) the non-delegation doctrine (Count V).

By Memorandum Opinion and Order dated September 5, 2017 [Doc. No. 47], the Court dismissed for failure to state a claim Plaintiffs’ substantive due process claim (Count II), Equal Protection Clause claim (Count IV), and non-delegation doctrine claim (Count V).

By Memorandum Opinion and Order dated September 4, 2019 [Doc. No. 323] (the “Order”), the Court entered summary judgment in Plaintiffs’ favor with respect to their procedural due process claim (Count I) and Administrative Procedure Act claim (Count III), concluding that placement on the TSDB affected constitutionally protected liberty interests that

triggered a constitutionally adequate remedy for those placed on the TSDB and directed the parties to file supplemental briefing as to what constitutes a constitutionally adequate remedy.<sup>1</sup>

In their supplemental briefing, Plaintiffs propose that the Court issue “[p]roper declaratory relief [that] will clarify exactly what process is and is not sufficient to put people on the TSDB[,]” including declarations that (1) the current TSDB inclusion standard is insufficient and that any inclusion standard must be based on criminal activity; (2) there must be notice and opportunity to be heard; (3) there must be adequate, timely, and detailed post deprivation notice; and (4) there must be an adequate hearing before a neutral arbiter. [Doc. No. 332] at 2–23.

Plaintiffs also seek broad injunctive relief with respect to all persons currently on the TSDB, including actions necessary to eliminate the unconstitutional stigma of those improperly placed on the TSDB. *Id.* at 23–27.

In their supplemental briefing, Defendants reassert their position that “Plaintiffs have not demonstrated entitlement to any relief in this matter because they have not shown that they are being harmed by the Terrorist Screening Database (“TSDB”), or that they are being deprived of a liberty interest protected by the Due Process Clause.” [Doc. No. 331] at 6. Nevertheless, recognizing that the Court has determined that there has been a procedural due process violation and has solicited the parties’ view on appropriate remedy, Defendants propose that the Court “simply enter a declaratory judgment regarding the violation found, and that any injunction entered should, at most, simply order the Defendants to develop additional procedures to be

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<sup>1</sup> By Order dated December 4, 2019 [Doc. No 335], the Court ordered Defendants to “file a statement that identifies with specificity those facts recited in the Court’s September 4, 2019 order [Doc. No. 323], as to which it contends there is a general factual dispute, with a specific supporting reference to the existing summary judgment record.” On December 16, 2019, Defendants filed Defendants’ Statement Identifying Facts Recited In The Court’s September 4, 2019 Order That Are Disputed [Doc. No. 338] (the “Statement”). In the Statement, the Government states that while it contends that facts recited in the Court’s September 4, 2019 Order were “disputed, clarified or placed in context in Defendants’ opposition,” in filing the Statement, “the government does not concede that any specific fact disputed is material.”

provided to appropriate Plaintiffs, commensurate with their particular circumstances” and that “a final appealable judgment” be entered so that the Defendants “may consider appellate options.”

*Id.*

Upon consideration of the litigation history, the parties’ positions, the unsettled nature of the issues and claims presented, including the threshold showing necessary to confer standing for the purposes of obtaining a constitutionally adequate remedy with respect to a possible TSDB listing, particularly in light of the consequences that attend placement on the TSDB through its distribution and use for purposes in addition to airport screening, as discussed in the September 4, 2019 Order; and based on the record, finding and concluding that Plaintiffs are entitled to further relief in connection with their procedural due process claim (Count I), it is hereby

ORDERED pursuant to Fed. R. Civ. P. 54(b) that final judgment be, and the same hereby is, ENTERED against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non-delegation doctrine claim), which claims the Court dismissed on September 5, 2017 [Doc. No. 47] and as to which the Court expressly determines there is no just cause for delay; and it is further

ORDERED pursuant to 28 U.S.C. § 2201 that a declaratory judgment be, and the same hereby is, ENTERED in favor of the Plaintiffs and against Defendants in connection with their procedural due process claim in Count I and their Administrative Procedure Act claim in Count III, and the Court declares, as set forth in its Memorandum Opinion and Order dated September 4, 2019 [Doc. No. 323], that (1) Plaintiffs, or at least some of them, have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through which

Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests; and it is further

ORDERED that to the extent the Court's declaratory judgment and declaration of rights entered herein pursuant to 28 U.S.C. § 2201 with respect to Plaintiffs' procedural due process claim in Count I and their Administrative Procedure Act claim in Count III does not constitute a final appealable judgment, the Court hereby certifies pursuant to 28 U.S.C. § 1292(b) that the Court's declaration of rights involves a controlling question of law as to which there is substantial ground for difference of opinion and therefore an immediate appeal from this Order may materially advance the ultimate termination of the litigation; and it is further

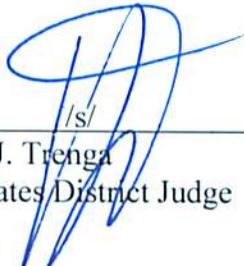
ORDERED that Defendants promptly review the listing of any named Plaintiff currently listed in the TSDB according to additional procedures to be added to a revised DHS TRIP process that are reasonably calculated to provide the required procedural due process, together with the creation of an adequate administrative record, with particular consideration given to (1) the threshold showing necessary to determine whether any such Plaintiff is entitled to such a review and the notice and explanation given to any Plaintiff determined not to meet that threshold; (2) the notice and opportunity to respond to any derogatory information; (3) the notice to be given Plaintiffs with respect to their TSDB status upon completion of that review; and (4) the opportunity for review and/or appeal of any adverse determination; and it is further

ORDERED that Defendants shall disclose those revised procedures to the Court for its review as to their constitutional adequacy, as well as the status of the named Plaintiffs with respect to any TSDB listing after a review under those revised procedures; and within forty-five (45) days of the date of this Order shall file a status report as to these revised DHS TRIP

procedures and Defendants' review of any Plaintiffs' placement on the TSDB under those revised procedures; and it is further

ORDERED that, notwithstanding any appeals, this action shall continue as appropriate pursuant to 28 U.S.C § 2202 and 28 U.S.C § 1292(b) with respect to any remaining claims or further necessary or proper relief based on the declarations and orders contained herein.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter a final judgment pursuant to Rule 58 with respect to the claims designated herein as final under Rule 54(b) and deemed final under 28 U.S.C. § 2201.

  
/s/  
\_\_\_\_\_  
Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
December 18, 2019

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

ANAS ELHADY, *et al.*, )  
)  
Plaintiffs, )  
v. ) Civil Action No. 1:16-cv-375 (AJT/JFA)  
)  
CHARLES H. KABLE, *et al.*, )  
)  
)  
Defendants. )  
\_\_\_\_\_)

**ORDER**

Defendants have filed a Motion To Partially Vacate The Court’s December 18, 2019 Order In Light Of Ten-Day Deadline [Doc. No. 344] (the “Motion”), in which Defendants seek to vacate that portion of the December 18, 2019 Order that certifies questions pursuant to 28 U.S.C. § 1292(b). Upon consideration of the Motion, the memorandum in support thereof and the Plaintiffs’ response thereto, and for good cause shown, it is hereby

ORDERED that the Motion [Doc. No. 344] be, and the same hereby is, GRANTED; and it is further

ORDERED that the Court’s Order dated December 18, 2019 [Doc. No. 341] together with the final judgment entered in connection therewith pursuant to Fed. R. Civ. P. 58 be, and the same hereby are, VACATED; and in its place, it is hereby

ORDERED pursuant to Fed. R. Civ. P. 54(b) that final judgment be, and the same hereby is, ENTERED against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non-delegation doctrine claim), which claims the Court dismissed on September 5, 2017 [Doc. No. 47] and as to which the Court expressly determines there is no just cause for delay; and it is further

ORDERED pursuant to 28 U.S.C. § 2201 that a declaratory judgment be, and the same hereby is, ENTERED in favor of the Plaintiffs and against Defendants in connection with their procedural due process claim in Count I and their Administrative Procedure Act claim in Count III, and the Court declares, as set forth in its Memorandum Opinion and Order dated September 4, 2019 [Doc. No. 323], that (1) Plaintiffs, or at least some of them, have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through which Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests; and it is further

ORDERED that Defendants promptly review the listing of any named Plaintiff currently listed in the TSDB according to additional procedures to be added to a revised DHS TRIP process that are reasonably calculated to provide the required procedural due process, together with the creation of an adequate administrative record, with particular consideration given to (1) the threshold showing necessary to determine whether any such Plaintiff is entitled to such a review and the notice and explanation given to any Plaintiff determined not to meet that threshold; (2) the notice and opportunity to respond to any derogatory information; (3) the notice to be given Plaintiffs with respect to their TSDB status upon completion of that review; and (4) the opportunity for review and/or appeal of any adverse determination; and it is further

ORDERED that Defendants shall disclose those revised procedures to the Court for its review as to their constitutional adequacy, as well as the status of the named Plaintiffs with respect to any TSDB listing after a review under those revised procedures; and within forty-five (45) days of the date of this Order shall file a status report as to these revised DHS TRIP

procedures and Defendants' review of any Plaintiffs' placement on the TSDB under those revised procedures; and it is further

ORDERED that, notwithstanding any appeals, this action shall continue as appropriate pursuant to 28 U.S.C § 2202 with respect to any remaining claims or further necessary or proper relief based on the declarations and orders contained herein.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter a final judgment pursuant to Fed. R. Civ. P. 58 with respect to the claims designated herein as final under Rule 54(b) and deemed final under 28 U.S.C. § 2201.

  
\_\_\_\_\_  
Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
December 27, 2019

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

ANAS ELHADY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

This matter is before the Court on Defendants’ Motion to Stay [Doc. No. 351] and Motion to Re-Certify the Court’s Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. § 1292(b) [Doc. No. 354] (collectively, the “Motions”). Upon consideration of the Motions, the memoranda of law in support thereof and in opposition thereto, the arguments of counsel, and for the reasons stated in open court during the February 14, 2020 hearing, it is hereby

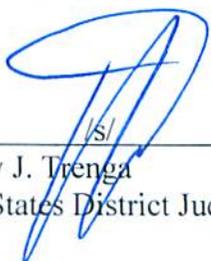
ORDERED that Defendants’ Motion to Stay [Doc. No. 351] be, and the same hereby is, DENIED for the reasons stated in open court; and it is further

ORDERED that Defendants’ Motion to Re-Certify the Court’s Disposition of Counts I and III for Interlocutory Appeal Under 28 U.S.C. § 1292(b) [Doc. No. 354] be, and the same hereby is, GRANTED; and the Court hereby certifies pursuant to 28 U.S.C. § 1292(b) that the Court’s following rulings with respect to Counts I and III involve a controlling question of law as to which there are substantial grounds for difference of opinion and therefore an immediate appeal from the Court’s Memorandum Opinion and Order dated September 4, 2019 [Doc. No. 323] may materially advance the ultimate termination of the litigation: (1) Plaintiffs, or at least

some of them, have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through which Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests; and it is further

ORDERED that Defendants submit to the Court the information and revised procedures identified in its Order dated December 27, 2019 [Doc. No. 348] within ninety (90) days of the date of this Order, and to the extent the Defendants contend that this information and revised procedures should be placed, in whole or in part, under seal or submitted *ex parte* or *in camera*, Defendants should accompany that submission with an appropriate motion.

The Clerk is directed to forward copies of this Order to all counsel of record.

  
\_\_\_\_\_  
/s/  
Anthony J. Trenga  
United States District Judge

Alexandria, Virginia  
February 14, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' NOTICE OF APPEAL**

Notice is hereby given that all defendants in the above named case hereby appeal to the United States Court of Appeals for the Fourth Circuit from the following orders entered in this action: Order, dated Dec. 18, 2019 (ECF No. 341); Judgment, dated Dec. 19, 2019 (ECF No. 342); Order, dated Dec. 27, 2019 (ECF No. 348). This appeal includes all prior orders and decisions that merge into these orders.

Dated: January 31, 2020

Respectfully submitted,

G. ZACHARY TERWILLIGER  
United States Attorney

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

ANTHONY J. COPPOLINO  
Deputy Director, Federal Programs  
Branch

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*/s/ Lauren A. Wetzler*  
LAUREN A. WETZLER  
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Assistant United States Attorney  
2100 Jamieson Ave.,  
Alexandria, VA. 22314  
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FILED: March 17, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-154  
(1:16-cv-00375-AJT-JFA)

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CHARLES H. KABLE, IV, Director of the Terrorist Screening Center, in his official capacity; KELLI ANN BURRIESCI, Principal Deputy Director of the Terrorist Screening Center in her official capacity; TIMOTHY P. GROH, Deputy Director for Operations at the Terrorist Screening Center in his official capacity; DEBORAH MOORE, Director of Department of Homeland Security Traveler Redress Inquiry Program in her official capacity; NICHOLAS J. RASMUSSEN, Director of the National Counterterrorism Center in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration in his official capacity; CHRISTOPHER ASHER WRAY, Director of the Federal Bureau of Investigation in his official capacity; KEVIN K. MCALEENAN, Acting Commissioner of United States Customs and Border Protection in his official capacity

Petitioners

v.

ANAS ELHADY; OSAMA HUSSEIN AHMED; AHMAD IBRAHIM AL HALABI; MICHAEL EDMUND COLEMAN; MURAT FRLJUCKIE; ADNAN KHALIL SHAOUT; WAEL HAKMEH; SALEEM ALI; SAMIR ANWAR; JOHN DOE, No. 2; JOHN DOE, No. 3; SHAHIR ANWAR; BABY DOE, 2; YASEEN KADURA; HASSAN SHIBLY; AUSAMA ELHUZAYEL; DONALD THOMAS; IBRAHIM AWAD; MUHAMMAD YAHYA KHAN; HASSAN FARES; ZUHAIR EL-SHWEHDI; JOHN DOE, No. 4; MARK AMRI

Respondents

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ORDER

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Upon consideration of submissions relative to the petition for permission to appeal and motion to stay district court proceedings, the court grants the petition and the motion. This case is transferred to the regular docket and assigned docket number 20-1311. District court proceedings are stayed pending the appeal in No. 20-1311.

A copy of this order shall be sent to the clerk of the district court.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: March 17, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1119 (L)  
(1:16-cv-00375-AJT-JFA)

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ANAS ELHADY; OSAMA HUSSEIN AHMED; AHMAD IBRAHIM AL HALABI; MICHAEL EDMUND COLEMAN; MURAT FRLJUCKIE; ADNAN KHALIL SHAOUT; WAEEL HAKMEH; SALEEM ALI; SAMIR ANWAR; JOHN DOE, No. 2; JOHN DOE, No. 3; SHAHIR ANWAR; BABY DOE, 2; YASEEN KADURA; HASSAN SHIBLY; AUSAMA ELHUZAYEL; DONALD THOMAS; IBRAHIM AWAD; MUHAMMAD YAHYA KHAN; HASSAN FARES; ZUHAIR EL-SHWEHDI; JOHN DOE, No. 4; MARK AMRI

Plaintiffs - Appellees

v.

CHARLES H. KABLE, Director of the Terrorist Screening Center, in his official capacity; KELLI ANN BURRIESCI, Principal Deputy Director of the Terrorist Screening Center in her official capacity; TIMOTHY P. GROH, Deputy Director for Operations at the Terrorist Screening Center in his official capacity; DEBORAH MOORE, Director of Department of Homeland Security Traveler Redress Inquiry Program in her official capacity; NICHOLAS J. RASMUSSEN, Director of the National Counterterrorism Center in his official capacity; DAVID PEKOSKE, Administrator of the Transportation Security Administration in his official capacity; CHRISTOPHER WRAY, Director of the Federal Bureau of Investigation in his official capacity; KEVIN K. MCALEENAN, Acting Commissioner of United States Customs and Border Protection in his official capacity

Defendants - Appellants

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No. 20-1311  
(1:16-cv-00375-AJT-JFA)

---

ANAS ELHADY; OSAMA HUSSEIN AHMED; AHMAD IBRAHIM AL HALABI; MICHAEL EDMUND COLEMAN; MURAT FRLJUCKIE; ADNAN KHALIL SHAOUT; WAEL HAKMEH; SALEEM ALI; SAMIR ANWAR; JOHN DOE, No. 2; JOHN DOE, No. 3; SHAHIR ANWAR; BABY DOE, 2; YASEEN KADURA; HASSAN SHIBLY; AUSAMA ELHUZAYEL; DONALD THOMAS; IBRAHIM AWAD; MUHAMMAD YAHYA KHAN; HASSAN FARES; ZUHAIR EL-SHWEHDI; JOHN DOE, No. 4; MARK AMRI

Plaintiffs - Appellees

v.

CHARLES H. KABLE, IV, Director of the Terrorist Screening Center, in his official capacity; KELLI ANN BURRIESCI, Principal Deputy Director of the Terrorist Screening Center in her official capacity; TIMOTHY P. GROH, Deputy Director for Operations at the Terrorist Screening Center in his official capacity; DEBORAH MOORE, Director of Department of Homeland Security Traveler Redress Inquiry Program in her official capacity; NICHOLAS J. RASMUSSEN, Director of the National Counterterrorism Center in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration in his official capacity; CHRISTOPHER ASHER WRAY, Director of the Federal Bureau of Investigation in his official capacity; KEVIN K. MCALEENAN, Acting Commissioner of United States Customs and Border Protection in his official capacity

Defendants - Appellants

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ORDER

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The court consolidates Case No. 20-1119 and Case No. 20-1311. Entry of appearance forms and disclosure statements filed by counsel and parties to the lead

case are deemed filed in the secondary case.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

~~SUBMITTED IN CAMERA, EX PARTE  
SENSITIVE SECURITY INFORMATION~~

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

\_\_\_\_\_  
Anas ELHADY, et al.,  
Plaintiffs,  
v.  
CHARLES H. KABLE, et al.,  
Defendants.  
\_\_\_\_\_

Case No. 1:16-cv-375 (AJT/JFA)

**DECLARATION OF HAO-Y TRAN FROEMLING**

I, Hao-y Tran Froemling, declare as follows pursuant to the provisions of 29 U.S.C. § 1746:

1. I am the Executive Director for Vetting, Office of Intelligence and Analysis, for the Transportation Security Administration (TSA), a component agency of the U.S. Department of Homeland Security (DHS). I have held this position since January 2018.
2. I understand the Plaintiffs in this action have challenged the constitutionality of the procedures afforded to U.S. citizens who seek to challenge their purported placement in the Terrorist Screening Database (TSDB). I make this Declaration in support of the Defendants' opposition to Plaintiffs' Fourth Motion to Compel. The statements herein are based on my personal knowledge and information made available to me in my official capacity.
3. As set forth below, I first describe TSA's mandate and highlight the security measures used by TSA to secure aviation. Next, I describe TSA's risk-based rules. Finally, I

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describe how TSA's risk-based rules inform mission coverage of the Federal Air Marshal Service (FAMS).

#### TSA's Mandate and Security Measures

4. As a result of the terrorist attacks of September 11, 2001, Congress passed the Aviation and Transportation Security Act of 2001 (ATSA), which created TSA. ATSA charged TSA with responsibility "for security in all modes of transportation" and created a federal workforce to screen passengers and cargo at commercial airports. ATSA also granted TSA broad authority to "assess threats to transportation," to "develop policies, strategies, and plans for dealing with threats to transportation security," to "enforce security-related regulations and requirements," and to "oversee the implementation, and ensure the adequacy, of security measures at airports." ATSA also specifically directed TSA to take appropriate action with respect to individuals who may be a threat to civil aviation or national security. The Intelligence Reform and Terrorism Prevention Act of 2004 (IRPTA) directed TSA to implement a pre-flight passenger pre-screening program comparing passenger information to the No Fly and Selectee Lists and to utilize all appropriate records in the Terrorist Screening Database (TSDB). As recommended in the final report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), TSA may also use the "larger set of watch lists maintained by the federal government." 49 C.F.R. § 1560.3. ATSA further directed TSA to deploy Federal Air Marshals (FAMs) on every flight determined to "present high security risks." In determining which flights present "high security risks," ATSA states that "nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority."

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Further, TSA may deploy FAMS on passenger flights of air carriers engaged in air transportation, including flights by aircraft between two places within the United States, and flights between a place in the United States and a place outside the United States.<sup>1</sup>

The TSA Administrator is also specifically authorized to exercise oversight and responsibility for the functions, duties, and personnel of the FAMS. FAMS are designated by the Administrator as federal law enforcement officers, and as such, carry the authorities of federal law enforcement officers. From the moment all external doors of an aircraft are closed following the boarding of passengers until the doors are opened to allow passengers to leave, the TSA Administrator has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an incident of air piracy.

5. TSA executes its mandate in part through the Secure Flight program, which pre-screens aviation passengers flying into, out of, within, and over the U.S. against various Government watch lists. All aviation passengers must undergo security screening prior to entering the sterile area of an airport and boarding an aircraft. Secure Flight may designate an individual for enhanced, standard, or expedited screening at airport security checkpoints.
6. Through Secure Flight, TSA may designate aviation passengers for enhanced screening based on a variety of criteria, including random selection, matching to a risk-based,

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<sup>1</sup> FAMS are limited to flights on U.S.-flagged aircraft and do not operate on foreign air carrier flights into, out of, or over the United States.

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intelligence-driven rule, or otherwise posing a threat to civil aviation or national security sufficient to warrant enhanced screening prior to boarding an aircraft.

7. TSA applies the same checkpoint screening procedures to individuals designated for enhanced screening, regardless of whether the individual is designated due to TSDB status or is designated randomly or for other reasons. In addition, passengers TSA designates for expedited or standard screening are not guaranteed to receive that type of screening and may be required to undergo additional screening as a result of unpredictable and random screening measures at the checkpoint, to resolve a walk-through metal detector alarm or an Advanced Imaging Technology (AIT) alarm, or for other reasons.
8. TSA recommends that all travelers arrive at the airport two to three hours in advance of the scheduled flight time. TSA's intent is to clear passengers for entry to the sterile area and to board an aircraft after applying the appropriate security measures. Although passengers may be delayed as a result of TSA's security measures, the purpose is to ensure aviation security and the freedom of movement for people and commerce.

#### TSA's Risk-Based Rules

9. TSA has evolved over time in its approach to aviation security, moving to more risk-based, intelligence-driven security operations. Under this passenger-centric approach, TSA conducts pre-screening to segment passengers by risk. Risk-based security increases operational efficiency and security effectiveness by allowing TSA to focus less on lower risk travelers and more on higher risk passengers or those about whom it knows less. Quiet Skies is one of TSA's risk-based security programs that identifies and

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addresses potential threats from individuals who may intend harm to aviation security but who are not in the TSDB maintained by the Terrorist Screening Center (TSC).

10. On December 25, 2009, Umar Farouk Abdulmutallab made a failed attempt to detonate an explosive device while onboard flight 253 from Amsterdam to Detroit. Mr. Abdulmutallab was not in the TSDB. Following this attack, the President of the United States initiated a review of the facts that permitted Abdulmutallab to board that flight. In his January 7, 2010 memorandum, the President concluded that immediate actions must be taken to enhance the security of the American people. TSA conducted its own review of the existing threats to aviation security and determined that it needed to mitigate the threat to commercial aviation posed by unknown or partially known terrorists based on analysis of current intelligence on terrorist travel and tradecraft. In order to do so, TSA partnered with U.S. Customs and Border Protection (CBP) to use the Automated Targeting System (ATS) to assist in designating individuals for enhanced screening during international air travel.
11. ATS is an enforcement and decision support tool that uses risk-based targeting to identify travelers, cargo and conveyances that may need additional scrutiny by CBP at the U.S. border. ATS receives advance information about passengers and crew attempting to fly to or from the United States. Information from both the Advanced Passenger Information System (APIS), which includes biographical information such as full name, date of birth, gender, flight number, date of arrival and departure, citizenship, and passport/alien registration card number, among others, and the Passenger Name Record (PNR), which refers to reservation information contained in an air carrier's electronic reservation

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system and/or departure control system that sets forth the identity and travel plans of each traveler or group of travelers included under the same reservation record, are utilized in the vetting of individuals attempting to travel to the United States.

12. ATS compares traveler information to travel patterns requiring additional scrutiny. The patterns are based on CBP officer experience, analysis of trends of suspicious activity and raw intelligence corroborating those trends. For example, ATS can compare information on travelers against criteria in a targeting rule developed by CBP that indicates a particular travel pattern is used by drug smugglers. CBP officials can then refer a person who meets such criteria who is attempting to enter or depart the United States for additional scrutiny, often known as a secondary inspection.

13. TSA creates two sets of rules that leverage ATS to designate passengers for enhanced screening. TSA's rules rely on an analysis of current intelligence reporting to identify a small portion of the traveling population into higher risk categories to determine whether individuals should receive enhanced screening. The rules developed by TSA exclusively address threats to aviation security or to the homeland. [REDACTED]

[REDACTED] TSA exclusively determines the rules that are used to designate airline passengers for enhanced screening and neither the Terrorist Screening Center nor the Watchlisting Advisory Council are involved in determining the rules. The rules constitute TSA final orders exclusively reviewable in a U.S. Court of Appeals pursuant to 49 U.S.C. § 46110.

14. [REDACTED] rules designates passengers on international flights for enhanced screening. [REDACTED] international rules that apply to domestic

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screening operations (“Quiet Skies rules”). TSA identifies such rules to address unknown threats to aviation security. These rules are applied to a limited set of travelers who matched to an international rule and received enhanced security screening on an international flight as a result. Individuals matching to such rules receive enhanced screening for a limited period of time.

15. TSA currently utilizes [REDACTED] Quiet Skies rules. [REDACTED]

[REDACTED]

[REDACTED] Out of the two million passengers TSA screens each day, the current Quiet Skies rules result in TSA designating approximately [REDACTED] passengers for enhanced screening.

16. TSA does not confirm or deny whether an individual received enhanced screening as a result of matching to a rule. Whether or not an individual received enhanced screening as a result of matching to a rule, as well as the rules themselves and certain details about their implementation, constitute Sensitive Security Information (“SSI”) pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. §§ 1520.5(b)(9)(i) and (ii).

17. TSA’s risk-based rules are only used by Secure Flight and are not used by any other TSA vetting programs. Federal agencies are required to provide “terrorist information” in their possession to the National Counterterrorism Center (NCTC) for integration into a terrorism identities database. “Terrorist information” is defined as “information about individuals known or reasonably suspected to be or to have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or terrorist activities.”

This requirement excludes individuals who merely match a Quiet Skies rule, as such

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individuals have only triggered a TSA rule that is an indication that there may be elevated risk that merits enhanced screening. Simply matching to a rule does not constitute derogatory information that the individual has or is suspected to have been engaged in conduct constituting, in preparation of, in aid of, or related to terrorism or terrorist activities. As a result, TSA does not submit information about individuals who match to a rule to TSC, NCTC, or the FBI for further screening or investigation by those agencies based solely on the match to the rule.<sup>2</sup>

18. Individuals who matched to a Quiet Skies rule will continue to receive enhanced screening [REDACTED] or for a period of [REDACTED]. In order to minimize impacts on travelers, TSA maintains a cleared list to ensure an individual will not continue to receive enhanced screening from matching to a rule indefinitely, and to enhance privacy, civil rights and civil liberties protections. After [REDACTED] or the requisite time period, individuals will not receive enhanced screening as a result of the prior match to a Quiet Skies rule.

19. TSA adds individuals to this cleared list for a period of [REDACTED]. During this time period, an individual would not be referred for enhanced screening due to [REDACTED]. After that [REDACTED] period, travelers who match [REDACTED]

[REDACTED]

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██████████ required to undergo enhanced security screening, and will again become eligible for this cleared list as described above.<sup>3</sup>

20. TSA rule sets for ATS are developed by the TSA Office of Intelligence & Analysis based on current threat information. The Office of Intelligence and Analysis continually evaluates the performance of the rules and the intelligence supporting them. If a rule is determined to no longer be necessary to address a particular threat, the rule will be deactivated and individuals identified for enhanced screening using the deactivated rule will no longer receive enhanced screening on account of that rule. Further, the rules are reviewed on a quarterly basis by the DHS Office for Civil Rights and Civil Liberties, the DHS Privacy Office, and the DHS Office of the General Counsel. The purpose of this review is to ensure that rules are based on current intelligence identifying specific potential threats; are deactivated when no longer necessary to address those threats; are appropriately tailored to minimize any impact upon bona fide travelers' civil rights, civil liberties, and privacy; and are in compliance with relevant legal authorities, regulations, and DHS policies.

#### FAMS Intelligence-Based Deployments

21. FAMS are an integral part of risk-based security where they serve within a matrix of security layers, and often as a last line of defense. FAMS serve as a deterrent to those with intent to do harm, and their presence helps to sustain the confidence of the traveling public. The FAMS is unique in its flexibility and ability to re-deploy thousands of law

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<sup>3</sup> Individuals may no longer be required to undergo enhanced screening at an earlier time as a result of TSA's threat assessment of the individual, multiple screenings, deactivation of the particular Quiet Skies rule, or a shorter period of time for receiving enhanced screening for certain rules.

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enforcement officers rapidly in response to specific threats or incidents in the transportation domain. As a risk-based organization, FAMS is responsive to current intelligence, threats and vulnerabilities and continually reviews its operations to further improve and mature the risk-based mission deployment methodology.

22. Information concerning the deployments, numbers, and operations of FAMS constitutes SSI pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. §§ 1520.5(b)(8)(ii) (“details of aviation . . . security measures, both operational and technical, whether applied directly by the Federal government or another person,” to include information “concerning the deployments, numbers, and operations of” FAMS constitutes SSI).

23. In March 2018, the FAMS began coverage of flights with individuals who matched to a Quiet Skies rule while continuing to prioritize flights [REDACTED]

[REDACTED] As explained above, TSA formulates risk-based screening rules based on [REDACTED] to identify higher risk travelers who are not on the TSDB.

24. TSA’s Office of Intelligence and Analysis (I&A) provides the identities of individuals who matched to a Quiet Skies rule to FAMS up to 72 hours in advance of the individual’s scheduled flight. The FAMS analyzes each flight [REDACTED]

[REDACTED]

25. If a FAM team will cover the flight, they will receive information about the passenger in advance, including the individual’s name, flight number, the rule(s) the passenger matched, and other available information relevant to the team’s coverage.

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26. All FAM teams have multiple priorities during a flight, including [REDACTED] monitoring other passengers in the cabin. The FAM team has the same priorities on flights with a Quiet Skies passenger (or any other higher-risk passenger) onboard, to include [REDACTED] monitoring passengers in the cabin, although the FAM team will be sure to observe the higher-risk passenger in case he or she exhibits any suspicious activity. Unless suspicious activity is observed, the FAM team's coverage of the Quiet Skies passenger is limited to in-flight observations and observations at [REDACTED] the airport. FAM teams merely observe what any passenger could observe while in the airport or passenger cabin.
27. After the flight, the FAM team will complete a report on which they will indicate whether or not they observed the passenger engage in suspicious activity. If there is no suspicious activity observed, the FAMS will make no report of any observations of the individual. FAMS may also recommend, based on their observations, that an individual no longer receive enhanced screening as a result of the prior match to a rule. This recommendation is then shared with I&A for an assessment as to whether the individual should receive enhanced screening for [REDACTED].
28. If the FAMs observe suspicious activity,<sup>5</sup> they will describe that activity on the report. The report is then shared with FAMS and I&A personnel, who will independently assess

<sup>4</sup> This would not permanently remove the possibility of the individual receiving enhanced screening, as the individual could match [REDACTED] or be randomly designated for enhanced screening, among other reasons.

<sup>5</sup> Suspicious activity includes, but is not limited to, [REDACTED]

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the information to determine whether further sharing is warranted, such as with TSA's insider threat division.<sup>6</sup> If the suspicious activity rises to the level of suspected terrorist activity, TSA will share the information with other appropriate government agencies, including NCTC and the FBI. Absent such suspicious activity, no information is shared.

29. By leveraging risk-based rules through Secure Flight, the FAMS is able to use intelligence driven information as an element in identifying the highest risk domestic and international mission deployments. FAMS provides an adaptive layer of security with the ability to change deployment capability – literally overnight – in response to risk identified by current intelligence.

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<sup>6</sup> "Insiders" are, or present themselves to be, current or former transportation sector workers (including both TSA and private sector personnel) and individuals employed or otherwise engaged in providing services requiring authorized access to transportation facilities, assets, or infrastructure. "Insider Threats" are "insiders" with the intent to cause harm to the transportation domain.

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DATED: August 15, 2018  
Arlington, VA

  
HAO-Y TRAN FROEMLING  
Executive Director for Vetting  
Office of Intelligence and Analysis  
Transportation Security Administration

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

<b>ANAS ELHADY, et al.,</b>	)	
	)	<b>Case No. 16-cv-00375</b>
Plaintiffs,	)	<b>Hon. Anthony J. Trenga</b>
	)	
v.	)	
	)	
<b>CHARLES H. KABLE</b> , Director of the	)	
Terrorist Screening Center; in his official	)	
capacity, <i>et al.</i> ;	)	
	)	
Defendants.	)	

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**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS'**  
**FIRST MOTION TO COMPEL RE: DEFENDANTS' REDACTED DOCUMENTS**

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## INTRODUCTION

The Government's copious redactions and withholdings of core watchlisting documents must be lifted. The law enforcement privilege is a qualified and not an absolute privilege – it should be lifted when Plaintiffs show a compelling need. Plaintiffs bring a procedural due process claim regarding deficiencies in the very watchlist policies which wreak havoc on their lives. Plaintiffs accordingly have a compelling need to know what those policies provide.

Most notably, the Government has invoked the law enforcement privilege to withhold in full the 2015 Watchlisting Guidance. The 2015 Watchlisting Guidance comprises the Government's complete and operative watchlist policy. It is the single most important document to understanding all watchlist operations, including nominations, screenings, encounters, and redress. Absent this governing document, Plaintiffs lack clarity on the rules which bind them.

The Government has likewise invoked the law enforcement privilege to refuse to provide statistics about its watchlist operations. Plaintiffs need these statistics to understand the watchlist's size, the scope of its deprivations, its error rates, and how the size of the watchlist compares to publicly available data about total travel and total terrorist attacks in the United States. These statistics bear upon the Government's interests in the watchlist, and the efficacy of the watchlist's operations. Based on the four redacted sample statistical reports the Government produced, it is clear the Government tracks material categories of data. Annualized versions of these numbers should be produced.

Finally, the Government invokes the law enforcement privilege to withhold 5 additional documents in full, and to interpose redactions on 26 more. For some of these documents, it is not clear the law enforcement privilege even applies, based on prior public disclosures of the same information. For others, Plaintiffs interests in knowing the policies which govern watchlisting and affect their lives supplies compelling need for setting aside the law enforcement privilege.

The Government asserts the law enforcement privilege for every document remaining in dispute. Across these documents, Plaintiffs only seek to lift the redactions designated (G) and (H) by the Government's deletion codes. (G) and (H) signify the law enforcement privilege and comprise the vast majority of the Government's redacted content. For purposes of this motion, Plaintiffs consent to the far more limited redactions based on other privileges and restrictions, including pursuant to the State Secrets Privilege, Sensitive Security Information<sup>1</sup>, Privacy Act, and more. *See* Dkt. 241-1 (Government Deletion Codes).

### **PROCEDURAL BACKGROUND**

On March 15, 2018, Plaintiffs filed their First Motion to Compel (Dkt. 137) regarding Defendants' withholding of certain relevant and responsive documents during discovery. Defendants filed their Opposition on April 23 (Dkt. 178), Plaintiffs filed a Reply on May 8 (Dkt. 208), and the Court held argument on May 18 (Dkt. 214). At the May 18 hearing, the Court ordered Defendants to provide the Court with *in camera* copies of the documents

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<sup>1</sup> Pursuant to 48 U.S.C. § 46110, Plaintiffs have separately petitioned the Sixth Circuit for review of Defendant TSA's two Final SSI Orders issued regarding discovery information sought by this litigation. *See* Sixth Circuit Pet. Nos. 18-3582 and 18-3799. Plaintiffs reserve the right to seek the SSI from this Court should the Sixth Circuit reject TSA's contentions.

listed on Plaintiffs' Reply Exhibit A, (Dkt. 208-1, Ex. A) and to provide Plaintiffs with redacted copies of the same documents. Defendants lodged the documents for ex parte, in camera inspection on May 29, 2018. *See* Dkt. 218. For the versions provided to Plaintiffs, Defendants withheld some of the documents in their entirety, including the operative 2015 Watchlisting Guidance (TSCA0019). On July 19, Defendants finished providing redacted versions of the remaining documents to Plaintiffs. On August 21, Defendants provided unredacted, "read-through" versions of all documents to the Court. *See* Dkt. 241. Magistrate Judge Anderson has deferred the adjudication of some related discovery disputes pending this Court's resolution of this motion. Concurrently with these document-related motion to compel proceedings, Judge Anderson has also ordered the TSA to sit for an additional deposition<sup>2</sup> in light of the Court's concern "that this deposition that was taken on March 20 has information in it that really wasn't accurate," particularly the TSA's witness's "troublesome" evasion of questions regarding "intelligence collection on passengers" at airports. *See* 8/24/2018 Hearing Tr., Dkt. 246 at 79-80.

Pursuant to the Parties' agreements and the Courts' orders (Dkt. 240, Dkt. 250) Plaintiffs now submit supplemental briefing regarding the propriety of Defendants' redactions and withholdings. For the convenience of the Court, Plaintiffs have appended to this motion an Index of Redacted Exhibits, which is in essence a modified version of Reply Exhibit A. The Index reflects assigns Supplemental Briefing Exhibit Numbers, reflects which Reply Exhibit A documents the Government withheld, and includes a couple Government updates to more current versions of documents. All redacted documents are separately attached as Supplemental Exhibits.

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<sup>2</sup> The parties have scheduled the second TSA deposition for October 4, 2018.

## LEGAL STANDARD

Federal Rule of Civil Procedure 26(b)(1) provides: “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). The burden on a motion to compel falls on the Government, who is “the party objecting to the discovery to establish that the challenged production should not be permitted.” *Singletary v. Sterling Transp. Co., Inc.*, 289 F.R.D. 237, 241 (E.D. Va. 2012). To the extent the Government invokes law enforcement privileges to avoid discovery, it bears the burden of showing the privileges apply. *See United States v. Matish*, 193 F. Supp. 3d 585, 597 (E.D. Va. 2016) (citing *In re The City of New York*, 607 F.3d 923, 944 (2d Cir. 2010) and *In re Sealed Case*, 856 F.2d 268, 271-72 (D.C. Cir. 1988)). The law enforcement privilege is a qualified and not an absolute privilege. *See United States v. Matish*, 193 F. Supp. 3d 585, 597 (E.D. Va. 2016) (citing *In re The City of New York*, 607 F.3d 923, 944 (2d Cir. 2010) and *In re Sealed Case*, 856 F.2d 268, 271-72 (D.C. Cir. 1988)). It can be set aside based on a Plaintiffs’ compelling need. *See id.*

For the law enforcement privilege to apply, the Government “must show that the documents contain information that the law enforcement privilege is intended to protect.” *Matish*, 193 F. Supp. 3d at 597. Even accepting the Government “successfully shows that the privilege applies, the district court then must balance the public interest in nondisclosure against the need of a particular litigant for access to the privileged information.” *Matish*, 193 F. Supp. 3d at 597 (internal quotation omitted). The Government’s law enforcement privilege should be lifted here because Plaintiffs’ (1) suit is non-frivolous and brought in good faith, (2) the information sought is not available through other discovery or from other sources, and (3) Plaintiffs have a compelling need for the

information. *Hugler v. BAT Masonry Co.*, 6:15-cv-28, 2017 U.S. Dist. LEXIS 49027, at \*11-13 (W.D. Va. Mar. 31, 2017) (citing *In re The City of New York*, 607 F.3d 923, 944-945 (2d Cir. 2010)). The Government has never challenged Plaintiffs' suit as frivolous, nor contended that the requested watchlist policies and information are available from any other source than the Government itself.

The Government's key argument in opposing disclosure is that Plaintiffs lack a compelling need for the requested relevant information because watchlist policies are not "necessary" to the resolution of Plaintiffs' procedural due process claims. *See* Dkt. 178 at 2, 14, 15, 16, 22, 24, 27, 28, 30. Yet the Plaintiffs' need for the information is critical to the balancing analysis: "It is not fair for the government," to take adverse legal action against a person, "and then hide behind a privilege information that might exonerate that person." *Miller v. Holzmann*, No. 95-cv-01231, 2007 U.S. Dist. LEXIS 16117 \*8 (D.D.C. Mar. 8, 2007) *magistrate recommendation adopted by district court*, 2007 U.S. Dist. LEXIS 21681 \*5 n.1 (D.D.C. Mar. 9, 2007) (compelling production of FBI investigative file).

Discovery has substantiated the wide variety of stigmatizing and adverse consequences which have been wrought upon Plaintiffs due to the watchlist's operations, which they lack the ability to contest or cure. In order to challenge the adequacy of the procedures Defendants actually use, Plaintiffs need access to core watchlisting policies, including inclusion standards, nomination standards, screening procedures, encounter procedures, redress procedures, and statistical assessments. The Government uses these policies in order to designate Plaintiffs as high-risk potential terrorists and deprive them of liberty, and yet the Government refuses to disclose them. Plaintiffs have established that the balance of interests favors disclosure of law enforcement privileged information to

Plaintiffs, so that the procedures surrounding the watchlist can be subjected to judicial review. *See United States v. Matish*, 193 F. Supp. 3d 585, 597 (E.D. Va. 2016).

## ARGUMENT

### **I. Plaintiffs Have A Compelling Need For The 2015 Watchlisting Guidance**

The single most important document regarding the watchlist is the 2015 Watchlisting Guidance, which the Government has withheld in full. The Government does not dispute the 2015 Watchlisting Guidance (TSCA0019) is governing policy. At its 30(b)(6) deposition, the TSC testified that its “policies and procedures generally are governed by whatever the current Watch Listing Guidance is, which is promulgated by ... the Watch Listing Advisory Council.” *See* MTC1, Dkt. 139-1, Ex. M, TSC Depo. Tr. at 15. In each agency’s 30(b)(6) deposition, they emphasized the Watchlisting Guidance’s role as a governing document. *See* MTC2, Dkt. 167-1, Ex. B, TSA Depo. Tr. at 122-129, 196, 284, 365-366; Dkt. 167-1, Ex. C, CBP Depo. Tr. at 329-331; Dkt. 170-2, Ex. D, FBI Depo. Tr. at 254, 257-260, 263-264.

The 2015 Watchlisting Guidance sets forth the core watchlisting policy information Plaintiffs seek. The document sets forth all current standards all watchlisting agencies follow regarding inclusion standards, nominations, exceptions, screenings, encounters, removals, quality control, and more. *See, e.g.,* Groh Decl., Dkt. 178-18 ¶¶ 26-35. The TSC testified, for example, that “to further break down the practical application of [watchlisting inclusion] standards is found in the guidance and the training materials for each one of those clauses.” *See* MTC1, Dkt. 139-1, TSC Depo. Tr. at 329-331, 337-338. Other policy documents cross-reference the 2015 Watchlisting Guidance as well. *See, e.g.,* Supp. Ex. 34, TSCE0003 at Elhady-FBITSC-PRIV004672 (“For the full list, please see the 2015

Watchlisting Guidance...[redacted].”). The 2015 Watchlisting Guidance also likely contains definitions of what constitutes “known” vs “suspected” terrorists and lists of terrorism-related crimes, which Plaintiffs could use to cross-reference publicly available terrorist data. *See, e.g.*, Dkt. 22-2 (2013 Watchlisting Guidance).

This Court has previously recognized that a relevant consideration for procedural due process claims is the “specific criteria” used by the Government to place persons in the Terrorist Screening Database. *See Mohamed v. Holder*, No. 1:11-cv-50, 2015 U.S. Dist. LEXIS 92997, at \*44 (E.D. Va. July 16, 2015) (Trenja, J.) (setting forth factors for constitutionally adequate process regarding placement on No Fly List). The Court in this case later remarked that the Government’s “internal processes” for watchlist management could amount to a “‘trust us’ approach” that “is inconsistent with the fundamental procedural protections applicable to the deprivation of a protected liberty interest, including the right to be heard.” *See* Opinion on Motion to Dismiss, Dkt. 47 at 16. With their refusal to disclose governing policy, the Government’s “trust us” approach continues, harming Plaintiffs.

Large segments of law enforcement privilege designations for the 2015 Watchlisting Guidance are not proper. The Government admits that no part of the 2015 Watchlisting Guidance is classified. Groh Decl., Dkt. 178-18 ¶¶ 27-28. Although some information in the 2015 Watchlisting Guidance has been designated as SSI, the SSI segments amount to a relatively small and discrete portion of the entire, lengthy document. The Government admits that some details or portions of the 2015 Watchlisting Guidance may seem innocuous or harmless; it once previously prepared a redacted version for potential public consumption. Groh Decl., Dkt. 178-18 ¶ 28 & n.6. In preparing the ten-page *Overview* document and other redactions regarding watchlist policies, substantial swaths of

information contained in the 2015 Watchlisting Guidance itself are surely now public. Notably, the 2013 Watchlisting Guidance – which likely substantially overlaps with the 2015 version – has been public (due to a leak) for more than four years.

Even for portions which have not been publicly disclosed, Plaintiffs’ compelling need justifies lifting the redactions – as does the public interest in knowing how the Government operates a system designed to label innocent US persons as “high-risk” and “potential terrorists.” The 2015 Watchlisting Guidance is the center of the Government’s secretive watchlisting system. Pursuant to its policies, it subjects Plaintiffs and innocent United States citizens and their families to embarrassment, public stigma, restrictions on domestic and international travel, handcuffing, electronics searches, FBI inquisitions, lengthy detentions upon entry, immigration benefit delays, denials of certifications and employment, and a multitude of other consequences. Plaintiffs’ liberty interests, the Governments’ law enforcement interests, the processes used in watchlist operations, the availability of adequate substitute procedures, and the risks of erroneous deprivations are all implicated by the Guidance. Accordingly, Plaintiffs have demonstrated a compelling need for the 2015 Watchlisting Guidance’s production.

Notably, nowhere in setting forth the potential law enforcement harm from the 2015 Watchlisting Guidance’s disclosure does the Government point to any actual terrorist circumventions or law enforcement harms experienced by the 2014 leak of the 2013 Watchlisting Guidance. Nor has the Government pointed to any actual harm experienced from all other public disclosures regarding the watchlist, whether they came in response to media, Congress, litigation, or leaks. Therefore, as they have done with all other redactions, the Government should be required to line-edit the 2015 Watchlisting Guidance to only

redact SSP, SSI, Privacy Act, and like privileges – and then lift the law enforcement privileged portions designated under deletion codes (G) and (H).

## II. Plaintiffs Have A Compelling Need For Annualized Statistical Data

Plaintiffs believe the Government’s statistics show—incontrovertibly—that the watchlist has not done anything to prevent an act of terrorism, that no actual terrorist has ever been on the watchlist at the time he committed his act of terrorism, and that the federal government knows this. Government statistics will allow Plaintiffs to demonstrate that the risk of erroneous deprivation is 100 percent, something Defendants certainly understand as a result of the statistics they monitor.

After claiming the Government “does not track much of the information requested by Plaintiffs,” *see* Groh Decl., Dkt. 178-18 ¶¶ 70-71, the Government’s production of sample redacted statistical reports show that a wealth of statistical information requested by Plaintiffs is, in fact, regularly tracked. These categories include how many TSDB nominations have been processed, and how quickly. *See* Supp. Ex. 23b. TSDB statistics include the total number of persons in the TSDB, including subsets designated as No Fly, Selectee, and US Persons. *See* Supp. Ex. 12 at 3. They include data on US Persons listed on the TSDB – whether they are on the No Fly List or not – being denied boarding on aircraft or entry to the United States. *See* Supp. Ex. 12 at 10. They include the number of TSDB persons and US persons exported to other Government databases, including the Department of Homeland Security’s Watchlisting System, the State Department’s CLASS Visa and Passport systems, and the FBI’s National Crime Information Center system. *See, e.g.,* Supp. Ex. 12 at 4, 11. The Government even appears to track how many TSDB Listees are specifically annotated as “Armed and Dangerous” within CBP’s TECS system. *See* Supp.

Ex. 13 at 2. Entire names of other categories of data are redacted. *See, e.g.*, Supp. Ex. 12 at 4, 12, 18, 19; Supp. Ex. 13 at 1, 2; Supp. Ex. 23b.<sup>3</sup>

In addition to the size and subcategorizations of the watchlist, the TSC aggregates data on all TSDB encounters, including whether they were positive, negative, or inconclusive. *See, e.g.*, Supp. Ex. 12 at 5, 7. Encounters are tracked based on whether the event occurred domestically, pursuant to FBI Investigation, or pursuant to an interaction with the TSA, CBP, state or local law enforcement, or other federal agencies or foreign partners. *See, e.g.*, Supp. Ex. 12 at 5-7; Supp. Ex. 23b.

Plaintiffs are willing to accommodate, for purposes of this motion, the Government's concern that weekly or monthly TSC statistical reports are too detailed and would provide too much opportunity for trend-analysis that could harm law enforcement. *See* Groh Decl., Dkt. 178-18 ¶ 77; TSA Final Order, Dkt. 178-21 at 7. For that reason, Plaintiffs limit their request to only annualized data, for every category listed in the sample statistical reports. *See* Supp. Ex. 12, 13, 23. The Government's law enforcement interest in this data is minimal: it has repeatedly in the past disclosed aggregate and annual trend statistics comparable to those Plaintiffs seek, and it identifies no concrete harms that have resulted from such disclosures. Illustratively, two statisticians retained by Plaintiffs have helped compile a spreadsheet of some of the Government's prior public disclosures related to travel, the watchlist, encounters, and redress. *See* Declaration of William Fairly & William Huber in Support of Supplemental Briefing ("Stat. Decl."), Ex. B. The Government's publication of statistics regarding handling codes, encounters, No Fly and Selectee

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<sup>3</sup> Although not a statistical report, Supp. Ex. 3 includes statistics on foreign partner use of the HSPD-6 encounter process. Basic information on foreign government use of the TSDB would not imperil law enforcement interests.

breakdowns, and more in the past mitigate against any law enforcement interest in disclosing qualitatively comparable numbers now. At a minimum, the Government should fill in the gaps in the spreadsheet attached to their declaration as Exhibit B. The Government's desire to avoid embarrassment due to Plaintiffs' comparison of the TSDB's size with its inefficacy at identifying actual terrorists is not a valid law enforcement interest.

The Government has stated that the goal of the TSDB is to identify "persons who intend to commit acts of terrorism," to provide a "common operating picture" to screening and law enforcement agencies who may encounter these persons, and thereby to help prevent future terrorist attacks. *See* MTC1, Dkt. 139-1, Ex. M, TSC Depo. Tr. at 81-82, 283. Whether or not the TSDB actually accomplishes these stated goals relates directly to the strength of the Government's interests in placing persons in the TSDB, as well as the Government's interests in maintain its current watchlisting procedures. As the GAO publicly recognized back in May 2012, prior changes to federal watchlisting guidance had led to "increasing volumes of information and related challenges in processing this information." *See* Government Accountability Office, *Routinely Assessing Impacts of Agency Actions Since the December 25, 2009 Attempted Attack Could Help Inform Future Efforts* (May 2012), available at <https://www.gao.gov/assets/600/591312.pdf>.

As but one example of this excessive growth, the CBP disclosed in 2008 that it intercepted approximately 1 person per day "identified to have suspected national security concerns." *On a Typical Day in Fiscal Year 2008*, U.S. CUSTOMS AND BORDER PROTECTION (last modified Feb. 18, 2014), available at <https://www.cbp.gov/newsroom/stats/previous-year/fy08/fy08-typical-day>. By 2017, that number had increased *thousands* of times over,

to the CBP daily identifying “1,607 individuals with suspected national security concerns.” *Snapshot: A Summary of CBP Facts and Figures*, U.S. CUSTOMS AND BORDER PROTECTION (August 2018), available at <https://www.cbp.gov/sites/default/files/assets/documents/2018-Aug/cbp-snapshot-20180823.pdf>. Despite the staggering growth in the watchlist’s size and terror-related encounters, the Government *does not know* whether an encounter has ever led to a terrorism-related arrest, much less indictment or conviction. The Government provided a declaration showing that five years of encounter data led to 1455 TSDB Listee “arrests,” but interposed the caveat that “arrest” could just mean “traffic stop.” *See* 7/5/2018 Groh Decl. ¶ 5. The Government should be compelled to review the details of those “arrest” records in order to sub-categorize them by type of arrest, including how many “arrests” were for a terrorism offense.<sup>4</sup>

In this case, statistical information is likely to prove dispositive insofar as Plaintiffs believe that the numbers will show a 100 percent risk of erroneous deprivation. Balanced on the scale with the Government’s asserted law enforcement interests in annual statistics is the Plaintiffs’ compelling need for aggregate, annualized statistical information regarding watchlist contents and operations. A core allegation in Plaintiffs’ Complaint is that “Defendants’ watch listing system would perform similarly if inclusion on the watch list was done via random selection instead of the existing inclusion standards Defendants utilize.” *See* Amended Complaint, Dkt. 22 at ¶ 28. In order to substantiate that assertion, and otherwise assess the effectiveness of the watchlist, Plaintiffs need statistics regarding the watchlist’s size, scope, error rates, redress processing, and more. *See* Stat. Decl. ¶¶ 7, 10. Especially when cross-referenced against public data about total U.S. citizens, crimes,

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<sup>4</sup> Plaintiffs believe not a single arrest was for a terrorism-related offense.

travelers and terror attacks, watchlist data can be assessed statistically for effectiveness.

See Stat. Decl. ¶¶ 5, 7, 11, 12.

**III. As to All Other Redacted Documents, The Government's Assertion of the Law Enforcement Privilege is Generally Implausible. Even Where Properly Invoked, This Court Should Recognize Plaintiffs' Compelling Need.**

While Plaintiffs cannot know exactly what lies beneath the Government's redactions, this Court should review all parts of all documents to conduct a section-by-section determination as to whether the Government's qualified privilege, even if properly invoked, warrants withholding. There is ample reason for skepticism of the redactions made based on the material the Government has disclosed. That skepticism warrants an exacting review by this Court. Though Plaintiffs seek all information over which the Government has asserted the law enforcement privilege, the examples below illustrate the near-certain impropriety of a broad swath of that assertion.

The Government has redacted blank forms. See Supp. Ex. 8 (TSCB0002). Defendants have no law enforcement interest in withholding blank forms. They have also redacted Defendant TSC's definition of "known terrorists." Supp. Ex. 22 (TSCD0029 at 003570). Plaintiffs believe they have done so because their definition of a "known terrorist" does not comport with what that phrase generally means. Plaintiffs believe that, to Defendants, a "known terrorist" is a person who is suspected of being a terrorist whereas their definition of a "suspected terrorist" likely means that the Government predicts some risk that labelled persons, though innocent now, will become terrorists in the future. Though their nonsense-on-stilts definitions may prove embarrassing, the law enforcement privilege cannot be invoked to protect the Government from inconvenient revelations.

The Government has nonsensically redacted as law enforcement privileged basic information regarding its goals and purposes in maintaining and disseminating its watchlist. Supplemental Exhibit 5 (TSCA0231) has a section on “Encounter Goals,” which refer to Defendant TSC’s purposes in disseminating TSDB information to thousands of law enforcement agencies which TSC directs to screen persons those agencies encounter against the TSDB. *See id.* at PRIV003021. The Government has revealed one of those goals but redacts the rest of them. Similarly, Supplemental Exhibit 22 (TSCD0029) identifies four “Watchlist Purpose[s]” but redacts one of them. In Supplemental Exhibit 6 (TSCA0233), the Government redacts its “Vision” for TSDB biometric information, the “partner agencies” it works with to pursue that vision, and the services TSC provides with respect to TSDB biometric information. Supp. Ex. 6 at 003026-003027. There is no law enforcement interest in shielding from Plaintiffs the goals Defendants have in maintaining and disseminating TSDB information.

The Government has also shielded basic facts about the watchlist from Plaintiffs. Although the Government has produced documents that indicate Defendant TSC uses “One Time Screening Agreement[s]” to screen “all persons associated with events,” they redact much information about this unknown aspect of the watchlist. Supp. Ex. 22 (TSDC0029) at 003574. The Government has redacted the name of an entire category of “Records in TSDB” that Plaintiffs do not know about and appear to be subject to the loosest standard. *See* Supp. Ex. 9 (TSCB0012) at 000323. Defendants withheld at least one sentence identifying parties to a Memorandum of Understanding between Defendant TSC and the Overseas Private Investment Corporation. *See* Supp. Ex. 29 TSCD0060 at 004413. They withheld another sentence regarding the parties to a Memorandum of Understanding

regarding Defendant TSC's screening of private sector employees of P&O Ports North America, Inc. *See* Supp. Ex. 28 (TSCD0055) at 004372.

For the Terrorist Screening Center's "Handling Codes," the Government redacts those codes entirely. *See* Supp. Ex. 4. This is despite the Handling Codes extensive public disclosure by state and local law enforcement agencies, and criminal law prep materials, across the country. *See, e.g.,* Baltimore Police Department Policy 802, Handling Codes: Terrorist Response (Sept. 8, 2016), available at <https://www.baltimorepolice.org/802-handling-codes-terrorist-response>; *accord* MTC1 Reply, Dkt. 208 at 18-20.

In short, good cause exists to doubt the legitimacy of many of the Government's law enforcement privilege invocations. For the remainder, Plaintiffs' compelling need for core watchlisting policies, practices, and information justifies an order to lift the law enforcement redactions.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court GRANT their First Motion to Compel, and COMPEL the production of all documents listed in Supplemental Exhibit A, with all (G) and (H) law enforcement privilege redactions lifted.

Respectfully submitted,

COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS

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Dated: September 11, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2018, I electronically filed the foregoing by using the Court's ECF system. I further certify that all participants in the case are registered ECF users and will be electronically served by the Court's ECF notification system.

Respectfully submitted,

COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS

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September 11, 2018

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

<b>ANAS ELHADY, et al.,</b>	)	
	)	<b>Case No. 16-cv-00375</b>
Plaintiffs,	)	<b>Hon. Anthony J. Trenga</b>
	)	
v.	)	
	)	
<b>CHARLES H. KABLE, Director of the</b>	)	
<b>Terrorist Screening Center; in his official</b>	)	
<b>capacity, et al.;</b>	)	
	)	
Defendants.	)	

**DECLARATION OF WILLIAM B. FAIRLEY AND WILLIAM A. HUBER IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL REGARDING STATISTICAL DOCUMENTS**

We, William B. Fairley and William A. Huber, hereby state as follows:

1. William B. Fairley is President and a Senior Statistician at Analysis & Inference Inc., a statistical research and consulting firm which he co-founded in 1979. He is Fellow of the American Statistical Association (ASA), and an Accredited Professional Statistician ("PStat") of the ASA. He received a BA from Swarthmore College and a PhD in Statistics from the Department of Statistics at Harvard University. He worked for the Insurance Commissioner of Massachusetts, for Citibank (the First National City Bank of New York), and for the New York City Rand Institute. He taught statistics for six years in the Public Policy Program of the John F. Kennedy School of Government at Harvard as an Assistant and Associate Professor, served as a visiting professor of statistics at the Stern School of Business at New York University and at Swarthmore College, and taught courses in the Department of Statistics at Temple University. He has consulted on over 400

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projects, authored 40 peer-reviewed publications, and been accepted as an expert in statistics and economics in numerous regulatory hearings and state and federal courts.

Appendix C of the present report is his CV.

2. William A. Huber is Senior Statistician at Analysis & Inference Inc. and owner of the statistical consulting firm Quantitative Decisions, which he founded in 1997. He is an Accredited Professional Statistician of the ASA. He received a BA from Haverford College and a PhD in Mathematics from Columbia University. As a software developer and expert in geographic information systems he has designed, implemented, maintained, and audited many large computer databases. He has taught statistics to professional organizations and at the undergraduate and graduate levels at Penn State University, Villanova University, Bryn Mawr College, Haverford College, and St. Joseph's University. He has served as a statistical consultant in over 400 projects worldwide, as a statistical expert for federal regulatory agencies and the Department of Justice, and has testified as an expert in statistics in arbitration hearings and state and federal courts. Appendix D of the present report is his CV.

3. We understand this case concerns, in part, the size, operations, and efficacy of the federal Terrorist Screening Database (TSDB), colloquially known as the federal terrorist watchlist, and the several subsets and data exports from it, including the No Fly and Selectee lists. For convenience we will refer to all these lists collectively as the "watchlist." We have reviewed the operative Complaint in this action, the Government's January 2018 Overview of the Watchlisting System, and the Government documents identified in "Attachment A" which contain statistics related to watchlisting.

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4. We have summarized core components of the available data in a spreadsheet, included as “Attachment B.” This spreadsheet shows categories of statistics the Government acknowledges it tracks, particularly through the redacted TSC reports the Government produced. These statistics are only partially filled out due to selective Government disclosures and redactions. As is evident from the white space, the available statistics from the Government leave notable gaps.

5. The efficacy of the watchlist is a question that can be statistically addressed. Standard statistical tools can measure size, additions, edits, deletions, and error rates to assess data quality. Sensitivity (the degree to which people who should be on the watchlist are put on it) and specificity (the degree to which people who should not be on the watchlist are kept off it) are well-known tools we can use to measure the usefulness and fairness of data sets.

6. Attachment B lays out broad categories of the summaries described in the immediately preceding paragraphs. Its columns headed “2017,” “2016,” etc. designate summary years. Its rows correspond to useful categories. They are organized by the type of use of the watchlist (including nominations, screenings, encounters, outcomes) and by agency within type of use. The data described by the spreadsheet and by the Government’s redacted statistical reports would be useful for applying statistical assessment tools to the watchlist. Yearly summaries of the data would be sufficient for this analysis. At a minimum, three or more years of such annual summaries are needed to assess the variability and representativeness of the data, as well as to evaluate trends over time. In an ideal assessment of effectiveness, the data would also summarize the watchlist by

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demographic categories like US persons, gender, age group, race, ethnicity, and religion. Attachment B does not explicitly break any of the rows into subcategories by religion, ethnicity, gender, or other factors except those we know are maintained in the TSDB; *i.e.*, US persons and various threat level annotations. This omission is made for simplicity: to the extent that the TSDB tracks additional demographic categories, summaries broken down by those factors will be useful to assess the watchlist's effectiveness.

7. The efficacy of the watchlist is a function of how many people are placed on it, how many are not placed on it, and the outcomes (such as arrests or engaging in some form of terrorist-related activity) experienced by those two groups. With standard, well-known statistical methods we can use current US Census and other official data to compare the efficacy of the watchlist to the efficacy of a hypothetical list of randomly selected individuals.

8. To assess the full consequences of the use of the TSDB, it is important to know or estimate how much use all agencies make of the watchlist and what results from those uses, as described in the next two paragraphs.

9. Maintaining the watchlist is one kind of use. This is carried out in a "nomination" process by initiating actions to change the list by means of adding records, modifying records, or removing records. Summary data about the numbers of each action and their success rates can provide information about the size and manner of growth of the watchlist.

10. Querying the watchlist is another kind of use. Queries result in a "match" or not. A high incidence of false or negative matches could indicate that the watchlist is not

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functioning effectively. Positive matches are often converted into “encounters,” where the querying agency uses the match result to make decisions and take actions against watchlistees. In most cases the consequences or results of those actions are recorded. Summary data about the numbers of each kind of query by each agency (FBI, TSA, CBP, and the Department of State in particular) broken down by the actions taken and their consequences can suggest how effective these queries have been.

11. Any analysis of the watchlist should also compare it to actual acts of domestic terrorism. In order to complete that assessment, we would compare the watchlist data with publicly available documentation of extremist and terrorist incidents in the United States, such as the datasets compiled by the [University of Maryland](#) and the [Cato Institute](#).

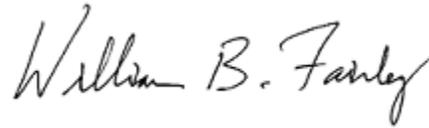
12. Risk assessment has been studied extensively within the field of statistics and related disciplines. It should not be surprising that the field whose purview includes data, their accuracy and reliability, probability and uncertainty, predictability, and comparisons of risks could help throw light on the value and limitations of such a large-scale data collection and analysis operation that the watchlist represents. Indeed, Presidential Directive for Homeland Security 11 (HSPD-11, paragraph (7)) directs the government to employ “metrics” in its plan for the organization of anti-terrorist activities. These are the metrics we seek to evaluate in order to assess the watchlist’s effectiveness.

13. We declare, under penalty of perjury, that the foregoing is true and correct to the best of our information, knowledge and belief.

Executed on the 11th day of September, 2018

September 11, 2018

**BY:**



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**William B. Fairley, PhD**  
**President and Senior Statistician**  
**Analysis & Inference, Inc.**



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**William A. Huber, PhD**  
**Senior Statistician**  
**Analysis & Inference, Inc.**

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### **EXHIBIT A – Works Reviewed**

Homeland Security Presidential Directive/HSPD-11, August 27, 2004

A sample, redacted, weekly statistics report from the TSC produced on July 13, 2018.

A sample, redacted, “dashboard” monthly report from the TSC produced on July 13, 2018.

A sample, redacted, monthly statistics report from the TSC produced on July 13, 2018

A sample, redacted, annual statistics report from the TSC produced on July 13, 2018

The TSC’s February, 21 2018 Response to Plaintiffs’ Interrogatory No. 7, regarding total TSDB nominations, additions, and rejections from 2008-2017.

The CBP’s June 14, 2018 Declaration regarding CBP’s border encounters with TSDB listees since 2010, as well as CBP’s overall “arrests.”

The TSC’s July 5, 2018 Declaration regarding the size of the TSDB, the percentage that are US Persons, and the number of “arrests” of those persons, for the last 5 years.

Various annual CBP fact sheets regarding total U.S. travel statistics.

Various annual TSA fact sheets regarding total U.S. travel statistics.

A January 2018 report regarding terrorism statistics related to President Trump’s “Travel Ban” Executive Order

An excerpt of a January 2017 GAO report regarding CBP high-risk screening, including number of total travelers from and “no-board” recommendations to foreign airports.

September 2014 Congressional hearing testimony regarding the Selectee and No Fly List, as well as DHS TRIP stats.

An excerpt of the September 2011 DHS Office of the Inspector General report regarding CBP encounters with TSDB listees.

An excerpt of the October 2007 GAO Report regarding TSDB records and encounters from 2004 - 2007

The CBP’s February 15, 2018 website publication statement regarding the number of TSDB listees CBP denies entry to each year.

An excerpt of the June 2005 DOJ’s Office of Inspector General report regarding the Terrorist Screening Center, particularly the use of handling codes in the TSDB. Page 52-54

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**A public document from the Baltimore Police Department describing the TSC's handling codes**

**An excerpt of a 2007 TSC – State Department Memorandum of Understanding regarding screening visas against the TSDB at 1-2**

**A December 2017 report from the NCTC regarding foreign terrorist organization attacks in the United States, produced on July 13, 2018**

	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
<b>GENERAL UNITED STATES TRAVEL</b>														
TSA passengers screened	750 million	738 million	708 million	653 million	639 million	638 million								
CBP people screened at ports of entry	397,229,500	390,282,090	382,750,680	374,575,410	362,168,695	351,539,165	340,346,440	352,285,955	361.2 million	396,780,185				
CBP total arrests by Office of Field Operations	50,868	60,575	51,997	49,558	59,103	55,314	62,644	69,301	48,805	36,380				
<b>TSDB WATCHLIST SIZE &amp; CATEGORIES</b>														
TSDB Listees - US PERSONS	4,640	5,150	5,340	5,530	6,120					20,000	7,550	5,159	2,880	1,584
TSDB Listees - ALL PERSONS	1,160,000	1,030,000	890,000	790,000	680,000				400,000	400,000	754,960	515,906	287,982	158,374
TSA No Fly		81,000		63,200			16,000		3,400	50,000 on both No Fly / Selectee				
TSA No Fly - US PERSONS		1,000							170					
TSA Selectee		28,000		23,700			16,000							
TSA Selectee - US PERSONS		1,700												
TSA Expanded Selectee														
CBP TECS														
CBP TECS: Armed and Dangerous														
NCIC Known or Suspected Terrorist File														
Handling Code 1 - Outstanding Arrest Warrant											8,701		518	
Handling Code 2 - Under Active Investigation											2,270		317	
Handling Code 3 - Individual has Possible Ties to Terrorism											404,647		63,471	
Handling Code 4 - Identity Provided has Possible Ties to Terrorism													214,950	
<b>TSDB NOMINATIONS</b>														
Additions	480,984	518,352	454,173	431,086	482,114	344,258	285,681	262,411	229,369	248,234				
Rejections	166,603	176,014	148,730	115,627	159,829	106,468	77,925	64,197	54,999	66,862				
Removals	5,215	2,671	1,021	1,218	1,820	1,153	1,203	1,346	424	916				
Record Edits														
<b>TSDB ENCOUNTERS</b>														
Total Encounters									55,000					
Positive Match Encounters									19,000		27,034	19,887	14,938	4,876
Negative Match Encounters														
Inconclusive Matches														
<i>Note: 96,771 encounters between 12/1/2003 and 4/3/2007 ~50% Positive Match rate</i>														
CBP Encounters with individuals identified to have suspected national security concerns	586,555	320,105	219,000	200,020	50,005	41,975				365				
CBP Encounters with "KSTs or individuals with connections to KSTs" which CBP prevented from traveling to US			8,100											
CBP Positive Encounters with TSDB Listees travelling to the United States	2,554	3,104	3,826	3,181	3,029	3,334	2,193	2,670						
DHS Positive Encounters Denied Entry To US	2,500													
DHS Positive Encounters Denied Boarding														
Domestic Encounters														
Positive Domestic Encounters ending in "Arrest"	263	270	288	305	329									
<b>TSDB REDRESS</b>														
Redress Cases that are "false positives" to the watchlist														
<i>185,000 total 2007-2014 98-99% from 2007-2014</i>														
Pending Watchlist related Redress Cases														
Pending No Fly Redress Cases														
Pending Selectee and below Redress Cases														
In 2009, the FBI testified that of watchlist DHS TRIP cases "approximately 51 percent are appropriately watchlisted, 22 percent have been modified or reviewed prior to redress, 10 percent were similar names, and 15 percent were removed or downgraded due to the redress process."														

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**EXHIBIT C – CV of William B. Fairley, PhD**

**WILLIAM B. FAIRLEY, PhD, PStat ®**

wfairley@analysisandinference.com  
Tel 610 543 0159

**SUMMARY OF EXPERIENCE AND QUALIFICATIONS**

- Fellow of the American Statistical Association
- PhD in Statistics from the Department of Statistics, Harvard University.
- PStat ® (Accredited Professional Statistician, American Statistical Association).
- Taught for six years as an Assistant and Associate Professor in the Public Policy Program of the John F. Kennedy School of Government, Harvard University. Visiting Professor at New York University Stern School of Business and Swarthmore College. Worked for three years for the Massachusetts Insurance Commissioner.
- Published over 45 professional articles, including in the *Journal of the American Statistical Association*, *Risk Analysis*, *Bell Journal of Economics*, *The American Statistician*, *Journal of Risk and Insurance*, *Management Science*, *Journal of Legal Studies*, and the *Harvard Law Review*.
- Testified on behalf of plaintiffs and defendants in over 50 trials, hearings, arbitrations, and mediations before federal, state, and local courts, special panels, and regulatory venues.
- Expertise includes sampling, regression, statistical validity, statistical significance, statistical models, probability, risk analysis, and research design.
- Undertaken or critiqued sampling in diverse populations including insurance claims, potentially defective products, social services benefits, construction, accounting records revealing theft or fraud.
- Consultant in over 400 projects in industries including healthcare, construction, education, financial services, manufacturing, pharmaceuticals, and real estate on behalf of

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corporations, government agencies, law firms, engineering firms, audit organizations, and non-profits.

### **PROJECT EXAMPLES (Out of 400+)**

- For a state Blue Cross Blue Shield organization administering claims for Medicare, designed a random sampling of their enormous data files of medical claims in connection with a challenge from a federal inspector general. Participated in the negotiations that resolved the issue.
- A hotel chain was unhappy with the performance of air conditioners installed in its rooms, and pressed the manufacturer for replacement of the units. Designed a random sampling of the units that were then tested by engineers to determine the percent of units that were defective.
- Working with the law firm of Covington & Burling on behalf of their clients—over 40 state social services departments—identified and testified to statistical aspects of the federal quality control program for states’ administration of social services that states were able to challenge successfully.
- The reimbursement levels of a company operating skilled nursing home facilities were questioned by government auditors. Using statistics on service utilization, the auditors estimated damages in the millions using their measure of utilization. Developed an alternative, more accurate measure from the data.
- An individual was the subject of a stop and frisk in a downtown city area. He alleged racial profiling. Using police data on stop and frisks and data on the racial composition of persons in the area, determined if there was an imbalance in stop and frisks by racial category that was statistically significant. The case settled.

### **EXPERIENCE**

#### **Analysis & Inference, Inc. — President**

Analysis & Inference, Inc. provides authoritative research and consulting services in statistics nationwide to corporations, government agencies, law firms, engineering firms, and non-profits. The firm is skilled at presenting complex ideas to non-experts. Capabilities include sampling, statistical modeling, statistical validity and statistical significance, regression, machine learning, and measurement reliability and validity. Principal topic areas have been discrimination,

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insurance, healthcare, theft and fraud, risk analysis, product liability, commercial litigation and damages, public policy, and education.

**New York University** — Visiting Professor of Statistics and Operations Research, Leonard N. Stern School of Business, Department of Statistics and Operations Research.

**Swarthmore College** — Visiting Professor, Department of Mathematics.

**Temple University** — Adjunct Lecturer, Department of Statistics.

**Commonwealth of Massachusetts** — Economist and Statistician, Division of Insurance, State Rating Bureau. Member of a special rating and regulatory analysis group created by the Massachusetts Legislature and appointed by the Commissioner of Insurance. Responsible for introducing modern tools of economics, finance, and statistics in rate reviews, research, and testimony of the State Rating Bureau for the major property-liability insurance lines.

**University of Karachi** — Visiting Professor, and Consultant, Applied Economics Research Center, Ford Foundation and Government of Pakistan.

**Harvard University** — Assistant and Associate Professor, Kennedy School of Government, Public Policy Program.

Graduate teaching and research focused on the uses of statistics in government, law and analyses of policy. Taught courses on statistics at the Harvard Law School with Michael Finkelstein, Frederick Mosteller, and Lloyd Weinreb. At various times Chairman of the Ph.D. Committee, Second Year Committee, Modules Committee, and the Committee on Information Services of the Kennedy School.

**New York University** — Assistant Professor, Graduate School of Business.

Graduate teaching and research in applied statistics. Organized and chaired Conference on Quantitative Analysis in Urban Affairs; Member of the Committee on Urban Problems.

**New York City Rand Institute** — Statistician.

Co-director of study on crime in the public housing projects of New York City for the Mayor's Criminal Justice Coordinating Council and with the New York City Housing Authority and New York City Police Department.

**First National City Bank of New York (Citibank)** — Research Specialist, Management Sciences Department.

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Consulting within Management Science and Economics Departments; participated in operations research projects on asset management and the prediction of interest rates.

## **EDUCATION**

**Harvard University**, PhD, Department of Statistics. Woodrow Wilson and National Science Foundation Fellowships.

**London School of Economics**, Fulbright Fellowship.

**Swarthmore College**, BA with High Honors. Major in Economics, Minors in History and Philosophy.

## **AWARDS**

Fellow of the American Statistical Association

PStat ® (Accredited Professional Statistician, American Statistical Association).

## **MEMBERSHIPS**

Member of the American Statistical Association; member Committee on Law and Justice Statistics 2009—2011 and 1977—1980; member of Committee on Professional Ethics, 1995—1997. Member of the American Association for the Advancement of Science, the American Economic Association, and the Society for Risk Analysis.

## **PUBLICATIONS**

### **SAMPLING, AUDITING, AND THEFT AND FRAUD LOSSES**

“Resolving a Multi-Million Dollar Contract Dispute with a Latin Square,” William B. Fairley, Peter J. Kempthorne, Julie Novak, Scott McGarvie, Steve Crunk, Bee Leng Lee, and Alan Salzberg, *The American Statistician*, August 2017.

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“Combining Incomplete Information from Independent Assessment Surveys for Estimating Masonry Deterioration,” William B. Fairley, Alan J. Izenman, and Steven M. Crunk, *Journal of the American Statistical Association*, June 2001.

“Inference for Welfare Quality Control Programs,” William B. Fairley, Alan J. Izenman, and Partha Bagchi, *Journal of the American Statistical Association*, September 1990.

“Bricks, Buildings, and the Bronx,” William B. Fairley, Alan J. Izenman and A. Rhett Whitlock, *Chance*, Summer 1994.

“A Question of Theft,” William B. Fairley and Jeffrey E. Glen in Morris DeGroot, Stephen Fienberg and Joseph Kadane, Editors, *Statistics and the Law*, Wiley, 1986.

“Welfare Quality Control Programs: How Much is Misspent by the Welfare System?,” William B. Fairley and Alan J. Izenman, *Chance*, Summer 1989.

“Estimated Public Welfare Quality Control Error Rates and Penalties,” William B. Fairley and David Fairley, in *Bayesian Statistics 3*, Oxford University Press, 1988.

“Establishing Quantity Estimates and Levels of Certainty in Predicting Structural Damage: A Masonry Case Study,” William B. Fairley, Alan J. Izenman, and A. Rhett Whitlock, *Proceedings of the British Masonry Society*, No. 6, March 1994.

## **DISCRIMINATION**

“Statistical Criticism and Causality in *Prima Facie* Proof of Disparate Impact Discrimination,” William B. Fairley and William A. Huber, *Observational Studies*, December 2017 (forthcoming).

“Measures of Discrimination and Protocols for Evidence: The Case of the Spare List,” Steven M. Crunk and William B. Fairley, *Proceedings of the American Statistical Association*, 2008, Statistical Consulting Section.

“Comment on Federal Judicial Center “Statistical Examples Software Prototype: Age Discrimination Example,” William B. Fairley, *Jurimetrics*, Spring 2002.

“A Case of Unexamined Assumptions: The Use and Misuse of the Statistical Analysis of Casteneda/Hazelwood in Discrimination Litigation,” Thomas J. Sugrue and William B. Fairley, *Boston College Law Review*, July 1983.

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“Statistical Evidence of Racial Disparities in Death Sentencing: A Critical Analysis of *McCleskey v. Kemp*,” Glenn Dickinson and William B. Fairley in *Human Rights and Statistics: Getting the Record Straight*, Richard P. Claude and Thomas B. Jabine, Editors, University of Pennsylvania Press, 1992.

## **INSURANCE, FINANCE, AND REGULATION**

“Investment Income and Profit Margins in Property-Liability Insurance: Theory and Empirical Results,” William B. Fairley, *Bell Journal of Economics*, Spring 1979. Re-printed in J. David Cummins and Scott A. Harrington, Editors, *Fair Rate of Return in Property-Liability Insurance*, Kluwer-Nijhoff, 1987.

“Investment Analysis Using the Probability Distribution of the Internal Rate of Return,” William B. Fairley and Henry D. Jacoby, *Management Science*, August 1975.

“Pricing Automobile Insurance under a Cross-Classification of Risks: Evidence from New Jersey,” William B. Fairley, T. Jerome Tomberlin, and Herbert I. Weisberg, *Journal of Risk and Insurance*, September 1981, Winner of the 1982 *Journal of Risk and Insurance* Articles Award of the National Association of Independent Insurers.

“Pricing Automobile Insurance under Multivariate Classification of Risks: Additive versus Multiplicative,” Lena Chang and William B. Fairley, *Journal of Risk and Insurance*, March 1979. Winner of the *Journal of Risk and Insurance* Clifford D. Spangler Award of the Alpha Kappa Psi Foundation, 1989.

“An Estimation Model for Multivariate Insurance Rate Classification,” Lena Chang and William B. Fairley in *Automobile Insurance Risk Classification: Equity and Accuracy*, Massachusetts Division of Insurance, 1978.

“Automobile Insurance: Additive versus Multiplicative Pricing,” Lena Chang and William B. Fairley, *1978 Proceedings of the Business and Economic Section*, American Statistical Association, Washington, D.C.

“Capacity and Solvency—The Outside Influence,” William B. Fairley, *Society of Actuaries Record*, Vol. 4, No. 1, 190—196, 1978.

## **RISK ANALYSIS, ACCIDENTS, HEALTH, AND PRODUCT LIABILITY**

“Parametric Inference for Right-Censored Data with Indeterminate Survival Times and Censoring Status,” B.L. Lee, Steven M. Crunk, Maheen Khan, and William B. Fairley, *Journal of Applied Statistics* (2017).

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“Estimating Mine Equipment Injury Rates,” William B. Fairley and Tian-Tzer Jeng in B. J. Garrick and W. C. Gekler, Editors, *The Analysis, Communication, and Perception of Risk*, Plenum Press, 1991.

“A Probability Model for Brittle Fracture Turbine Reliability,” Edward M. Caulfield, Michael T. Cronin, William B. Fairley, and Nancy R. Rallis in Chris Whipple and Vincent T. Covello, Editors, *Risk Analysis in the Private Sector*, Plenum Press, 1985.

“Insurance Market Assessment of Technological Risks,” William B. Fairley, Michael B. Meyer, and Paul L. Chernick, in Chris Whipple and Vincent T. Covello, Editors, *Risk Analysis in the Private Sector*, Plenum Press, 1985.

“Market Risk Assessment of Catastrophic Risks,” William B. Fairley, in Howard C. Kunreuther and Eryl V. Ley, Editors, *The Risk Analysis Controversy: An Institutional Perspective*, Springer-Verlag, 1982.

*Design, Costs, and Acceptability of an Electric Utility Self-Insurance Pool for Assuring the Adequacy of Funds for Nuclear Power Plant Decommissioning Expense*, with Paul L. Chernick, William B. Fairley, Michael B. Meyer, and Linda C. Scharff, NUREG/CR-2370, U.S. Nuclear Regulatory Commission, Washington, D.C., November 1981.

“Assessment for Catastrophic Risks,” William B. Fairley, *Risk Analysis*, Vol. 1, No. 3, September 1981.

“Evaluating the ‘Small’ Probability of a Catastrophic Accident from the Marine Transportation of Liquefied Natural Gas,” William B. Fairley, in *Proceedings of the Engineering Foundation Conference on Risk Benefit Methodology and Application*, David Okrent, Editor, Asilomar, California, 1975. Re-published in Fairley and Mosteller, *Statistics and Public Policy*, Addison-Wesley, 1977.

“Accidents on Route 2: Two-Way Structures for Data,” William B. Fairley, in William B. Fairley & Frederick Mosteller, Editors, *Statistics and Public Policy*, Addison-Wesley, 1977.

Discussion of Lester B. Lave and Eugene P. Seskin, “Does Air Pollution Shorten Lives,” William B. Fairley, in John W. Pratt, Editor, *Statistical and Mathematical Aspects of Pollution Problems*, Marcel Dekker, 1975.

## **PUBLIC POLICY**

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“Credible Argument: School Finance in a Legal Trial,” William B. Fairley, *Proceedings of the American Statistical Association Annual Meeting* Baltimore, 1999.

*Statistics and Public Policy*, William B. Fairley and Frederick Mosteller, Editors, Addison-Wesley, 1977. (Japanese Translation, Shojin Sha Ltd., 1990)

“Public Policy and Statistics,” William B. Fairley, in the *International Encyclopedia of Statistics*, Vol. 2, William H. Kruskal and Judith M. Tanur, Editors, Macmillan and Free Press, 1978.

Contributor to Stephen E. Fienberg, David Hoaglin, William H. Kruskal, and Judith M. Tanur, Editors, *A Statistical Model: Frederick Mosteller’s Contributions to Statistics, Science, and Public Policy*, Springer-Verlag, 1990.

“Comment on Statistical Defensibility,” William B. Fairley, *The American Statistician*, August 1982.

*Improving Public Safety in Urban Apartment Dwellings: Security Concepts and Experimental Design for New York City Housing Authority Buildings*, William B. Fairley and Michael Liechenstein, New York City Rand Institute, 1971.

“Trial of an Adversary Hearing: Public Policy in Weather Modification,” William B. Fairley and Frederick Mosteller, *International Journal of Mathematical Education in Science and Technology*, Vol. 3, pp. 375—383, 1972.

## **LAW, EVIDENCE, AND DAMAGES**

“Statistics in Law,” William B. Fairley. Article in the *Encyclopedia of the Statistical Sciences*, Vol. IV, Samuel Kotz and Norman L. Johnson, Editors, Wiley, 1983.

“A Bayesian Approach to Identification Evidence,” Michael O. Finkelstein and William B. Fairley, *Harvard Law Review*, Vol. 83, No. 3, January 1970.

“The Continuing Debate over Mathematics in the Law of Evidence,” Michael O. Finkelstein and William B. Fairley, *Harvard Law Review*, Vol. 84, No. 8 June 1971.

“Probabilistic Analysis of Identification Evidence,” William B. Fairley, *The Journal of Legal Studies*, Vol. II, June 1973. Also in Dirk Wendt and Charles Vlek, Editors, *Utility, Probability, and Human Decision Making*, D. Reidel, 1975.

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“A Conversation about Collins,” William B. Fairley and Frederick Mosteller, *University of Chicago Law Review*, Vol. 41, No. 2, Winter 1974.

Discussion of “Statistics in the Law,” William B. Fairley, American Statistical Association, *Proceedings of the Social Statistics Section*, Part I, 1976.

“The Many Uses of Forensic Economics and Statistics,” W. Fairley, P. Eden, C. Aller, C. Vencill, M. Meyer, and P. Chernick, *The Practical Lawyer*, Vol. 31, No. 4, pp. 25—36, 1985.

“Evaluation of Structured Settlements,” W. Fairley, P. Eden, C. Aller, M. Meyer, L. Schroeter, and C. Vencill. *Am. Jur. Trials*, Vol. 31, pp. 595—632, 1984.

## **PROBABILITY THEORY**

“The Number of Real Roots of Random Polynomials of Small Degree,” William B. Fairley, *Sankhya, The Indian Journal of Statistics*, Series B, Pt. 2, pp. 144—152, 1976.

*Roots of Random Polynomials*, William B. Fairley, Ph.D. Thesis, Department of Statistics, Harvard University, June 1968.

## **SPEAKING**

### **SAMPLING, AUDITING, QUALITY AND THEFT AND FRAUD LOSSES**

Participant, Research Workshop, “Creating and Implementing Quality in Organizations,” SEI Center for Advanced Studies in Management, Wharton School, University of Pennsylvania, March, 1990.

Speaker, “Empirical Bayes Procedures for Welfare Quality Control,” American Statistical Association Annual Meeting, Washington D.C., 1989.

Chair, “Estimation for Welfare Quality Control,” American Statistical Association Annual Meeting, New Orleans, 1988.

Speaker, “Error Rate and Penalty Inference for Quality Control in Public Welfare Programs,” American Statistical Association Annual Meeting, San Francisco, August 1987.

Speaker, “Estimated Public Welfare Quality Control Error Rates and Penalties,” Third Valencia International Meeting on Bayesian Statistics, Altea, Spain, June 1987.

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Participant, “The City of New Amsterdam vs. Armored Coin Collection Company,” mock trial presented by The Panel on Statistical Assessments in the Courts, National Academy of Sciences, at American Statistical Association Annual Meeting, Las Vegas, 1985.

Speaker, “A Question of Theft,” American Statistical Association Annual Meeting, Philadelphia, August 1984.

## **DISCRIMINATION**

Participant, Mock Trial, Quantitative Analysis in Law, University of Pennsylvania Law School, December 2006.

Speaker, “Statistics Without Measurements: Promotions and Age in a Police Department,” American Statistical Association Annual Meeting, Indianapolis, 2000.

Speaker, “Non-starter Models of Promotion in Age Discrimination,” Fourth International Conference on Forensic Statistics, Raleigh, North Carolina, December 1999.

## **INSURANCE, FINANCE, AND REGULATION**

Invited presentation, “Bootstrap Resampling and Propensity Scores in Statistical Learning, Random Forests, and Bagging to Assign Ownership of Unclaimed Property,” with Marc Sobel and Kenneth Swartz, International Symposium on Business and Industrial Statistics, August 18—21, 2007, a satellite conference of the International Statistical Institute 2007 Meetings in Lisbon, Portugal.

Winner, *Journal of Risk and Insurance* Clifford D. Spangler Award of the Alpha Kappa Psi Foundation, 1989.

Speaker, “Estimating Mine Equipment Injury Rates,” Society for Risk Analysis Annual Meeting, San Francisco, October 1989.

Chairman, “Insurance and Risk Management” session, Society of Risk Analysis, Annual Meeting, New York City, August 1983.

Speaker, “Insurance Market Assessment of Technological Risks,” with Michael B. Meyer and Paul L. Chernick, Annual Meeting, American Association for the Advancement of Science, Detroit, May 1983.

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Winner, *Journal of Risk and Insurance* Articles Award, 1982.

Member and Speaker, Advisory Committee to the National Association of Insurance Commissioners' Task Force on Profitability and Investment Income, 1982—83.

Chairman of Session "Equitable Risk Classification in Competitive Insurance Markets," American Economic Association and Association of Property and Casualty Insurance Economists, Annual Meeting, Atlanta, Georgia, December 28, 1979.

Speaker, "Regulatory Rate Setting Decisions in Automobile Insurance: Massachusetts Experience," Public Policy Research Conference, University of Chicago, October 19, 1979.

Chair and Speaker, Session "Is Automobile Insurance Priced Fairly? Equity and Statistical Validity in Risk Classification," American Statistical Association Annual Meeting, San Diego, August 1978.

Panelist of Session "Capacity and Solvency," Society of Actuaries and Casualty Actuarial Society Annual Meeting, New York City, April 1978.

Speaker, "Profits and Rates of Return in Property-Liability Insurance," Society of Actuaries Research Conference on Modeling Financial Markets, New York University, September 1977.

## **RISK ANALYSIS, HEALTH, ACCIDENTS, AND PRODUCT LIABILITY**

Speaker, "Quantitative Risk Assessment: A Study of DDT," Temple Environmental Forum, Philadelphia, Fall 1986.

Speaker, "Decision Uses of Quantitative Risk Assessment," Gordon Research Conference Seminar on Statistics in Chemistry and Chemical Engineering, New Hampton School, New Hampshire, July 1985.

Speaker, "A Probability Model for Brittle Fracture Turbine Reliability," Society for Risk Analysis, Annual Meeting, New York City, August 1983.

Speaker, "Market Risk Assessment of Catastrophic Risk," Summer Study in Decision Processes and Institutional Aspects for Risks, International Institute of Applied Systems Analysis, Vienna, June 1981.

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Speaker, “Catastrophic Risks: Case of Zero Occurrences of Accidents,” Annual Meeting of the American Statistical Society, Session on “Statistics, Reliability and Risks,” Houston, Texas, August 13, 1980.

Panelist, “Accident Risk Assessments,” Symposium/Workshop on “Nuclear and Nonnuclear Energy Systems: Risk Assessment and Governmental Decision Making,” Washington, D.C., February 1979, Mitre Corporation.

Speaker, “Problems in the Estimation of ‘Small’ Probabilities,” Engineering Foundation Conference on Risk Benefit Methodology and Application, Asilomar, California, September 1975.

## **PUBLIC POLICY AND EDUCATION**

Speaker, “Credible Argument: School Finance in a Legal Trial,” American Statistical Association Annual Meeting, Baltimore, 1999.

Invited Lecture Series, “Statistics in Law and Public Policy: How to Bet If You Must,” Temple University, Department of Statistics, April 1989.

Speaker, “Statistics and Public Policy,” Institute of Mathematical Statistics Meeting, Yale University, August 1976.

## **LAW, EVIDENCE, AND DAMAGES**

Panelist, “Solo Consulting: The Good, the Bad and the Ugly,” American Statistical Association at the Association’s Annual Meetings, August 2012, San Diego.

Organizer, Invited Session, “Experiences of Statistical Consulting in Lawsuits,” American Statistical Association at the Association’s Annual Meetings August 2010, Vancouver.

Organizer, Session, “The Statistician’s Contribution to Fact-Finding in Law,” sponsored by the Statistical Consulting Section of the American Statistical Association at the Association’s Annual Meetings August 2007, Salt Lake City.

Speaker, Invited talk to the Winter Gathering of the Philadelphia Chapter of the American Statistical Association, January 26, 2007.

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Speaker, “A Consulting Role in Dispute Resolution,” invited talk to the Fall Meeting of the Philadelphia Chapter of the American Statistical Association. October 9, 2003.

Speaker, “A Consulting Role in Legal Applications,” invited talk at the 20<sup>th</sup> Annual Spring Conference sponsored by the Delaware Chapter of the American Statistical Association, “Probable Justice: Statistics and the Judiciary,” April 25, 2003.

Speaker, “Establishing Quantity Estimates and Levels of Certainty in Predicting Structural Damage: A Masonry Case Study,” with Alan J. Izenman and A. Rhett Whitlock, Third International Masonry Conference, London, October 1992.

Speaker, “A Case Study of Masonry Deterioration and Civil Damages: Calibration and Poisson Regression,” Second International Conference on Forensic Statistics, Tempe, Arizona March 1993.

Discussant, “The Use of Statistics in Litigation,” American Statistical Association, Annual Meeting, Detroit, August 1981.

Discussant, “Statistics in the Law,” American Statistical Association, Annual Meeting, Boston, August 1976.

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**EXHIBIT D – CV of William A. Huber, PhD**

**WILLIAM A. HUBER, PhD, PStat®**

whuber@analysisandinference.com

Tel 610 543 0159

**SUMMARY OF EXPERIENCE AND QUALIFICATIONS**

- PStat® (Accredited Professional Statistician, American Statistical Association).
- PhD in Mathematics from the Department of Mathematics, Columbia University.
- 29 years' experience as a consulting statistician.
- 40 years' experience teaching professionals and university students in statistics, data analysis, sampling, mathematics, computing, and geographic information systems (GIS).
- Expertise includes sampling, data visualization, regression, spatial statistics, geostatistics, statistical validity, statistical significance, statistical models, probability, risk analysis, machine learning, quality control, and GIS.
- Consultant in statistics for industries including healthcare, environmental remediation, agriculture, water resources, manufacturing, mining, transportation, construction, refining, occupational health, telecommunications, health care, technology, and real estate on behalf of corporations, government agencies, law firms, engineering firms, hospitals, and non-profits.
- Testified on behalf of plaintiffs and defendants or assisted counsel on statistical matters in over 20 trials, hearings, arbitrations, and mediations before federal and state courts and special panels.
- Represented clients in presentations and negotiations with federal regulatory agencies, more than 10 state agencies, and in Mexico.
- Award-winning software developer for PCs and mainframe supercomputers, with applications in database management and design, GIS, and computer models.
- Award-winning peer reviewer for *Risk Analysis* and many environmental and engineering journals.

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- Member of advisory panels and peer reviewer for the US Environmental Protection Agency.
- Owner, director, and investor in small businesses.
- Technical magazine editor.
- Principal investigator in data visualization research.
- Patent holder for inventions exploiting geographic data.

## EXPERIENCE

### **Analysis & Inference, Inc.**, Springfield, PA (2015 – present) – Statistical Consultant

Analysis and Inference, Inc. is a research and consulting firm specializing primarily in statistics and secondarily in economics and finance. Dr. Huber's capabilities include data analysis, statistical modeling and simulation, sampling, monitoring, inference, regression, data visualization, spatial data, database design and auditing, quality control, decision analysis, process optimization, real estate analysis, geographic information systems, risk analysis, computer programming, and environmental statistics.

### **S. S. Papadopulos & Associates**, Washington, DC (1998 – present) – Associated Expert

SSPA has a recognized international practice in contaminant studies, environmental engineering, remediation, geochemistry, surface-water hydrology, geographic information systems (GIS), and software development. Dr. Huber complements this expertise with rigorous, defensible statistical assessments of data, optimizing data collection and decisions, statistical support for litigation, and evaluations of conceptual and numerical models applied to data about the environment, occupational health, and risk assessment.

### **Quantitative Decisions**, Rosemont, PA (1997 – present) – Owner

QD provides services in statistical analysis, sampling, litigation support, software development, database design and auditing, geographic information systems, risk assessment, and environmental compliance both independently and collaborating with other consultants. Clients have ranged from US federal regulatory agencies to Fortune 10 companies, international quasi-nongovernmental organizations, research firms, non-profits, academic institutions, and small businesses.

### **Fiscal Associates, Inc.**, Newark, DE (2002 – 2014) – Advisor

Fiscal Associates engages in real estate and energy analysis. In an ongoing collaboration with FA, Dr. Huber was awarded a patent for travel time computation procedures and helped with successful extensions of other patents covering real estate analysis. He also supported the

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award-winning National Energy Independence Plan (NEIP) with statistical and mathematical analysis and editorial direction.

**X-Interchange, Inc.**, Kansas City, MO (2003 – 2008) – Director

XI provided creative solutions to infrastructure and environmental problems. It optimized remedial operations at contaminated sites, developed logistical solutions, and decommissioned industrial sites. Dr. Huber supplied quantitative economic analysis of potential projects and supported marketing and training activities.

**Haverford College**, Haverford, PA (2005 – 2006) – Visiting Associate Professor of Statistics

Haverford College is a highly ranked small liberal arts institution. Dr. Huber taught undergraduate courses in statistics and exploratory data analysis, supervised thesis work in stochastic differential equations, provided statistical support for undergraduate research and library staff, and trained students in mathematical problem solving.

**Directions Magazine, Inc.** (2000 – 2002) – Editor

Directionsmag.com is the oldest active source of geospatial information technology news and commentary. In the late 1990's, Dr. Huber had contributed a regular series of technical articles on geographic analysis and GIS software development, covering topics ranging from Fourier analysis to steganography. Upon the untimely demise of its founder, Scott Elliott, in 2000, Dr. Huber assumed the Editor's role, ran the magazine successfully for the next year, and helped hire a permanent replacement.

**Pennsylvania State University**, Malvern, PA (1997 – 2003) – Part-time lecturer

This branch of the Penn State University system focuses on graduate degree programs in engineering, information science, and business. Dr. Huber developed and taught innovative courses in geographic information systems and environmental statistics.

**Dames & Moore, Inc.**, Willow Grove, PA and Sacramento, CA (1992 – 1997) – Senior Associate

Dames & Moore provided environmental and geotechnical engineering services to tens of thousands of clients in all sectors. It was a publicly owned engineering company of 3400 professionals in 110 offices worldwide. Coming to D&M through the acquisition of his company IDT, Dr. Huber engaged in project management, marketing, personnel development, and firm-wide technical support for statistics, information management, software development, and risk assessment. He created and led a successful GIS specialty group.

**Integrated Data Technologies, Inc.**, Philadelphia, PA (1986 – 1992) – Software developer / statistical consultant / co-owner

IDT published commercial software products and provided software development, database, and statistical consulting services. Dr. Huber provided technical management in all areas and led scientific visualization research funded by the Ben Franklin Partnership of Pennsylvania.

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**St. Joseph's University**, Philadelphia, PA (1984 – 1986) – Assistant Professor of Mathematics

Taught 17 semester-length courses in mathematics to undergraduates.

**Time Distribution Services**, New York, NY (1982) – Programmer

Provided custom mainframe programming solutions to support the distribution arm of Time-Life, Inc.

**Oak Ridge National Laboratories**, Oak Ridge, TN (1978 and 1979) – Researcher in physics

Developed quantum mechanical computer models for an experimental group in atomic spectroscopy and a theoretical group in dielectronic recombination.

**Bryn Mawr College**, Bryn Mawr, PA (1976 – 1978) – Computer operator

Operated the college computing center during summers and weekends. Provided programming support for college business operations and helped students and professors run and maintain their computing projects.

## EDUCATION

**Columbia University in the City of New York**, (1978 – 1984). M.A., Ph.D., Mathematics.  
Dissertation on classification of graded semisimple Lie algebras.

**Haverford College**, Haverford, PA (1974 – 1978). B.A, double major in Philosophy and Mathematics, with High Honors. College mathematics prizes 1975, 1976, 1977. Phi Beta Kappa.

## REPRESENTATIVE PROJECTS

### Market Analysis

**(Large hospital—confidential client.)** Created statistical models of supply and demand for primary medical services within the region served by a hospital and its competitors. Accounting explicitly for spatial relationships, such as the time and cost of travel, these models provided essential information for identifying communities that would experience changes in service resulting from a proposed hospital move.

**(Pharmaceutical marketing firm.)** Estimating the US market for veterinary pharmaceuticals. Developed statistical methods to perform accurate monthly projections of product sales from a large dataset. Implemented the methods in software. Techniques include regularized regression, cross-validation, time series outlier detection, and combining correlated spatial data.

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## Big Data

**Federal Communications Commission.** Led the statistical analysis underpinning the first National Broadband Map (2009) created by the FCC. Performed literature review, identified relevant variables from several thousand covering demographic, infrastructure, geographic, and topographic information. Developed and tested logistic regression models, then applied them to predict availability and speed of broadband services at 8.3 million Census blocks throughout the United States.

## Litigation Support

**Tyson Foods.** Critical evaluation of a multivariate principal components analysis (PCA) of 80 variables used to generate a “signature” of environmental contamination in the Illinois River Watershed. *State of Oklahoma v. Tyson Foods et al.* (2008).

**US Department of Justice.** Discovered and testified to fundamental flaws in statistical and scientific estimates of natural resources damage. *State of New Mexico, et al., v. General Electric, et al.* (2002).

**Envirosafe Services of Ohio, Inc.** Provided understandable explanations of statistical material produced by expert witnesses and developed independent opinions in a case centering around allegations of the misuse of statistical pollution monitoring tests. *Julia R. Bates, et al. v. Envirosafe Services of Ohio, Inc* (1998).

## Sampling and Monitoring

**ConocoPhillips** Redesigned the groundwater monitoring program at a large refinery and shepherded it through the process of regulatory approval. Ponca City, OK (2004).

**(International manufacturer—confidential client).** Designed and supervised sampling of the soils, sediments, water, and groundwater in and around Cuautla, Mexico. Managed the data and mapping elements of the study. Performed statistical analysis of the results. As principal author of the resulting investigation report and risk assessment, presented and explained the results to Federal regulatory authorities. Provided additional statistical analysis of medical data collected from town residents (2001 – 3).

**(National retail chain—confidential client).** Created a formal sampling plan to evaluate the efficacy of a lead cleanup program at a recycling facility in rural Iowa, using sample compositing to minimize the costs of cleanup and demonstrating its success (1993).

September 11, 2018

## Regulatory Compliance

**Multiple clients, including DuPont, Ciba-Geigy, American Cyanamid, and Exxon.** Through FOIA, obtained and analyzed New Jersey's databases of 15,000 regulated industrial facilities to identify those that would be most affected by proposed changes in environmental regulations. Assisted clients in public meetings to make the state aware of these consequences and to suggest more equitable formulas to determine permit fees (1989 – 1992).

## Statistical Review

**United States Environmental Protection Agency.** One of three peer reviewers responsible for a comprehensive assessment and critical review of the *Statistical Analysis of Groundwater Monitoring. Data at RCRA Facilities—Unified Guidance* (2005).

## Database Design and Management

**CC:Control.** Designed and led the development of a comprehensive relational database used at 100 sites to manage, statistically analyze, and visualize large groundwater monitoring datasets. It included robust outlier detection and quality control procedures (1990 – 1995).

## Data Visualization and Communication

**(Confidential client).** Designed and prepared innovative graphics to analyze and understand a large database of groundwater monitoring measurements made at one thousand Long Island gas stations (2010).

**Mohawk Chemicals, Mountain View, CA.** Mapping and three-dimensional visualization of contamination and geological structures. Designed programs to sample soils, soil gas, groundwater, and geotechnical parameters. Created visualizations of integrated datasets and presented them to state regulatory agencies (1999).

**Trane, Lacrosse, WI.** Performed innovative exploratory analysis of monitoring and sampling data to identify hidden, inaccessible sources of soil and groundwater contamination. Developed maps and graphs to communicate findings to corporate executives and state regulators. Managed the ensuing remediation project, a soil vapor extraction system (1992 – 1993).

## Decision Analysis and Support

**Alterra (Wageningen).** Developed mathematical models of the utility of agricultural land in the Netherlands based on use, location and proximity. Built software prototypes to support and optimize land redistribution (2003).

September 11, 2018

**FMC Corporation.** Employed influence diagrams and decision modeling to lead experts in identifying critical risks in managing environmental liabilities at industrial properties (1996).

## Research

**National Energy Independence Plan (NEIP).** Scientific, mathematical, and statistical modeling of energy markets and alternative energy plans. Editorial assistance with award-winning reports and presentations (2009 – present).

**GridRoute.** US patent 8332247 awarded for algorithms integrating vector and raster data structures to support high-speed, large-volume computation of travel times utilizing networks embedded within a spatially extensive matrix (2007 – 2012).

**Groundwater Data Visualization (Ben Franklin Partnership of PA).** Secured and directed a \$100K research grant to develop PC software for innovative visualization of spatial data (1991).

## PROFESSIONAL ACTIVITIES

**Treasurer,** American Statistical Association-Philadelphia 2016 – present.

**Newsletter Editor,** American Statistical Association-Philadelphia 2014 – 2016.

**Editorial Board,** *Risk Analysis* 2009 – 2013.

**Elected moderator** of the professional statistics and GIS communities on the Web at <http://stats.stackexchange.com> 2011 – present.

**Best reviewer award.** Society for Risk Analysis 2009.

**Organizer, Haverford College Problem Solving Group.** 2005 – present.

**Author of over 40 open source software programs** to perform statistical and geometric analysis and visualization of data.

## TEACHING

**Regression Methods.** Math 8406, Villanova University, 2015.

**Environmental Statistics in Pennsylvania.** 8-hour workshop. PA Council of Professional Geologists, 2010 and 2011.

**Spatial Statistics.** 40-hour workshop, 2007. 8-hour workshop on the web. NITL, 2010

September 11, 2018

**Introduction to GIS.** Geology 328, Bryn Mawr College, 2007.

**Problem Solving.** Weekly undergraduate seminar at Haverford College, 2005 – present.

**Introduction to Statistics.** Math 103, Haverford College, 2006.

**Statistics.** Math 203, Haverford College, 2006.

**Exploratory Data Analysis.** Math 209, Haverford College, 2005.

**Environmental Statistics.** Computer Engineering 597, Penn State-Great Valley, 2001.

**Environmental GIS.** Systems Engineering 597, Penn State-Great Valley, 1997 – 2003.

**Environmental Sampling.** Two-day course developed and taught for Government Institutes,  
1994 – 1995

September 11, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2018, I electronically filed the foregoing by using the Court's ECF system. I further certify that all participants in the case are registered ECF users and will be electronically served by the Court's ECF notification system.

Respectfully submitted,

**COUNCIL ON AMERICAN-ISLAMIC  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Terrorism remains a grave and persistent threat to our national security and civil aviation. One crucially important tool for U.S. counterterrorism efforts has been the creation of a consolidated terrorist watchlist, the Terrorist Screening Database (“TSDB”), which allows U.S. authorities to identify known and suspected terrorists seeking to board aircraft, enter the country, or engage in other potentially threatening activity. Several different components of the federal government work together to secure the U.S. and its borders and aviation system from these terrorist threats. The Federal Bureau of Investigation (“FBI”) investigates terrorist activity, and the Terrorist Screening Center (“TSC”), an interagency operation within the FBI, maintains the TSDB. The Department of Homeland Security (“DHS”) is charged with preventing terrorist attacks within the U.S. Within DHS, the Transportation Security Administration (“TSA”) is responsible for securing all modes of transportation, with a focus on preventing terrorist attacks against civil aviation and other methods of transportation. Among other things, TSA relies upon certain subsets of the TSDB to screen passengers attempting to fly on United States commercial aircraft, or any commercial flight to, from, over, or within the U.S. Also within DHS, U.S. Customs and Border Protection (“CBP”) has authority to inspect all those who are entering the United States, including for the purpose of preventing terrorist attacks.

While working to ensure that air travel is safe and secure, the Government has also undertaken efforts to protect civil rights and civil liberties. Before an individual is placed in the TSDB, his or her nomination undergoes several independent layers of review to ensure that the requisite criteria are met and the underlying information is reliable. When combined with regular post-placement reviews and audits of TSDB information, these procedures offer ample assurance that TSDB placements are appropriately supported and warranted by the underlying information. Individuals who suspect or believe their travel has been affected by TSDB placement may also seek redress with DHS’s Traveler Redress Inquiry Program (“DHS TRIP”).

Plaintiffs' sole remaining claim relates to procedural due process, and the Government is entitled to summary judgment on that claim for several reasons. First, following the conclusion of months of wide-ranging discovery, Plaintiffs—especially the numerous Plaintiffs who admit that they currently travel without experiencing any unusual scrutiny or security procedures—cannot establish a certainly impending future injury sufficient to support standing.

Plaintiffs also cannot establish a violation of procedural due process, even construing all facts in their favor. Neither placement in the TSDB, nor placement on any subset thereof requiring enhanced screening, prohibits any form of travel, including by aircraft. Indeed, all Plaintiffs concede that they have repeatedly traveled by air, both domestically and internationally. And although Plaintiffs make a wide variety of claims about how their alleged status with respect to the TSDB has supposedly disrupted their travel or other activities, the evidence shows that many of these alleged experiences, such as difficulties with banks or car dealerships, bear no possible plausible causal relationship with the TSDB. Others describe security screening or inspection that every traveler may be asked to undergo. Plaintiffs' asserted right to travel by airplane and across borders, unimpeded by any delays or inconveniences, is not an interest so deeply rooted in the Nation's history and tradition, or implicit in the concept of ordered liberty, that it implicates due process.

Nor can Plaintiffs establish a due process claim based on reputational harm. Such a claim must be based on government stigmatization and requires that the government publicly disseminate information to the community at large. But the Government does not publicly disclose any information about an individual's inclusion or non-inclusion on the TSDB. Information regarding the status of individuals with respect to the TSDB is generally limited to law enforcement and homeland security entities and the intelligence community and is subject to strict controls. A stigmatization claim also requires (in addition to reputational harm) an alteration of a legal right or status, but Plaintiffs have not shown any such injury from their alleged placement in the TSDB. Notwithstanding the Complaint's lengthy allegations about harms that Plaintiffs speculate might

befall an individual in the TSDB, Plaintiffs have established no facts that would constitute deprivation of a liberty or property interest within the scope of the Fifth Amendment. As a matter of law, they cannot establish that their alleged status with respect to the TSDB deprives them of a liberty interest protected by the Due Process Clause. Neither their travel nor their reputations are impaired. And in any event, the current redress process is more than constitutionally sufficient to protect their limited private interests, particularly given the extraordinary public interest in preventing catastrophic terrorist attacks.

### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

#### **The Threat Environment**

1. The United States continues to face terrorist threats from foreign terrorist organizations, including al Qaeda in the Arabian Peninsula, al Qaeda in the Islamic Maghreb, and the Islamic State of Iraq and ash-Sham (“ISIS”). Declaration of Michael J. Orlando, Acting Assistant Director of the Counterterrorism Division, FBI, Defendants’ Exhibit (“DEX”) 2 ¶ 15; Declaration of Hao-Y Froemling, Executive Director for Vetting, Office of Intelligence and Analysis, TSA, DEX1, ¶¶ 4, 17-27. These and other organizations are adept at disseminating propaganda and training materials in an effort to spur attacks worldwide. *See* Orlando Decl. ¶ 15 (describing recent terrorist activity). “Global jihadists in dozens of groups and countries threaten local and regional US interests, despite having experienced some significant setbacks in recent years, and some of these groups will remain intent on striking the US homeland.” 2019 Worldwide Threat Assessment, cited in Orlando Decl. ¶ 15 n.4.

2. Terrorists remain intent on attacking civil aviation, and the threat environment remains complex, diverse, and persistent. Froemling Decl. ¶ 4. Aviation remains a principal target for terrorists who seek to instill fear, disrupt the economy, and undermine the American way of life, and terrorists are constantly working to find new methods for evading security measures. *Id.* ¶¶ 17-21. Multiple terrorist attacks on civil aviation in recent years demonstrate the persistent threat and

that adversaries continue to try to find ways to defeat security measures. *Id.* ¶¶ 21-26 (describing recent attacks on commercial aircraft in Egypt and Somalia, in 2015 and 2016, respectively, and a 2017 terrorist plot in Australia). Terrorist groups are expected to continue to use insiders to execute attacks and also to apply their ingenuity to devise new ways to bypass or defeat aviation security measures. *Id.* ¶ 27.

3. Effective and timely governmental information-sharing is crucial to preventing terrorist attacks. In recent years, through the information sharing system supported by the TSDB, the U.S. has been able to track potential terrorist plots by coordinating derogatory information from the intelligence community with encounter information from local law enforcement or other screening partners. Declaration of Timothy P. Groh, Deputy Director for Operations of TSC, DEX3, ¶ 6. As was noted by the 9-11 Commission, this was not possible before 9-11 when, for example, the Central Intelligence Agency (“CIA”) might have known an individual had ties to terrorism—but did not know the individual was in the U.S.—while local law enforcement knew the individual was in the U.S.—but did not know the individual had ties to terrorism. The common operating picture afforded by the information sharing system (as supported by the TSDB) is absolutely critical to preventing such terrorist plots from coming to fruition in the future. *Id.*; *see also* *The 9/11 Commission Report*, § 13.3 (recommending greater information-sharing), § 8.2 (describing what the Commission found to be specific information failures in the months leading up to the 9/11 attacks), available at <https://www.9-11commission.gov/report/>.

### **The Defendant Agencies**

4. Several different components of the federal government work together to secure the United States and its borders and aviation system from these terrorist threats. The FBI investigates and analyzes intelligence relating to both domestic and international terrorist activities, *see* 28 U.S.C. § 533, 28 C.F.R. § 0.85(l). The FBI also administers the TSC, a multi-agency Executive organization established by Presidential Directive in 2003 and tasked with, *inter alia*, “consolidat[ing] the

Government's approach to terrorism screening and provid[ing] for the appropriate and lawful use of Terrorist Information in screening processes." Homeland Security Presidential Directive ("HSPD") 6 (Sept. 16, 2003), <https://fas.org/irp/offdocs/nspd/hspd-6.html>.

5. The National Counterterrorism Center ("NCTC") analyzes and integrates intelligence relating to international terrorism and counterterrorism. 50 U.S.C. §§ 3056(a), (d)(1). NCTC maintains classified national security information concerning international terrorists within its Terrorist Identities Datamart Environment ("TIDE"). Groh Decl. ¶ 21.

6. DHS is charged with "prevent[ing] terrorist attacks within the United States," 6 U.S.C. § 111(b)(1)(A), and "reduc[ing] the vulnerability of the United States to terrorism," *id.* § 111(b)(1)(B); *see also id.* § 202(1) (charging DHS with the responsibility of "[p]reventing the entry of terrorists and the instruments of terrorism into the United States."). Within DHS, TSA is responsible for securing all modes of transportation, including prevention of terrorist attacks against civil aviation and other methods of transportation. *See* 49 U.S.C. § 114(d). TSA is further responsible for day-to-day federal security screening operations for passenger air transportation, 49 U.S.C. § 114(e)(1), and for developing "policies, strategies, and plans for dealing with threats to transportation security," *id.* § 114(f)(3). TSA may "issue . . . such regulations as are necessary to carry out [its] functions," *id.* § 114(l)(1), as well as "prescribe regulations to protect passengers and property on an aircraft," *id.* § 44903(b).

7. The Froemling Declaration details TSA's multi-faceted approach to aviation security, which includes pre-screening, checkpoint screening, post-checkpoint security measures, and security threat assessments. Froemling Decl. ¶¶ 30-51. One of TSA's responsibilities is to ensure aircraft security by using information from government agencies to identify individuals on airline passenger lists who may be a threat to civil aviation or national security and prevent such individuals from boarding an aircraft, or take other appropriate actions. *See* 49 U.S.C. § 114(h)(3). TSA executes this mandate in part through the Secure Flight program, which "compar[es] passenger information to the

automatic selectee and no fly lists and utilizes all appropriate records in the [TSDB].” 49 C.F.R. § 44903(j)(2)(C)(ii). After completing the comparison of passenger information, TSA provides instructions to aircraft operators to identify individuals for standard, enhanced, or expedited screening at a security checkpoint, or to deny individuals transport or authorization to enter a U.S. airport’s sterile area. Froemling Decl. ¶ 31.

8. All aviation passengers must undergo security screening prior to entering the secure area of an airport and boarding an aircraft, and any passenger may be selected for enhanced screening. *Id.* ¶ 10; 34. TSA applies the same checkpoint screening procedures to individuals Secure Flight designates for enhanced screening, regardless of whether the individual is designated due to TSDB status, randomly, or for other reasons, and the boarding pass does not indicate why someone has been selected for enhanced screening. *Id.* ¶ 11. The majority of passengers designated for enhanced security screening are so designated for reasons other than TSDB status. *Id.* ¶ 10. Enhanced screening typically includes screening of the person through a walk-through metal detector, the Advanced Imaging Technology (also known as an “AIT”), and a pat-down, and screening of accessible property through a scanner, an explosives trace detection search, and physical search of the interior of the passenger’s accessible property, electronics, and footwear. *Id.* ¶ 39. A typical enhanced screening takes 10 to 15 minutes. *Id.* ¶ 39.

9. Also within DHS, CBP has authority to inspect all those who are entering the United States. CBP exercises authority under numerous statutes to search persons and goods at the nation’s border. *See, e.g.*, 19 U.S.C. §§ 482, 1455, 1459, 1461, 1467, 1499, 1581, 1582; *United States v. Flores Montano*, 541 U.S. 149, 152-53 (2004). These authorities include, but are not limited to, inspections for the purpose of preventing terrorist attacks. *See, e.g.*, 6 U.S.C. § 211(g)(3)(a); *Tabbaa v. Chertoff*, 509 F.3d 89, 97 (2d Cir. 2007) (describing antiterrorism mission of CBP and DHS).

10. The Howe Declaration describes some of the methods used by CBP to execute its mission. Declaration of Randy Howe, Exec. Dir. for Operations, Office of Field Operations, CBP,

DEX51 ¶¶ 12-20. All travelers attempting to enter the U.S. are required to present themselves and their effects for inspection at the port of entry. *Id.* ¶ 13. A CBP officer will verify the identity of the person, and ask the person questions regarding his or her travel and intent in entering the U.S. CBP also performs law enforcement system queries to see if there are any alerts in the system. Alerts may be present in the system for a wide variety of reasons. *Id.*

11. CBP officers have discretion in conducting their inspections, subject to legal and policy requirements and in accordance with their training and experience. *Id.* ¶ 14. There are myriad reasons a CBP officer may refer a traveler for additional scrutiny, sometimes referred to as secondary inspection. *Id.* For example, CBP randomly refers a percentage of travelers for additional scrutiny. *Id.* Consideration of TSDB information at the border is also an important element of accomplishing CBP's border security responsibilities. *Id.* ¶ 15. Once a traveler is referred for additional scrutiny, the specific actions taken during the secondary border inspection vary depending on the officer's evaluation of each traveler's situation. *Id.* ¶ 17. For example, an officer may choose to search that traveler's luggage or other belongings, subject to legal and policy requirements. *Id.*

### **The TSDB**

12. Pursuant to HSPD-6, TSC consolidated several government terrorist watchlists into a single database. Groh Decl. ¶¶ 4-5. The TSDB contains unclassified identifying information of known or suspected terrorists. *Id.* ¶¶ 9-11. The vast majority of the identities in the TSDB are foreign nationals who are not located in, and have no known nexus to, the U.S. *Id.* ¶ 19. In fact, U.S. persons<sup>1</sup> make up less than 0.5 percent (*i.e.*, one two-hundredth) of the identities in the TSDB. *Id.* As a result of the dynamic intelligence environment, regular reviews of the data, and the redress process, the TSDB is constantly changing as it is continuously reviewed and updated. *Id.* ¶ 13.

13. To include a known or suspected terrorist identity in the TSDB, the nomination must rely upon articulable intelligence or information which, based on the totality of the

<sup>1</sup> U.S. Persons, as defined in Executive Order 12333, are U.S. citizens and legal permanent residents.

circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities, and the nomination must include sufficient identifying information. Groh Decl. ¶ 22. Mere guesses or “hunches” or the reporting of suspicious activity alone are not sufficient to establish reasonable suspicion. *Id.* ¶ 24. Nominations must not be based solely on the individual’s race, ethnicity, or religious affiliation, nor solely on beliefs and activities protected by the First Amendment. *Id.* ¶ 25.

14. TSA may designate airline passengers for enhanced screening who meet the reasonable suspicion standard for TSDB inclusion and for whom the TSDB record contains a full name and a full date of birth. Individuals who meet this minimum requirement are included in the “Expanded Selectee List,” a subset of the TSDB. Froemling Decl. ¶ 10 & n. 15. The No Fly List and the Selectee List are separate subset lists of the TSDB, and placement on those subsets requires additional heightened substantive derogatory criteria to be met. *See* 49 C.F.R. § 1560.105(b)(2), (b)(7)(iii); Groh Decl. ¶ 26; Froemling Decl. ¶ 10.<sup>2</sup> The TSA Administrator has final authority over implementation of the No Fly, Selectee, and Expanded Selectee Lists and makes final determinations concerning inclusion on the No Fly List for U.S. persons seeking redress through DHS TRIP. *Id.*

15. To maintain thorough, accurate and current terrorism information, the TSDB is subjected to rigorous and ongoing quality control measures. Groh Decl. ¶ 41. First, before any individual is added to the TSDB, the nominating agency assesses the available, relevant information,

<sup>2</sup> While TSA applies the same checkpoint procedures to individuals on the Expanded Selectee List as individuals on the Selectee List, TSA values having separate Selectee and Expanded Selectee Lists. More specific details related to why TSA values having both subset lists is SSI, which Defendants would be willing to provide the court *ex parte* if necessary. Froemling Decl. ¶ 10 n. 15. Plaintiffs’ counsel never sought access to SSI in this case, despite being repeatedly informed about the process for applying. Although the No Fly List criteria are public, the Selectee List criteria are not public because disclosure would give known or suspected terrorists information that may assist in developing strategies to circumvent security screening. Groh Decl. ¶ 27; Froemling Decl., Ex. A.

including any exculpatory information, to determine whether the applicable standard is met, and the TSC completes a de novo review of available, relevant information to make the same assessment before the individual is included in the TSDB. *Id.* ¶ 16. In addition, TSC conducts biannual reviews of all US citizens and lawful permanent residents in the TSDB to ensure continued placement is warranted based on available, relevant information, and further conducts a review at each encounter. *Id.* ¶¶ 16, 44. Nominating agencies also conduct annual reviews. *Id.* Individuals who experience travel-related screening difficulties such as delayed or denied boarding may also seek redress through DHS TRIP. Moore Decl. ¶¶ 3-16; Groh Decl. ¶¶ 16, 52-63.

16. Nominations to the TSDB are made by federal agencies based on credible information from a wide variety of intelligence sources; additionally, foreign partners may submit identities to be considered for nomination to the TSDB. Groh Decl. ¶ 18. Nominating agencies and partners provide identities that meet the standard for inclusion in the TSDB and which have a nexus to international terrorism to the NCTC, and to the FBI for identities with a nexus to domestic terrorism. *Id.* ¶ 19. Accordingly, before an individual is added to the TSDB, the nomination undergoes a multi-step review process at the nominating agency, at the NCTC or FBI (as appropriate), and then again at TSC to ensure compliance with interagency standards for inclusion. *Id.* ¶ 20.

17. TSDB determinations are not categorical judgments based on statistical models or generic behavioral indicators. Orlando Decl. ¶ 11. The watchlisting system combines intelligence analysis with policy-based criteria for requiring additional security screening before boarding an aircraft. *Id.* This system relies on informed judgments by experienced analysts and agents who evaluate TSDB nominations based on individual circumstances, taking into account the particular intelligence that distinguishes the individual under review. *Id.* These analysts and agents draw on years of experience and training and from a body of source material; they have a variety of investigative and intelligence-gathering tools at their disposal to inform their judgment and make use

of subject-matter experts from throughout the intelligence community. *Id.* ¶ 14 Agents and analysts are also guided in their decision-making by detailed analytical standards that structure their discretion and promote scrutiny and professionalism in their work. *Id.* ¶ 11.

18. TSC is responsible for determining if the information associated with a nomination meets the established standards for inclusion in the TSDB or its subset lists. Groh Decl. ¶ 26.

19. At any time that a federal agency (whether or not it was the nominator) identifies new or updated information about a watchlist record, is expected to make a request to NCTC/TSC to modify or remove that record. *Id.* ¶ 45. Nominating agencies conduct annual reviews of all their nominations of U.S. persons to the TSDB, and each nominating agency has internal procedures to prevent, identify, and correct any errors. *Id.* ¶ 43.

20. TSC also regularly reviews data in the TSDB to ensure the underlying information supports the nomination and performs audits to confirm the data in the TSDB is thorough, accurate, and current. Groh Decl. ¶ 44. In addition to these reviews, the TSC conducts a biannual review for all U.S. person records in the TSDB, and there is a review following each encounter when there is a potential match to an individual in the TSDB (“a TSDB identity”). *Id.* Available, relevant information, including exculpatory information, is carefully reviewed to evaluate whether the record still meets the standard for inclusion. *Id.*

21. Other government entities provide further oversight and input into watchlisting procedures, including Inspectors General, the Privacy and Civil Liberties Oversight Board, the Government Accountability Office, and Congress. *Id.* ¶¶ 48-50. Such reviews have resulted in additional quality assurance mechanisms at TSC, which have improved accuracy and efficiency. *Id.*

### **Redress**

22. Congress directed DHS to establish a timely and fair redress process for travelers who believe they have been delayed or prohibited from boarding a commercial aircraft because they have been wrongly identified as a threat. *See* 49 U.S.C. § 44926(a). Congress further directed the

Administrator of TSA to create a process to enable airline passengers who are delayed or prohibited from boarding a flight because TSA's "passenger prescreening system determined that they might pose a security threat to appeal such determination and correct information contained in the system" as necessary. *Id.* § 44903(j)(2)(C)(iii)(I). TSA implements this mandate through DHS TRIP, which serves as a single point of contact for a wide variety of complaints and inquiries regarding travel difficulties. Declaration of Deborah O. Moore, Branch Manager, Transportation Security Redress Branch, TSA. DEX 4, ¶ 5.

23. Travelers who have experienced a screening-related travel difficulty, including those who believe that they experienced such problems because they were wrongly identified as a threat may submit a Traveler Inquiry Form to DHS TRIP. Moore Decl. ¶ 7. When a traveler files an inquiry with DHS TRIP online, the system automatically provides the traveler a Redress Control Number ("RCN"), which helps the traveler monitor the progress of the inquiry. An additional feature of the RCN is that a traveler may use the RCN when making future air travel reservations. *Id.* ¶ 8. In conjunction with TSA's Secure Flight Program, airlines have modified their reservation systems to allow an individual with an RCN to enter it into the reservation system to prevent the individual from being misidentified. *Id.*

24. Upon receipt of a Traveler Inquiry Form, DHS TRIP reviews the information submitted by the traveler and evaluates each inquiry to determine which DHS components or other governmental agencies have equities in the issues underlying the claimed travel difficulties. In addition to reviewing the traveler's submission, DHS TRIP also reviews relevant government databases, and refers the inquiries to the appropriate DHS TRIP component(s), and/or any other governmental agencies with equities. Moore Decl. ¶ 9. Approximately 98 percent of DHS TRIP inquiries have no connection with any identity in the TSDB. Moore Decl. ¶ 11.

25. If a traveler experienced problems because he or she was "misidentified"—*i.e.*, the traveler's name is the same as or similar to the name of a different individual who is included in the

TSDB—then DHS TRIP, in coordination with all relevant government agencies, attempts to prevent future misidentification. Moore Decl. ¶ 10.

26. In the small fraction of cases when DHS TRIP determines that a traveler is an exact or possible match to an identity in the TSDB, DHS TRIP refers the matter to the TSC Redress Office. Moore Decl. ¶ 11. When this occurs and the traveler is a confirmed match to the TSDB, TSC reviews the available derogatory and exculpatory information about the traveler, including any information provided by the traveler as a part of the inquiry, to determine whether the identity in the TSDB continues to satisfy the criteria for inclusion or should be removed or have its status otherwise modified. Moore Decl. ¶ 12; Groh Decl. ¶¶ 56-60. The TSC Redress Office consults with the nominator to ensure that any new or exculpatory information is considered as part of the redress review. Groh Decl. ¶ 58. When changes to a record's status are warranted, TSC's Redress Office ensures such corrections are made and verifies that such modifications or removals are carried over to the various screening systems that receive TSDB data. DHS TRIP sends a determination letter advising the traveler of the results of the adjudication of the redress inquiry. *Id.* ¶ 60. When appropriate, the DHS TRIP redress process will result in removal of a traveler from the TSDB and/or one of its subsets. Moore Decl. ¶ 12; Groh Decl. ¶ 60.

27. Once all relevant agencies have reviewed a redress inquiry and record, DHS TRIP issues a determination letter to the traveler. Moore Decl. ¶ 13. In light of national security and law enforcement interests, the determination letter generally provides the results of the individual's redress inquiry without disclosing whether the traveler was, or is, included in a federal watchlist used by TSA for passenger pre-boarding screening (including the TSDB and its subsets) or revealing other sensitive information. Moore Decl. ¶ 14;<sup>3</sup> *see also, e.g.*, March 23, 2015 DHS TRIP Redress letter to Plaintiff Shahir Anwar, Bates No. Elhady-DHSTRIP-000811-12, DEX 56.

<sup>3</sup> Additional process is available to U.S. persons who have been denied boarding and request redress through DHS TRIP because they are on the No Fly List. *See* Groh Decl. ¶ 62; Moore Decl. ¶ 17; *see Mohamed v. Holder*, No. 1:11-CV-50 AJT/MSN, 2015 WL 4394958, at \*13 (E.D. Va. July 16, 2015).

28. FBI, TSC, CBP, and TSA have each assessed that disclosure of TSDB status during the redress process—to individuals who have not been denied boarding—would cause harm to national security and law enforcement efforts, and would be detrimental to transportation security, and that disclosure of underlying derogatory information would cause additional harm to national security. Orlando Decl. ¶¶ 19-36; Groh Decl. ¶¶ 64-67; Froemling Decl. ¶¶ 52-60, Howe Decl. ¶ 20. Compelled disclosure of a traveler's TSDB status in these circumstances would have a devastating effect on the usefulness of the TSDB and imperil the effectiveness of critical law enforcement tools used to protect national security. Orlando Decl. ¶¶ 19, 36.

29. If the Government were forced to disclose TSDB status—beyond the limited disclosure contemplated by the DHS TRIP process for U.S. persons denied boarding—terrorists would know who would be required to undergo additional screening at airports, and could use that information to attempt to evade security measures to gain access to the commercial aviation system to perpetrate an attack. Froemling Decl. ¶¶ 53-59. The information could be used to identify the best operatives, to predict the likelihood of detection, and to take countermeasures to attempt to avoid that detection, and could specifically compromise countermeasures such as federal air marshals. *Id.* Moreover, requiring disclosure of whether or not an individual is in the TSDB or the reasons for such inclusion, beyond the disclosure contemplated by the DHS TRIP procedures, could jeopardize the integrity and secrecy of ongoing counterterrorism investigative or intelligence activities, and prompt individuals to take countermeasures and evade detection. Orlando Decl. ¶¶ 19-36; *see also* Groh Decl. ¶¶ 64-67; Froemling Decl. ¶¶ 49-59. Finally, DHS TRIP assesses that if the enhanced redress process for U.S. persons on the No Fly List were applied to U.S. persons who receive enhanced screening as a result of TSDB status, its workload for enhanced redress cases would increase by approximately 1400%. Moore Decl. ¶¶ 17-20.

### Information-Sharing

30. It is the policy of the U.S. Government not to disclose TSDB status; it is law enforcement sensitive, and certain subset lists of the TSDB are also Sensitive Security Information (“SSI”); *see* 49 U.S.C. § 114(r) and 49 C.F.R. part 1520. Groh Decl. ¶ 61; Orlando Decl. ¶ 20; Howe Decl. ¶ 9; Froemling Decl. ¶ 52 & Ex. A. TSDB information therefore is not shared with the public and is subject to strict access controls. Froemling Decl. ¶ 62. The information is protected from disclosure and is accessible only to persons who have an official “need to know,” such as federal law enforcement officials for their screening and vetting functions. Groh Dec. ¶ 10.

31. Pursuant to HSPD-6, agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective public missions. Groh Dec. ¶ 30. TSC exports subsets of TSDB information to the following federal government entities: DHS, Department of State, FBI (including the National Crime Information Center (“NCIC”), a database administered by the Criminal Justice Information Services (“CJIS”) Division of the FBI to enable information-sharing among law enforcement agencies), and the Department of Defense. *Id.* ¶ 32. For other agencies and events, TSC runs lists of names against the TSDB and reports the results to the agency requester. *Id.* Memoranda of understanding (“MOUs”) between TSC and its screening partners specify the terms by which TSDB information is shared and used. *Id.* As a result, TSC can attest that its screening partners use TSDB information for lawful screening purposes, in accordance with their own legal authorities, and subject to the restrictions specified in relevant MOUs. *Id.* Prohibited disclosure of internal government information, let alone information protected by statutory law and privilege (such as TSDB information), constitutes a serious breach of official duties. *Id.*

32. TSC exports subsets of TSDB data to foreign partners (including all Visa Waiver Program countries) with which TSC has entered into foreign partner arrangements. Groh Decl. ¶ 33.

TSC reasonably expects foreign partners to use TSDB information for lawful terrorist screening purposes, subject to their domestic laws and authorities, and subject to the restrictions specified in relevant arrangements. *Id.*

33. TSC does not provide TSDB information or access to the TSDB directly to any private company. Defendants are not aware of any mechanism, policy or practice that would permit TSDB information to be shared with entities such as car dealerships, banks, financial institutions, or gun dealers. Groh Decl. ¶ 36; Orlando Decl. ¶ 17; Declaration of Robin A. Stark-Nutter, Section Chief, National Criminal Background Check System (“NICS”), CJIS, FBI ¶¶ 11-13 (explaining that TSDB status is not a basis for denial of a firearm and is not communicated to a gun seller). 34.

34. Indirectly, as discussed in further detail below, certain MOUs permit some limited private access to some TSDB data when it is necessary to carry out or support a government function. Groh Decl. ¶ 35. For example, TSA provides a subset of TSDB information to regulated U.S. airport and aircraft operators for the purpose of vetting passengers and employees in the limited circumstances in which TSA does not conduct such vetting itself. Froemling Decl ¶ 61. All parties authorized to receive TSDB information by TSA, including authorized representatives, must protect this information as SSI and safeguard this information from unauthorized disclosure in accordance with the provisions of 49 C.F.R. part 1520 and are subject to civil penalty and other enforcement action. *Id.* ¶ 62.

35. TSA also uses TSDB information as part of its process in conducting security threat assessments of individuals who have access to sensitive transportation areas and systems pursuant to regulation. *See, e.g.*, 49 C.F.R. parts 1540 and 1572; Froemling Decl. ¶¶ 3; 49-51. In conducting security threat assessments, TSA’s eligibility determinations draw on information provided from multiple federal databases, including the TSDB. Froemling Decl. ¶ 50. An individual’s inclusion in one or more government databases is not determinative of TSA’s eligibility determinations. *Id.* TSDB status merely serves as a factor indicating that an individual requires further scrutiny. *Id.* Even

if a person applied for employment requiring a TSA security threat assessment, any determination of ineligibility by TSA resulting from that security assessment would be subject to a separate administrative redress process, *see, e.g.*, 49 C.F.R. Part 1515, and review in the Court of Appeals.

36. CBP receives TSDB information and considers it as an important element of accomplishing CBP's border security responsibilities, and TSDB status is one of many factors that may indicate that additional scrutiny of a traveler is warranted. Howe Decl. ¶ 14. CBP also uses TSDB information to assist in vetting activities, including for example, vetting of applicants for customs seals. *Id.* ¶ 20. While not dispositive, inclusion in the TSDB could indicate that additional research regarding an individual's eligibility for a custom's seal is needed and the derogatory information supporting TSDB status is one of many factors considered in making a determination to grant, revoke or suspend a customs seal. *Id.* ¶ 24. CBP's determination will be based upon all available information, including but not limited to any derogatory information supporting TSDB status. *Id.* Customs seals are governed by a separate administrative scheme with its own appeals process. *See generally* 19 C.F.R. §§ 122.181-89.

37. TSDB exports enable the FBI to share relevant information necessary for its partners to carry out their respective missions in a concerted effort to prevent terrorist attacks. Orlando Decl. ¶ 16. The TSDB allows FBI to leverage the combined resources of state, local and federal law enforcement to provide information on the activities of known or suspected terrorists whom they encounter. *Id.* The TSC exports a subset of TSDB, referred to as the Known or Suspected Terrorist ("KST") File, to the NCIC. Orlando Decl. ¶ 17. Users access information in the NCIC Files by entering a name and identifier, such as a date of birth or social security number; a user cannot perform a search if only a name is entered, and information is returned to the user only if both the name and numeric identifier match a record in any of the files in NCIC. Declaration of Scott A. Rago, Acting Deputy Assistant Director, Operational Programs Branch, CJIS, FBI, DEX52, ¶ 6. NCIC access is available to over 18,000 governmental law enforcement entities nationwide. DEX

58. In order for an entity to search information in the NCIC, the entity must apply for and obtain an Originating Agency Identifier (“ORI”) from the CJIS Division. Rago Decl. ¶ 9. NCIC access is subject to stringent security controls and regular audits, and the applicable federal security policy is set forth in the CJIS Security Policy. *Id.* ¶¶ 20-23;<sup>4</sup> *see* [https://www.fbi.gov/file-repository/cjis-security-policy\\_v5-7\\_20180816.pdf/view](https://www.fbi.gov/file-repository/cjis-security-policy_v5-7_20180816.pdf/view).

### **The Plaintiffs<sup>5</sup>**

38. All of the Plaintiffs are U.S. citizens. Although four of the Plaintiffs were previously denied boarding on flights, none of the Plaintiffs believe they are currently on the No Fly List, and none of the Plaintiffs has been prohibited from travel. Dkt. No. 47, at 2 n.2. None of the Plaintiffs believes that he has been denied the ability to purchase a gun because of the watchlist.<sup>6</sup> None of the Plaintiffs has ever: sought a HAZMAT license; been denied a job at an airport, or been denied the ability to board a ship or boat.<sup>7</sup> None of the Plaintiffs claims to have been informed by government officials whether they are on a watchlist that would require enhanced screening.

<sup>4</sup> A limited number of private entities (estimated at 533) have access to the NCIC because they are performing or supporting law enforcement functions. In order to obtain an ORI, a qualified private entity must certify the criminal justice duties the entity will be performing, either as a qualified police department of a railroad or college or university, 28 U.S.C. § 534(e), or on behalf of a criminal justice agency pursuant to 28 C.F.R. § 20.33(a)(6)-(7), and if applicable, must also submit the contract between the criminal justice agency and the entity, which must include the FBI CJIS Security Addendum. *See* Rago Decl. ¶¶ 10-16, 24; *see also* 28 C.F.R. § 20.20(a) The Security Addendum limits the use of the NCIC information, ensures the security and confidentiality of the information consistent with regulations and CJIS security policies, provides for sanctions for misuse, and contains such other provisions as the Attorney General may require. Rago Decl. ¶¶ 14-15.

<sup>5</sup> The following statement of facts is recited in the light most favorable to the Plaintiffs, consistent with the standard for summary judgment. Defendants do not concede all of Plaintiffs’ recited claims.

<sup>6</sup> *See* DEX6, at 55; DEX8 at 155; DEX10 at 115-16; DEX12, at 110-12; DEX14 at 100-01; DEX16 at 75; DEX18 at 173; DEX19 at 143-44; DEX22 at 82-83; DEX24, at 131; DEX26 at 235-36; DEX28 at 164-68; DEX30 at 240-43; DEX32 at 262-70; DEX34 at 225-26; DEX36 at 159; DEX38 at 111; DEX40 at 262-64; DEX42 at 277; DEX44 at 189-92; DEX46 at 179; DEX48 at 287-91; DEX49 at 149.

<sup>7</sup> *See* DEX6 at 55-58; DEX8 at 155-56; DEX10 at 111-15; DEX12, at 100-01, 109-10; DEX14 at 101-03; DEX16 at 75-77; DEX18 at 173-76; DEX19 at 143-46; DEX22 at 83-86; DEX24 at 132-33; DEX26 at 236-40; DEX28 at 168-71; DEX30 at 243-46; DEX32 at 270-71; DEX34 at 226-28; DEX36 at 159-62; DEX38 at 111-12; DEX40 at 265-67; DEX42 at 277-79; DEX44 at 192-95; DEX46 at 179-180; DEX48 at 291-93; DEX49 at 149-51.

39. **Osama Ahmed**: Since reaching the age of majority,<sup>8</sup> Ahmed has thrice (in 2010-2011, 2014, and 2016-2017, respectively) traveled by air to Yemen. DEX5 p. 6-9. On the latter two trips, he was selected for enhanced screening by TSA, and on each of the trips, he was referred for secondary inspection by CBP upon his reentry into the U.S. *Id.*; DEX6 at 20-24, 32-33, 37-40, 44-45. Upon his reentry in 2011, CBP officers detained a USB drive in order to complete a border search; FBI agents subsequently returned the drive to him in a home visit. DEX5 at 6; DEX6 at 25-28. In 2017, he missed a connecting flight following this border inspection, and was rebooked for a flight that departed one or two hours later. DEX6 at 44-45. Ahmed did not have any issues flying to Washington, DC for his deposition in February 2018. *Id.* at 72-73.

40. Osama Ahmed completed a DHS TRIP traveler inquiry form on April 20, 2011, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about October 4, 2011. Moore Decl. ¶ 24.

41. **Ahmad Al Halabi**: In 2005, Al Halabi entered the U.S. by land near San Diego, and was questioned, searched, and he estimates that he was detained for approximately four and a half hours. DEX7 at 5-6.<sup>9</sup> From 2005 to 2016, Al Halabi lived in Dubai. DEX8 at 32. Between 2012 and 2017, he took approximately seven round trip international flights and three round trip domestic flights. DEX7 at 6-8. During that time, when he traveled by air to the U.S., prior to boarding he was questioned by someone from the U.S. Embassy; upon arrival in the U.S., he estimates that he would be questioned by CBP up to four and a half hours, and he afterwards missed two connecting flights. DEX8 at 37-41, 48-51, 72, 88-89. He was also selected for enhanced screening by TSA, which he

<sup>8</sup> While a minor, Ahmed traveled around twice a month from the U.S. to Canada. DEX5 at 5-6. He estimates that around 70% of those trips involved an inspection delay of around 15 minutes, on the “low end,” and around 20 percent were four to five hours, on the “high end.” DEX6 at 20.

<sup>9</sup> Defendants do not concede that any of Plaintiffs’ estimated timeframes regarding their various screening and inspection encounters are accurate, and in the event this case were to proceed to trial, reserve the right to question or impeach Plaintiffs regarding these assertions. However, for the purposes of this summary judgment motion only, Defendants do not dispute that the timeframes provided are in fact Plaintiffs’ estimates.

recalls lasting 30 to 45 minutes. *Id.* at 54-55, 60. In 2014, Al Halabi and his family entered the U.S. by land from Canada, and were detained at the border for approximately five hours. *Id.* at 74-79, DEX7 at 7. He continued travelling, and beginning in 2016, he “started seeing less and less interrogation and . . . invasive searching,” including on two trips to Canada, and he had no problems travelling for his deposition. DEX8 at 107-08.

42. Al Halabi recently worked for a contractor, for which employment he acquired a security badge giving him full access to the Detroit airport’s facilities. DEX8 at 151-52. He has submitted three DHS TRIP inquiries and was issued a final determination letter each time. Moore Decl. ¶ 25.

43. **Saleem Ali:** From 2011 to 2017, Ali traveled by air on more than 15 flights. DEX9 at 5-9, 12-15.<sup>10</sup> Upon reentry into to the U.S. in 2011, he recalls being questioned by CBP for around three hours. DEX10 at 34. On an outgoing domestic flight in 2014, he experienced additional screening at the TSA checkpoint, and was told it was random selection. *Id.* at 41. Upon reentry from a March 2017 trip to Indonesia, he recalls being questioned by CBP for 45 minutes; he was told his selection for this questioning was random. DEX10 at 69-71; DEX9 at 8.

44. From 2014 to 2016, Ali frequently exited and reentered the U.S. by land. On two or three occasions in 2014 and 2015, Ali was detained and questioned by CBP, which he recalls lasting about 30 to 45 minutes. DEX10 at 45, 55-56. On one occasion in October 2015, Ali was detained for secondary inspection, which he estimates lasted approximately six hours, and was told to return the next day to retrieve his phone. *Id.* at 49-53. From September and December 2017, Ali made 12 additional trips into Canada as part of his employment as a truck driver. DEX9 at 5-11. After driving

<sup>10</sup> Ali testified that some of his international travel by air between 2011 and 2016 does not appear in his interrogatory responses, but did not explain the omission. DEX10 at 39-40, 43. He also testified that several of the dates of other travel described in his interrogatory responses are incorrect. For example, a 2011 trip to Indonesia is incorrectly described as having taken place in 2016. DEX10 at 56-59; *compare* DEX9 at 8 ¶ 19. Another trip by land to Canada is incorrectly listed as taking place in November 2016, when it occurred in 2015. DEX10 at 60; *compare* DEX9 at 10 ¶ 12.

into Canada, Ali would return to the U.S. by air. DEX10 at 77-79. He was unable to obtain a boarding pass from a self-service kiosk for these flights; he did not encounter any additional security screening at the checkpoint. *Id.* at 78-80, 86-89.

45. Ali continued travelling and did not undergo additional or enhanced screening or secondary inspection when traveling internationally by air or land on other occasions between 2015 and 2017. *Id.* at 48, 68, 90-92.

46. Ali submitted a DHS TRIP inquiry on March 15, 2011, related to travel difficulties. DHS TRIP issued a final determination letter in response to that inquiry on or about March 30, 2011. Moore Decl. ¶ 26.

47. **Mark Amri**: Between June 2006 and July 2014, Amri exited and re-entered the U.S. by air or land on at least six occasions, without any relevant incident. DEX11 at 5-6; DEX55.<sup>11</sup>

48. Amri also flew domestically without incident in June 2014. DEX11 at 7; DEX 12 at 40. In January 2016, Amri attempted to fly to Las Vegas, but was unable to obtain a boarding pass at the airport. DEX11 at 8; DEX12 at 42-44. Amri subsequently submitted a DHS TRIP inquiry on March 4, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about September 1, 2016, which stated, “At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly.” Moore Decl. ¶ 27. In August 2016, Amri flew to San Francisco, and was required to undergo enhanced screening at the TSA checkpoint. DEX11 at 7-8; DEX12 at 48-52. In March 2018, prior to boarding a connecting flight en route to his deposition in this litigation, a swab taken from Amri’s hands tested positive on an explosive trace detection test; he was thereafter required to undergo two pat-downs because a trainee had erroneously been assigned to conduct the first pat-down, requiring that

<sup>11</sup> Amri has fully and completely disclaimed as a factual matter that he was in any way injured by Defendants’ conduct during his international travel experiences, and his international travel experiences do not form any part of his claims against Defendants. DEX55 (Stipulation).

it be re-done. Amri missed his connecting flight and was rebooked on a later flight. *See* Dkt. No. 187 (Defs.' Opp'n Mot. for Disc.) p. 2, Dkt. No. 187-4 (Decl. of Timothy Joseph).

49. **Samir Anwar**: Samir Anwar estimates that prior to 2014, he made 15 round trips by car into Canada, all without incident. DEX14 at 79-82. In May 2014 and again in February 2015, Anwar was detained by CBP, which he estimates lasting for approximately 3.5 hours, upon crossing into the U.S. by land from Canada; on each occasion, he received a patdown search and was questioned. *Id.* at 67-73, 83-89; DEX13 at 6-7. He chose to forego an additional trip to Canada. DEX 14 at 92-93. In September 2017, he again traveled to Canada, without incident. *Id.* at 94; DEX13 at 7-8.

50. In June 2014, Samir Anwar flew round-trip domestically and on both legs was screened for approximately 15 additional minutes at the security checkpoint. DEX14 at 31-41. Aside from this trip, he has “never ha[d] an issue or delay boarding a flight.” *Id.* at 62-63. Since then, he has flown domestically without incident on at least three occasions. *Id.* at 47-57, 61-62; DEX13 at 9-10.

51. Samir Anwar completed a DHS TRIP traveler inquiry form on July 9, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about August 7, 2014. Moore Decl. ¶ 28.

52. **Shahir Anwar**: Since 2005, Shahir Anwar has traveled by land to Canada and back approximately once or twice per year, without issue. DEX16 at 43-44; 65-66; DEX15 at 6. In 2006, he additionally entered the U.S. by land from Canada, after traveling by air round-trip from Toronto to Afghanistan with his parents; their luggage was searched at the border, and they were detained at the border for an estimated two to three hours. DEX16 at 46-48. In 2010, Shahir Anwar flew internationally without incident. DEX15 at 5-6; DEX16 at 48-51.

53. Shahir Anwar has also flown round-trip domestically five times. DEX15 at 7-9. On trips in 2013 and 2014, he was unable to print his boarding pass from a kiosk. Security searched him

and through all of his items. *Id.*; DEX15 at 58-62. Subsequently, he has taken at least three additional domestic airline trips, all without incident. DEX15 at 9; DEX16 at 62-65, 74. He does not believe his reputation has been affected by his purported watchlist status. DEX16 at 82-83.

54. Shahir Anwar completed a DHS TRIP traveler inquiry form on November 3, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about March 23, 2015. Moore Decl. ¶ 29.

55. **Ibrahim Awad**: Since becoming an adult (around 2009), Awad has encountered no unusual security on domestic flights, including on at least four round trips. DEX17 at 11; DEX18 at 108-18. He makes no allegation that he was ever subject to any significant delays by CBP. Rather, on a connecting flight to the U.S. from Turkey (via the Netherlands) in 2013, he was subjected to patdowns and questions by the Netherlands security, but entered the U.S. without delay. DEX18 at 37-42. In 2014, he was questioned by NYPD officers at customs, which he recalls taking about 15 minutes. *Id.* at 55-65. In 2017, he flew from Saudi Arabia to the U.S. via Canada; on the first leg of this trip he and others were selected for additional screening by foreign officials at the gate; he experienced no delay. *Id.* at 72-82.

56. Awad has made several trips to Canada by car, including three trips in which he estimates he was questioned at the border for less than an hour. DEX17 at 5-10. He continued travelling, and in December 2016, he crossed the border without incident or delay. DEX18 at 95-96.

57. In 2016, Awad was required to undergo a short waiting period before Buff Whelan Chevrolet in Sterling, Michigan, would lease a truck to him. *Id.* at 126-49. Subpoenaed records reflect that Awad's name was a near match to a name on the Specially Designated National ("SDN") list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"); accordingly, the dealer was required to verify that Awad was not the individual on the list before it could complete the transaction. Declaration of Amy Powell, attaching Subpoena Response from

Robert Y. Weller, February 2, 2018, *attached as* DEX54. Accordingly, the apparent delay in his test drive was unrelated to the TSDB.<sup>12</sup>

58. DHS TRIP has no record of receiving any inquiry from Awad. Moore Decl. ¶ 30.

59. **Michael Coleman**: Between 2012 and 2015, Coleman traveled to Canada by land on multiple occasions, without incident. DEX19 at 55. During his last such entry, in or about March 2015, he was subject to secondary inspection that he recalls lasting one to two hours. *Id.* at 51-53.

60. Coleman has taken at least five round-trip domestic flights and four round-trip international flights since 2015. DEX20 at 5-13. Between 2015 and 2017, he was routinely required to undergo enhanced screening by TSA; in conjunction with delays in obtaining his boarding pass, he estimates that he was typically delayed by thirty minutes to one hour. DEX19 at 87. Coleman missed one flight due to enhanced screening, *Id.* at 74-75, 88, and was twice referred for secondary inspection by CBP upon returning to the U.S. *Id.* at 96-97, 105-06.

61. Between September 2017 and February 2018, Coleman traveled more than five times by air domestically, and twice internationally. *Id.* at 118 Coleman did not experience any travel difficulties in connection with these trips. *Id.* at 119. Coleman does not believe that he is currently on any watchlist. *Id.* at 154.

<sup>12</sup> Dr. Ibrahim Awad Ibrahim Al-Badri remains on the SDN List because he was designated by the State Department pursuant to Executive Order 13224, 66 Fed. Reg. 49079 (2001). *See* <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=2971>; <https://www.un.org/press/en/2011/sc10405.doc.htm>; <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20111004.aspx>; <https://2009-2017.state.gov/r/pa/prs/ps/2011/10/174971.htm>. U.S. persons, including financial institutions, are generally prohibited from conducting any business with designated persons. *See* E.O. 13224; 50 U.S.C. §§ 1701-06. Accordingly, it is common practice at financial institutions to automatically search for close matches and to ensure that near matches to SDN list have provided verification of their identity. *See generally* OFAC FAQs, [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_lists.aspx#sdn](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_lists.aspx#sdn) (“**What do I do if I have a match to the Specially Designated Nationals (SDN) or one of OFAC’s other sanctions lists?** If you have checked a name manually or by using software and find a match, you should do a little more research. Is it an exact name match, or very close? Is your customer located in the same general area as the SDN or another entry on one of OFAC’s sanctions lists? If not, it may be a ‘false hit.’ If there are many similarities, contact OFAC’s “hotline” at 1-800-540-6322 for verification.”).

62. Coleman's sole application to DHS TRIP was administratively closed due to his failure to provide the requisite documentation. Moore Decl. ¶ 31.

63. **Baby Doe:** Baby Doe has taken three roundtrip international flights. DEX21 at 5-6. On one trip, both Baby Doe and Baby Doe's father's boarding passes were stamped "SSSS." DEX22 at 44. Upon arrival in the U.S., Baby Doe's father was referred for secondary inspection, while Baby Doe remained with his mother. *Id.* at 48-49. Baby Doe was suffering from a fever and his father requested that CBP call an EMS to evaluate him, which CBP obliged. *Id.* at 50-51. Baby Doe traveled without incident on the other two trips. *Id.* at 59-60; DEX21. DHS TRIP has not received an inquiry on behalf of Baby Doe 2. Moore Decl. ¶ 32.

64. **John Doe 2:** Doe 2 has never encountered enhanced screening on domestic flights, including more than 20 flights from 2000 to 2018. DEX23 at 8-11; DEX24 at 26-54, 120-22. From 2006-2015, he flew four times to Turkey. DEX23 at 5-8. He encountered no unusual airport security, but on re-entry was stopped and interviewed by CBP, and his luggage and electronic devices were searched; he estimates that delays were between 1-3 hours. DEX24 at 63-107. Doe 2 completed a DHS TRIP traveler inquiry form on December 21, 2015, related to travel delays. DHS TRIP issued a final determination letter in response to that inquiry on or about January 21, 2016. Moore Decl. ¶ 33. He plans to travel internationally in 2019, and is concerned that it may take extra time or affect his wife. DEX24 at 114-15, 143-45.

65. **John Doe 3:** Since 2002, Doe 3 has flown internationally and domestically on multiple occasions. *See generally* DEX25.<sup>13</sup> He claims to have received enhanced screening from TSA

<sup>13</sup> At a discovery hearing on January 19, 2018, Magistrate Judge Anderson ruled from the bench that Plaintiffs "will be limited to those instances of disruption, or impeding their liberty, or whatever they claim is a result of the watchlist to those that have been identified as of today either through answers to interrogatories or through the depositions that have been taken [through] today." Jan. 19 Tr., attached as DEX58, at 25-26. Notwithstanding this clear instruction, when Doe 3 supplemented his interrogatory responses on February 2, 2018, he improperly attempted to bring new events, disclosed for the first time at this belated date, into the suit. Because these events are excluded from the suit, Defendants do not discuss them above.

on all domestic flights, DEX26 at 109-10, 144, but does not recall any specific incidents for at least five domestic round trip flights. *Id.* at 194-202; 203-04. He has also encountered additional screening or inspection during at least two international trips, which involved questioning, physical search, and searches of electronic devices. *Id.* at 109-10, 146-49.

66. In 2016, Doe 3 estimates that he was detained for approximately 5.5 hours while reentering the U.S. by land from Canada. Officers drew their weapons while he exited his car, and CBP performed border searches of his and his family's electronic devices. DEX25 at 5-7; DEX26 at 46-71.

67. Doe 3 moved from the U.S. to Germany in January 2017. DEX25 at 13. Subsequently, he has traveled to Morocco, Saudi Arabia, Turkey, and Canada. DEX26 at 213.

68. DHS TRIP has no record of receiving any inquiry from Doe 3. Moore Decl. ¶ 34.<sup>14</sup>

69. **John Doe 4:** In July 2012, Doe 4 traveled round-trip from Detroit to Oman, without incident. DEX27 at 5-6; DEX28 at 19, 24-26. His passport additionally bears a stamp marked January 3, 2013; Doe 4 does not allege anything with respect to this trip. DEX27. In August 2016, he was denied boarding on an intended flight to Morocco. DEX27 at 6; DEX28 at 29-33. Doe 4 subsequently submitted a DHS TRIP inquiry on August 3, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about September 21, 2016, which stated, "At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly." Moore Decl. ¶ 35.

70. In September 2016, Doe 4 flew to Morocco. DEX28 at 44. At the boarding gate, officers searched his luggage and questioned him for approximately 30 minutes; otherwise, the trip and return flight were without incident. DEX28 at 45-48, 59-61; DEX27 at 6-7. Since September 2016, Doe 4 has flown domestically on at least two occasions, without incident. DEX28 at 71-73,

<sup>14</sup> Doe 3 claims to have attempted to submit one. DEX26 (Doe 3 Tr.) at 211. DHS TRIP cannot receive files over 10MB. Moore Decl. ¶ 22 n.8.

85-86; *see id.* 49 (stating that since this time, air travel has been “easy”). Doe 4 has also entered the U.S. by land twice, without incident. DEX27 at 7.

71. **Anas Elhady:** Between 2012 and 2018, Elhady took approximately seven one-way international flights with a departure or arrival point in the U.S.<sup>15</sup> DEX29 at 6-12. His departures on these trips were without incident, DEX30 at 43-45, 77-78, 88-89, except for a “system issue” that delayed his and his family’s check-in by an hour in 2017, *Id.* at 114. During this same period, upon his re-entry to the U.S., CBP searched Elhady’s luggage and questioned him for periods of two hours, DEX29 at 6, DEX30 at 70-72; one hour, DEX29 at 6, DEX30 at 84-85; four hours, DEX29 at 6-7, DEX30 at 91, 93-95, and thirty minutes. DEX29 at 7; DEX30 at 123-25.

72. Between 2013 and 2018, Elhady took at least three round trip domestic flights, all without any incident relevant to this suit. DEX29 at 13-14, DEX30 at 46-50, 127-28.

73. Elhady also traveled by land from the U.S. to Canada on at least eight occasions between 2014 and 2015. DEX29 at 8-12. During this time, he was typically questioned, searched, and detained by CBP for approximately three to eight hours. *Id.*; DEX30 at 131-35, 142-44. On two occasions, his cell phone was detained; each time it was returned to him approximately two months later. DEX29 at 9-10. During one re-entry in April 2015, Elhady claims he was detained by CBP for somewhere between 6 and 12 hours, *compare* Am. Compl. ¶ 148 (alleging detention of 6 hours) *with* Tr. p. 186 (10 hours) *with* DEX29 (Interrogatory responses, 12 hours), during which time he also received medical care at a hospital. DEX29 at 12; DEX30 at 179, 182-93.

74. Elhady submitted a DHS TRIP inquiry on January 27, 2015, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about May 11, 2015. Moore Decl. ¶ 36.

<sup>15</sup> Additionally, from July through September 2012, Elhady traveled by air among several countries in Africa and the Middle East, without relevant incident. DEX 78-80, 82.

75. **Ausama Elhuzayel**: Prior to 2016, Elhuzayel traveled by air on multiple occasions without incident. DEX31 at 5-6; DEX32 at 125, 136-37, 160. On April 23, 2016, Elhuzayel was denied boarding on a flight to San Juan. DEX31 at 7-8; DEX32 at 125-31. Elhuzayel subsequently submitted a DHS TRIP inquiry on April 24, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about December 6, 2016, which stated, “At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly.” DEX32 at 280-81; Moore Decl. ¶ 37.

76. Since then, he has taken two trips by air, and encountered additional screening. DEX31 at 5-6; DEX32 at 53-106, 138-50. For each flight, he was delayed at check-in, required to undergo additional screening, and screened again at the gate before each connecting flight, and his estimates of the time required varied. *Id.* When re-entering the U.S., he estimates that he was questioned for about three hours. DEX32 at 89-97. Some flights had to be re-booked due to delays. He has not avoided travel due to his perceived placement. DEX32 at 184.

77. **Zuhair El-Shwehdi**: El-Shwehdi has flown commercially more than 20 times since 2011, including 17 domestic flights, and has regularly experienced enhanced security screening at the airport. DEX33 at 5-12. He estimates that he was typically delayed 30-45 minutes at check-in, as well as 20-30 minutes at security screening, and that it was “substantially similar” for all trips. *Id.*; DEX34 at 58. On four trips to Libya between 2011 and 2013, he was inspected at customs on re-entry; he estimates that the inspections were usually about two hours but once he recalls approximately six hours. DEX33 at 5-8; DEX 34 at 145-70, 176-81. On three of these occasions, he missed his connecting flight and was required to stay overnight at the transfer point before continuing to his final destination. *Id.* He has continued to travel, but sometimes avoids flying as a result. DEX34 at 202-06, 253.

78. El-Shwehdi completed a DHS TRIP traveler inquiry form on August 18, 2016, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about November 21, 2016. Moore Decl. ¶ 38.

79. **Hassan Fares:** Hassan Fares has taken at least 14 round-trip domestic flights and at least seven round-trip international flights since 2005. DEX35 at 5-11. Beginning in 2005, he was unable to print his boarding pass at a self-service kiosk, but experienced no other issues while traveling. DEX36 at 29-32, 38. At some point between 2010 and 2014—continuing to the present day—he became able to check in at the self-service kiosk. DEX36 at 43-45, 55, 105-06.

80. In May 2015, Fares and his wife were questioned at the gate for approximately ten minutes before boarding a flight to Jordan. DEX35 at 6; DEX36 at 78-81. In August 2016, Fares missed a connecting flight from Detroit to Jordan after TSA officers asked him to deplane after boarding, for additional security screening. DEX35 at 9; DEX36 at 101-02. He was initially rebooked on another flight, but decided to forego his travel to Jordan. No one told Fares that he could not fly to Jordan. DEX36 at 103.<sup>16</sup>

81. Between 2005 and 2014, Fares made “numerous” land border crossings from Detroit to Canada and back. DEX35 at 7. When crossing back into the U.S., Fares would be questioned he estimates for “maybe 10, 15 minutes.” DEX36 at 65-66. The maximum amount of time that he estimates he was delayed for questioning was 1.5-2 hours. *Id.* at 71. In 2017, Fares flew from the U.S. to Jordan three times without incident, with the sole exception that on one occasion he was questioned by CBP for approximately one hour upon arrival in the U.S. *Id.* at 123, 129, 139.

82. DHS TRIP has no record of receiving any inquiry from Fares. Moore Decl. ¶ 39.

<sup>16</sup> Fares contacted TSA, who responded via e-mail that “[t]he Officer who was checking [Fares’s] documents prior to entering the Checkpoint failed to recognize the selectee boarding pass” which should have alerted the TSA Security Officer that he was to receive additional screening before leaving the Checkpoint. DEX 36 (Fares Depo. Ex. 12).

83. **Murat Frljuckic**: Between 2002 and 2009, Murat Frljuckic took six round-trip international flights, without incident. DEX37 at 5-7; DEX38 at 36-40.

84. Between December 2012 and April 2013, he traveled by air between Detroit and New York on a monthly basis. During these trips, he was selected for enhanced screening by TSA. DEX37 at 9; DEX38 at 60. In June 2014, he flew from Canada to Montenegro, via Vienna. He was unable to print his boarding pass and missed the flight to Vienna. The airline booked Frljuckic and his family on another flight for the following day. DEX38 at 74-76.

85. On five occasions between October 2012 and May 2016, Frljuckic traveled to Canada by car. *Id.* at 46-51, 66-69, 81-85, 93-94, 101-03. On each occasion, upon re-entry to the U.S., CBP officers drew their weapons and handcuffed Frljuckic before he was held for inspection for what he estimates was approximately 3.5 to four hours; on one occasion, he estimates that the inspection lasted six hours. *Id.* at 105, 82-83.

86. Frljuckic first completed a DHS TRIP inquiry on November 7, 2012, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about January 4, 2013. Frljuckic submitted a second DHS TRIP inquiry on August 18, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about October 31, 2014. Moore Decl. ¶ 40. Frljuckic claims that he has stopped flying and does not “want to go anywhere crossing the borders” he claims he made his most recent trip to Canada in May 2016 because his “intention was really to move there.” DEX38 at 103.

87. **Wael Hakmeh**: In April 2014, upon reentry to the U.S. from travel to Syria, Hakmeh was questioned about his travels, which he estimates delayed him by one to two hours, and he missed his connecting flight. DEX39 at 6-7; DEX40 at 53-63. Subsequently, when he flew internationally, he generally drove to (and flew out of) Chicago, in order to avoid the need for a connecting flight. *Id.* at 68-69. Out of at least ten subsequent international trips, he recalls being referred for secondary inspection twice: in Abu Dhabi, in March 2017, DEX39 at 6-7; DEX40 at

212-15; and upon reentry to the U.S. in July 2017, DEX 39 at 5; DEX40 at 219-22. Hakmeh has also taken at least five domestic roundtrip flights between 2013 and 2018. DEX39 at 8-10; *see also* DEX40 at 158-59, 232, 234. On one of these trips, in June 2016, he was required to undergo enhanced screening, on both legs of the trip. DEX39 at 9-10; DEX40 at 156-57. He encountered no relevant issues on subsequent domestic roundtrip flights. DEX39 at 9.

88. DHS TRIP has no record of receiving any inquiry from Hakmeh. Moore Decl. ¶ 41.

89. **Yasseen Kadura**: Between 2009 and 2011, Kadura flew roundtrip twice domestically and once internationally, without incident. DEX41 at 9-11; DEX42 at 45, 48, 59, 60-64, 72-74.<sup>17</sup> In February 2011, he additionally flew to Cairo, and from there traveled by land into Libya. DEX41 at 5; DEX42 at 83, 85-87. Upon his reentry into the U.S. in August 2011, he was detained by CBP and searched, which he recalls lasting about one hour, DEX41 at 6-7; DEX42 at 104, 113-16.

90. In 2011 and 2012, Kadura made at least five trips by land into Canada. On three of these occasions, he estimates he was detained for six to eight hours, and received a patdown search and was questioned. DEX41 at 7-8; DEX42 at 132-33, 136-37, 158-67, 211. Once, officers drew their weapons while he exited his car, and his phone was detained for the completion of a border search. DEX41 at 162-67. Two other land entries from Canada were without incident. *Id.* 158-61.

91. On October 22, 2012, Kadura was denied boarding on an attempted flight to Istanbul. *Id.* at 189, 191-93. In August 2015 Kadura entered the U.S. by land, at Laredo. He was detained and questioned by CBP, which he estimates lasted approximately seven hours. *Id.* at 235-39. Between 2014 and 2017, he claims he declined to travel on a number of occasions due to his perceived watchlist status. *Id.* at 260-62.

<sup>17</sup> Kadura has provided conflicting testimony about the date of one of these trips, from Indianapolis to Charlotte. His interrogatory responses (including a final amended version served subsequent to his deposition) identify this trip as occurring in 2009, but at his deposition he testified that this trip “was most definitely in like 2011 or so.” DEX42 at 68-70.

92. Kadura completed a DHS TRIP traveler inquiry form on November 21, 2012, related to a denial of boarding. DHS TRIP initially issued a final determination letter in response to that inquiry on or about May 8, 2013. DHS TRIP issued a superseding final determination letter on or about September 4, 2015, which stated, “At this time the U.S. Government knows of no reason Mr. Kadura should be unable to fly.” Moore Decl. ¶ 42.

93. In January 2016, Kadura made a round-trip domestic trip; on both legs, he received enhanced screening from TSA. DEX42 at 242-45, 251-52. Since January 2016, he has taken at least four round-trip domestic trips, on which he has experienced “zero” travel issues. *Id.* at 253-56; DEX41 at 10-11.

94. **Muhammad Khan:** In 2012, Khan was referred for secondary inspection upon entering the U.S. by land in Michigan. DEX43 at 5-6; DEX44 at 93-95. In 2013, Khan moved to Islamabad; this trip was without incident. DEX44 at 103-04. In 2015, he moved back to Michigan; upon his arrival in the U.S., he was referred for secondary inspection by CBP, and missed his connecting flight. DEX43 at 7-8, 12; DEX44 at 29-35, 131-33.

95. In 2016 and 2017, Khan took three round-trip international trips. For his departure flights, he was selected for enhanced screening by TSA, and at the boarding gate his luggage was re-inspected. DEX43 at 6-9, 12; DEX44 at 35-36, 39, 41-42, 45-50, 52, 64-71, 150-54. On his return trips, he estimates that he was delayed by thirty minutes to three hours in obtaining his boarding passes, and upon arrival in the U.S. received secondary inspection. DEX43 at 6-7, 9; DEX44 at 35-36, 42, 45-46, 52-53, 55-59, 63, 65, 78, 80-81, 83-84.

96. Khan claims he has foregone specific trips due to his perceived TSDB status. DEX44 at 166, 168. He also claims he has driven to avoid any issues at the airport. *Id.* at 157-58, 161-64, 166. Khan has also flown domestically “quite a few time[s],” *id.* at 155, including a minimum of three round-trip flights. On a trip to Los Angeles in 2016, he was selected for enhanced screening

by TSA on both legs. DEX43 at 11; DEX44 at 137-46. Two other trips, of unknown dates, were without incident. DEX44 at 156-57.

97. Khan first submitted a DHS TRIP inquiry on January 7, 2014, related to enhanced screening. DHS TRIP administratively closed this inquiry on or about February 26, 2014, due to plaintiff Khan's failure to submit required documentation. Plaintiff Khan submitted a second DHS TRIP inquiry on April 13, 2015. DHS TRIP issued a final determination letter in response to that inquiry on or about July 14, 2015. Moore Decl. ¶ 43.

98. **Adnan Khalil Shaout**: Shaout has taken approximately 36 international flights and at least ten domestic flights since 2004. DEX45 at 5-17. Shaout first began experiencing additional screening and inspection in December 2004 when he was returning to Detroit from a conference in Algeria. DEX46 at 34-36. As a result of the inspection, he missed his connecting flight. *Id.* at 90. Between December 2004 and May 2017, Shaout experienced delays in obtaining his boarding pass. *Id.* at 137, 143. In addition, upon reentry to the U.S., he would be subject to secondary inspection by CBP, *Id.* at 38-39, 77-78, 86-87, which he estimates typically lasted half an hour to three hours, *Id.* at 170. In June 2011, Shaout was asked to deplane after boarding a domestic flight, which was held until he was cleared. *Id.* at 74-75. Once Shaout was screened an additional time at the gate after clearing the security checkpoint. *Id.* at 88-89.

99. Since May 2017, Shaout has not experienced enhanced screening or inspection by TSA or CBP. *Id.* at 72.

100. Shaout submitted three DHS TRIP inquiries between 2011 and 2015 and received a final determination letter in response to each. Moore Decl. ¶ 44.

101. **Hassan Shibly**: Shibly entered the U.S. by land at the U.S.-Canada border on 12-13 occasions between 2004 and 2017. DEX47 at 8-10. Until 2016, he was routinely referred by CBP for secondary inspection, which he estimates to have lasted anywhere from 15-30 minutes, up to “an

hour or two, plus” with “an hour, two being the norm.” DEX48 at 112-13. On one occasion in 2004, he estimates that the inspection lasted approximately six hours. DEX48 at 48.<sup>18</sup>

102. Shibly took at least ten round-trip international flights between 2006 and 2016, and has also taken more than 80 domestic flights since 2015. DEX47 at 5-8, 12-13 (citing Shibly-000143-Shibly-000455). Beginning in approximately 2010, Shibly was unable to check in for flights online and he could not always print his boarding pass at a kiosk; when he could not, he estimates that he would wait 15-20 minutes for an airline agent to assist him, with the longest time taking around 45 minutes. DEX48 at 86, 89-90, 131. Typically, if he was unable to print his boarding pass, then he was also selected for enhanced screening by TSA. *Id.* at 102. Twice, he missed a flight due to such screening. *Id.* at 104, 124-27. On the second of these two occasions, Shibly was only having problems printing a boarding pass with one specific airline. *Id.* at 188-89, 209. During this time period, Shibly also traveled by land and by air, domestically and internationally, without incident or delay. *Id.* at 141-45. As of the time of his deposition, Shibly does not recall experiencing any travel problems since 2016, and he continued to travel. *Id.* at 190.

103. Shibly first submitted an inquiry to DHS TRIP on November 30, 2009, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about March 8, 2011. Shibly subsequently submitted a DHS TRIP inquiry on August 26, 2013, related to travel difficulties. DHS TRIP issued a final determination letter in response to that inquiry on or about November 15, 2013. Moore Decl. ¶ 45.

104. **Donald Thomas**: Prior to 2015, Thomas travelled regularly without incident. DEX49 at 18-19, 114-15, 120-22. On two flights in 2015 and 2016, he was selected for enhanced screening and was re-screened at the gate; he estimates total delays of one to two hours. *Id.* at 98-100, 114-19, 161-63. Additionally, in February 2016 he traveled to Canada by land, and upon his

<sup>18</sup> Mr. Shibly previously sued CBP regarding his treatment during a 2004 border crossing. The Second Circuit upheld summary judgment for the defendants. *See Tabbaa*, 509 F.3d at 97.

return to the U.S. he estimates that he was detained for about eight hours along with his co-travelers. DEX50 at 6; DEX49 at 68-76. In April 2016, he was denied boarding on a flight to Malaysia. DEX50 at 5-6; DEX49 at 44-59.

105. Subsequently, Thomas has taken at least three roundtrip domestic flights. Trips in January and October 2017 were without incident. DEX49 at 66-67, 90-97. In January 2018, he was selected for enhanced screening; he missed the flight and was rebooked. DEX49 at 78-87. He also received additional screening at the gate. *Id.* at 85-86. He reported no incident in connection with the return flight. *Id.* at 87-88.

106. Thomas submitted an inquiry to DHS TRIP in April 2016, shortly before his denial of boarding. On or about September 1, 2016, he received a final determination and did not submit another TRIP inquiry after his denial of boarding. *Id.* at 153-60; Moore Decl. ¶ 46.

### **SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate when, viewing the facts in a light most favorable to the non-moving party, “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to interrogatories, or admissions on file, “specific facts showing that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324. “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323. On summary judgment, a plaintiff may not rest on “mere allegations,” but must “set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.” *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017).

## ARGUMENT

Defendants are entitled to judgment as a matter of law as to Plaintiffs' procedural due process claim. Plaintiffs have not established an ongoing injury that is redressable through this court, and they have not established that their perceived status with respect to the TSDB deprives them of a liberty interest. In any event, the process available through DHS TRIP is constitutionally sufficient given the nature of the private interests Plaintiffs allege, the negligible value of additional measures in light of the robust internal review procedures already in place, and the profound government interest in protecting information vital to preventing terrorist attacks.

### **I. Plaintiffs Lack Standing to Pursue Their Due Process Claim Because They Cannot Demonstrate Any "Certainly Impending" Future Injury**

As a threshold matter, the Court should dismiss Plaintiffs' claims under Rule 12(h) for lack of standing, because they cannot demonstrate any "certainly impending" future injury. Article III, Section 2, clause 1 of the Constitution limits federal court jurisdiction to "Cases" and "Controversies," and as the Supreme Court has explained, an "essential and unchanging part of the case-or-controversy requirement" is that a plaintiff must establish Article III standing to sue. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992). The well-settled test for standing requires that a litigant must demonstrate an "(1) injury in fact (2) that is fairly traceable to the defendant's conduct and (3) that is likely to be redressed by a favorable decision." *Retail Indus. Leaders Assoc. v. Fielder*, 475 F.3d 180, 186 n. 1 (4th Cir. 2007). Importantly, where—as here—the relief sought is prospective relief only, it is well-established that a plaintiff must demonstrate a risk of future injury that is both "real" and "immediate" and neither "conjectural" nor "hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 (1983). Thus, a plaintiff seeking forward-looking relief must demonstrate the existence of a future "threatened injury [that is] certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

Defendants acknowledge that the Court previously found Plaintiffs to possess, at the outset of the case, standing sufficient to pursue a due process claim. *Elbady v. Piehota*, 303 F. Supp. 3d 453, 462 (E.D. Va. 2017). However, “standing represents a jurisdictional requirement which remains open to review at all stages of the litigation,” *Nat’l Org. for Women v. Scheidler*, 510 U.S. 249, 255, (1994); *see also Hollingsworth v. Perry*, 570 U.S. 693, 705, (2013) (“Article III demands that an ‘actual controversy’ persist throughout all stages of litigation.”); Fed. R. Civ. P. 12(h). Here, although a limited number of the Plaintiffs claim to have experienced additional screening at airports or the border, this does not establish, even for those Plaintiffs, a threat of future harm sufficient to establish standing to seek prospective relief. The burden is on Plaintiffs to establish, as a factual matter, a certainly impending future injury—and none of them can do so.

Several Plaintiffs have experienced only occasional, past or intermittent screening. For example, aside from one instance of a 15 minute screening delay, Plaintiff Samir Anwar has “never ha[d] an issue or delay boarding a flight.” *See supra* Statement of Material Facts (“SMF”) ¶ 50. He was referred for secondary inspection from CBP officials twice when he entered the U.S. by land from Canada, but has since traveled to and from Canada without incident. *Id.* ¶ 49. Plaintiff Shahir Anwar has traveled back and forth from Canada without issue approximately once or twice per year since 2005. *Id.* ¶ 52. He has since traveled both internationally and domestically at least six times without incident since 2014. *Id.* ¶ 53. Plaintiff Coleman has not experienced any travel difficulties since September 2017, failed to provide documentation to complete the DHS TRIP redress process, and does not believe he is currently on any watchlist. *Id.* ¶¶ 59-62. Plaintiff Baby Doe has only one travel incident, in which he had SSSS on his boarding pass during a trip in which his father was selected for enhanced screening—he has since traveled without incident. *Id.* ¶ 63. Plaintiff John Doe 2 has never encountered enhanced screening on more than 20 domestic flights since 2000. *Id.* ¶ 64. Plaintiff John Doe 4 has had no travel incidents since September 2016, although he has traveled both domestically and internationally on multiple occasions since. *Id.* ¶ 70. Plaintiff Hakmeh has

traveled multiple times to Turkey and Syria—out of at least 10 international trips since 2014, he recalls being selected for secondary inspection or additional questioning twice. He also took at least 5 roundtrip domestic flights since 2013, and only encountered issues on one trip. *Id.* ¶ 87.

Even construing their claims generously, only five of the Plaintiffs arguably claim to currently, regularly experience enhanced screening. But individuals are subjected to enhanced screening for reasons unrelated to a watchlist. *See Scherfen v. DHS*, No. 3:CV-08-1554, 2010 WL 456784, at \*7 (M.D. Pa. Feb. 2, 2010) (“Heightened screening at airports and border-crossing points does not necessarily signify inclusion” on a watchlist, as “[t]ravelers may be pulled out of line, searched, and questioned for a variety of reasons, unrelated to watchlists.”); 73 Fed. Reg. 64,018, 64,025 (Oct. 8, 2008) (“standard passenger and baggage screening . . . may include additional, random screening”); *id.* at 64,026 (“[Passengers who are not on the Selectee List] will not always avoid enhanced screening.”). As further explained in the Froemling declaration, TSA designates passengers for enhanced screening for a variety of reasons, including random selection, and the majority of passengers designated for enhanced screening are so designated for reasons other than TSDB status. Froemling Decl. ¶ 10. And while individuals included in the TSDB may be designated for enhanced screening on multiple consecutive flights, the same is true for individuals not in the TSDB. *Id.* ¶ 11. Further, the boarding passes of anyone selected for enhanced screening do not include the reason for the enhanced screening designation and do not indicate status in the TSDB. *Id.* ¶ 12. Passengers designated by Secure Flight for expedited or standard screening are not guaranteed to receive that type of screening and may be required to undergo additional or enhanced screening, for a variety of reasons. *Id.* Likewise, given CBP’s significant authorities authorizing the inspection of all persons and goods entering the country, the fact that a person has been subjected to a border search is not sufficient to establish that they will be subject to a search in the future.<sup>19</sup>

<sup>19</sup> Given Plaintiffs’ failure to establish any certainly impending future injury or the deprivation of any liberty interest, Defendants do not believe that the current TSDB status of Plaintiffs is necessary to

Accordingly, the Court lacks jurisdiction over Plaintiffs' claims.<sup>20</sup>

## II. Several of Plaintiffs' Claims Are Barred Because They Failed to Avail Themselves of DHS TRIP.

Additionally, several Plaintiffs have failed to exhaust the administrative redress process for travel-related difficulties. Specifically, DHS TRIP found no inquiries from or on behalf of Plaintiffs Awad, Baby Doe 2, Doe No. 3, Fares, or Hakmeh, Moore Decl. ¶ 22, and administratively closed an inquiry from Plaintiff Coleman due to his failure to provide all required documentation, *id.* ¶ 23.

Ripeness is an aspect of the justiciability analysis, “inextricably linked to [the] standing inquiry,” since it is one of the “doctrines that cluster about Article III.” *Cooksey v. Futrell*, 721 F.3d 226, 239–40 (4th Cir. 2013). The ripeness doctrine prevents the court from premature adjudication and protects “agencies from judicial interference until an administrative decision has been formalized.” *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49. A case is not ripe when “problems such as the inadequacy of the record . . . or ambiguity in the record . . . will make [the] case unfit for adjudication on the merits.” *Ostergren v. Cuccinelli*, 615 F.3d 263, 288 (4th Cir. 2010); *Reg'l Mgmt. Corp. v. Legal Servs. Corp.*, 186 F.3d 457, 465 (4th Cir. 1999). Likewise, the exhaustion doctrine is premised on “the notion, grounded in deference to Congress' delegation of authority to coordinate branches of Government, that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992).

Applying these principles, several courts have dismissed the claims of travelers who failed to exhaust their administrative remedies through DHS TRIP, reasoning that an exhaustion requirement

adjudicate this matter. If the Court disagrees, however, and enters an order, Defendants would provide current status of Plaintiffs *ex parte* and *in camera*.

<sup>20</sup> Defendants maintain that this Court also lacks jurisdiction over Plaintiffs' claims because these are claims to the adequacy of the redress process and are properly heard only in the Court of Appeals under 49 U.S.C. § 46110. See also Groh Decl. ¶ 26 (describing TSA's final authority). The Court previously held that it does have jurisdiction, relying on the unpublished opinion of the Fourth Circuit. *Elbady*, 303 F. Supp. 3d at 462. The Government will not repeat those arguments here, as its position is otherwise reserved.

in this context promotes judicial efficiency, encourages administrative accuracy, and creates an administrative record. *See Shearson v. Holder*, 725 F.3d 588, 594-95 (6th Cir. 2013); *Mokdad v. Holder*, No. 13-cv-12038, Order, Dkt. No. 43 (E.D. Mich. Dec. 16, 2015); *see also Latif v. Holder*, No. 3:10-cv-750-BR, Dkt. No. 152 (D. Or. Oct 3, 2104); *Fikre v. FBI*, No 3:13-cv-899, Dkt. 57 (D. Or. Jan 14, 2015); *Tarbuni v. Holder*, No. 3:13-cv-001, Dkt. 79, 86 (D. Or. Oct. 3, 2014). The Court should follow the same approach here with respect to the Plaintiffs who have not filed for DHS TRIP, or who filed but did not complete the redress process. *See* Moore Decl. ¶¶ 22-23.

Additionally, the Court should dismiss the procedural due process claim of these Plaintiffs for the separate but related reason that these Plaintiffs have failed to avail themselves of the procedures available to them. It is well established that “in order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him.” *Alvin v. Suzuki*, 227 F.3d 107, 116 (2d Cir. 2000).<sup>21</sup> Thus, Plaintiffs “cannot plausibly claim that [the government’s] procedures are unfair when [they have] not tried to avail [themselves] of them.” *Mora v. City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008). Here, these Plaintiffs have not availed themselves of the procedures they are challenging, making dismissal of their procedural due process claim and co-extensive APA claim proper.<sup>22</sup>

### III. The Watchlisting Enterprise Comports with Procedural Due Process.

In order to make a procedural due process claim, Plaintiffs must establish “(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3)

<sup>21</sup> *See also, e.g., Carmody v. Bd. of Trustees of the Univ. of Illinois*, 747 F.3d 470, 479 (7th Cir. 2014); *Farbat v. Jopke*, 370 F.3d 580, 596 (6th Cir. 2004); *Tri-Cnty. Paving v. Ashe Cnty.*, 281 F.3d 430, 436 (4th Cir. 2002).

<sup>22</sup> In *Mohamed v. Holder*, 995 F. Supp. 2d 520, 533-34 (E.D. Va. 2014), this Court held that DHS TRIP redress procedures then applicable to someone denied boarding were not mandatory and that the plaintiff’s failure to exhaust did not prevent adjudication of a due process claim regarding the No Fly List. For the reasons set forth above, Defendants respectfully maintain that the claims of those Plaintiffs who have not availed themselves of DHS TRIP should be dismissed. In *Mohamed*, the Court ultimately held that it could not adjudicate the due process claims raised regarding the revised redress process unless Plaintiff availed himself of the revised DHS TRIP redress procedures available to U.S. persons denied boarding. *Mohamed v. Holder*, No. 1:11-CV-50, 2015 WL 4394958, at \*13 (E.D. Va. July 16, 2015).

that the procedures employed were constitutionally inadequate.” *Shirvinski v. U.S. Coast Guard*, 673 F.3d 308, 314 (4th Cir. 2012) (quoting *Kendall v. Balcerzak*, 650 F.3d 515, 528) (4th Cir. 2011). “[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Rather, “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* Plaintiffs fail to establish the deprivation of any liberty interest, much less the deprivation of a liberty interest related to the TSDB. Plaintiffs’ speculation about their possible watchlist status based on minor travel delays does not give rise to rights to notice and a hearing. In any event, the current procedures are constitutionally adequate given the limited Plaintiffs’ interest at issue and the extraordinary public interest in preventing acts of terrorism.

**a. Plaintiffs Have Not Been Deprived of a Liberty Interest.**

Plaintiffs claim that their alleged watchlist status is a deprivation of a liberty interest in travel or in their reputations. Both claims fail as a matter of law and fact. To be constitutionally cognizable as a matter of due process, the liberty interest at issue “must rise to more than an abstract need or desire and must be based on more than a unilateral hope;” rather, “a plaintiff must demonstrate a legitimate claim of entitlement” to the asserted interest. *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (citation omitted). “Protected liberty interests ‘may arise from two sources—the Due Process Clause itself and the laws of the States.’” *Id.*

In this Court’s opinion on the Motion to Dismiss, the Court described the Supreme Court opinions in *Kerry v. Din*, 135 S. Ct. 2128 (2015). *See Elhady*, 303 F. Supp. 3d at 463-64. The *Din* plurality “found that procedurally protected liberty interests are those within the historic understanding of the Due Process Clause and, at most, also include implied fundamental liberty interests for the purposes of substantive due process,” *id.* at 463, whereas the dissent found “that procedurally protected liberty interests are those sufficiently important to flow implicitly from the design, object, and nature of the Due Process Clause,” *id.* Here, the parties do not dispute that there

is some procedurally protected interest in travel and that outright bans on all means of travel would trigger due process requirements. The scope of the liberty interest, however, cannot reasonably be described under either test as including a right to travel through airports or across borders without screening or delay. All travelers at airports and borders must submit to a search. Delay-free travel is neither an implicit nor historical feature of the due process clause.

**i. Plaintiffs Have Not Been Deprived of a Right to Travel.**

Plaintiffs mistakenly allege that they have been deprived of a right to travel as a result of TSA screening at airports and CBP inspections at the border. At most, the evidence shows that some Plaintiffs have experienced modest delays while traveling, not that they were unable to travel. Plaintiffs have no “legitimate claim of entitlement” to not being screened at airports or inspected at the border and, even construing all facts in their favor, their ability to travel is not impaired.

The due process clause protects, at most, only against “statutes, rules, or regulations which *unreasonably* burden or restrict” the right to travel. *Saenz v. Roe*, 526 U.S. 489, 499 (1999) (emphasis added). The right to travel is not violated by “minor burdens,” *Miller v. Reed*, 176 F.3d 1202, 1205 (9th Cir. 1999), or “[m]inor restrictions,” *Cramer v. Skinner*, 931 F.2d 1020, 1031 (5th Cir. 1991), on travel. *See League of United Latin American Citizens v. Bredesen* (“LULAC”), 500 F.3d 523, 535 (6th Cir. 2007) (“To the extent this inconvenience burdens exercise of the right to travel at all, the burden is incidental and negligible, insufficient to implicate denial of the right to travel.”); *see also Green v. TSA*, 351 F. Supp.2d 1119, 1122, 1130 (W.D. Wash. 2005) (plaintiffs who “allege [they are] subjected ... to enhanced security screening ... do not have a right to travel without any impediments whatsoever”). Thus, “a screening of passengers” at an airport “does not exceed constitutional limitations” including “the passenger’s right to travel.” *United States v. Davis*, 482 F.2d 893, 913 (9th Cir. 1973).<sup>23</sup>

<sup>23</sup> Suspicionless airport searches have uniformly been upheld under the Fourth Amendment. *See, e.g., United States v. Ankaï*, 497 F.3d 955, 958-63 (9th Cir. 2007) (en banc); *United States v. Hartwell*, 436 F.3d 174, 177-81 (3d Cir. 2006); *United States v. Allman*, 336 F.3d 555, 556 (7th Cir. 2003); *United States v.*

As explained in the Froemling Declaration, all airport travelers are required to undergo screening and all can be designated for enhanced screening for a variety of reasons, including random selection or TSDB status. Froemling Decl. ¶¶ 9-10, 31. Individuals selected for enhanced screening by TSA have their boarding passes marked “SSSS,” and TSA applies the same checkpoint screening procedures to such individuals, regardless of whether the individual is designated due to TSDB status, randomly, or for other reasons. *Id.* ¶¶ 12, 32. The boarding pass does not indicate why someone has been selected for enhanced screening. *Id.* ¶ 32. The majority of passengers designated for enhanced security screening are so designated for reasons other than TSDB status. *Id.* ¶ 10. Enhanced screening typically includes screening of the person through a walk-through metal detector, the AIT, and a pat-down, and screening of accessible property through a scanner, an explosives trace detection search, and physical search of the interior of the passenger’s accessible property, electronics, and footwear. *Id.* ¶ 39. A typical enhanced screening takes approximately 10-15 minutes. *Id.* For all passengers, additional screening may occur at the gate. *Id.* ¶ 46.

Some additional delay may also occur for passengers at check-in for the purposes of identity resolution. The average time for such calls is 12.5 minutes. *Id.* ¶ 31 n.21. Some of the Plaintiffs claim to have experienced slightly longer delays, *see e.g.*, Statement of Material Facts (“SMF”) ¶ 77 (estimation by El-Shwehdi that he was typically delayed 30-45 minutes at check-in, as well as 20-30 minutes at security screening); SMF ¶ 95 (estimation by Khan that he was delayed by 30 minute to three hours in obtaining boarding passes for international flights into the U.S.), but the record nonetheless supports a conclusion that, in general, selection for enhanced screening results in delays of well under an hour. Froemling Decl. ¶¶ 31 n.21, 39. Moreover, the due process analysis looks to the “generality of cases,” beyond the particular application of the process to the individual at bar. *Mathews*, 424 U.S. at 344 (“[P]rocedural due process rules are shaped by the risk of error inherent in

*Edwards*, 498 F.2d 496 (2d Cir. 1974); *United States v. Skipwith*, 482 F.2d 1272, 1275-76 (5th Cir. 1973); *Davis*, 482 F.2d at 912; *United States v. Slocum*, 464 F.2d 1180 (3d Cir. 1972).

the truthfinding process as applied to the generality of cases, not the rare exceptions.”); *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1034 (9th Cir. 2012) (en banc) (same).

Construing all testimony in Plaintiffs’ favor for the purposes of this motion only, some Plaintiffs experience enhanced screening by TSA on a regular basis, but most do not. Some have experienced enhanced screening only once or even never. *See, e.g.*, Ali (once); Baby Doe (once or never); Samir Anwar (once); Awad (never since adulthood); John Doe 2 (never); John Doe 4 (once); Elhady (never). Construing their allegations favorably, only five of the 23 Plaintiffs testified that they continue to receive enhanced screening on a regular basis (Amri, John Doe 3, Elhuzayel, El-Shwehdi, Frljuckic). And the remainder have described occasional, intermittent, or past experiences with enhanced screening. *See* SMF, *supra*. But travelers can receive enhanced screening for many reasons unrelated to the TSDB, including on multiple consecutive trips. Froemling Decl. ¶¶ 10, 31; *see also Scherfen*, 2010 WL 456784, at \*7 (“Heightened screening at airports and border-crossing points does not necessarily signify inclusion” on a watchlist, as “travelers may be pulled out of line, searched, and questioned for a variety of reasons, unrelated to watchlists.”); 73 Fed. Reg. at 64,025 (“standard passenger and baggage screening . . . may include additional, random screening”); *id.* at 64,026 (“[Passengers who are not on the Selectee List] will not always avoid enhanced screening.”).

Courts have held that this sort of airport screening, even on a regular basis, does not deprive the passenger of a protected liberty interest in travel. In *Beydown v. Sessions*, the Sixth Circuit addressed a due process challenge brought by two individuals who alleged they were included on the Selectee List. 871 F.3d 459 (6th Cir. 2017). Similar to the allegations in the present case, the plaintiffs in *Beydown* alleged that they “missed ‘countless flights’ after being subjected to lengthy secondary screenings,” *id.* at 467, citing “delays ranging from ten minutes to one hour in duration” and contended that they “had been deterred from flying on one occasion,” *id.* at 467-68. The court affirmed the dismissal of both plaintiffs’ claims, holding that “Plaintiffs did not allege that any protected interest was violated by the[ir] being on the Selectee List.” *Id.* at 468. The court reasoned

that “Plaintiffs may have been inconvenienced by the extra security hurdles they endured in order to board an airplane,” but “these burdens do not amount to a constitutional violation” because “Plaintiffs have not actually been prevented from flying altogether or from traveling by means other than an airplane.” *Id.* In addition, the court held, plaintiffs’ delays and inconveniences “can only be described as incidental or negligible and therefore do not implicate the right to travel....When Plaintiffs’ only allegations amount to delays that many individuals are likely to experience at the airport, it is hard to conclude that the fundamental right to travel has been implicated.” *Id.*<sup>24</sup> *See also Abdi v. Wray*, No. 2:17-CV-622-DB, 2018 WL 1940411, at \*3 (D. Utah Apr. 23, 2018), appeal pending (rejecting due process claim based on alleged watchlist status because “Plaintiff has failed to show that the right to movement is a liberty interest that is protected under the Constitution, particularly where, as here, Plaintiff has been able to travel, albeit inconveniently.”); *Kovac v. Wray*, No. 3:18-CV-0110-L, 2019 WL 1057935, at \*18 (N.D. Tex. Mar. 5, 2019) (“the Screening List Plaintiffs have failed to state a claim that their inclusion in the Screening List caused them to suffer a deprivation of a liberty interest based on their right to travel, as that term is historically understood.”).

Even in the context of interstate travel, the courts have held that travel delays ranging from a few hours up to a full day do not unconstitutionally burden the right to travel. *See, e.g., Cramer*, 931 F.2d at 1031 (finding no violation where a statutory restriction “makes travel less convenient” but “does not bar travelers from using the airport”); *City of Houston v. FAA*, 679 F.2d 1184, 1186-99 (5th Cir. 1982) (upholding regulation limiting use of airport so that certain passengers must use connecting flights or land at a more distant airport); *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 51 (2d Cir. 2007) (upholding law banning certain ferry travel to an island thereby making

<sup>24</sup> The Sixth Circuit decision (“*Beydoun IP*”) was addressing a substantive due process claim, while affirming two district court decisions that reached similar conclusions on the procedural due process claim: *Beydoun v. Lynch* (“*Beydoun P*”), No. 14-CV-13812, 2016 WL 3753561 (E.D. Mich. July 14, 2016); *Bazzi v. Lynch*, No. 16-10123, 2016 WL 4525240 (E.D. Mich. Aug. 30, 2016).

interstate travel “longer and more expensive”); *Torraco v. Port Auth. of N.Y. & N.J.*, 615 F.3d 129, 141 (2d Cir. 2010) (holding that a delay of “a little over one day . . . was a minor restriction” that did not deny the right to travel”); *cf. George v. Reibel*, 738 F.3d 562 (3d Cir. 2013) (holding in the Fourth Amendment context that unusual TSA screening taking much longer was nonetheless constitutionally reasonable). Plaintiffs claiming to be on the Selectee List “can still fly after additional screening.” *Beydoun I*, 2016 WL 3753561, at \*5 (E.D. Mich. July 14, 2016); *Bazzyi*, 2016 WL 4525240 at \*6-7; *Kadura v. Lynch*, No. CV 14-13128, 2017 WL 914249, at \*6-7 (E.D. Mich. Mar. 8, 2017). Inconvenience, inspections, or delays at the airport or at the border, like those alleged by the Plaintiffs, do not amount to a constitutionally cognizable deprivation of the liberty interest in travel. *See, e.g., LULAC*, 500 F.3d at 535; *Beydoun I*, 2016 WL 3753561, at \*5; *Bazzyi*, 2016 WL 4525240 at \*6-7; *see also Gilmore v. Gonzales*, 435 F.3d 1125, 1137 (9th Cir. 2006) (TSA’s policy “requir[ing] airline passengers [to] either present identification or be subjected to a more extensive search” does not violate right to travel).

Some Plaintiffs also claim to have experienced delays at secondary inspection by CBP—ranging from 15 minutes (Awad’s most recent re-entry) to one outlier delay allegedly lasting 12 hours (Mr. Elhady’s most lengthy inspection, including time spent in medical care).<sup>25</sup> Others have had one or no experiences with secondary inspection, despite travelling internationally (Baby Doe, John Doe 3, John Doe 4). And some who had such experiences in the past no longer do (al Halabi, Ali, Samir Anwar, Shahir Anwar, Coleman, Fares, Shaout, Shibly). Only three of the 23 Plaintiffs testified that they are *always* subject to significant delays of more than 2 hours at the border (Elhady, Frjulcklic, Kadura), and none have testified that they have been prohibited from travel. *See SMF, supra*.

This testimony about widely varying experiences is consistent with CBP testimony that officers exercise discretion at the border, subject to legal and policy requirements and in accordance

<sup>25</sup> Elhady’s description of this detention is notably inconsistent and has lengthened considerably over the course of this litigation. *Compare* Am. Compl. ¶ 148 (alleging detention of 6 hours) *with* DEX30, p. 186 (10 hours) *with* DEX29 (Interrogatory responses, 12 hours).

with their training and experience. Howe Decl. ¶ 14. Although TSDB status is one factor that may indicate additional scrutiny of an individual is warranted, there are many other possible reasons that individuals may be referred for secondary inspection, related to CBPs many statutory authorities. *Id.* Once a traveler is referred for additional scrutiny, the specific actions taken during the secondary border inspection vary depending on the officer's evaluation of each traveler's situation. *Id.*

The Supreme Court has held that “delays of one to two hours at international borders are to be expected,” *Flores-Montano*, 541 U.S. at 155, and other courts of appeal have found detentions at the border of four to six hours to be constitutional, *Tabbaa*, 509 F.3d at 100-01. The right to travel across the border is highly qualified and certainly does not include a right to travel across the border without delay or inspection. *Cf. Flores Montano*, 541 U.S. at 152-53 (“The Government’s interest in preventing the entry of unwanted persons and effects is at its zenith at the international border. Time and again, we have stated that searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.”).<sup>26</sup> Thus, a law causing “inconvenience” for the traveler, including delays at the border, does not amount to a constitutional “denial of the right to travel.” *LULAC*, 500 F.3d at 535.

Finally, some of the Plaintiffs claim that they have avoided specific travel due to their perceived watchlist status. *See, e.g.*, DEX34, at 202-06, 253 (El-Shwehdi sometimes avoids flying)); DEX36, at 103 (Fares decided to forego a specific trip); DEX38, at 102 (Frljuckic does not “want to go anywhere crossing the borders”); DEX26, at 213-15 (Doe 3 refuses to travel to the United

<sup>26</sup> CBP exercises authority under a wide array of statutes to stop, search, and examine persons at international borders. *See, e.g.*, 19 U.S.C. §§ 482, 1455, 1459, 1461, 1467, 1499, 1581, 1582. These statutes touch on a wide array of violations, including alien smuggling, drug violations, agriculture concerns or monetary reporting requirements. *See, e.g.*, 19 U.S.C. § 1584; 8 U.S.C. § 1324; 6 U.S.C. § 231(b); 7 U.S.C. § 8301 *et seq.*; 31 U.S.C. § 5316; *see also* 19 C.F.R. § 162 (inspections of, *inter alia* vehicles, aircraft, persons, baggage, and merchandise). Moreover, the Government has the authority to perform border searches without a warrant, probable cause, or reasonable suspicion. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985).

States); DEX44, at 157-68 (Khan has foregone specific trips); DEX16, at 67 (Shahir Anwar skipped one trip). Others admit that they have not been deterred from travel. DEX32, at 184 (Elhuzayel); DEX6, at 48-49 (Ahmed); DEX40, at 246-48 (Hakmeh). And many Plaintiffs have extensive, repeated domestic and international travel, notwithstanding their perceived watchlist status. *See, e.g.*, SMF ¶¶98-99(Shaout), 101-02(Shibly). None have refrained from travel entirely as a result, even those who claim to have avoided specific travel. Mr. El-Shwehdi, for example, has flown more than 20 times since being subjected regularly to enhanced screening. SMF ¶ 77. Mr. Fares has travelled internationally on a number of occasions since the one trip he did not take. SMF ¶¶79-81. Mr. Khan has flown several times during the same timeframe as he was being screened. SMF ¶¶ 94-96.

The Court previously held that, in theory, government actions that “actually deter[]” travel might create such an unreasonable burden as to deprive someone of their liberty interest in travel. *Elbady*, 303 F. Supp. 3d at 463 (citation omitted). Mere deterrence, especially deterrence based on a subjective chilling effect on some individuals’ decision to travel, however, is not a deprivation of the right to travel. Other courts have rejected much more significant “burdens” on one’s ability to travel as not constituting sufficient deprivation to trigger due process protections. *Torraco*., 615 F.3d at 141 (holding that a delay of “a little over one day ... was a minor restriction that did not result in a denial of the right to travel”); *City of Houston*, 679 F.2d at 1186–99 (upholding regulation limiting use of airport). But, even if accurate, the deterrence theory cannot possibly extend to individual decisions to avoid specific trips such as those explained by Plaintiffs. People might plausibly avoid travel as a response to any number of government actions: they may dislike vaccination requirements or showing identification or flying without a weapon, or being subject to any security screening whatsoever. That does not mean that such ordinary requirements constitute a deprivation of a liberty interest in travel. *See, e.g., Abdi*, 2018 WL 1940411, at \*3.

Plaintiffs bear the burden of showing the deprivation of a liberty interest in travel due to their perceived TSDB status. But by their own account, they routinely are able to fly and to travel

internationally and domestically and have done so numerous times since they first experienced travel difficulties. Many do so regularly and extensively. What they allege, rather than a deprivation, is delay resulting from additional screening. Regardless of how regular or predictable those delays may be, they do not constitute a deprivation of a protected liberty interest in travel. *Beydown I*, 2016 WL 3753561, at \*5; *Bazzy*, 2016 WL 4525240, at \*6-7; *Abdi*, 2018 WL 1940411, at \*3.

**ii. Plaintiffs Do Not Have a Stigma-Plus Reputational Interest Cognizable Under the Due Process Clause.**

In addition to their movement-related liberty interest claims, Plaintiffs have also alleged an infringement of their “right to be free from false government stigmatization as individuals who are known or suspected to be terrorists.” Am. Compl. ¶ 564. Injury to reputation alone does not suffice to give rise to a liberty interest protected under the Due Process Clause. *See Paul v. Davis*, 424 U.S. 693, 712 (1976); *Shirvinski*, 673 F.3d at 315; *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012). Instead, the “stigma-plus” test requires that plaintiffs demonstrate (1) they suffered a stigma from governmental action; plus (2) they experienced an alteration or extinguishment of “a right or status previously recognized by state law.” *Paul*, 424 U.S. at 711.

The Supreme Court has held that even false charges made by the Government will not satisfy the stigma prong unless they are “made public” or there is “public disclosure.” *Bishop v. Wood*, 426 U.S. 341, 348 (1976). A plaintiff must show not only some mere possibility that stigmatizing information may be available to the public, but instead a “likelihood” of dissemination to the public for there to be a cognizable stigma. *See Sciolino v. City of Newport News*, 480 F.3d 642, 650 (4th Cir. 2007). Even where a Plaintiff has made such a showing, the “plus” requirement must be satisfied by a present injury through transformation of some recognized legal status such as the termination of government employment, *see Ridpath v. Bd. of Governors of Marshall Univ.*, 447 F.3d 292, 309 n.16 (4th Cir. 2006), not simply some “damage [that] flows from injury caused by the defendant to a plaintiff’s reputation.” *Siegert v. Gilley*, 500 U.S. 226, 234 (1991) (defamatory post-resignation letter from an

employer, although it “undoubtedly damage[d] the reputation. . . and impair[ed] future employment,” did not rise to a constitutional injury). For a plaintiff to prevail in demonstrating a cognizable constitutional injury with respect to the “plus” prong, they must have either been deprived of a right or interest protected by state law, or have a harm that “rise[s] to the level of a constitutional deprivation.” *Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994).

In its opinion on the Government’s Motion to Dismiss, this Court recognized that the case law is unsettled with respect to how broadly defamatory information must be disseminated to satisfy the stigma prong. *See* Mem. Op. at 14. In doing so, the Court cited *Palka v. Shelton*, which would require that defendants “actually disseminate the stigmatizing comments in a way that would reach potential future employers or the community at large,” 623 F.3d 447, 454 (7th Cir. 2010) and *Johnson v. Martin*, which would find that dissemination within a proper chain of command does not constitute public disclosure, 943 F.2d 15, 17 (7th Cir. 1991). Under either test, Plaintiffs’ claim must fail, because the information has been kept within the proper chain of command and because it has not been actually disseminated in a way that would reach the community at large.

The record makes clear that TSDB status is closely guarded to make sure that the information is only disseminated to those who absolutely need to receive it. As Plaintiffs note in their complaint, government policy provides that an individual’s status with respect to the TSDB or Selectee List generally cannot be disclosed to the individual, let alone the general public. Am. Compl. ¶¶ 196, 213, 228. There is a limited exception for the revised redress process for some individuals on the No Fly List, who may be informed of their status after actually being denied boarding, but otherwise, TSDB status is protected as law enforcement sensitive, and an individual’s status on the subsets of the TSDB that TSA uses for pre-screening constitutes SSI, because TSA has determined that its disclosure would be detrimental to transportation security, Froemling Decl. ¶¶ 52-59 & Ex. A; *see also* Groh Decl. ¶¶ 10, 61. Defendant agencies keep such information closely protected because they recognize that release of information regarding an individual’s inclusion on the TSDB

could have “a devastating effect on the usefulness of the TSDB and a potentially calamitous effect on the national security.” Declaration of Orlando Decl. ¶ 36; *see also id.* ¶¶ 19-36 (describing the importance of safeguarding TSDB information, and the potential consequences of release of TSDB information on investigations and investigative sources and methods).

Indeed, dissemination is carefully circumscribed and limited to entities that require such information in furtherance of their missions. For example, TSDB information is shared internally between those government agencies that require the information “for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective” purposes. Groh Decl. ¶ 30. For example, TSA uses certain subsets of the TSDB in its Secure Flight program. Froemling Decl. ¶¶ 10, 30-33. TSA shares a subset of information under limited circumstances with regulated U.S. aircraft and airport operators, to conduct passenger and employee vetting in the limited circumstances where TSA does not itself conduct that vetting. *See* Froemling Decl. ¶ 61. In each circumstance, all parties authorized to receive TSDB information by TSA must protect this information as SSI in accordance with the provisions of 49 C.F.R. part 1520 and are subject to civil penalty and other enforcement action by TSA if they improperly disclose this information. *See id.*

TSC does not provide access to the TSDB directly to any private companies, nor is the Government aware of any mechanism, policy, or practice, that would permit TSDB information to be shared with entities like car dealerships or banks or other financial institutions. *See* Groh Decl. ¶ 36. Some TSDB information is exported through the NCIC, a computerized information system administered by the FBI, which serves to provide criminal information to nationwide law enforcement agencies, including access to KST File. *See* Rago Decl. ¶ 5-6. Inclusion of the KST File in the NCIC allows for federal, state, and local law enforcement and criminal justice agencies to share relevant information necessary to carry out their respective missions in a concerted effort to prevent terrorist attacks. *Id.* ¶ 6.

Any entity that has access to NCIC must obtain an ORI from the FBI's Criminal Justice Information Services Division. A governmental law enforcement or criminal justice agency's request for an ORI assignment must be accompanied by, among other things: documentation demonstrating that the agency was established pursuant to executive order, statute, or ordinance; documentation of its arrest powers or criminal justice functions, as also outlined via executive order, statute, or ordinance; and documentation that more than fifty percent of its budget is allocated to the administration of criminal justice functions, as defined in 28 C.F.R. § 20.3(b). Moreover, none of these entities have access to the entire KST File at once—access to the File is restricted to individual searches through name and piece of identifying information such as a date of birth or social security number. *See* Rago Decl. ¶ 6.<sup>27</sup> The CJIS Security Policy provides that data contained in CJIS systems, including data in the NCIC, is sensitive information and security must be afforded to prevent any unauthorized access, use, or dissemination of the information. *Id.* ¶ 14 & n. 4. Under either test contemplated by the Court, there is no probability, let alone “likelihood,” that such information has been disseminated to the public at large. *See Sciolino* 480 F.3d at 650.

Plaintiffs allege that their TSDB status is made public because enhanced screening is conducted in view of other passengers and fellow travelers (or in one or two instances, because a traveler was called by name over the loudspeaker). But courts that have been faced with similar allegations in the context of the No Fly List have recognized that the argument that such screening amounts to stigma is insufficient.<sup>28</sup> *See, e.g., Tarhuni v. Sessions*, No. 3:13-cv-00001-BR, 2018 WL

<sup>27</sup> The *only* private entities that may access NCIC are authorized college, university and railroad police departments (that exercise certain police powers under state law) and certain contractors that are providing services on behalf of or in support of a criminal justice agency. *See* Rago Decl. ¶ 10. Plaintiffs have argued in discovery disputes that this is proof of publication or private dissemination of the watchlist. It is not. All of these entities are exercising or supporting law enforcement functions and can only search NCIC in support of those functions. They are bound by federal regulations and CJIS Security Policy, and access is strictly controlled. *Id.* ¶¶ 11-23. In any event, Plaintiffs cannot (and have not) established any deprivation incurred as a result of law enforcement information-sharing.

<sup>28</sup> Indeed, this Court in *Mohamed* expressed some doubt that No Fly List placement could give rise to a stigma-plus claim, *see Mohamed v. Holder*, No. 1:11-cv-50, 2015 WL 4394958, at \*6 (E.D. Va. July 16, 2015) (“There is also a substantial question whether the dissemination of the No Fly List within or

3614192, \*12 (D. Or. July 27, 2018) (dismissing Plaintiffs' Fourth Amended complaint's stigma-plus claim on the same grounds as their previous claim, because "government disclosure of No-Fly List status to the airlines and the additional incidental disclosures to other passengers who may overhear or witness an individual being denied boarding were not enough to implicate the sort of community-wide reputational injury required for a stigma-plus claim"); *Tarbuni v. Holder*, 8 F. Supp. 3d 1253, 1275 (D. Or. 2014) (prior ruling with the same holding); *see also Beydoun II*, 871 F.3d at 469 ("... [Plaintiffs claim] their reputation was harmed because those around them when they travel could infer that they were suspected of terrorism . . . because Plaintiffs cannot show that their liberty interest in travel was infringed upon by being subject to relatively minor additional screening, Plaintiffs' reputational harm claims also fail"); *Latif v. Holder*, 28 F. Supp. 3d 1134, 1150 (D. Or. 2014) (Although being denied boarding or arrested in airports amounted to stigma with respect to the No Fly List, "the limited nature of the public disclosure in this case mitigates Plaintiffs' claims of injury to their reputations," since "the 'public' disclosure is limited to a relatively small group of individuals in the same area of the airport as the traveler when the traveler is denied boarding"); *Abdi*, 2018 WL 1940411, at \*3 ("Plaintiff's repeated screening at airports, while no doubt frustrating to Plaintiff, do not rise to the level of a change in legal status."); *Kovac*, 2019 WL 1057935, at \*20 ("there is no stigma attached to lawful screening and inspection."); *Scherfen*, 2010 WL 456784, at \*7 (enhanced screening does not signify inclusion on a watchlist).

Unlike the No Fly List, however, which denies certain travelers from boarding, enhanced screening frequently happens entirely at random and therefore could not possibly support a stigma allegation. Froemling Decl. ¶¶ 10, 12, 32, 38. Indeed, the majority of passengers designated for among government agencies or to airlines, standing alone, would satisfy the public disclosure prong of a stigma-plus claim"), although it ultimately held that the possibility of consequences of being on the No Fly List due to publication to third parties "underscore[d] the need overall for strong procedural protections for [Plaintiff's] travel related rights." *Id.* This case, unlike *Mohamed*, does not involve the No Fly List, and thus the Court's concern over "accompanying adverse consequences visited upon" a person denied boarding does not apply. *Id.* at \*6. Unlike denial of boarding, a traveler may receive heightened screening for multiple reasons, including random selection. *See* Froemling Decl. ¶¶ 12, 32.

enhanced security screening are so designated for reasons other than TSDB status. *Id.* Courts have observed that “[s]ince every air passenger is subjected to a search, there is virtually no ‘stigma attached to being subjected to search at a known, designated airport search point.’” *United States v. Hartwell*, 436 F.3d 174, 180 (3d Cir. 2006) (quoting *Skipwith*, 482 F.2d at 1275); accord *United States v. Wehrli*, 637 F.2d 408, 409 (5th Cir. 1981) (same). Further, every person entering the United States is obligated to present themselves and their effects to CBP officials for inspection. *United States v. Ramsey*, 431 U.S. 606, 619 (1977) (“Border searches, then, from the adoption of the Fourth Amendment, have been considered to be ‘reasonable’ by the single fact that the person or item in question had entered our country from outside.”); see also *Carroll v. United States*, 267 U.S. 132, 154 (1925) (“Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.”); *Flores-Montano*, 541 U.S. at 153; *Ekiu v. United States*, 142 U.S. 651, 659 (1892).

But even if Plaintiffs had proved their contention that TSDB dissemination constitutes stigma, they have not shown an alteration in legal status sufficient to constitute a “plus” factor under the stigma-plus doctrine. See *Randal*, 30 F.3d at 522. In *Paul v. Davis*, the Supreme Court concluded that reputational harm alone does not implicate a liberty or property interest, and as a result, a claimant must identify a “plus” factor establishing the deprivation of such an interest. See 424 U.S. at 701. In *Green v. TSA*, a district court held that the allegation of reputational harm should be dismissed because the plaintiffs did “not allege[] any tangible harm to their personal or professional lives that is attributable to their association with the No-Fly List, and which would rise to the level of a Constitutional deprivation of a liberty right . . . [or] any injury to a property interest.” 351 F. Supp. 2d at 1130. And in *Beydoun*, the district court held that a plaintiff claiming to be on the Selectee List “fail[ed] to sufficiently allege that he was deprived of a right previously held under the law.” *Beydoun I*, 2016 WL 3753561, at \*5; *Bazzyj*, 2016 WL 4525240, at \*7; *Abdi*, 2018 WL 1940411, at \*3;

*Kovac*, 2019 WL 1057935, at \*20. There is no right to enter the country or board a plane without being subjected to inspection or search.

In its opinion on the Motion to Dismiss, this Court focused on potential allegations of “tangible consequences to their legal rights or status” that included Plaintiffs’ purported inability to buy guns in certain states, to obtain HAZMAT licenses, or to obtain jobs at airports. *Elbady*, 303 F. Supp. 3d at 465. But even if these amounted to cognizable “plus” elements, the record does not bear out these claims. No plaintiffs have claimed an inability to buy a gun due to purported TSDB status, SMF ¶ 38, and TSDB status is not shared with firearms dealers. Stark-Nutter Decl. ¶ 13. No plaintiff has alleged that they ever applied for a HAZMAT license, let alone that they were denied one. *See, supra*, SMF ¶ 38.<sup>29</sup> Additionally, for the one plaintiff who had claimed an inability to get a job at an airport, his deposition testimony revealed that he simply voluntarily put off *applying* for a job at the airport due to the fact that he believed he was in the TSDB—once he actually applied, he got the job a week or two later. *See Ahmed Tr.*, DEX6 at 56-58.

So too with Plaintiffs’ other one-off allegations. The plaintiff who claimed to have been prevented from test-driving a vehicle had a similar name to an individual on the Specially Designated National (“SDN”) list maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”); accordingly, the dealer was required to verify that Awad was not the individual on the list before it could complete the transaction. *See SMF* ¶ 57. The SDN List is publically available and not contingent on the TSDB; moreover, none of the other Plaintiffs experienced any similar problems. A few Plaintiffs contend that they had bank accounts closed or were prevented from making wire transfers at financial institutions as a result of their purported TSDB status. *Am. Comp.* ¶ 566. In each instance, however, Plaintiffs adduced no evidence that their bank accounts or wire transfers were delayed due to their purported TSDB status. The

<sup>29</sup> Even if a person applied for employment requiring a TSA security threat assessment, any determination of ineligibility by TSA resulting from that security assessment would be subject to a separate administrative redress process, *see, e.g.*, 49 C.F.R. Part 1515, and review in the Court of Appeals.

Government’s testimony confirms that these allegations had nothing to do with Plaintiffs’ TSDB status—the government does not share TSDB status with any banks or other financial institutions. Groh Decl. ¶ 36. Thus, Plaintiffs have not alleged any alteration or extinguishment of “a right or status” under state law or under the Constitution, and cannot prevail on their stigma-plus claim.

Finally, the Amended Complaint names NCTC and appears to seek relief against NCTC coextensive with the other Defendants. The evidence shows, however, that NCTC’s role in the watchlisting process is to analyze intelligence and make nominations, but not to make placement determinations. *See* Groh Decl. ¶¶ 19-21, 26. NCTC participates in some interagency deliberations on behalf of the intelligence community, but Plaintiffs have put forward no evidence that NCTC has taken any action that deprives any Plaintiff here of a liberty interest.<sup>30</sup> Nomination alone is insufficient to result in placement, and NCTC is separately entitled to judgment as a matter of law.

**a. Demanded Process Would Impair Government Interest.**

“[A]ssessing the adequacy of a particular form of notice requires balancing the ‘interest of the State’ against ‘the individual interest sought to be protected.’” *Jones v. Flowers*, 547 U.S. 220, 229 (2006) (citation omitted). As this Court and other courts have acknowledged, the government has a compelling interest in protecting the national security. *See Haig v. Agee*, 453 U.S. 280, 307 (1981) (“[N]o governmental interest is more compelling than the security of the Nation.”); *Wayte v. United States*, 470 U.S. 598, 612 (1985) (“Unless a society has the capability and will to defend itself from the aggressions of others, constitutional protections of any sort have little meaning.”); *Mohamed*, 2015 WL 4394958, at \*5 (“the government’s interest in protecting the safety of commercial aircraft is compelling”).

The process that Plaintiffs demand—notice of the reasons and bases for placement on the TSDB—would impair the government’s interest in preventing acts of terrorism through the

<sup>30</sup> Plaintiffs directed no discovery to NCTC and sought no information about NCTC during the discovery period. Although Plaintiffs made post-discovery attempts to depose NCTC (that were rejected by the Magistrate Judge), Plaintiffs have never treated NCTC as part of this case.

maintenance of an effective watchlisting system. In light of the Government's paramount interest in preventing terrorist attacks, due process does not require the Government to disclose a traveler's TSDB status every time that traveler experiences enhanced screening, or even after multiple screenings. Unlike the No Fly List, where status is confirmed for U.S. persons who are denied boarding and seek redress, a known or suspected terrorist required to undergo enhanced security screening is not told his or her own status in the TSDB, and it cannot be deduced based upon experiences at airports or the border. Groh Decl. ¶¶ 65-67 & n.13. Travelers may be required to undergo additional screening or inspection for a wide variety of reasons having nothing to do with the TSDB, and the majority of passengers designated for enhanced security screening are so designated for reasons other than TSDB Status. Froemling Decl. ¶ 10; Howe Decl. ¶ 16. Individuals who are not in the TSDB may be designated for enhanced screening on multiple consecutive flights, diminishing the ability of any individual to infer TSDB status from repeated designation for enhanced screening. Froemling Decl. ¶ 11. And, TSA applies the same checkpoint screening procedures to individuals that Secure Flight designates for enhanced screening, regardless of whether the individual is designated due to TSDB status, randomly, or for other reasons. *Id.* ¶¶ 12, 32. Similarly, travelers entering the country may be required to undergo additional inspection for a wide variety of reasons unrelated to the TSDB. Howe Decl. ¶¶ 14, 26.

Compelled disclosure of a traveler's TSDB status—beyond those circumstances contemplated by the DHS TRIP procedures—would have a devastating effect on the usefulness of the TSDB and imperil the effectiveness of critical law enforcement tools used to protect national security. Orlando Decl. ¶ 36. For example, disclosure of TSDB status would tend to reveal the Government's investigative interest (or lack thereof) in that individual, as well as the investigative procedures and techniques of investigating agencies associated with that individual's status. Groh Decl. ¶¶ 65-67; Orlando Decl. ¶¶ 21-23. It would be of considerable value to terrorist groups to confirm which individuals may not be of investigative or intelligence interest and who are thus more

likely to escape scrutiny. Groh Decl. ¶ 66; Orlando Decl. ¶ 23. Signaling the FBI's investigative interest in a particular person can be especially damaging where FBI subjects or former subjects have associates whom the FBI may still be investigating for potential ties to terrorist activity. Orlando Decl. ¶ 22. Information regarding one subject may reflect law enforcement interest in other subjects, and alerting those other subjects could cause them to flee, destroy evidence, or take steps to alter their conduct or communications so as to avoid detection of future activities. *Id.*

By the same token, terrorists would know whether they are required to undergo additional screening at airports, and use that information to attempt to evade enhanced security screening and other security measures to gain access to the commercial aviation system to perpetrate an attack. Froemling Decl. ¶¶ 49-59. Unlike persons on the No Fly List, who are denied boarding, persons otherwise on the TSDB can still gain access to sterile area of airports, and can attempt social engineering or to find insider threats. *Id.* ¶¶ 10, 55.

The Government also has a strong interest in protecting sensitive and classified information related to terrorism. Particularly in light of the limited Plaintiffs' interest at issue, due process does not require that the Government provide notice of the reasons and bases for placement on the TSDB. Inclusion in the TSDB is sometimes based on sensitive law enforcement information, including information that pertains to law enforcement techniques and procedures, information that would undermine the confidentiality of sources, information that would endanger witness and law enforcement personnel, information that would undermine the privacy of individuals involved in the investigation, or information that would seriously impair the ability of a law enforcement agency to conduct future investigations. Orlando Decl. ¶ 30. Revealing information about why a person was included in the TSDB would therefore reasonably be expected to risk circumvention of the law and cause harm to national security by providing potential terrorists with operationally valuable information about the nature of the government's interest in them, as well as exposing Government sources and methods used to obtain the relevant derogatory information. Groh Decl. ¶ 65; Orlando

Decl. ¶ 31. *See Bassiouni v. CIA*, 392 F.3d 244, 246 (7th Cir. 2004) (disclosing confidential information could demonstrate “how the CIA is deploying its resources and what subjects it is investigating,” which “could be useful to both nations and terrorists.”); *Snepp v. United States*, 444 U.S. 507, 509 n.3 (1980) (per curiam) (“The Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service.”). As the FBI attests, requiring Defendants to disclose the reasons and bases for placement on the TSDB would force nominating agencies such as the FBI to choose between, on the one hand, disclosing information that could reasonably be expected to compromise an investigation, expose a source, or reveal sensitive surveillance techniques, and, on the other, withholding information that could be used to identify and prevent a terrorist attack. Orlando Decl. ¶ 32.

As addressed further below, particularly in light of the minimal deprivation at issue—potential delays for additional screening—the balance of interests weighs heavily against the disclosure of watchlist status or the basis for such a status.

**b. The Process Afforded by DHS TRIP is Appropriate and Adequate.**

The current DHS TRIP process is appropriate and adequate to protect Plaintiffs’ alleged liberty interest from the risk of erroneous deprivation. As set forth *infra*, the private interests affected by alleged TSDB placement is limited, while the Government’s interest in prevention of catastrophic terrorist attacks is extraordinary. The current nomination, placement, and quality assurances, and DHS TRIP procedures, ensure that the risk of erroneous deprivation is appropriately low. *See* Groh Decl. ¶¶ 17-29, 41-63; Orlando Decl. ¶¶ 8-14; Moore Decl. ¶¶ 7-16.

Inclusion in the TSDB is subject to multiple levels of review. First, before any individual is added to the TSDB, the nominating agency assesses the available, relevant information, including any exculpatory information, to determine whether the applicable standard is met, and the TSC completes a de novo review of available, relevant information to make the same assessment before

the individual is included in the TSDB. Groh Decl. ¶ 16. In addition, TSC conducts biannual reviews of all U.S. persons in the TSDB to ensure continued placement is warranted based on available, relevant information. *Id.* Further, individuals who experience travel-related screening difficulties may seek redress through DHS TRIP and, if the individual is a match to the TSDB, the TSC Redress Unit and the nominator will consider the individual's inquiry and other available, relevant information to make a determination as to whether continued placement is warranted. *Id.* On balance, the harm to counterterrorism efforts caused by alerting individuals as to whether or not they are on a terrorist watchlist far outweighs the benefits of additional process for people who are merely subject to travel delays. *See Rahman v. Chertoff*, 530 F.3d 622, 627 (7th Cir. 2008) (“Any change that reduces the number of false positives on a terrorist watch list may well increase the number of false negatives.”).

Further, any additional procedural requirements would pose an enormous administrative and fiscal burden on the affected agencies. *See Mathews v. Eldridge*, 424 U.S. at 335. For example, expanding the revised redress procedures available to U.S. persons who are denied boarding to U.S. persons who experience enhanced screening would pose an extraordinary burden on the involved agencies, which the impacted private interests do not warrant. As explained *infra*, travelers are required to undergo additional screening or inspection for a wide variety of reasons having nothing to do with the TSDB. And if the revised redress process for U.S. persons on the No Fly List were applied to U.S. persons who receive enhanced screening as a result of TSDB status, DHS TRIP estimates that its workload for revised redress cases would increase by more than 1400 percent. Moore Decl. ¶ 20. This would lead to an impact in DHS TRIP's ability to provide a fair and timely redress process for all applicants, including the 98 percent of applicants who are cleared of any connection to the TSDB. *Id.* Additional challenges are posed by the fact that status in certain TSDB subsets constitutes SSI. Froemling Decl. ¶ 52 & Ex. A; Moore Decl. ¶ 14. None of these administrative and fiscal burdens are warranted by the limited travel delays alleged by plaintiffs.

**IV. The Court Should Also Grant Summary Judgment in Defendants’ Favor on Plaintiffs’ Administrative Procedure Act Claim.**

As the Court has previously held, Plaintiffs’ Administrative Procedure Act (“APA”) claim “essentially conflate[s]” with their procedural due process claim. *Elbady*, 303 F. Supp. 3d at 467. Accordingly, Defendants are entitled to summary judgment on this claim for reasons coextensive with those set forth above, and Plaintiffs cannot separately demonstrate that the DHS TRIP process is arbitrary or capricious in violation of the APA. *See* 5 U.S.C. § 706(2)(A). In other words, in the circumstances here presented, if the challenged redress process comports with due process—which, as shown above, it does—“arbitrary and capricious” scrutiny cannot otherwise limit Defendants’ statutory authority and discretion. In any event, if the Court were to consider the due process issue as a separate APA claim, the scope of APA review is narrow and deferential, and a court cannot substitute its judgment for that of the agency. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As long as the agency’s action being challenged—here the adequacy of the redress process—has a rational basis, it must be affirmed. *See Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). As set forth above, the contours of the relevant redress process are plainly reasonable.

**CONCLUSION**

For the foregoing reasons, the Court should grant summary judgment for Defendants as to Plaintiffs’ remaining claim.

Dated: March 11, 2019

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	
	)	

Case No. 1:16-cv-375 (AJT/JFA)

**DECLARATION OF HAO-Y TRAN FROEMLING**

I, Hao-y Tran Froemling, declare as follows pursuant to the provisions of 29 U.S.C. § 1746:

1. I am the Executive Director for Vetting, Office of Intelligence and Analysis, for the Transportation Security Administration (TSA), a component agency of the U.S. Department of Homeland Security (DHS). I have held this position since January 2018. I previously served as the Director of the Program Management Division, Office of Intelligence and Analysis. I have been employed by TSA since 2007.

2. I understand the Plaintiffs in this action have challenged the constitutionality of the procedures afforded to U.S. citizens who seek to challenge their purported placement in the Terrorist Screening Database (TSDB). I make this Declaration in support of the defendants' motion for summary judgment. The statements herein are based on my personal knowledge and information made available to me in my official capacity.

3. TSA relies on access to the TSDB to execute its mission. Before a flight is scheduled to depart, TSA determines whether any passengers on the flight match known

or suspected terrorists in the TSDB. TSA uses the results of this process to require such individuals to undergo enhanced security screening prior to boarding an aircraft or to deny boarding. TSA also uses the TSDB as a part of its process in conducting security threat assessments on individuals who seek access to sensitive transportation systems and information, including pilots, aviation workers, and other individuals who have inside access to the aviation system.

4. The TSDB is key to TSA's ability to counter ongoing terrorist threats. While aviation security operations have advanced significantly since TSA's creation, the United States still faces determined adversaries. Terrorists remain intent on attacking civil aviation, and the threat environment remains complex, diverse, and persistent. The TSDB remains an essential and effective component of TSA's countermeasures in substantial part because its contents are not disclosed to individuals required to undergo enhanced security screening.<sup>1</sup>

5. As set forth below, I first describe TSA's mandate and highlight security measures used by TSA to secure aviation. Next, I describe the current threat to aviation, including recent attempts to commit terrorist attacks. I then describe the security measures TSA uses to counteract the threat posed by terrorists, and the effect that disclosing status in the TSDB to those required to undergo enhanced screening would have on those security measures. Finally, I describe TSA's limited disclosures of TSDB information and how TSA ensures the confidentiality of that information.

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<sup>1</sup> This declaration is limited to public information and thus necessarily omits certain supporting detail regarding the threats and challenges that TSA must address and counteract.

### TSA's Mandate and Security Measures

6. As a result of the terrorist attacks of September 11, 2001, Congress passed the Aviation and Transportation Security Act of 2001 (ATSA),<sup>2</sup> which created TSA. ATSA charged TSA with responsibility “for security in all modes of transportation” and created a federal workforce to screen passengers and cargo at commercial airports.<sup>3</sup> ATSA also granted TSA broad authority to “assess threats to transportation,”<sup>4</sup> to “develop policies, strategies, and plans for dealing with threats to transportation security,”<sup>5</sup> to “enforce security-related regulations and requirements,”<sup>6</sup> and to “oversee the implementation, and ensure the adequacy, of security measures at airports.”<sup>7</sup> ATSA also specifically directed TSA to take appropriate action with respect to individuals who may be a threat to civil aviation or national security.<sup>8</sup>

7. Congress further directed TSA to assume from aircraft operators the function of conducting pre-flight comparisons of airline passenger information to Federal government watchlists for domestic flights and international flights to, from, and overflying the United States.<sup>9</sup>

8. TSA executes its mandate in substantial part through the Secure Flight program, its advanced passenger prescreening program which compares passenger

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<sup>2</sup> Pub. L. No. 107-71, 115 Stat. 597 (2001).

<sup>3</sup> ATSA § 101, 49 U.S.C. § 114(d); ATSA § 111, amending 49 U.S.C. § 44935.

<sup>4</sup> 49 U.S.C. § 114(f)(2).

<sup>5</sup> 49 U.S.C. § 114(f)(3).

<sup>6</sup> 49 U.S.C. § 114(f)(7).

<sup>7</sup> 49 U.S.C. § 114(f)(11).

<sup>8</sup> See ATSA § 101, 49 U.S.C. §§ 114(f), 114(h)(3).

<sup>9</sup> Pub. L. No. 108-458, 118 Stat. 3638, Dec. 17, 2004; 49 U.S.C. § 44903(j)(2) (The Intelligence Reform and Terrorism Prevention Act of 2004).

information to various Government watchlists.<sup>10</sup> Secure Flight may designate an individual for enhanced, standard, or expedited screening at airport security checkpoints or may result in denial of boarding.

9. Aviation passengers must undergo security screening prior to entering the sterile area of an airport and boarding an aircraft.<sup>11</sup> On an average day, TSA screens over two million passengers and six million items of carry-on and checked luggage.<sup>12</sup> Of these passengers, Secure Flight designates a very small percentage for enhanced screening.

10. Secure Flight may designate aviation passengers for enhanced screening for a variety of reasons, including random selection, matching to one of TSA's risk-based rules,<sup>13</sup> TSDB status, or for other reasons.<sup>14</sup> For purposes of Secure Flight matching to the TSDB, TSA may designate passengers for enhanced screening who meet the

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<sup>10</sup> Secure Flight matching is limited to covered aircraft operators, which are generally airlines offering scheduled and public charter flights from commercial airports. Secure Flight does not conduct watchlist matching for non-covered aircraft operators. TSA instead provides exports of the No Fly and Selectee subsets of the TSDB to regulated U.S. aircraft operators operating charters and other flights under a TSA-authorized security program on aircraft that are not covered by Secure Flight and those entities are responsible for completing the watchlist matching function for their aviation passengers. As further described below, there are strict controls over access to and the use of those subsets of the TSDB.

<sup>11</sup> The sterile area refers to portions of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, an aircraft operator, or a foreign air carrier.

<sup>12</sup> TSA agents will discover an average of 11.6 firearms, ten of which are loaded, in carry-on luggage every day. <https://www.tsa.gov/blog/2019/02/07/tsa-year-review-record-setting-2018>.

<sup>13</sup> My declaration of August 15, 2018 further describes TSA's risk-based rules. TSA uses two sets of risk-based rules to designate passengers for enhanced security screening, referred to as Silent Partner and Quiet Skies. Silent Partner rules apply to passengers on international flights and Quiet Skies rules are a subset of Silent Partner rules that apply to domestic screening operations. As directed by Congress, the DHS Traveler Redress Inquiry Program (DHS TRIP) is available to individuals who experience travel difficulties related to matching one of TSA's risk-based rules. FAA Reauthorization Act of 2018, § 1949(a). In addition, TSA has robust review procedures for its risk-based rules within TSA and with the DHS Privacy Office, Office for Civil Rights and Civil Liberties and Office of the General Counsel.

<sup>14</sup> TSA does not identify individuals for enhanced screening as a result of any prior but not current listing in the TSDB. TSA's screening operations, including reasons for designating individuals for enhanced screening, are subject to oversight by the DHS and TSA Civil Rights and Civil Liberties Offices, Privacy Offices, and Legal Counsel Offices to ensure compliance with the U.S. Constitution, applicable laws and regulations, and DHS and TSA policy.

reasonable suspicion standard for TSDB inclusion and for whom the TSDB record contains a full name and a full date of birth.<sup>15</sup> In contrast, individuals who meet additional heightened substantive derogatory criteria for inclusion on the No Fly List, a separate subset of the TSDB, generally are not allowed access to sterile areas of airports and are denied boarding. The majority of passengers designated for enhanced security screening are so designated for reasons other than TSDB status.

11. Individuals included in the TSDB may be designated for enhanced screening on multiple consecutive flights. Individuals who are not in the TSDB may also be designated for enhanced screening on multiple consecutive flights, diminishing the ability of any individual to infer TSDB status from repeated designation for enhanced screening.

12. TSA applies the same checkpoint screening procedures to individuals Secure Flight designates for enhanced screening, regardless of whether the individual is designated due to TSDB status, randomly, or for other reasons. The passenger's boarding pass does not include the reason for the enhanced screening designation. In addition, passengers designated by Secure Flight for expedited or standard screening are not guaranteed to receive that type of screening and may be required to undergo additional or enhanced screening as a result of unpredictable and random screening measures at the

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<sup>15</sup> Individuals who meet this minimum requirement are included in the Expanded Selectee List. The Selectee List, a separate subset of the TSDB, requires additional heightened substantive derogatory criteria to be met before the individual is added to the Selectee List. While TSA applies the same checkpoint procedures to individuals on the Expanded Selectee List as individuals on the Selectee List, TSA values having separate Selectee and Expanded Selectee Lists. More specific details related to why TSA values having both subset lists constitutes Sensitive Security Information.

checkpoint, to resolve an alarm generated by a walk-through metal detector or Advanced Imaging Technology (AIT),<sup>16</sup> or for other reasons.

13. TSA recommends that all travelers arrive two to three hours in advance of the scheduled flight time. Although passengers may be delayed as a result of TSA's security measures, the purpose and effect of these measures is to ensure aviation security and the freedom of movement for people and commerce.

14. TSA's security measures extend beyond TSA security checkpoints. TSA uses unpredictable security measures throughout the airport to accomplish its transportation security mission. All passengers may be required to undergo additional screening at boarding gates, which is conducted after clearing initial checkpoint screening.

15. The Federal Air Marshal Service (FAMS) also represents a necessary security measure to mitigate threats.<sup>17</sup> Federal Air Marshals are deployed on commercial aircraft using risk-based analysis, and as such, FAMS missions are responsive to current intelligence, threats, and vulnerabilities. FAMS' mission coverage goals are adjusted continually in response to emerging and evolving threats and incorporate randomness and unpredictability as a further mitigation measure. Federal Air Marshals serve as a deterrent to those who intend to do harm, and they have multiple priorities during flight, including protecting the flight deck and passengers in the cabin from terrorist attacks. In

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<sup>16</sup> The AIT is designed to identify both metallic and non-metallic potential threat items that may be concealed on an individual.

<sup>17</sup> Congress directed TSA to deploy Federal Air Marshals to passenger flights that present high security risks and to utilize a risk-based strategy when making Federal Air Marshal resource allocation decisions for domestic and international flights. 49 U.S.C. § 44917. Congress requires TSA to consider its risk-based rules when creating Federal Air Marshal mission schedules. FAA Reauthorization Act of 2018, §1949(d)(1).

carrying out their responsibilities, Federal Air Marshals observe what any other passenger or the flight crew could observe.

16. Large populations of individuals have insider access to secure areas of airports and other transportation venues. As demonstrated by news reporting related to recent terrorist attacks, this access could allow insiders to provide necessary materials or weapons to individuals to carry out a terrorist attack. To counter this threat, TSA implements several security measures and controls, including requiring a security threat assessment for such individuals. TSA uses governmental databases and available information, including the TSDB, as part of its security threat assessment process.

#### The Current Threat

17. Aviation remains a principal target for terrorists who seek to instill fear, disrupt the economy, and undermine the American way of life. Terrorists are constantly working to find new methods for disguising explosives, recruiting insiders, and hijacking aircraft.

18. The United States continues to face one of the most challenging threat environments since 9/11, as foreign terrorist organizations exploit social media and secure communication applications to inspire, enable, or direct individuals already here in the United States to commit terrorist acts.

19. Terrorist groups have proven adaptive in the face of new security measures, as demonstrated by their development of non-metallic explosive devices designed to evade metal detectors and other aviation security measures. These devices remain some of the most serious threats to aviation. The threat is compounded by the

fact that terrorist groups have published instruction manuals online and invited their aspirants to use the information.

20. One such example is the 13th edition of Inspire, Al-Qaeda in the Arabian Peninsula's (AQAP) English language magazine. Published in December 2014, Inspire 13 focuses on lone actor attacks and presents detailed instructions for constructing a bomb, proceeding with it through airport security, and detonating it onboard while over U.S. soil.

21. Since 2015 terrorist groups' have broadened the scope and location of aviation attacks, as shown by the attacks on commercial aircraft in Egypt and Somalia, in 2015 and 2016, respectively, and the 2017 terrorist plot in Australia. These plots are sobering reminders that the threat to aviation is as real as ever.

22. In October 2015, Metrojet Flight 9268 was scheduled to fly from Sharm el-Sheikh International Airport, Sinai Peninsula, Egypt to St. Petersburg, Russia, but suffered a catastrophic explosive event after departing, killing all 224 passengers. Islamic State of Iraq and ash-Sham (ISIS) claimed responsibility. Following an investigation, several countries, including the United States, concluded that the plane was brought down by an explosive device. A matter of significant concern about the bombing was the possibility of an airport worker facilitating the smuggling of the bomb onto the plane.

23. In the wake of the Metrojet attack, ISIS published a new edition of their English language magazine Dabiq, which celebrated the downing of the aircraft and displayed a photo of the improvised explosive device (IED) purportedly used to bring down the aircraft. The photo revealed a soda can filled with a substance—possibly an

explosive—a commercial detonator, and a probable firing circuit that could include a timer and power source.

24. In February 2016, a bomb detonated onboard Daallo Airlines Flight D3-159 from Mogadishu, killing only the bomber. Al-Qaeda linked terrorist group al-Shabaab claimed responsibility. Per media reports, Somalia's government spokesperson noted that security video footage taken at Mogadishu airport showed the suspected suicide bomber being handed what appears to be a laptop computer by an individual dressed as an airport worker after passing through the security checkpoint. Media reports called this a clear example of terrorists mastering the technique of getting simple bombs on planes via corrupt airport personnel.

25. In the summer of 2017, a plot was uncovered highlighting threat actors' efforts to detonate a bomb on a flight from Sydney, Australia with explosive material hidden in a meat grinder. Australian Federal Police called it one of the most sophisticated plots that had ever been attempted on Australian soil. An alleged senior ISIS commander likely sent parts, including weapons-grade explosives, from Turkey to develop a bomb intended to bring down an airliner leaving Australia. The plot was reportedly only aborted after the luggage with the device was deemed overweight.

26. In 2017, the United States became increasingly concerned about the terrorist threat to civil aviation, as terrorist groups such as al-Qaeda affiliates AQAP to al-Shabaab, and from al-Qaeda to ISIS expressed interest in concealing IEDs in modified electronic devices, including laptops, printers, and cameras. The success of ISIS in downing one commercial airliner (Metrojet) underscores their capability and intent to pose a persistent threat to aviation.

27. This background indicates that terrorist groups continue to see this Nation's civil aviation system as a highly valuable target. Terrorist groups are expected to continue to use insiders to execute attacks and also to apply their ingenuity to devise new ways to bypass or defeat aviation security measures. Terrorist groups will likely continue to share information on weapons, tactics, and targets in online publications and social media in order to incite lone actor attacks.

#### Security Measures to Mitigate the Threat

28. Applying enhanced screening and other appropriate security measures to known or suspected terrorists in the TSDB is essential to prevent attacks against civil aviation and the Nation. These are individuals that U.S. law enforcement and intelligence agencies have reasonable suspicion to believe are engaged, have been engaged, or intend to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities. For example, individuals may be included in the TSDB due to membership in terrorist organizations that pose a grave threat.

29. Below I describe TSA security measures and TSA's use of the TSDB. I further describe how the effectiveness of TSA security measures would be diminished by the disclosure of status in the TSDB to individuals who are required to undergo enhanced security screening.

#### *Pre-Screening and Watchlist Matching*

30. Pursuant to section 4012(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), TSA implemented the Secure Flight program. Under

this program, covered aircraft operators<sup>18</sup> must transmit to TSA certain passenger information for flights into, out of, within, and over the U.S., and on point-to-point international flights operated by U.S. airlines, approximately 72 hours prior to scheduled flight departure times.<sup>19</sup>

31. Secure Flight uses the passenger information it receives from aircraft operators to determine if any passengers are on a Government watchlist such as the TSDB.<sup>20</sup> After Secure Flight completes the comparison of passenger information, TSA provides instructions to aircraft operators to identify the individual for standard, enhanced, or expedited screening at a security checkpoint, or to deny the individual transport or authorization to enter a U.S. airport's sterile area.<sup>21</sup> TSA may designate passengers for enhanced screening for a variety of reasons other than status on the TSDB, as described above.

32. In the case of an individual requiring enhanced security screening, the aircraft operator applies a "SSSS" marking on the boarding pass to signify that enhanced screening is required. The notation applies to all passengers designated for enhanced screening, including individuals designated by random selection or for other reasons unrelated to the TSDB. There is no special notation on passengers' boarding passes to

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<sup>18</sup> These aircraft operators generally are the passenger airlines that offer scheduled and public charter flights from commercial airports.

<sup>19</sup> For reservations created within 72 hours of flight departure, including reservations booked by walking up to an airport ticket counter, covered aircraft operators must submit Secure Flight passenger information as soon as it becomes available. Aircraft operators may not issue a boarding pass to a passenger until TSA responds.

<sup>20</sup> TSA obtains its export of the TSDB via the Department of Homeland Security (DHS) Watchlist Service (WLS). WLS maintains a synchronized copy of the TSDB and disseminates exports of TSDB records to authorized DHS Components, including TSA.

<sup>21</sup> Some passengers designated for enhanced screening may be required to check-in at the airport ticket counter instead of checking in online or using an airport kiosk. An airline representative may ask the individual for identification and may place a call to TSA for identity resolution. During these calls, TSA does not disclose whether or not the individuals is in the TSDB and will only provide the representative with instructions to identify the individual for standard, enhanced, or expedited screening at a security checkpoint, or to deny boarding. The average time for such calls is 12.5 minutes.

signify inclusion in the TSDB or any of its subset lists. TSA then distributes the information within the agency to drive risk-based operational responses and allocation of airport screening resources.

33. Secure Flight pre-screening is one of the Nation's front-lines of defense against terrorism targeting aviation. The Secure Flight program is an essential tool that enables TSA to effectively rely on law enforcement and intelligence information to require known and suspected terrorists in the TSDB and other individuals to undergo enhanced security screening prior to accessing the sterile area of airports and boarding an aircraft.

#### *Checkpoint Screening*

34. All passengers must first undergo screening at an airport security checkpoint before entering the sterile area and boarding an aircraft. Designating passengers for enhanced, standard, or expedited screening allows TSA to carry out this mandate and to focus its limited resources on passengers who present a higher risk or unknown risk while ensuring the freedom of movement for people and commerce. In creating TSA, Congress required TSA to implement "trusted passenger programs and to use available technologies to expedite the security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening."<sup>22</sup>

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<sup>22</sup> ATSA § 109(a)(3), 49 U.S.C. § 114 NOTE.

35. The value of enhanced security screening is substantial. Assessments show that TSA screeners are more likely to detect prohibited items during checkpoint screening for passengers who are designated for enhanced security screening.<sup>23</sup>

36. TSA continues to adapt its checkpoint security screening measures to better address the threat to our Nation's aviation security. TSA's security measures are informed by intelligence and ongoing threats to aviation. For example, TSA revised its airport screening procedures to account for the December 2001 attempt by Richard Reid (who claimed to be with Al-Qaeda) to detonate explosives packed into the shoes he was wearing while on an American Airlines flight from Paris to Miami; the 2004 attack on two domestic Russian passenger planes using explosives that were concealed on the torsos of female passengers; the 2006 plot to board aircraft with liquid explosives that would be used to construct and detonate a bomb on flights from the United Kingdom to the United States and Canada; and the 2009 attempt of Umar Farouk Abdulmutallab to detonate an explosive device concealed in his underwear on a Northwest flight from Amsterdam to Detroit, for which AQAP claimed responsibility. More recently, TSA revised its security requirements at Last Point of Departure airports with flights to the United States to account for the 2010 discovery of packages containing chemically-initiated IEDs found on cargo planes bound from Yemen to the United States; the 2014 terrorist plots to conceal IEDs in consumer electronics; and the more recent plots and attacks discussed above.

37. Checkpoint screening for all passengers includes screening of the person and his or her accessible property. Below I describe the screening procedures utilized by

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<sup>23</sup> Specific statistics demonstrating this point are classified.

TSA screeners at checkpoints for standard, expedited, and enhanced screening.<sup>24</sup> I also describe the measures TSA takes at international airports that serve as Last Points of Departure to the United States (LPDs).

38. Standard screening typically includes screening of the person through a walk-through metal detector, the AIT, or a pat-down, and screening of the passenger's accessible property through a scanner. Expedited screening typically includes screening of the person through a walk-through metal detector and accessible property through a scanner.<sup>25</sup> Individuals selected for standard or expedited screening may undergo additional screening of their person (e.g. walk-through metal detector, AIT, and/or a pat-down<sup>26</sup>) and their accessible property (e.g., an explosives trace detection search involving a device certified to detect explosive particles and/or additional physical searches of the passenger's accessible property) for a variety of reasons, including random and unpredictable security measures or an alarm during the screening process.

39. Enhanced screening similarly includes screening of the person and his or her accessible property. The key difference is that TSA is using more than one screening mechanism to clear the passenger and his or her accessible property into the sterile area. Enhanced screening typically includes screening of the person through a walk-through

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<sup>24</sup> Expedited screening applies to passengers TSA has determined in its sole discretion pose a low risk.

<sup>25</sup> Passengers selected for standard screening are generally required to remove their shoes, laptops, liquids, belts and light jackets, among other things. Passengers selected for expedited screening are not required to remove those items.

<sup>26</sup> A pat-down for all passengers, whether designated for standard, enhanced, or expedited screening, may include inspection of the head, neck, arms, torso, legs, and feet. This includes head coverings and sensitive areas such as breasts, groin, and the buttocks. TSA screeners use the back of the hands for pat-downs over sensitive areas of the body. In limited cases, additional screening involving a sensitive area pat-down with the front of the hand may be needed to determine that a threat does not exist. Pat-downs are conducted by a screener of the same gender and all passengers may request a private screening accompanied by a companion of the passenger's choice. A second screener of the same gender will be present during the private screening.

metal detector, the AIT, and a pat-down, and screening of accessible property through a scanner, an explosives trace detection search, and physical search of the interior of the passenger's accessible property, electronics,<sup>27</sup> and footwear. A typical enhanced screening process takes 10 to 15 minutes.<sup>28</sup> In the event of an alarm, appropriate screening personnel, which may include a TSA explosives expert, will complete the passenger's screening. Enhanced screening may be conducted in any screening lane and there is no special lane or area designated for enhanced screening. In addition, all passengers, whether designated for enhanced, standard, or expedited screening, may request a private screening.

40. TSA trains its personnel to treat all passengers with dignity and respect, regardless of the type of screening for which they are designated. TSA screeners perform administrative searches for items prohibited from entering the sterile area of an airport, such as explosives, weapons, and incendiaries. Generally, TSA screeners are not required to question individuals during the administrative search for any purpose other than facilitating and completing the search,<sup>29</sup> and TSA only requires individuals to remain at the checkpoint until the administrative search is completed. An individual's designation for enhanced screening is not a basis for detaining or questioning the individual. TSA screeners do not seize evidence, arrest individuals, execute criminal investigative searches, or carry weapons. If while performing the administrative search a

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<sup>27</sup> As a screening measure, TSA does sometimes require electronic devices to be powered on, but TSA does not search electronic devices for electronic content that may be contained on the device, and does not extract data from passenger electronic devices.

<sup>28</sup> This timeframe is based on limited information and applies from when screening commences to its completion. This timeframe does not include any time spent waiting to present boarding pass and identification or following the completion of the screening process.

<sup>29</sup> For example, TSA screeners may ask passengers questions related to whether there are painful areas to touch, whether the passenger can stand for a few minutes for a pat-down, and whether the passenger has any items in accessible property that are sharp or dangerous.

TSA screener discovers a suspected illegal item such as controlled substances or child pornography, the local police will be notified. Upon arrival, local law enforcement officers may conduct a search, seize evidence, and/or effectuate an arrest, pursuant to the statutes, rules, and other authorities governing their conduct.

41. If the screener discovers a prohibited but not illegal item that may not enter the sterile area of the airport, such as a baseball bat, the screener is not permitted to seize the item and rather must give the individual the option of leaving the sterile area to dispose of the item, placing it in checked baggage (if the item is permitted to be carried in checked baggage), leaving it with someone not entering the sterile area, taking it back to his or her vehicle, or voluntarily abandoning it.

42. For purposes of international flights, TSA implements security measures at foreign airports that serve as LPDs to further secure the Nation's aviation system. While TSA screeners do not carry out screening at LPDs, TSA works closely with foreign airports and air carriers to maintain aviation security standards abroad. Foreign countries are generally held to the aviation security standards required by the International Civil Aviation Organization (ICAO), which are minimum baseline requirements. TSA directly assesses the security posture of LPDs and evaluates the implementation of the ICAO standards. Congress has also directed TSA to improve international aviation security standards and to develop a validation process for security equipment to ensure consistency between TSA and foreign partners.<sup>30</sup>

43. TSA also utilizes its regulatory authorities over air carriers serving the United States to require implementation of additional security measures at foreign

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<sup>30</sup> See FAA Reauthorization Act of 2018, §§ 1914, 1956.

locations. As an element of each air carrier's approval to operate commercial aircraft to, from, or over the United States, the airline agrees to meet all security requirements stipulated by TSA. TSA inspects airlines to ensure all U.S. regulations and international security standards are being met at LPDs.

44. Although the United States has instituted robust aviation security measures since 9/11, evaluated intelligence indicates that terrorist groups' efforts to execute an attack against the aviation sector are persistent given that such attacks provide an opportunity to cause mass casualties and inflict significant economic damage, as well as generate heavy media coverage. One vital way of reducing the risk of an explosive entering the sterile area at LPDs and ultimately ending up on a plane bound for the United States is passenger pre-screening through Secure Flight. Every passenger and crew member on every flight bound for or overflying the United States is required to be vetted against the TSDB, which in turn ensures that known or suspected terrorists receive enhanced screening at foreign airports prior to flying as a passenger to the United States.

#### *Post-Checkpoint Security Measures*

45. TSA's security measures extend beyond TSA security checkpoints. TSA uses unpredictable security measures throughout the airport to accomplish its transportation security mission.

46. All passengers may be required to undergo additional screening at their boarding gates, after they have cleared initial checkpoint screening. Gate screening typically involves randomly selecting a subset of passengers for additional screening at the gate and may include identification checks, searching a person and/or his or her accessible property, and explosive trace detection testing.

47. TSA conducts gate screening for many reasons. For example, local TSA leadership at airports may direct gate screening for any flight to mitigate insider threats and the potential of passengers receiving prohibited items in sterile areas.

48. TSA also utilizes Federal Air Marshals (FAMs) to mitigate risks at the airport and in-flight. Decisions to deploy FAMs are based upon many factors. The identity of flying FAMs constitutes SSI. FAMs generally operate covertly and only reveal their identities when deemed necessary to respond to an immediate threat.

*Countering Insider Threat Using Security Threat Assessments*

49. To carry out its statutory responsibilities, TSA has issued regulations that establish eligibility requirements for individuals who seek access to sensitive transportation areas and systems regulated by TSA. *See, e.g.*, 49 C.F.R. parts 1540 and 1572. TSA conducts security threat assessments on a range of individuals with privileged access to the transportation sector, including those with access to Security Identification Display Areas, sterile areas, and Air Operations Areas at U.S. airports.<sup>31</sup> TSA conducts security threat assessments to ensure that applicants who seek such access meet the eligibility standards of the program to which they apply. For example, in determining whether to grant or deny a Transportation Worker Identification Credential or Hazardous

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<sup>31</sup> The Security Identification Display Area (SIDA) refers to portions of an airport, specified in the airport security program, in which security measures required by regulation must be carried out. This area includes the security area and may include other areas of the airport. As noted above, the sterile area refers to portions of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, an aircraft operator, or a foreign air carrier. The Air Operations Area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under 49 C.F.R. part 1544 or 1546, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures.

Materials Endorsement, TSA determines whether the applicant poses or is suspected of posing a threat to national security, to transportation security, or of terrorism.<sup>32</sup>

50. In conducting security threat assessments, TSA's eligibility determinations draw on information provided from multiple federal databases, including the TSDB. If TSA's database checks reveal a potential concern, TSA will review the available substantive information and other available relevant information regarding the applicant against the eligibility standards of the particular program to which the applicant belongs. An individual's inclusion in one or more government databases is not determinative of TSA's eligibility determination and merely serves as a factor indicating that an individual requires further scrutiny.

51. Individuals who are required to undergo a security threat assessment by TSA are automatically vetted against the TSDB and other federal databases on a daily basis. Recurrent vetting ensures TSA is made aware of individuals with privileged access to transportation systems who may have connections to terrorism so that TSA can determine whether the individual is eligible to retain privileged access to the transportation sector.

*Disclosure of TSDB Status Would Be Detrimental To Transportation Security*

52. TSA's security measures remain effective in combating terrorism because status in the TSDB is not disclosed to those required to undergo enhanced screening. An individual's status on the subsets of the TSDB that TSA uses for passenger pre-board screening constitutes Sensitive Security Information (SSI) pursuant to 49 U.S.C. § 114(r)

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<sup>32</sup> 49 C.F.R. § 1572.5(a)(1); *see also* 49 C.F.R. § 1570.3 (defining "security threat").

and 49 C.F.R. part 1520, as TSA has determined that its disclosure would be detrimental to transportation security.<sup>33</sup> Section 1520.5(b)(9)(ii) makes clear that “SSI includes information and sources of information used by a passenger or property screening program or system, including an automated screening system. This is intended to cover information used by a computerized passenger screening system, including lists of individuals identified as threats to transportation or national security.”<sup>34</sup> Disclosure of SSI is limited to covered persons who have a need to know to carry out their official duties and unauthorized disclosure of SSI is grounds for a civil penalty and other enforcement or corrective action.

53. As explained in the Final Order on Sensitive Security Information of April 23, 2018, attached hereto as Exhibit A, if the government revealed the status of individuals as being either on or off the subsets of the TSDB that TSA uses for passenger pre-board screening, terrorists and others who seek to circumvent the purpose of those lists would be able to do so, as they would be armed with the knowledge of who would be required to undergo additional screening and who would not. Terrorists could use the information to attempt to evade enhanced security screening and other security measures to gain access to the commercial aviation system to perpetrate an attack.

54. With respect to Secure Flight matching, official confirmation that an individual required to undergo enhanced screening is in the TSDB could result in evasion of matching, as the individual would be armed with the knowledge that enhanced screening and potentially other security measures will ensue based on reservation data

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<sup>33</sup> In certain limited circumstances, a U.S. citizen or lawful permanent resident who is denied boarding may learn of his or her status on the No Fly List, a subset of the TSDB, after filing an inquiry with DHS TRIP about the denial of boarding. In those limited circumstances, No Fly List status is not SSI.

<sup>34</sup> 69 Fed. Reg. 28066-1 (2004).

submitted to TSA. The individual could attempt to manipulate reservation data or proof of personal identification in an effort to avoid enhanced screening and other security measures. Through such attempts to manipulate reservation data or proof of identification, a known or suspected terrorist could gain insight into matching thresholds used by Secure Flight to identify travelers in the TSDB, thereby allowing that individual to use or pass knowledge on to others about how to circumvent the prescreening process, including individuals on the No Fly List. If the known or suspected terrorist successfully evaded the system, numerous barriers to carrying out a potential terrorist attack may not be present, enabling a successful attack.

55. Confirmation that an individual required to undergo enhanced screening is in the TSDB would also allow known or suspected terrorists to more effectively and intelligently plan and carry out a domestic or international attack. Importantly, individuals who are selected for enhanced screening, unlike individuals who are denied boarding, are able to access sterile areas of airports and fly via commercial aviation, which remains a prime target for terrorist groups. Armed with knowledge of TSDB status and limitless opportunities to test screening procedures applicable to Selectees, the individual may rely on social engineering to abbreviate or distract TSA screeners from the screening process. The individual may also rely on insider threats, recruiting insiders to meet onboard the aircraft to obtain the necessary items, such as a soda can converted to an IED, to carry out an attack.

56. The recent international events involving Metrojet Flight 9268 and Daallo Airlines Flight D3-159 highlight the dangers posed at foreign airports, specifically in light of potential insider threats. If the Government is required to broadly confirm the

status of persons required to undergo enhanced screening in the TSDB, terrorists would most certainly use that information in planning attacks on flights bound for the United States. The information could be used to identify the best operatives, to predict the likelihood of detection, and to take countermeasures to attempt to avoid that detection.

57. Required notice of status in the TSDB for persons required to undergo enhanced screening would also allow individuals who were selected for enhanced screening for other reasons unrelated to TSDB status to analyze the specific circumstances in which TSA designates passengers for enhanced screening. For example, an individual selected for enhanced screening based on a TSA risk-based rule that resulted in designation for enhanced screening on multiple consecutive trips could analyze his or her travel patterns in an effort to identify why he or she was designated for enhanced screening. Revealing this information could in turn facilitate the ability of a terrorist unidentified by the United States Government to alter travel plans to avoid being flagged by TSA's risk-based rules. Similarly, revealing status in the TSDB to those required to undergo enhanced screening, even to a limited subset of individuals, could be used to analyze TSA's security measures, including the likelihood of random designation for enhanced screening. The percentage of passengers randomly designated for enhanced screening is informed by current threats and intelligence.

58. TSA continues to effectively counter the grave threat posed by terrorists through enhanced screening. However, giving travelers insight into the circumstances under which an individual may be required to undergo enhanced screening would be detrimental to TSA's countermeasures insofar as terrorists could use the information to predict when TSA would require enhanced screening and to take countermeasures to

avoid such screening. Disclosing TSDB status for passengers required to undergo enhanced screening would most likely lead to TSA randomly designating a substantially higher rate of passengers for enhanced screening and/or deploying additional screening measures, straining screening resources and prolonging the time required for all passengers to complete screening.

59. Finally, the effectiveness of FAMS could be defeated if status in the TSDB of persons required to undergo enhanced screening were disclosed. A public report notes that one of FAMS' objectives is to deploy air marshals on flights that have a known or suspected terrorist on board and that when FAMS assigns air marshals to cover such flights, it refers to these flights as Special Mission Coverage (SMC) assignments. Disclosing status in the TSDB of passengers who are required to undergo enhanced screening would provide valuable knowledge that an armed law enforcement officer may be onboard and that it is simply a matter of identifying that individual and taking measures to obtain his or her firearm or otherwise neutralize that officer to carry out a terrorist attack. FAMS take significant measures to protect their identities in flight and their presence on aircraft to avoid any tactics that could potentially compromise their ability to carry out their mission. Any such disclosure of TSDB status would run counter to FAMS' measures to conceal their identities and FAMS' ability to protect the flight deck and passengers. FAMS in-flight coverage is a highly important, effective, and essential measure to defeating ongoing threats to transportation that would be greatly undermined by disclosing TSDB status to any individual.

60. As explained above, status on the subsets of the TSDB that TSA uses for passenger pre-board screening is SSI and its disclosure is strictly controlled.<sup>35</sup> Moreover, selection for enhanced screening does not signify that an individual is in the TSDB. There are multiple reasons for selecting passengers for enhanced screening other than TSDB status and passengers who are not in the TSDB may be designated for enhanced screening on multiple consecutive flights.

#### TSA's Dissemination of TSDB Information

61. In addition to internally using the TSDB in carrying out its mandate, TSA shares a subset of TSDB information under limited circumstances to further its transportation security mission where it is not otherwise conducting matching of individuals' information against the TSDB. Specifically, TSA provides a subset of TSDB information to regulated U.S. aircraft operators for the purpose of vetting airline employees who may have access to SSI, to regulated U.S. airport operators for the purpose of vetting non-traveling or other individuals who are authorized to have access to the airport,<sup>36</sup> and to regulated U.S. aircraft operators operating charters and other flights under a TSA-authorized security program on aircraft that are not covered by Secure Flight for the purpose of vetting employees and traveling passengers against the No Fly and Selectee subsets of the TSDB. TSA also permits regulated entities who are authorized to receive subsets of the TSDB to share this information with authorized

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<sup>35</sup> As further explained above, in certain limited circumstances, an individual's No Fly List status is not SSI.

<sup>36</sup> TSA anticipates no longer providing regulated airport operators and aircraft operators with TSDB information and instead conducting this vetting itself in the near future. TSA has already begun this process with respect to airport operators.

representatives with whom they have contracted to perform the vetting function on their behalf.

62. All parties authorized to receive TSDB information by TSA, including authorized representatives, must protect this information as SSI and safeguard this information from unauthorized disclosure in accordance with the provisions of 49 C.F.R. part 1520 and are subject to civil penalty and other enforcement action by TSA if they improperly disclose this information.<sup>37</sup>

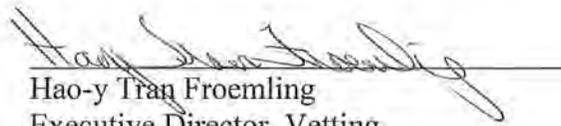
### CONCLUSION

63. Disclosing the status in the TSDB of individuals required to undergo enhanced screening would greatly diminish TSA's ability to secure commercial aviation and would provide a significant advantage to determined adversaries. It is essential that the TSDB continue to be confidential for TSA to carry out its crucial mission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2019

By:



Hao-y Tran Froemling  
Executive Director, Vetting  
Office of Intelligence and Analysis  
Transportation Security Administration  
U.S. Department of Homeland Security  
601 South 12th Street  
Arlington, VA 20598

<sup>37</sup> In addition, all authorized parties are subject to audits by TSA and must be compliant with DHS and TSA policies regarding sensitive systems and information assurance and complete information security awareness, privacy and SSI training and sign Non-Disclosure Agreements prior to receiving access.

# EXHIBIT A

## **Final Order on Sensitive Security Information**

### **I. Introduction**

Plaintiffs filed suit against various federal agencies in the U.S. District Court for the Eastern District of Virginia. During the course of the litigation, the federal government withheld certain information responsive to discovery requests and deposition questions because they contain Sensitive Security Information (SSI). On March 15, 2018, Plaintiffs filed a motion to compel certain information that is SSI. TSA issues this Final Order addressing the SSI sought by Plaintiffs.

### **II. Authority to Make Final SSI Determinations**

The Administrator of TSA is authorized by 49 U.S.C. § 114(r), formerly 49 U.S.C. § 114(s), and 49 C.F.R. part 1520 to determine whether information pertaining to transportation security constitutes SSI. That authority is delegated from the Administrator to the Chief of the SSI Program pursuant to a Management Directive signed by the Administrator on November 4, 2015. That Management Directive is in effect as of the date of this Final Order.

### **III. Review of Documents and Information**

Pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. part 1520, the SSI Program, under my supervision, has reviewed the documents designated as SSI in Exhibit K to Plaintiffs' first motion to compel and certain information sought in Plaintiffs' first and second motions to compel. These documents were referred to TSA for SSI review after Defendants identified them during discovery, pursuant to 49 C.F.R. § 1520.9(a)(3). In conducting this review, I have determined that 47 documents contain information that falls within the definition of SSI found at 49 C.F.R. § 1520.5.<sup>1</sup> I have also determined that certain information responsive to discovery requests (requests for admission and interrogatories) and deposition questions, which is described in detail below, falls within the definition of SSI found at 49 C.F.R. § 1520.5. I have further determined that the release of this specific information would be detrimental to the security of transportation.

### **IV. Sensitive Security Information Sought by Plaintiffs**

#### *A. Status of Individuals on the Expanded Selectee List, Selectee List, and No Fly List*

49 C.F.R. § 1520.5(b)(9)(ii) expressly prohibits the disclosure of “[i]nformation and sources of information used by a passenger or property screening program or system, including an automated screening system.” This subsection “is intended to cover . . . lists of individuals identified as threats to transportation or national security.” Protection of Sensitive Security Information, 69 Fed. Reg. 28066-01, 28071 (May 18, 2004) (interim final rule adding 49 C.F.R. § 1520.5(b)(9)(ii)).

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<sup>1</sup> The following documents contain SSI: TSCA0001-13, 15, 17-19, TSCB0004-7, 9, 10, 12, 16, 17-37, TSCC0001, 2, 4-6, 10, 11, TSCD0022-24, 26-27, 43, 49, 51, 59, 66, 71, and TSCE0001-3..

The Terrorist Screening Center (“TSC”) maintains the Terrorist Screening Database (“TSDB”), the U.S. government’s consolidated database of identifying information about those known or reasonably suspected of being involved in terrorist activity. TSC exports the No Fly and Selectee lists, subsets of the TSDB, to TSA. TSA also receives and screens passengers against all records in the TSDB that contain a full name and a full date of birth (the “Expanded Selectee list”). Individuals on the No Fly list are prohibited from boarding while individuals on the Selectee and Expanded Selectee lists receive enhanced screening prior to boarding. TSA uses the status of individuals on the No Fly, Selectee, and Expanded Selectee lists when vetting passengers attempting to board commercial aircraft. TSA uses this information to enhance the security of air travel within the United States, to facilitate the secure travel of the public, and to support the federal government’s counterterrorism efforts by assisting in the detection of known or suspected terrorists identified on the No Fly, Selectee, and Expanded Selectee lists who seek to travel by air.

The information I have reviewed includes individuals’ status on the No Fly, Selectee, and Expanded Selectee lists, and information that could be used to ascertain an individual’s current and historical status on those lists. The No Fly, Selectee, and Expanded Selectee lists remain effective tools in the government’s efforts to secure transportation because, among other reasons, their contents are generally not disclosed.<sup>2</sup> Withholding whether or not an individual is on a federal watch list used by TSA for passenger pre-board screening protects the operational counterterrorism and intelligence collection objectives of the federal government and the personal safety of those involved in counterterrorism investigations. If the government revealed the status of individuals as being either on or off the No Fly, Selectee, and Expanded Selectee lists, terrorists and others who seek to circumvent the purpose of those lists would be able to do so, since they would be armed with the knowledge of who would be required to undergo additional screening and who would not. Terrorists could use the information to attempt to evade enhanced security screening at airports and to gain access to the commercial aviation system to perpetrate an attack. Such circumvention of security screening systems would be detrimental to the security of transportation.

Therefore, I determine that disclosure of information that would reveal individuals’ current or historical status on the No Fly, Selectee, or Expanded Selectee lists would be detrimental to the security of transportation. Such information constitutes SSI.<sup>3</sup> In making this determination I have considered the passage of time, intervening changes to the aviation security system, and the evolving security environment.

#### *B. Watchlist Matching Information and Technical IT Details*

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<sup>2</sup> In certain limited circumstances, a U.S. citizen or lawful permanent resident who is denied boarding may learn of his or her status on the No Fly List after filing an inquiry with the Department of Homeland Security Traveler Redress Inquiry Program about the denial of boarding. Notwithstanding this exception, which applies in very limited circumstances, TSA has determined previously that any other disclosures of an individual’s status on the No Fly List would be detrimental to the security of transportation in that terrorists could use the information to gain access to the commercial aviation system to perpetrate an attack.

<sup>3</sup> The documents with information falling under this category include, but are not limited to, TSCB0005, 7, TSCC0001, 2, 4-6, 10, 11, and TSCD0051.

49 C.F.R. §§ 1520.5(b)(9)(i) and (b)(9)(ii) expressly prohibit the disclosure of “[a]ny procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons ... that is conducted by the Federal government or any other authorized person”; and “[i]nformation and sources of information used by a passenger or property screening program or system, including an automated screening system.”

Further, 49 C.F.R. §§ 1520.5(b)(4)(i), (b)(13), and (b)(15) expressly prohibit the disclosure of “[a]ny performance specification and any description of a test object or test procedure, for . . . [a]ny device used by the Federal Government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any person. . . .”; “[a]ny information involving the security of operational or administrative data systems operated by the Federal government that have been identified . . . as critical to aviation or maritime transportation safety or security, including automated information security procedures and systems, security inspections, and vulnerability information concerning those systems”; and “[i]nformation obtained or developed in the conduct of research related to aviation, maritime, or rail transportation security activities . . . , including research results.”

TSA and TSC rely on applications and technical platforms for both agencies to carry out their functions. Once an identity has been accepted into the No Fly, Selectee, or Expanded Selectee list, that information is exported to TSA through the DHS Watchlist Service.<sup>4</sup> TSA’s Secure Flight system then conducts matching of passenger information to the No Fly, Selectee, and Expanded Selectee lists, which may result in an individual being denied boarding or being required to undergo enhanced security screening.

The information I have reviewed includes the technology and platforms used by TSA and TSC, which culminate in Secure Flight determinations. This includes technical details about Secure Flight, details demonstrating how watchlist matching is conducted, descriptions of software used and connectivity details, and details regarding resolution of a potential match. Secure Flight remains a highly effective tool in the government’s efforts to secure transportation because, among other reasons, this information is not disclosed. This information could be used by adversaries to defeat the Secure Flight system and to circumvent TSA security screening. The technical IT details could be used to obtain unauthorized access to or to otherwise corrupt the systems and the specific matching information, including information about potential matches, could be used to circumvent the matching process. Such actions would be detrimental to the security of transportation.

Therefore, I determine that the disclosure of information about watchlist matching and technical IT details would be detrimental to the security of transportation. Such information constitutes SSI.<sup>5</sup> In making this determination, I have considered the passage of time, intervening changes to the aviation security system, and the evolving security environment.

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<sup>4</sup> In July 2010, DHS launched an improved method of transmitting TSDB data to DHS through a service called the DHS Watchlist Service (WLS). WLS maintains a synchronized copy of the TSDB, which contains personally identifiable information and disseminates TSDB records it receives to authorized DHS Components, including TSA.

<sup>5</sup> The documents with information falling under this category include, but are not limited to, TSCC0004-6, 10, and TSCD0049, 59, 66.

*C. TSA Screening Procedures and Security Measures Taken to Counteract Threats*

49 C.F.R. § 1520.5(b)(9)(i) expressly prohibits the disclosure of “[a]ny procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons ... that is conducted by the Federal government or any other authorized person.” 49 C.F.R. § 1520.5(b)(9)(ii) expressly prohibits the disclosure of “[i]nformation and sources of information used by a passenger or property screening program or system, including an automated screening system.” Finally, 49 C.F.R. § 1520.5(b)(8)(i) expressly prohibits the disclosure of “[s]ecurity measures or protocols recommended by the Federal government.”

TSA has the authority to assess threats to transportation and to take appropriate countermeasures to counteract threats, including denying boarding or requiring enhanced security screening. As explained above, individuals on the Selectee and Expanded Selectee lists receive enhanced security screening prior to boarding. TSA also uses intelligence-driven flight by flight risk assessments to identify passengers who require enhanced screening. Under certain circumstances, TSA and other screening agencies may take certain measures upon encountering an individual on the No Fly, Selectee, or Expanded Selectee lists. All of these measures are intended to enhance the security of air travel and to support the government’s counterterrorism efforts.

The information I have reviewed includes procedures and measures that the government may undertake upon encountering individuals on the No Fly, Selectee, and Expanded Selectee lists; the circumstances under which TSA may deny or permit boarding and may require or not require enhanced security screening prior to boarding; the total number of times individuals on the No Fly List have been permitted to fly; the actual screening procedures applied by TSA to individuals on the TSDB; and examples of TSA’s intelligence-driven risk assessments to identify passengers for enhanced security screening, including components of those risk assessments. This information remains effective in the Government’s efforts to secure transportation because, among other reasons, it is not disclosed. If the Government revealed this information, individuals could ascertain whether or not they would be denied boarding or required to undergo enhanced security screening, which in turn could be used by terrorist operatives to plan an attack. Terrorists and others could also take action to evade the procedures and measures, enabling them to circumvent the procedures and measures. Such circumvention would be detrimental to the security of transportation.

Therefore, I determine that disclosing information revealing certain screening procedures and security measures described above would be detrimental to the security of transportation. Such information constitutes SSI.<sup>6</sup> In making this determination I have considered the passage of time, intervening changes to the aviation security system, and the evolving security environment.

*D. Criteria for the TSDB, and the Expanded Selectee, Selectee, and No Fly lists*

49 C.F.R. § 1520.5(b)(9)(ii) expressly prohibits the disclosure of “[i]nformation and sources of information used by a passenger or property screening program or system, including an

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<sup>6</sup> The documents with information falling under this category include, but are not limited to, TSCA0017-19, TSCB0010, 12, 16, TSCC0010, 11, and TSCD0022, 23, 26, 27, 66, 71.

automated screening system.” Further, 49 C.F.R. § 1520.5(b)(9)(i) expressly prohibits the disclosure of “[a]ny procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons ... that is conducted by the Federal government or any other authorized person.”

TSC reviews nominations to the TSDB to determine whether an individual meets the reasonable suspicion standard for placement on the TSDB, and the heightened criteria for placement on the Selectee and No Fly lists. This review includes consideration of guidance, factors, and examples pertinent to the determination. As further explained above, TSA uses the TSDB to identify individuals who may pose a risk to the transportation system and who should therefore receive enhanced security screening or be denied boarding on an aircraft.

The information I have reviewed includes the current and historical criteria for placement on the Selectee List; guidance, factors, and examples related to whether or not an individual meets the reasonable suspicion standard for placement on the TSDB, and the heightened criteria for placement on the Selectee and No Fly lists; minimum biographic criteria required for TSDB inclusion and export; and nominations information, including prioritization information, related to the timeframe for placing individuals on the TSDB and its subset lists.

All of this information remains effective in the government’s efforts to secure transportation because, among other reasons, it is not disclosed. If the government revealed the Selectee List criteria, information about the application of criteria for the TSDB, the Selectee list, and the No Fly list, terrorists and others who seek to circumvent the purpose of the application of this information would be able to do so by anticipating behavior of concern to the government and changing their behavior in response. Terrorists could also use information related to minimum biographic criteria to evade placement on the TSDB. Further, disclosing changes to the criteria over time would reveal information about the evolving and dynamic threat posed by terrorists. Notwithstanding the public release of the criteria for inclusion on the No Fly List and the reasonable suspicion standard for inclusion on the TSDB, release of the current and historical criteria for the Selectee List would provide adversaries with valuable knowledge of which individuals would present terrorism concerns to the government and of sensitive information related to the threat posed. Unlike individuals on the No Fly List, individuals on the Selectee List and the TSDB are permitted to enter sensitive areas of the nation’s aviation system. Terrorists could also use all of this information to assess the likelihood that other operatives and recruits may have been identified and could use that information to circumvent aviation security measures in planning an attack. Finally, adversaries could use nomination information related to the timeframe for placement on the TSDB to circumvent the purpose of the Expanded Selectee, Selectee, and No Fly Lists, since they would be armed with knowledge of the expedience with which the government could place individuals on those lists. Such circumvention would be detrimental to the security of transportation.

Therefore, I determine that the disclosure of information revealing criteria for placement on the TSDB and its subset lists, as further described above would be detrimental to the security of

transportation. Such information constitutes SSI.<sup>7</sup> In making this determination I have considered the passage of time, intervening changes to the aviation security system, and the evolving security environment.

*E. TSDB and Enhanced Security Screening Statistics*

49 C.F.R. § 1520.5(b)(9)(ii) expressly prohibits the disclosure of “[i]nformation and sources of information used by a passenger or property screening program or system, including an automated screening system.” 49 C.F.R. § 1520.5(b)(7) expressly prohibits the disclosure of “[a]ny information held by the Federal government concerning threats against transportation or transportation systems and sources and methods used to gather or develop threat information.”

The government compiles data related to the number of individuals on the TSDB, and the Expanded Selectee, Selectee, and No Fly lists. This information provides an overview of the number of individuals who are required to undergo enhanced security screening at airports or who are denied boarding. The information I have reviewed includes total numbers of individuals, including U.S. citizens and lawful permanent residents, on the TSDB and its subset lists on a weekly and monthly basis; the current numbers of individuals and U.S. citizens on the Selectee and Expanded Selectee lists; total U.S. citizens on the Selectee List from 2012 to present; the total number of children under age 10 and under age 5 on the TSDB; and the number of times Secure Flight designates individuals for enhanced security screening on a daily and yearly basis.

This information remains effective in the government’s efforts to secure transportation because, among other reasons, it is not disclosed. Revealing the total number of individuals on the TSDB and its subset lists on a weekly and monthly basis, including current numbers and demographic information, would give adversaries valuable operational knowledge about the government’s receipt of intelligence information related to terrorism. For example, if those adversaries had attempted to avoid detection during any given timeframe, those numbers would reveal whether or not they were successful. Similarly, those numbers would reveal the flow of information from other sources related to terrorism. Terrorists could also ascertain the best populations to recruit from if demographic information, such as the number of U.S. citizens and children on the lists, were released.<sup>8</sup> Further, release of the number of individuals who Secure Flight designates for enhanced security screening on a daily and yearly basis would give terrorists and others knowledge about the total percentage of passengers who are designated for enhanced security screening, including by random selection.<sup>9</sup> Such numbers inform adversaries of the likelihood of

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<sup>7</sup> The documents with information falling under this category include, but are not limited to, TSCA0001-13, 15, 19, TSCB0004, 6, 9, 12, and 17-37, TSCC0010, TSCD0024, 71, and TSCE0001-3.

<sup>8</sup> The government has made generalized statements about children on the TSDB. Those generalized statements are not SSI. Specific information about the total number of children on the TSDB under five and under ten is SSI in that it would provide adversaries with demographic information that would be useful in determining who to use to perpetrate an attack.

<sup>9</sup> This annualized number constitutes SSI because the number of passengers screened on a yearly basis is publicly available information, and, as a result, an individual with the yearly number of individuals designated for enhanced security screening would know the likelihood of being designated for enhanced security screening at airports. Annualized numbers related to the total number of individuals on the Selectee List are released because such

being designated for enhanced security screening prior to boarding an aircraft. Such knowledge could be used to circumvent TSA's measures to secure commercial aviation, and would be detrimental to the security of transportation.

Therefore, I determine that the disclosure of information about the TSDB and enhanced security screening statistics described above would be detrimental to the security of transportation. Such information constitutes SSI.<sup>10</sup> In making this determination I have considered the passage of time, intervening changes to the aviation security system, and the evolving security environment.

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numbers do not reveal that likelihood and do not reveal the same trends and patterns as monthly and daily data described above.

<sup>10</sup> The documents with information falling under this category include, but are not limited to, TSCC0001, 2, 11, and TSCD0043.

V. Final Order

This Order is issued under 49 U.S.C. § 114(r) and is final. Pursuant to 49 U.S.C. § 46110, any person disclosing a substantial interest in this Order may, within 60 days of its issuance, apply for review by filing a petition for review in an appropriate U.S. Court of Appeals.

DATED: Arlington, Virginia, April 22, 2018



DOUGLAS E. BLAIR  
Chief, SSI Program  
Security Services & Assessments Division  
Office of Law Enforcement &  
Federal Air Marshal Service  
Transportation Security Administration  
U.S. Department of Homeland Security



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information provided to me in my official capacity, and my evaluation of that information.<sup>1</sup> My conclusions have been reached in accordance therewith.

3. (U) Through the exercise of my official duties, I have become familiar with this civil action in which the Plaintiffs, who allege they are all U.S. citizens, challenge their supposed placement in the TSDB and, in particular, their supposed placement on the Government's Selectee List. I understand that in their remaining claims in this case, Plaintiffs assert that their supposed placement on the TSDB violates their right to procedural due process because they were not provided notice or a hearing and because their alleged placement deprives them of a liberty interest in connection with their travel. *See* Amended Complaint at ¶¶ 559-569. Plaintiffs also allege that they have a right to be free from "false government stigmatization" when it arises in conjunction with additional consequences that they claim follow from being placed on a watchlist. Amended Complaint at ¶ 564. . Plaintiffs also seek an order requiring the Government to provide individuals in the TSDB with notice of the reasons for their inclusion in the TSDB and a meaningful opportunity to contest their inclusion in the TSDB. I make this declaration in support of the defendants' motion for summary judgment with respect to these claims.

4. (U) This declaration addresses: (a) the FBI's authorities and responsibilities in combating terrorist threats, including the role in this effort played by the TSDB; (b) nominations to the TSDB; (c) the FBI's use and dissemination of TSDB information; and (d) the harms to national security that would result if the Government were required to disclose an individual's

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<sup>1</sup> (U) The information in this declaration is unclassified. Accordingly, the paragraphs in this declaration are marked with a "U".

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status with respect to the TSDB beyond the disclosure allowed under the Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP).

5. (U) The information provided herein is illustrative as a general matter, and in providing this information, I do not confirm or deny whether any of the plaintiffs is or is not in the TSDB.<sup>2</sup> As explained more fully below, any requirement that the Government on the whole, and the FBI as a nominating agency, provide additional information to individuals about their TSDB status beyond that contemplated by the DHS TRIP procedures would risk significant harm to ongoing counterterrorism investigative or intelligence activities, to the sources and methods used in those activities, and to the overall national security interests of the United States. In particular, the use of surveillance, confidential human sources, national security process, and other sensitive sources may be compromised if additional information regarding a person's TSDB status must be disclosed. In addition, because many of the topics discussed herein implicate national security and law enforcement investigative information, this declaration does not disclose all pertinent details about matters discussed herein, but only information that can be disclosed publicly.

#### **(U) THE FBI'S ROLES AND RESPONSIBILITIES**

6. (U) The FBI's mission is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners; and to perform these responsibilities in a manner that is responsive to the

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<sup>2</sup> (U) In the interest of brevity, this declaration refers to unspecified individuals with the pronouns "he" or "him," as opposed to "he or she" or "him or her." Unless otherwise indicated, "he" or "him" could refer to a male or a female individual.

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needs of the public and is faithful to the Constitution of the United States. In order to defend the country from a range of national security and major crime threats, the FBI uses an intelligence-driven and threat-focused approach, combining its investigative and intelligence operations to be more predictive and preventative, more aware of emerging threats, and better able to stop them before they turn into crimes or acts of terrorism.

7. (U) The FBI's top priority is protecting the United States from terrorist attacks. Working closely with its partners, the FBI uses its investigative and intelligence capabilities to neutralize terrorist cells and operatives in the United States, to help dismantle extremist networks worldwide, and to cut off financing and other forms of support provided by terrorist sympathizers. In carrying out the FBI's paramount mission of securing the nation from terrorism, criminal prosecution is only one of several means that the FBI uses to protect national security.

8. (U) The FBI and other federal agencies use the TSDB as preventative measures to protect against terrorist threats. Unlike in the criminal judicial process, where the FBI collects and then presents evidence of a crime already committed for purposes of prosecution, TSDB nominations are made based in part on sensitive intelligence information, sources, and methods that cannot be publicly disclosed without significant harm to ongoing national security investigations and intelligence-gathering. Inclusion in the TSDB is based on an assessment of the threat of terrorist activity posed by a particular individual. TSDB determinations are made in a fluid, intelligence-driven environment based on the most current information.

9. (U) As with any other aspect of the FBI's investigative or intelligence-gathering operations, nominations to the TSDB must conform to FBI policies and procedures. This includes the requirement, set forth in both the Attorney General's Guidelines for Domestic FBI

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Operations and the FBI's Domestic Investigations and Operations Guide that FBI agents consider and, if reasonable based on the circumstances of the investigation, use the least intrusive means or method to protect national security. In addition, a fundamental principle of the Attorney General's Guidelines, and of the FBI's investigations and operations, is that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment to the United States Constitution. Investigative activity for the sole purpose of monitoring the exercise of First Amendment rights is prohibited.

**(U) THE TSDB NOMINATION PROCESS**

10. (U) I understand that the TSDB nomination process and the No Fly and Selectee Lists are discussed in detail in the declaration of TSC Deputy Director Timothy P. Groh being submitted concurrently herewith, so I will not repeat all those details here. In brief, as one of numerous members of the TSDB watchlisting community, the FBI nominates known or suspected terrorists for inclusion in the TSDB. Nominations to the TSDB must satisfy minimum identifying criteria to allow screening agencies to be able to discern a match, and include sufficient substantive derogatory criteria to establish reasonable suspicion that the individual is a known or suspected terrorist. To meet this standard, a nominator such as the FBI must rely upon objective "articulable" intelligence or other information which, based on the totality of the circumstances and taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is known or suspected to be or has been knowingly engaged in conduct constituting, in preparation of, in aid of, or related to terrorism and/or terrorist activities.<sup>3</sup> Mere guesses or "hunches," or the reporting of suspicious activity alone, are not

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<sup>3</sup> (U) I understand that limited exceptions to the reasonable suspicion standard exist for the sole purpose of supporting special screening functions of DHS and the State Department. Individuals

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sufficient to establish reasonable suspicion. As with the Attorney General Guidelines previously discussed, TSDB nominations must not be based solely on race, ethnicity, national origin, religious affiliation, or activities protected by the First Amendment, such as free speech, the exercise of religion, freedom of the press, freedom of peaceful assembly, and petitioning the government for redress of grievances.

11. (U) Watchlisting determinations are not categorical judgments based on statistical models or generic behavioral indicators. The Government has developed a watchlisting system that combines intelligence analysis with policy-based criteria for requiring additional security screening before boarding an aircraft. This system relies on informed judgments by experienced analysts and agents who evaluate watchlist nominations based on individual circumstances, taking into account the particular intelligence that distinguishes the individual under review. Agents and analysts are also guided in their decision-making by detailed analytical standards that structure their discretion and promote scrutiny and professionalism in their work.

12. (U) Ultimately, the Government is left with the question of whether a *particular person* meets the reasonable suspicion standard for inclusion in the TSDB as a known or suspected terrorist. The Government has an obligation to detect and prevent terrorist threats and to identify the particular individuals who might carry out such actions. It is precisely because the significance of information in determining whether a terrorism threat exists is context-specific, it requires that the analysis underlying TSDB determinations be carried out by those with the

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included in the TSDB pursuant to such exceptions are not considered “known or suspected terrorists.”

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training and experience to assess the available intelligence and make the complex, case-by-case analytical judgments about how various facts relate to one another.

13. (U) Analytical judgments about potential threats are the stock-in-trade of the intelligence community, and the FBI is no exception. As I explain below, TSDB nominations are closely related to, and often correspond with, the FBI's broader analytical intelligence-gathering and investigative functions to determine the type and extent of harm a person may pose.

14. (U) Analysis for the purpose of making a TSDB nomination is a critical feature of the intelligence-gathering and investigative functions of the FBI. FBI analysts and agents routinely research and analyze source intelligence on terrorist activities and terrorist threats to identify individuals or groups who pose potential threats and to make judgments about the type and degree of risk that is posed. These analysts and agents draw from a body of source material and have a variety of investigative and intelligence-gathering tools at their disposal to inform their judgment. They also make use of subject-matter experts from throughout the Intelligence Community. Drawing on years of experience and training, these experts provide invaluable insight and context for agents and analysts seeking to develop, clarify, or reconcile source material. Such intelligence expertise can fill knowledge gaps and identify certain patterns of behaviors or overarching trends that can help analysts and agents gauge the credibility and seriousness of a threat. For example, if a reported threat involves a foreign-based extremist group, an agent or analyst may consult with subject matter experts on the group or the relevant region to learn more about the group's operations, capabilities, plans, and activities.

15. (U) The TSDB's role in protecting against threats to national security is particularly important given the current threat environment. The United States continues to face

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terrorist threats from organizations including al Qaeda in the Arabian Peninsula, al Qaeda in the Islamic Maghreb, and the Islamic State of Iraq and ash-Sham (“ISIS”).<sup>4</sup> These and other organizations are adept at disseminating, via the Internet, propaganda and training materials in an effort to attract individuals from all over the world to their violent cause. ISIS, in particular, has made widespread use of the Internet and social media to spread its message. Through their communications, groups like ISIS encourage the recipients of their message to travel for the purpose of engaging in violence or to engage in violence at home. Too often this encouragement sees results. Recently, Sayfullo Saipov of Paterson, New Jersey, was charged with the murder of eight people and with attempting to provide material support to ISIS in the October 31, 2017, truck attack in lower Manhattan. On November 6, 2018, Ayaked Ullah, of Brooklyn, New York, was convicted of offenses related to the detonation and attempted detonation of a bomb in a subway station near the Port Authority Bus Terminal in New York City on December 11, 2017, on behalf of ISIS. Despite ISIS’ territorial losses in Iraq and Syria, just within the past few weeks, the Department of Justice announced a federal indictment of an Ohio man<sup>5</sup> and a separate federal indictment of a Texas man captured in Syria<sup>6</sup>, both charged with attempting to provide material support to ISIS.

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<sup>4</sup> (U) On January 29, 2019, the Director of National Intelligence provided a Statement for the Record to the Senate Select Committee on Intelligence, which at pp. 10-13 includes an assessment of the current terrorism threat. The Statement for the Record is available at <https://www.dni.gov/index.php/newsroom/congressional-testimonies/item/1947-statement-for-the-record-worldwide-threat-assessment-of-the-us-intelligence-community>.

<sup>5</sup> (U) See <https://www.justice.gov/usao-ndoh/pr/ohio-man-charged-attempting-provide-material-support-isis-attempting-commit-hate-crime>

<sup>6</sup> (U) See <https://www.justice.gov/opa/pr/texas-man-arrested-attempting-provide-material-support-designated-foreign-terrorist>.

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**(U) THE FBI'S USE AND DISSEMINATION OF TSDB DATA**

16. (U) As discussed above, the FBI's top priority is to protect the United States from terrorist attacks. In carrying out this mission, the FBI must work closely and share relevant information with its law enforcement partners at the federal, state and local levels, with other members of the Intelligence Community and with its foreign partners. The TSDB plays a critical role in the FBI's mission by enabling the FBI and its partners to share relevant information necessary to carry out their respective missions in a concerted effort to prevent terrorist attacks. Aside from protecting against threats to aircraft, the ability to access TSDB information leverages the combined resources of state, local and federal law enforcement to provide information on the activities of known or suspected terrorists whom they encounter.

17. (U) The TSC exports a subset of TSDB data to the National Crime Information Center (NCIC), a database administered by the Criminal Justice Services Division (CJIS) of the FBI. This export from TSC to the NCIC is referred to as the Known or Suspected Terrorist (KST) File, and it is the primary means by which the FBI enables its law enforcement partners to access a subset of TSDB information. I understand that a separate declaration from the FBI's CJIS Division is being submitted concurrently herewith and provides details about access to the KST file in the NCIC. I will note that, contrary to Plaintiffs' allegations, the FBI does not share TSDB information with banks or other financial institutions or with car dealerships and is not aware of any instance of such sharing by any recipient of TSDB information.

18. (U) Contrary to Plaintiffs' allegations, the FBI does not nominate individuals to the TSDB or its subsets in order to coerce those individuals into becoming informants (or, to use the FBI's terminology, confidential human sources (CHSs)). Nominations are made in accordance with Homeland Security Presidential Directive-6 (HSPD-6) and Congress' mandate

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to promote the sharing of terrorism information in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties.<sup>7</sup> However, the recruitment of a CHS by an FBI Special Agent involves collecting information about and developing a more fulsome understanding of the motivations and concerns of the individual being recruited. If that individual believes that he is in the TSDB and expresses an interest in being removed from the TSDB, then he may want to discuss his perceived status with the FBI agent. The FBI agent is nonetheless unable to confirm or refute the individual's actual status. Moreover, if during the development of a relationship with a potential CHS who is in the TSDB, an FBI agent learns new, exculpatory information, the agent would have an obligation to update the TSDB nomination with that information. This may result in a change in status on the TSDB or potentially removal from the TSDB. However, FBI agents are not authorized to promise removal from the TSDB in exchange for an individual agreeing to become a CHS.

**(U) HARM TO NATIONAL SECURITY FROM DISCLOSURE OF NATIONAL SECURITY AND LAW ENFORCEMENT PRIVILEGED INFORMATION REGARDING AN INDIVIDUAL'S INCLUSION ON THE TSDB**

19. (U) The Amended Complaint in this case seeks an order requiring the Government to provide individuals in the TSDB with notice of the reasons and bases for their inclusion in the TSDB and a meaningful opportunity to contest their inclusion in the TSDB. The DHS TRIP process<sup>8</sup> provides the process due to U.S. persons to contest their inclusion on the TSDB, so the order being sought in this case, even if limited to U.S. persons, would be a

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<sup>7</sup> (U) *See* Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458 § 1016 (2004) (codified at 6 U.S.C. § 485).

<sup>8</sup> (U) I am advised that the DHS TRIP process is discussed in detail in the declarations of TSC Deputy Director Timothy P. Groh and DHS Branch Manager Deborah O. Moore being submitted concurrently herewith.

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significant expansion of that process.<sup>9</sup> In my informed judgment, such an expansion would have a devastating effect on the usefulness of the TSDB and a potentially calamitous effect on the national security.

20. (U) As noted, inclusion in the TSDB is often based on highly sensitive national security and law enforcement information that is properly protected from disclosure under law, including: (i) information that could tend to reveal whether an individual has been the subject of an FBI counterterrorism investigation, including the basis, status, or results of the investigation, and the content of any relevant investigative files; and (ii) information that could tend to reveal whether particular sources and methods were used by the FBI in a counterterrorism investigation or intelligence activity related to the individual in the TSDB or his associates. The notice and opportunity to contest TSDB status which Plaintiffs seek would risk or require disclosure of a great deal of this information. As explained below, disclosure of this information would provide adversaries with valuable insight into the specific ways in which the Government goes about detecting and preventing terrorist attacks, with potentially grave consequences for the national security. Moreover, the expanded process which Plaintiffs seek would discourage cooperation from sensitive sources, would discourage agencies from making otherwise appropriate nominations to the TSDB, and would divert significant intelligence and investigative resources which otherwise would be spent detecting and preventing terrorist attacks.

**(U) Subject Identification And Ongoing Investigations**

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<sup>9</sup> (U) I am advised that during discovery, Plaintiffs were provided with a July 5, 2018 declaration from Deputy Director Groh which stated that as of June 2017, there were approximately 1.16 million persons included in the TSDB and that only approximately 0.4% (fewer than 5000) of those were U.S. persons. As the Selectee list is a subset of the TSDB which requires additional criteria for inclusion, the number of U.S. persons on the Selectee list is even smaller than that.

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21. (U) Requiring nominating agencies to disclose whether or not an individual is in the TSDB or the reasons for including an individual in the TSDB, beyond the disclosure contemplated by the DHS TRIP procedures, could jeopardize the integrity and secrecy of ongoing counterterrorism investigative or intelligence activities. In many cases, such disclosures may contain information that could tend to confirm or deny whether a particular individual is the subject of an FBI investigation. For example, the existence of an FBI record about an individual could alert the individual to the Government's investigative or intelligence interest in him and cause him to take counter-measures to evade detection. The risk of harm to national security would be amplified if such disclosures were required to include the *contents* of an FBI counterterrorism or counterintelligence file, thereby revealing to the individual what the FBI knows about his plans. This might include information that could tend to reveal the reason for initiating the investigation, the status of the investigation, or other sensitive information that the investigation had brought to light.

22. (U) Disclosures of this nature would be particularly damaging where FBI subjects or former subjects have associates whom the FBI may still be investigating for potential ties to terrorist activity. Information regarding one subject may reflect law enforcement interest in other subjects, with the result that releasing such information could reasonably be expected to alert the other subjects that they are of interest to law enforcement. This, in turn, could cause the other subjects to flee, destroy evidence, or take steps to alter their conduct or communications so as to avoid detection of future activities. In these circumstances, law enforcement and intelligence officers would be significantly hindered in gathering further information on the activities of the other subjects or in determining their whereabouts. In addition, an individual's knowledge that he is under investigation might enable him to anticipate law enforcement actions

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by, for example, conducting counter-surveillance, which could place federal agents at higher risk of harm.

23. (U) Furthermore, if, in addition to the disclosures contemplated by the DHS TRIP procedures, the government were required to disclose TSDB status to individuals not in the TSDB, this would effectively confirm that any individual not eligible for such a disclosure is, in fact, in the TSDB. Confirmation that an individual is not in the TSDB would be of considerable value to terrorist groups to confirm which individuals are not the likely subject of ongoing investigations and who are more likely to evade detection and escape scrutiny. With respect to people who believe they are in the TSDB because they are required to undergo additional screening, because there are many reasons an individual may be required to undergo additional screening that have nothing to do with TSDB status, the ambiguity left open by the absence of official confirmation denies important operational information to terrorist adversaries.

**(U) Sources and Methods**

24. (U) The disclosure of national security information relating to the status of an individual with respect to the TSDB beyond that allowed under the DHS TRIP process could also reveal sensitive, classified, or previously undisclosed FBI sources and methods used in counterterrorism investigations and intelligence activities, as well as the type of information derived from such techniques.<sup>10</sup>

25. (U) In particular, such disclosures could reveal the specific investigative methods used with respect to a certain individual target, such as court-ordered searches or surveillance,

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<sup>10</sup> (U) Again, nothing in the following discussion is meant to suggest that any of the plaintiffs are actually in the TSDB or that these types of sources or methods were used with regard to the determination to include any plaintiff in the TSDB.

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confidential human sources, undercover operations, or various forms of national security process. This, in turn, could further reveal the reasons for initiating an investigation, the steps taken in an investigation, the reasons certain methods or sources were used, the status of the use of such methods or sources, and any results derived from those techniques. Detecting and preventing terrorist attacks is the paramount objective of the FBI, and the disclosure of sensitive and classified techniques and methods would provide a roadmap to adversaries as to how the FBI goes about this vital task, allowing them to engage in countermeasures to escape detection and frustrate the FBI's ongoing counterterrorism mission.

26. (U) Although the FBI's general use of certain methods, such as physical surveillance, are known to the public, the release of information derived from such a method in a particular matter could, in some circumstances, risk the success of investigations. For example, where surveillance is being conducted of a group of associates, providing one of the targets with information sufficient to identify where and when the surveillance took place, and even which agency was responsible for the surveillance, could lead a single target to warn his associates. That, in turn, would eliminate the effectiveness of the continued use of the surveillance with regard to the other associates.

27. (U) In addition to traditional surveillance, the Government has a compelling interest in protecting the secrecy of national security process, such as National Security Letters ("NSLs"), and Foreign Intelligence Surveillance Act ("FISA") surveillance. When used, NSLs can be important in the early phases of national security investigations, by providing subscriber telephone numbers and other non-content information, which can assist investigators in developing leads to determine, among other things, investigative subjects' true identities, actions, intent, associates, and financial transactions. To the extent that the reasons for inclusion in the

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TSDB are based, even in part, on information obtained through NSLs or FISA court orders or court warrants, disclosure of that fact, or of the information derived from those methods, would pose serious risks, including jeopardizing further surveillance activity and putting the success of the entire investigation or intelligence operation at risk. Moreover, revealing the use of an NSL or FISA order or warrant with regard to a particular subject could tip off that subject's associates that the Government may be aware of communication between the subject and his associates.

28. (U) The disclosure of information concerning the basis for an individual's placement in the TSDB or on the No Fly or Selectee List could also reveal the identity of CHSs, where such sources are used as part of an investigation. At the very least, such a disclosure could reveal information that a subject or his associates could use to determine that a CHS is being used and to discover the identity of that CHS. The risks posed by the discovery of a CHS's identity are twofold. First, when a target identifies a CHS, the CHS's usefulness to the ongoing investigation is greatly diminished, if not eliminated altogether. More importantly, however, the CHS's safety, and possibly the safety of his family, is put at risk. Where the disclosure of information regarding one subject leads to additional subjects learning that they too are of interest to the FBI, such disclosure could enable subjects to ascertain the identities of additional confidential informants or other sources of intelligence, putting those sources at risk as well.

29. (U) In addition, where foreign law enforcement and intelligence information has been used in an investigation, revealing such information could compromise the confidentiality agreements with foreign government(s) and thereby reasonably could be expected to strain relations between the United States and the foreign government(s) and disrupt the free flow of vital information to United States intelligence and law enforcement agencies. Information about

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the FBI's relationships with certain foreign government entities is subject to constraints on disclosure. Some foreign government information is classified, while other foreign government information is subject to the law-enforcement privilege. The FBI's ability to carry out its responsibilities to conduct counterterrorism and counterintelligence investigations often depends on the cooperation of certain foreign government officials, foreign intelligence services, or foreign security services. Maintaining the confidentiality of foreign government information is critical to the maintenance of ongoing productive cooperation with friendly foreign nations in the field of counterterrorism. The free exchange of information among United States intelligence and law enforcement services and their foreign counterparts is predicated upon the understanding that, not only must the information exchanged be kept in confidence, but that, generally, the relationships themselves likewise be kept confidential. Indeed, in many instances, information received from a foreign government remains the property of that government and is provided under the express caveat that it may not be released outside the FBI without that government's express permission.

**(U) Law Enforcement Privilege**

30. (U) In addition to reliance on national security information, inclusion in the TSDB is sometimes based on sensitive law enforcement information, including information that pertains to law enforcement techniques and procedures, information that would undermine the confidentiality of sources, information that would endanger witness and law enforcement personnel, information that would undermine the privacy of individuals involved in the investigation, or information that would seriously impair the ability of a law enforcement agency to conduct future investigations.

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31. (U) Revealing additional information, beyond the types already contemplated in the DHS TRIP procedures, would risk the revelation of law enforcement privileged information including, among other things, information about individuals contained in FBI files, the identities of FBI agents and TSC personnel, and policies and procedures relating to the TSDB watchlisting process. In particular, the Watchlisting Guidance details the current policies and procedures governing the process for identifying and placing individuals on terrorism screening watchlists. The guidance is disseminated solely within the watchlisting community. Official disclosure or confirmation of the contents of the guidance and related materials would provide certainty to terrorist adversaries as to how the watchlisting process works and assist those adversaries in their effort to circumvent that process.

**(U) ADDITIONAL HARMS TO NATIONAL SECURITY FROM FURTHER DISCLOSURES**

32. (U) In addition to the concerns described above, if national security and law enforcement privileged information had to be disclosed to all persons in the TSDB in order to give them notice and an opportunity to contest their inclusion, it would have an extreme chilling effect on the use of such information in the nomination process, which in turn would severely undermine the effectiveness of the TSDB and its subset lists. If nominating agencies had reason to believe that national security information used to support their TSDB nominations would be disclosed, there would be a strong reluctance to share such information in the nomination process. When that happens, there will be gaps in information sharing through which terrorists could gain entry to the United States or to U.S. aircraft. Thus, the TSDB would become self-defeating if, in order to protect against terrorist threats to aviation and national security, the Government were required to disclose classified national security information or law

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enforcement information about a particular known or suspected terrorist included in the TSDB. In my judgment, nominating agencies such as the FBI should not be forced to choose between, on the one hand, disclosing information that could reasonably be expected to compromise an investigation, expose a source, or reveal sensitive surveillance techniques, and, on the other, withholding information that could be used to identify and prevent a terrorist attack.

33. (U) Furthermore, if the Government were required to provide notice to individuals that they are in the TSDB and to turn over evidence supporting the TSDB determination, such a process would place highly sensitive national security information directly in the hands of terrorist organizations and other adversaries, who would have every incentive to manipulate the procedures in order to discover whether they or their members are subject to investigation or intelligence operations, what sources and methods the Government employs to obtain information, or what type of intelligence information is sufficient to trigger an investigation in the first place.

34. (U) Moreover, if the relief Plaintiffs seek would include an adversarial hearing that calls for the cross-examination of Government witnesses, that could expose the identity of any confidential sources at issue in particular TSDB determinations, which would not only end their cooperation but endanger their lives and jeopardize the success of the investigation. Similarly, foreign governments likely would no longer assist in providing information relevant to TSDB nominations. An adversarial hearing would also require the devotion of significant intelligence and investigative resources, with the burden of preparation placed on some of the very officials charged with detecting and preventing terrorist attacks and undertaking counterterrorism investigations. This would provide further disincentive for agents to participate in the nomination process.

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35. (U) Likewise, any required release of national security information would present significant risks to FBI investigative or intelligence activities and would create a severe disincentive to use such information to nominate individuals to the TSDB. It must be stressed that TSDB determinations are made in the midst of ongoing investigative or intelligence activities, not during a post-investigation criminal proceeding, and that these activities are directed at the most significant of interests – detecting and preventing terrorist attacks. In these circumstances, the need to protect investigative or intelligence information and the sources and methods used to obtain it is at its zenith. No matter what kind of protective procedures might be adopted, release of national security to private counsel increases the risk of either an intentional or inadvertent unauthorized disclosure and thus risks compromising an ongoing counterterrorism activity. Thus, in my informed judgment, disclosure of information to counsel for suspected terrorists in the TSDB raises significant risks of harm to national security.

36. (U) The current DHS TRIP process already presents some risk of harm to the national security by requiring the disclosure of No Fly status to certain U.S. persons and, in appropriate cases, an unclassified summary of reasons for their inclusion on that list. In my informed judgment, any extension of the relief available under DHS TRIP to individuals who are not U.S. persons on the No Fly List, or the imposition of any other procedures requiring the Government to disclose the status or reasons for inclusion of an individual on the Selectee List or the TSDB would have a devastating effect on the usefulness of the TSDB and a potentially calamitous effect on the national security.

**(U) CONCLUSION**

37. (U) For the reasons stated above, I respectfully urge the court to grant the motion for summary judgment and deny the relief sought by Plaintiffs.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8 day of March, 2019.



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Michael J. Orlando  
Acting Assistant Director  
Counterterrorism Division  
Federal Bureau of Investigation  
Washington, D.C.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

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ANAS ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375
	)	
CHARLES H. KABLE, et al.	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF TIMOTHY P. GROH**

I, Timothy P. Groh, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Director for Operations of the Terrorist Screening Center (“TSC”) and have been in this position since May 2016. I have been a Special Agent with the Federal Bureau of Investigation (FBI) since February 1996 and have served in a variety of criminal investigative, counterterrorism, and senior management positions. In my capacity as the Deputy Director for Operations of the TSC, I supervise nine units and approximately three hundred individuals (including both government employees and contractors). I am responsible for the overall operations of the TSC, including maintaining the Terrorist Screening Database (TSDB), managing encounters, and sharing intelligence with domestic and foreign partners.

2. I submit this declaration in support of the motion for summary judgment filed by the government in *Elhady v. Kable*, 16-cv-375 (E.D.V.A.). The matters stated herein are based on my personal knowledge, my background, training and experience relating to terrorist watchlisting and counterterrorism investigations, and my review and consideration of information available to me in my official capacity, including information furnished by FBI and

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TSC personnel in the course of their official duties; my conclusions have been reached in accordance therewith.

3. As set forth below, in support of the Government's summary judgment motion, this declaration will address various topics concerning the function and operation of the Government's terrorist watchlisting system, including an overview of the TSDB and its history, nominations to the TSDB and its subsets, interagency information sharing, encounters, quality assurance, the removal process, oversight, and redress. Finally, this declaration will describe the risks associated with disclosing TSDB status, including the risks to national security and law enforcement interests.

#### **OVERVIEW OF THE CONSOLIDATED U.S. TERRORIST WATCHLIST**

4. Following the attacks of September 11, 2001, to further protect the homeland, the President through Homeland Security Presidential Directive-6 (HSPD-6), September 16, 2003, directed the USG to consolidate its approach to terrorism screening and watchlisting, facilitate information sharing, and protect privacy and civil liberties while managing the process. Thereafter, Congress likewise mandated greater sharing of terrorist information among federal departments and agencies, while still protecting privacy and civil liberties.<sup>1</sup>

5. As part of this effort, to facilitate information sharing, the USG integrated terrorist identity information from federal departments and agencies into a single database – the Terrorist Screening Database (TSDB) - for use by various government agencies in support of their screening and vetting activities. The TSC was established to manage the TSDB. The TSC was created by the Attorney General, Secretaries of Homeland Security and State, and the Director of Central Intelligence pursuant to Homeland Security Presidential Directive-6 (HSPD-6) of

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<sup>1</sup> Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458 § 1016 (2004) (codified at 6 U.S.C. § 485).

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September 16, 2003. The TSC is a multi-agency center that consolidates the USG terrorist watchlists into a single database and provides for the appropriate and lawful use of terrorist information in screening and vetting processes. Prior to the creation of the TSC in 2003, nine USG agencies maintained twelve different terrorist watchlists. The TSC is administered by the Federal Bureau of Investigation (FBI) in coordination with the Department of Homeland Security (DHS), the Department of State (State), the Department of Justice (DOJ), and the Office of the Director of National Intelligence (ODNI).

6. Effective and timely information-sharing is crucial to preventing terrorist attacks. In recent years, through the information sharing system supported by the TSDB, the United States has been able to track potential terrorist plots by coordinating derogatory information from the intelligence community with encounter information from law enforcement or other screening partners.<sup>2</sup> As was noted by the 9-11 Commission, this was not possible before 9-11 when, for example, the CIA might have known an individual had ties to terrorism--but did not know the individual was in the United States, while local law enforcement knew the individual was in the United States--but did not know the individual had ties to terrorism. The common operating picture afforded by the information sharing system (as supported by the TSDB) is absolutely critical to preventing such terrorist plots from coming to fruition in the future.

7. The overall watchlisting processes and procedures are the subject of continual internal reviews by agency officials charged with ensuring overall fairness and effectiveness, a process that includes review by legal counsel and agency privacy and civil liberties officers. In addition to these internal agency reviews, the overall watchlisting processes and procedures are also evaluated by external authorities on a regular basis, to include the Offices of Inspectors General,

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<sup>2</sup> See Paragraph 37 for the definition of "encounter" in the watchlisting context.

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the Government Accountability Office, Congress, and independent bodies, such as the Privacy and Civil Liberties Oversight Board. The U.S. Government (USG) is committed to protecting the United States from terrorist threats and attacks and seeks to do this in a manner that protects the freedoms, privacy, and civil rights and liberties of U.S. persons and other individuals with rights under U.S. law.

8. The TSDB, commonly referred to as the “Terrorist Watchlist”, contains both biographic and biometric identifying information (e.g., name, date of birth, photographs, iris scans, and/or fingerprints) of known or suspected terrorists.<sup>3</sup>

9. The TSDB does not contain classified national security information, although much of the information in the TSDB is derived from classified sources. As a result, some information in the TSDB is deemed unclassified only for watchlisting and screening purposes.

10. TSDB information is “For Official Use Only//Law Enforcement Sensitive,” which means the information is protected from disclosure and is accessible only to persons who have an official “need to know,” such as federal law enforcement officials for their screening and vetting activities. Moreover, it is my understanding that the Transportation Security Administration (TSA) has determined that an individual’s status on the subsets of the TSDB that TSA uses for passenger pre-board screening constitutes Sensitive Security Information (SSI). Generally, prohibited disclosure of internal government information--let alone information marked for official use only or protected by statute and privilege--constitutes a serious breach of official duties.<sup>4</sup>

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<sup>3</sup> Additionally, the TSDB includes identifying information of certain individuals who are not categorized as known or suspected terrorists. These limited exceptions are more fully described in FN 7.

<sup>4</sup> For example, for an FBI employee, unauthorized disclosure of information obtained as an employee would be a violation of his or her employment agreement, which could result in loss of security clearance or subject the employee to disciplinary sanctions.

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11. The TSDB includes subset categories of known or suspected terrorists who may be subject to additional security screening before being permitted to board an aircraft or who are prohibited from boarding flights on US carriers as well as flights into, out of, over or within US airspace. These categories are used by the TSA to secure commercial air travel against the threat of terrorism.<sup>5</sup> Individuals may be required to undergo additional security screening for reasons other than a match against a TSDB record. For example, passengers may be designated for additional security screening by virtue of random selection.

12. As a result of the dynamic intelligence environment, regular reviews of the data, and the redress process, the TSDB is almost constantly changing. The TSDB is continuously reviewed and updated. Identities are added, have their status changed, or are removed. In fact, information in the TSDB is commonly updated more than one thousand times per day and updated information is made available to screening partners at intervals consistent with each individual partner's ability to ingest that information, which is often in real or near-real time.

13. There are no quotas or numerical goals for the TSDB.

14. The vast majority of the identities in the TSDB are foreign nationals who are not located in the United States and have no known nexus to the United States. In fact, US persons (citizens and lawful permanent residents) make up less than .5 percent (i.e., one two-hundredth) of the identities in the TSDB.

15. The applicable procedures and standards for the TSDB are memorialized in an interagency document called the Watchlisting Guidance. It includes a comprehensive overview

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<sup>5</sup> The categories are commonly referred to as the Expanded Selectee, Selectee, and No Fly Lists. The Expanded Selectee List consists of individuals who meet the reasonable suspicion standard for TSDB inclusion and for whom the TSDB record contains a full name and a full date of birth. Inclusion on the Selectee List or No Fly list requires additional substantive derogatory criteria.

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of the TSDB watchlisting enterprise and is not publicly available.<sup>6</sup>

16. As further described below, inclusion in the TSDB is subject to multiple levels of review. These processes are intended to ensure that TSDB information is thorough, accurate, and current and to protect the privacy and civil liberties of all travelers. First, before any individual is added to the TSDB, the nominating agency assesses the available, relevant information, including any exculpatory information, to determine whether the applicable standard is met, and the TSC completes a de novo review of available, relevant information to make the same assessment before the individual is included in the TSDB. In addition, TSC conducts biannual reviews of all US citizens and lawful permanent residents in the TSDB to ensure continued placement is warranted based on available, relevant information. Further, individuals who experience travel-related screening difficulties such as delayed or denied boarding may seek redress through the DHS Traveler Redress Inquiry Program (DHS TRIP) and, if the individual is a match to the TSDB, the TSC Redress Unit and the nominator will consider the individual's inquiry and other available, relevant information to make a determination as to whether continued placement is warranted.

### **NOMINATIONS TO THE TSDB**

17. The procedure for submitting information about individuals for inclusion in the TSDB is referred to as the nomination process. Inclusion on the watchlist results from an assessment based on analysis of available intelligence and investigative information that the individual meets the applicable criteria for inclusion on the watchlist. The standard for inclusion in the TSDB is generally one of **reasonable suspicion** which is defined later in this declaration.

18. Nominations to the TSDB are made by USG agencies based on credible information

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<sup>6</sup> The WLG is updated on a periodic basis. It was drafted and approved by all affected agencies and ultimately went into effect only after consideration by the Deputies Committee of the National Security Council (NSC).

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from law enforcement, immigration records, homeland security, and intelligence communities. Additionally, foreign partners may submit identities to be considered for nomination to the TSDB.

19. Nominating agencies provide identities which meet the standard for inclusion in the TSDB to the National Counterterrorism Center (NCTC), for identities with a nexus to international terrorism, and the FBI, for identities with a nexus to domestic terrorism.

20. Before an individual is added to the TSDB, the nomination undergoes a careful and precise multi-step review process at the nominating agency, at the NCTC or FBI (as appropriate), and then again at the TSC to ensure compliance with interagency standards for inclusion. If the nomination has an international nexus to terrorism it is reviewed by NCTC, otherwise it is reviewed by the FBI.

21. The NCTC maintains classified national security information concerning international terrorists within its Terrorist Identities Datamart Environment (TIDE). Pursuant to Section 1021 of the Intelligence Reform and Terrorism Prevention Act of 2004, the NCTC serves as the primary organization in the USG for analyzing and integrating all intelligence possessed or acquired by the USG pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.

22. To include a known or suspected terrorist nomination in the TSDB, the nomination must include sufficient identifying information to allow encountering agencies to be able to determine whether the individual they are encountering is a match to a record in the TSDB, and enough information to establish a reasonable suspicion that the individual is a known or suspected terrorist.<sup>7</sup> Specifically, to meet the reasonable suspicion standard for inclusion in the

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<sup>7</sup> Limited exceptions to the reasonable suspicion standard exist for the sole purpose of supporting certain special screening functions of DHS and State (such as determining eligibility for immigration to the U.S.). Individuals

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TSDB as a known or suspected terrorist, the nominator must rely upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.

23. The USG continuously evaluates its standards for inclusion in the TSDB and its subset lists.

24. Mere guesses or “hunches” or the reporting of suspicious activity alone are not sufficient to establish reasonable suspicion.

25. Nominations must not be based solely on the individual’s race, ethnicity, or religious affiliation, nor solely on beliefs and activities protected by the First Amendment, such as freedom of speech, free exercise of religion, freedom of the press, freedom of peaceful assembly, and the freedom to petition the government for redress of grievances.

#### **NOMINATIONS TO THE NO FLY AND SELECTEE LISTS**

26. Nominations to the No Fly or Selectee Lists (which are subsets of the TSDB) must satisfy additional distinct criteria, in addition to meeting the reasonable suspicion standard for inclusion in the TSDB as a known or suspected terrorist.<sup>8</sup> The TSC is responsible for

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included in the TSDB pursuant to such exceptions are not considered “known or suspected terrorists” and are not screened as such. As a result, any U.S. person who is in the TSDB pursuant to an exception to the reasonable suspicion standard would not be required to undergo heightened aviation security screening at airports on that basis (but could be selected for other unrelated reasons, such as random selection).

<sup>8</sup> Any individual, regardless of citizenship, may be included on the No Fly List when the TSC determines the individual meets additional criteria. at least one of the following criteria, where the individual poses:

- (1) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) or domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to an aircraft (including a threat of piracy, or a threat to airline, passenger, or civil aviation security);
- (2) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to the homeland;
- (3) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) against any US Government facility abroad and associated or supporting personnel, including US embassies, consulates and

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determining if the underlying information meets the criteria for inclusion. The TSA Administrator has final authority over implementation of the No Fly and Selectee Lists and makes final determinations concerning inclusion on the No Fly List for U.S. persons seeking redress through DHS TRIP.

27. For security reasons, the criteria for inclusion on the Selectee List are not public. This is because disclosure of the Selectee criteria could give known or suspected terrorists information that may assist in developing strategies to circumvent security screening. Additionally, in some instances, disclosing the criteria for inclusion on the Selectee List might provide an individual who believes he is on the Selectee List enough additional information to deduce the nature or content of the underlying derogatory information the intelligence community has collected on him. This additional context would allow the individual to identify the nature of investigative interest in him and to alter his behavior, destroy evidence, take new precautions against surveillance, and change the level of any terrorism-related activity in which he or she is engaged.

28. The TSC reviews each nomination to determine whether it complies with standards for inclusion. At the conclusion of the TSC's review, TSC personnel either accept or reject the nomination for inclusion in the TSDB and, if appropriate, inclusion on either the Selectee or No Fly subsets.

29. Being subject to additional screening at an airport or inspection at the U.S. border (or its functional equivalent) does not necessarily mean a person is in the TSDB. To ensure the safety and security of the traveling public, TSA may require individuals to undergo additional

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missions, military installations (as defined by 10 U.S.C. 2801(c)(4)), US ships, US aircraft, or other auxiliary craft owned or leased by the US Government; or,  
(4) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so.

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security screening before they are permitted to enter the sterile area of an airport or to board an aircraft for a variety of reasons, as further explained in the Declaration of Hao-y Tran Froemling.

### **INTERAGENCY INFORMATION-SHARING**

30. Pursuant to HSPD-6, agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective public missions.

31. TSC exports subsets of TSDB data to partner agencies and foreign partners for use by those partners in a variety of lawful terrorist screening functions.

32. TSC exports subsets of TSDB information to the following federal government entities: DHS, Department of State (State), FBI (including the National Crime Information Center, NCIC), and the Department of Defense. For other agencies (specifically the Nuclear Regulatory Commission, the Overseas Private Investment Corporation, the U.S. Agency for International Development, the Special Investigator General for Afghanistan Reconstruction, and the National Institute for Occupational Safety and Health), TSC runs lists of names against the TSDB and reports the results to the agency requester. Agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective missions, and use it in accordance with their own legal authorities. TSC does not have authority to manage or oversee the screening functions of its partner agencies, but TSC is fully aware of the terms under which such information may be shared and the restrictions upon access, disclosure, and use of that

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information. Memoranda of understanding (MOUs) between TSC and its screening partners specify the terms by which TSDB information is shared and used. As a result, TSC can attest that its screening partners use TSDB information for lawful screening purposes, in accordance with their own legal authorities, and subject to the restrictions specified in relevant MOUs.

Prohibited disclosure of internal government information, let alone information protected by statutory law and privilege (such as TSDB information), constitutes a serious breach of official duties.

33. TSC exports subsets of TSDB data to foreign partners (including all Visa Waiver Program countries) with which TSC has entered into foreign partner arrangements. As with domestic screening partners (described above), TSC reasonably expects foreign partners to use TSDB information for lawful screening purposes, in accordance with their own legal authorities, and subject to the restrictions specified in relevant arrangements.<sup>9</sup>

34. TSC exports a subset of TSDB data to NCIC, a database administered by the FBI for use by law enforcement. This export from TSC to the NCIC is referred to as the Known or Suspected Terrorist (KST) File. Detailed information about the NCIC can be found at <https://www.fbi.gov/services/cjis/ncic>, and it is further addressed in the Declaration of Michael A. Christman.

35. TSC is aware that DHS may share certain information with private entities in certain limited circumstances, when necessary to facilitate its mission and subject to limitations on use and disclosure of this information.

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<sup>9</sup> For examples of such restrictions upon foreign partner use and dissemination of TSDB information, please see the following information sharing agreements, which are publically available at the State website:

Albania (<https://www.state.gov/documents/organization/264334.pdf>);  
Bulgaria (<https://www.state.gov/documents/organization/264667.pdf>);  
Hungary (<https://www.state.gov/documents/organization/278373.pdf>);  
Slovenia (<https://www.state.gov/documents/organization/197956.pdf>).

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36. TSC does not provide TSDB information or access to the TSDB directly to any private company, and TSC is not aware of any mechanism, policy or practice that would permit it to be shared with entities such as car dealerships, banks, financial institutions, or gun dealers.

### **ENCOUNTERS**

37. In the context of watchlisting, an “encounter” is an event in which an individual is identified during a screening process or law enforcement stop to be a potential match to an individual who is in the TSDB (“a TSDB identity”). An encounter can be a face-to-face interaction (e.g. inspection at a U.S. port of entry, visa interview, or traffic stop by local law enforcement), electronic (e.g., Electronic System for Travel Authorization (ESTA) application or a visa application), or paper-based (e.g. review of visa petition).

38. When an encounter occurs, the agency and/or the encountering officer may contact the TSC to confirm whether the individual matches the TSDB identity.<sup>10</sup> TSC’s identity resolution process is performed in real time and is usually completed in a few minutes.

39. If the individual is confirmed to match the TSDB identity, the encounter is considered a “positive encounter.” Only after the encounter is determined to be “positive,” will the encountering agency take appropriate action according to internal procedures and policies and consistent with the application of its regulatory and statutory standards. In other words, if internal procedures require the encountering officer to conduct additional screening of a TSDB identity, that additional screening is conducted only after the encounter is confirmed as a positive encounter.<sup>11</sup>

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<sup>10</sup> It is my understanding that certain encountering agencies, such as the Transportation Security Administration (TSA), perform internal identity resolution before seeking final confirmation from the TSC.

<sup>11</sup> In cases where a traveler's biographic information (name, date of birth, etc.) is the same or similar to the biographic information of a TSDB identity, the DHS TRIP process can provide assistance in distinguishing the traveler from the TSDB identity and thus expedite the identity resolution process.

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40. Thus, the identity confirmation process is meant to ensure accuracy in matching encountered individuals to TSDB identities and ensuring the encountering agency will take appropriate action for properly matched individuals (such as enhanced screening). In the case of an encounter that is determined not to be a positive match to a TSDB identity, the encountered individual should not experience any additional screening or inconvenience on the basis of possible TSDB inclusion, beyond the few minutes it may take to complete the identity resolution process (generally noticeable only in the case of face-to-face interaction with an encountering agent, as opposed to electronic or paper-based encounters).

#### **QUALITY ASSURANCE REVIEWS**

41. To maintain thorough, accurate and current terrorism information, the TSDB is subjected to rigorous and ongoing quality control measures to ensure nominations continue to satisfy the criteria for inclusion; and information offered in support of the nomination is reliable and up-to-date.

42. Quality control measures include reviews and evaluations by the 1) nominating agency, 2) NCTC or FBI, and 3) TSC to verify that each nomination meets the appropriate criteria for inclusion in the TSDB and any appropriate subset list prior to an identity being added to the TSDB. These reviews and evaluations also provide a means to identify any changes to the information over time that could affect inclusion.

43. For example, nominating agencies conduct annual reviews of all their nominations of US persons to the TSDB. Nominations of non-US persons receive reviews, as well. Each nominating agency must have internal procedures to prevent, identify, and correct any errors. These procedures include the review of retractions and/or corrections of information that may have been used to support a nomination.

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44. In addition to the nominating agencies' review prior to nomination, the TSC regularly reviews data in the TSDB to ensure that the underlying information supports the nomination and performs audits to confirm the data in the TSDB is thorough, accurate, and current. The TSC also conducts a biannual review for all US person records in the TSDB. Additionally, for all persons, there is a review at the time of each encounter when there is a potential match to a TSDB identity. Available, relevant information, including any exculpatory information, is carefully reviewed to evaluate whether the record still meets the standard for inclusion.

45. At any time, a USG agency (whether or not it is the nominator) that identifies new or updated information about a watchlist record, is expected to make a request to NCTC/TSC to modify or remove that record.

46. The multiple reviews described above conducted by the nominating agencies, NCTC, and TSC help ensure that terrorist identity information used to support law enforcement and screening functions is thorough, accurate, and current.

### **REMOVAL PROCESS**

47. If it is determined during the quality assurance reviews that a change should be made to a record in the TSDB, the TSC, coordinating with the nominating agency and any other relevant agencies, takes steps to clarify the record. Additions, modifications, and removals are executed to ensure that the watchlisting process and procedures remain compliant with applicable law and to ensure that only those individuals for whom there is sufficient information to meet the applicable standards are included in the TSDB. Examples of situations where a record may be removed from the TSDB in the normal course of business include:

- (1) To promptly adjust or delete erroneous information,

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- (2) When new information becomes available to update the record including information that refutes or discredits the original information that supported the individual's watchlist status.

## **OVERSIGHT**

48. Relevant USG departments' and agencies' Inspectors General and the U.S. Government Accountability Office regularly review terrorist watchlist, screening, and redress processes. Such reviews have resulted in additional quality assurance mechanisms at TSC, which have improved accuracy and efficiency.

49. The Privacy and Civil Liberties Oversight Board (an independent bipartisan agency within the Executive Branch) and Congress also provide oversight.

50. Congress conducts oversight through its committees including, but not limited to, the House and Senate Intelligence Committees, the House and Senate Homeland Security Committees, the House and Senate Appropriations Committees, and the House and Senate Judiciary Committees.

51. The TSC also has both an embedded legal unit and a dedicated privacy and civil liberties attorney to provide continuous advice and counsel.

## **REDRESS PROCESS**

52. The DHS Traveler Redress Inquiry Program (DHS TRIP) is a resource for individuals to resolve travel-related screening difficulties, including for those who believe they have been unfairly or incorrectly delayed, denied boarding, or identified for additional screening or inspection at airports or US ports of entry. The DHS TRIP website <http://www.dhs.gov/dhs-trip>, provides a single point of contact for travelers.

53. As part of the redress process, DHS TRIP provides the traveler with an opportunity to

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submit any relevant information. The DHS TRIP process provides additional information that assists the USG in determining whether TSDB placement is warranted.

54. To resolve redress inquiries, DHS TRIP works with DHS component agencies and other USG agencies such as State, and the Department of Justice (including the FBI and TSC).

55. The TSC supports DHS TRIP by helping to resolve inquiries of travelers who are an exact or possible match to an identity in the TSDB. Approximately 98% of DHS TRIP inquiries have no connection with any identity in the TSDB.

56. In the few cases where a traveler is an exact or possible match to an identity in the TSDB, DHS TRIP works with the TSC's Redress Office, a separate component within the TSC that processes inquiries related to the use of TSDB data by screening agencies.

57. Upon receipt of an inquiry from the DHS TRIP program office, the TSC Redress Office independently reviews the available information about the traveler and documentation provided by the traveler to determine whether the traveler is a positive match to an identity in the TSDB.

58. If the traveler is a positive match to an identity in the TSDB, a TSC Redress Office analyst will review, whether the identity in the TSDB continues to satisfy the criteria for inclusion or should be removed or have its status otherwise modified. The TSC's Redress Office will also contact the nominating agency and NCTC or the FBI to assist in the resolution of the complaint. Part of that process includes the nominator participating to ensure that any new or exculpatory information is considered as part of the redress review.

59. After reviewing the available information, to include any information submitted by the traveler, the TSC's Redress Office determines whether the traveler's record should remain in the TSDB, be modified, or be removed, unless the legal authority to make such a determination

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resides, in whole or in part, with another government agency.<sup>12</sup> In such cases, the TSC Redress Office will implement the decision-making agency's determination.

60. When changes to a record's status are warranted, TSC's Redress Office ensures such corrections are made and verifies that such modifications or removals are carried over to the various screening systems that receive TSDB data. DHS TRIP sends a determination letter advising the traveler of the results of the adjudication of the redress inquiry.

61. Because of security concerns, the USG's general policy is neither to confirm nor deny a person's watchlist status. Accordingly, an individual who files an inquiry with DHS TRIP is not advised of their current or past watchlist status.

62. Additional process is available to a US person (defined as a US citizen or US lawful permanent resident) denied boarding because of their presence on the No Fly list. If certain requirements are met, they will be apprised of their status on the No Fly List through the DHS TRIP process, and will be provided an opportunity to request and receive additional information regarding their status and an opportunity to respond. This No Fly list redress process for U.S. persons culminates with the TSA Administrator reviewing the available information, including a recommendation from TSC, and either issuing a final order maintaining the person on the No Fly List or removing the person from the No Fly List, or remanding the case back to TSC with a request for additional information or clarification.

63. The U.S. Government is committed to ensuring that the redress process is fair and responsive, as part of its commitment to protect the American public from terrorist threats, while

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<sup>12</sup> As described in Paragraph 62, the TSA Administrator or his/her designee, in coordination with other relevant agencies, makes final determinations concerning inclusion on the No Fly List for U.S. persons seeking redress through DHS TRIP.

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at the same time, safeguarding privacy and civil liberties. The Declaration of Deborah Moore contains more information about the DHS TRIP redress process.

**RISKS OF HARM TO NATIONAL SECURITY OF DISCLOSING TSDB STATUS AND UNDERLYING INFORMATION**

64. Disclosure of TSDB status of specific individuals, or disclosure of the underlying information supporting placement on the TSDB, could reasonably be expected to risk circumvention of the law and cause harm to national security.

65. It is the policy of the US government not to disclose any individual's status in the TSDB or a subset, beyond the limited disclosures contemplated by the Government's DHS TRIP procedures. Disclosure of an individual's TSDB status outside of this narrowly-defined exception could reasonably be expected to risk circumvention of the law and cause harm to law enforcement and counterterrorism investigations. More specifically, disclosure of this information would facilitate terrorists and terrorist groups in their operations and planning by assisting them in determining which of their potential operatives are listed in the TSDB and which are not. Additionally, such knowledge could compromise ongoing counterterrorism investigations by giving members of terrorist groups the opportunity to gauge whether a particular individual is the subject of an FBI counterterrorism investigation, causing the person to alter his or her behavior, destroy evidence, take new precautions against surveillance, or change the level of any terrorism-related activity in which he or she is engaged. Terrorists would then be able to exploit the information to piece together how their activities might go undetected.<sup>13</sup>

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<sup>13</sup> The possible consequences of disclosing TSDB status were discussed in greater detail in the Declaration of Timothy P. Groh submitted in opposition to Plaintiffs' first motion to compel production of various documents and interrogatory responses.

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66. Similarly, if, in addition to the disclosures contemplated by the Government's DHS TRIP procedures, the government were required to disclose that an individual is *not* in the TSDB, this would necessarily confirm the TSDB status of any individual not eligible for such a disclosure. It would also be of considerable value to terrorist groups to confirm which individuals are not the likely subject of ongoing investigations and who are more likely to evade detection and escape scrutiny.

67. Even where an individual has been subject to enhanced screening, the lack of confirmation of TSDB status is still valuable to the Government in its watchlisting and screening efforts. Because there are many reasons an individual might be required to undergo enhanced screening (or even repeated enhanced screening) unrelated to TSDB status, the ambiguity left open by the absence of official confirmation denies important operational information to terrorist adversaries.<sup>14</sup>

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of March 2019.



Timothy P. Groh  
Deputy Director for Operations  
Terrorist Screening Center

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<sup>14</sup> An individual who is not in the TSDB may be required to undergo additional screening or inspection for a wide variety of reasons unrelated to the terrorist watchlist. Thus, it cannot be argued that a known or suspected terrorist will necessarily be able to deduce his or her own status in the TSDB based upon his experiences at airports or at the border.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF DEBORAH O. MOORE**

I, Deborah O. Moore, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Branch Manager of the Transportation Security Redress Branch in the Office of Civil Rights and Civil Liberties, Ombudsman and Traveler Engagement at the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS). I have held this position since June 16, 2013. As part of my official duties, I am responsible for the management of the DHS Traveler Redress Inquiry Program (DHS TRIP). The statements made within this Declaration are based upon my personal knowledge and information made available to me in my official capacity.
2. Below I provide a brief history of DHS TRIP. I then describe the current DHS TRIP redress process applicable to individuals in the Terrorist Screening Database (TSDB) and the effect that additional procedures would have on DHS TRIP’s operations. Finally, I briefly describe each Plaintiff’s redress history with DHS TRIP.

**A. DHS TRIP Background**

3. In 2007, Congress directed the Secretary of Homeland Security (Secretary) to establish a timely and fair redress process for travelers who believe they have been delayed or prohibited from boarding a commercial aircraft because they have been wrongly

identified as a threat under the regimes utilized by the TSA, U.S. Customs and Border Protection (CBP), or any other office or component of DHS. *See* 49 U.S.C. § 44926(a). Congress further directed the Secretary to establish an “Office of Appeals and Redress” to implement, coordinate, and execute the redress process. *Id.* § 44926(b). This office is required to include representatives from TSA, CBP, and such offices and components of DHS as the Secretary determines appropriate. *Id.* Additionally, Congress directed the Administrator of TSA to create a process to enable airline passengers who are delayed or prohibited from boarding a flight because TSA’s “passenger prescreening system determined that they might pose a security threat to appeal such determination and correct information contained in the system” as necessary. *Id.* § 44903(j)(2)(C)(iii)(I).

4. In February 2007, DHS TRIP was officially launched as the central processing point for redress inquiries. On December 10, 2007, the Secretary designated the TSA Office of Transportation Security and Redress, currently known as the Transportation Security Redress Branch, as both the lead agent to manage DHS TRIP and the statutorily-required “Office of Appeals and Redress.”
5. Multiple federal agencies play a role in the regimes utilized by DHS components to identify possible threats to transportation and national security. DHS TRIP serves an important function by providing the traveling public with a single point of contact for a wide variety of complaints and inquiries regarding travel difficulties, such as the following: delayed or denied airline boarding; delayed or denied entry into the United States at a port of entry; or being told that personal information on travel documents was incomplete or inaccurate.

6. DHS TRIP receives approximately 19,000 inquiries annually. For approximately 15,000 of those inquiries, the applicant submits all required documentation and DHS TRIP issues a final determination letter. DHS TRIP administratively closes approximately 4,000 of those inquiries due to the applicant's failure to submit required documentation.

**B. DHS TRIP Procedures**

7. Travelers who have experienced a screening-related travel difficulty, including those who believe that they experienced such problems because they were wrongly identified as a threat, may submit a Traveler Inquiry Form to DHS TRIP. The Traveler Inquiry Form prompts travelers to describe their particular experience, produce documentation related to the subject inquiry as necessary, provide at least one piece of government-issued photo identification documentation, and provide a contact to which a response may be directed. Travelers may also provide any comments or additional information that they deem relevant to the inquiry, including any exculpatory information.
8. When a traveler files an inquiry with DHS TRIP online, the system automatically provides the traveler a Redress Control Number (RCN), which helps the traveler monitor the progress of the inquiry. The RCN matches the traveler to the results of his or her redress case within the DHS TRIP case management system. An additional feature of the RCN is that once a traveler's case is closed, he or she may use the RCN when making future air travel reservations. In conjunction with TSA's Secure Flight Program, airlines have modified their reservation systems to allow an individual with a RCN to enter it into the reservation system to prevent the individual from being misidentified.
9. Upon receipt of a Traveler Inquiry Form, DHS TRIP reviews the information submitted by the traveler and evaluates each inquiry to determine which DHS components or other

governmental agencies have equities in the issues underlying the claimed travel difficulties. In addition to reviewing the traveler's submission, DHS TRIP also reviews relevant government databases, including TECS<sup>1</sup> and Secure Flight.<sup>2</sup> DHS TRIP will then refer the inquiries to the appropriate DHS TRIP components and any other governmental agencies with equities.

10. If a traveler experienced problems because he or she was "misidentified" – *i.e.*, the traveler's name is the same as or similar to the name of a different individual who is included in the Terrorist Screening Database (TSDB) – then DHS TRIP, in coordination with all relevant government agencies, attempts to prevent future misidentification by updating or correcting information in the traveler's record, or taking other action as warranted.
11. In the small fraction of cases in which DHS TRIP determines that a traveler is an exact or possible match to an identity in the TSDB, DHS TRIP refers the matter to the Redress Office at the Terrorist Screening Center (TSC). The TSC maintains the TSDB, of which the No Fly List, Selectee List, and Expanded Selectee List are subsets. Approximately 98 percent of DHS TRIP inquiries have no connection with any identity in the TSDB.
12. When a traveler's redress inquiry is referred to the TSC Redress Office and the traveler is a confirmed match to the TSDB, TSC reviews the available derogatory and exculpatory information about the traveler, including any information provided by the traveler as a part of the inquiry, to make a new determination as to whether the individual continues to

<sup>1</sup> TECS is the principal system used by CBP officers at the border to assist with screening and determinations regarding admissibility of arriving persons.

<sup>2</sup> Secure Flight is TSA's risk-based passenger prescreening program that enhances security by identifying low and high-risk passengers before they arrive at the airport by matching their names against trusted traveler lists and watchlists.

satisfy the standard for inclusion in the TSDB and its subsets. The Redress Office consults with other agencies, as appropriate. Upon the conclusion of that review, the TSC Redress Office notifies DHS TRIP of the outcome of the review.<sup>3</sup> When appropriate, the DHS TRIP redress process will result in removal of a traveler from the TSDB and/or one of its subsets.

13. Once all relevant agencies have reviewed a traveler's redress inquiry and record and completed their review, DHS TRIP issues a determination letter to the traveler.
14. In light of national security and law enforcement interests, the determination letter generally provides the results of the individual's redress inquiry without disclosing whether the traveler was, or is, included in a federal watchlist used by TSA for passenger pre-boarding screening (including the TSDB and its subsets) or revealing other sensitive information. DHS TRIP does not disclose Sensitive Security Information (SSI),<sup>4</sup> law enforcement sensitive information, or classified information to applicants.
15. In the event that an individual is, in fact, in the TSDB, the underlying information used to determine that placement is usually derived from sensitive information, such as law enforcement information, SSI, and classified information. Disclosure of an individual's TSDB status and reasons therefore would significantly undermine the government's counterterrorism efforts. Accordingly, DHS TRIP does not reveal an individual's TSDB status or reasons for such status, if any, when providing a final determination.<sup>5</sup>

<sup>3</sup> DHS TRIP provides additional procedures to U.S. citizens and lawful permanent residents on the No Fly List, further explained below, which may result in the TSA Administrator removing the individual from or maintaining the individual on the No Fly List.

<sup>4</sup> See 49 U.S.C. § 114(r) and 49 C.F.R. part 1520.

<sup>5</sup> In certain limited circumstances, a U.S. citizen or lawful permanent resident who is denied boarding may learn of his or her status on the No Fly List after filing an inquiry with DHS TRIP about the denial of boarding, as further explained below.

16. The redress procedures that apply to individuals in the TSDB provide those individuals with a means to impart exculpatory information that, in turn, is reviewed at multiple levels. During that process multiple federal officials carefully review the available information, including exculpatory information that is possessed by the nominator and/or submitted by the traveler, to assess whether continued placement on the TSDB is warranted. This redress process is robust and results in changes to TSDB status, as appropriate, including complete removal from the TSDB if the standard for inclusion in the TSDB is no longer satisfied.

**C. Impact of Additional Procedures**

17. In 2014, the government revised the DHS·TRIP procedures for U.S. citizens and lawful permanent residents (collectively, U.S. persons) who make redress inquiries regarding the denial of aircraft boarding. To qualify for additional procedures, the individual must be a U.S. person who (a) purchases an airline ticket; (b) is denied boarding that flight; (c) subsequently files a redress inquiry regarding the denial of boarding with DHS TRIP; (d) provides all information and documentation required by DHS TRIP; and (e) is determined to be appropriately on the No Fly List. A U.S. person who satisfies all of these criteria will be informed that he or she is on the No Fly List and provided an opportunity to request additional information, which may include, to the extent consistent with national security and law enforcement interests, an unclassified summary of information supporting the individual's placement on the No Fly List.

18. In addition to the harms to national security described in the Declaration of Hao-y Tran Froemling, providing the same or similar procedures to individuals selected for enhanced screening due to TSDB status would impose a substantial administrative burden on DHS

TRIP. The current process for U.S. persons on the No Fly List is time intensive and requires the full attention of several full time DHS TRIP employees, including an Enhanced Redress and Appeals Manager. U.S. persons on the No Fly List who request additional information represent a very small portion of the total number of applicants to DHS TRIP. Notwithstanding the small size of this population, a significant proportion of DHS TRIP's resources are required to address these redress inquiries, leaving DHS TRIP with limited resources to address all other redress inquiries. Expanding the scope of application of the enhanced procedures would result in substantial delays for all redress applicants.

19. In particular, providing unclassified summaries of information supporting placement on the No Fly List is an extremely time-intensive process that requires review by, and inter-agency coordination among, numerous DHS TRIP employees, TSA Intelligence Analysts, TSA Chief Counsel attorneys, DHS offices, TSC, TSDB nominators, and other agencies with equities. Aside from the harm to national security in confirming who is in the TSDB, requiring this process for more than the limited subset of U.S. persons on the No Fly list who qualify for the enhanced redress procedures described above would result in a great strain on DHS TRIP's limited resources and difficulty meeting its statutory mandate to provide a timely and fair redress process.
20. Based on the number of inquiries recently submitted to DHS TRIP, if the enhanced redress process for U.S. persons on the No Fly List were applied to U.S. persons who receive enhanced screening as a result of TSDB status, DHS TRIP estimates its workload for enhanced redress cases would dramatically increase by more than 1,400 percent. This would lead to an impact in DHS TRIP's ability to provide a fair and timely process for all

applicants, including the 98 percent of applicants who are cleared of any connection to the TSDB.

**D. Plaintiffs' DHS TRIP History**

21. Below I describe the redress history for each Plaintiff.<sup>6</sup> In summary, plaintiffs Osama Hussein Ahmed, Ahmad Ibrahim Al Halabi, Saleem Ali, Mark Amri, Samir Anwar, Shahir Anwar, John Doe No. 2, John Doe No. 4, Anas Elhady, Ausama El-Huzayel, Zuhair El-Shwehdi, Murat Frljuckic, Yaseen Kadura, Muhammad Yahya Khan, Adnan Khalil Shaout, Hassan Shibly, and Donald Thomas submitted inquiries to DHS TRIP and DHS TRIP issued final determination letters in response to those inquiries.<sup>7</sup>
22. DHS TRIP has no record of receiving any inquiry from plaintiffs Ibrahim Awad, Baby Doe 2, John Doe No. 3, Hassan Fares, or Wael Hakmeh.<sup>8</sup>
23. DHS TRIP administratively closed an inquiry from plaintiff Michael Edmund Coleman due to his failure to provide all required documentation and has no record of receiving any subsequent inquiry from him.
24. Osama Hussein Ahmed completed a DHS TRIP traveler inquiry form on April 20, 2011, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about October 4, 2011.<sup>9</sup>

<sup>6</sup> For purposes of the information described in this section, DHS TRIP conducted searches of its Redress Management System (RMS) on February 8, 2019 and February 15, 2019.

<sup>7</sup> Unless otherwise specified, the final determination letters received by each plaintiff contained the information described in paragraph 14.

<sup>8</sup> DHS TRIP is unable to receive inquiries via email that exceed 10 megabytes (MB). In the event an inquiry in excess of 10 MB is submitted via email, DHS TRIP will not receive the email. DHS TRIP encourages applicants to send separate e-mails with attachments using the same subject line if the size exceeds 10 MB. Documentation may also be submitted to DHS TRIP via US Mail.

<sup>9</sup> The determination letter sent to Plaintiff Ahmed was mistakenly dated August 24, 2011, due to the date not being updated.

25. Ahmad Ibrahim Al Halabi first submitted a DHS TRIP inquiry on May 9, 2012, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about October 15, 2012. Al Halabi submitted a second DHS TRIP inquiry on July 1, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about September 30, 2014. Al Halabi submitted a third DHS TRIP inquiry on October 14, 2015, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about February 26, 2016.
26. Saleem Ali submitted a DHS TRIP inquiry on March 15, 2011, related to travel difficulties. DHS TRIP issued a final determination letter in response to that inquiry on or about March 30, 2011.
27. Mark Amri submitted a DHS TRIP inquiry on March 4, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about September 1, 2016, which stated, “At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly.”
28. Samir Anwar completed a DHS TRIP traveler inquiry form on July 9, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about August 7, 2014.
29. Shahir Anwar completed a DHS TRIP traveler inquiry form on November 3, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about March 23, 2015.
30. DHS TRIP has conducted a search of its records and found no DHS TRIP inquiry submitted for plaintiff Ibrahim Awad.

31. Michael Edmund Coleman submitted a DHS TRIP inquiry on October 1, 2015, related to travel delays. DHS TRIP administratively closed this inquiry on or about November 2, 2015, due to plaintiff Coleman's failure to submit required documentation. DHS TRIP has no record of receiving any other inquiry from Plaintiff Coleman.
32. DHS TRIP has conducted a search of its records and found no DHS TRIP inquiry submitted for plaintiff Baby Doe 2.
33. John Doe No. 2 completed a DHS TRIP traveler inquiry form on December 21, 2015, related to travel delays. DHS TRIP issued a final determination letter in response to that inquiry on or about January 21, 2016.
34. DHS TRIP has conducted a search of its records and found no DHS TRIP inquiry submitted for plaintiff John Doe No. 3.
35. John Doe No. 4 submitted a DHS TRIP inquiry on August 3, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about September 21, 2016, which stated, "At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly."
36. Anas Elhady submitted a DHS TRIP inquiry on January 27, 2015, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about May 11, 2015.
37. Ausama El-Huzayel submitted a DHS TRIP inquiry on April 24, 2016, related to a denial of boarding. DHS TRIP issued a final determination letter in response to that inquiry on or about December 6, 2016, which stated, "At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly."

38. Zuhair El-Shwehdi completed a DHS TRIP traveler inquiry form on August 18, 2016, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about November 21, 2016.
39. DHS TRIP has conducted a search of its records and found no DHS TRIP inquiry submitted for plaintiff Hassan Fares.
40. Murat Frljuckic first completed a DHS TRIP inquiry on November 7, 2012, related to enhanced screening.<sup>10</sup> DHS TRIP issued a final determination letter in response to that inquiry on or about January 4, 2013. Frljuckic submitted a second DHS TRIP inquiry on August 18, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about October 31, 2014.
41. DHS TRIP has conducted a search of its records and found no DHS TRIP inquiry submitted for plaintiff Wael Hakmeh.
42. Yaseen Kadura completed a DHS TRIP traveler inquiry form on November 21, 2012, related to a denial of boarding. DHS TRIP initially issued a final determination letter in response to that inquiry on or about May 8, 2013. DHS TRIP issued a superseding final determination letter on or about September 4, 2015, which stated, “At this time the U.S. Government knows of no reason Mr. Kadura should be unable to fly.”
43. Muhammad Yahya Khan first submitted a DHS TRIP inquiry on January 7, 2014, related to enhanced screening. DHS TRIP administratively closed this inquiry on or about February 26, 2014, due to plaintiff Khan’s failure to submit required documentation. Plaintiff Khan submitted a second DHS TRIP inquiry on April 13, 2015. DHS TRIP issued a final determination letter in response to that inquiry on or about July 14, 2015.

<sup>10</sup> Frljuckic emailed his inquiry without required documentation on January 8, 2012. He provided the required documentation on November 7, 2012.

44. Adnan Khalil Shaout first submitted a DHS TRIP inquiry on June 28, 2011, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about January 5, 2012. Shaout submitted a second inquiry to DHS TRIP on July 24, 2014, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about August 19, 2014. Shaout submitted a third inquiry to DHS TRIP on September 16, 2015, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about November 5, 2015.
45. Hassan Shibly first submitted an inquiry to DHS TRIP on November 30, 2009, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about March 8, 2011.<sup>11</sup> Shibly subsequently submitted a DHS TRIP inquiry on August 26, 2013, related to travel difficulties. DHS TRIP issued a final determination letter in response to that inquiry on or about November 15, 2013.
46. Donald Thomas submitted a DHS TRIP inquiry on April 22, 2016, related to enhanced screening. DHS TRIP issued a final determination letter in response to that inquiry on or about September 1, 2016.

<sup>11</sup> Shibly submitted another inquiry related to this inquiry.

DATED: March 1, 2019  
Arlington, VA



---

DEBORAH O. MOORE  
Director, DHS TRIP & Branch Manager  
Transportation Security Redress Branch  
Civil Rights and Liberties, Ombudsman & Traveler  
Engagement  
Transportation Security Administration



Deposition of:  
**Osama Ahmed**

*February 20, 2018*

In the Matter of:  
**Elhady vs. Kable**

**Veritext Legal Solutions**  
1075 Peachtree St. NE , Suite 3625  
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1 there. And I was a supervisor, so it was kind of  
2 difficult for me to supervise people working in an area  
3 where I wasn't allowed to go to.

4 Q And why did you leave your job at the airport?

5 A I was fired.

6 Q Okay.

7 A It was a dispute.

8 Q A dispute, not having to do with --

9 A No, it hasn't to do with it.

10 Q -- any watch list you said?

11 A No.

12 Q Okay. Well, thank you very much. We're going  
13 to take a quick break and then we'll be back.

14 MR. ABBAS: Okay, great. Excellent.

15 BY MR. HEALY:

16 Q A couple of questions about -- are we back?  
17 Sorry. Did you speak with anyone besides your attorney  
18 during the break?

19 A No.

20 Q Okay. A couple questions about losing your  
21 job at the airport. When did that happen?

22 A I don't remember, maybe 2015, 2014.

1 Q And can you give us a little bit more  
2 description about exactly what happened?

3 A Me and the manager didn't get along. And then  
4 I don't want the responsibility of being a supervisor,  
5 so I told him to demote me. And after he demoted me,  
6 he was putting me in positions where I didn't want to  
7 work. So, one day I confronted him about it and he  
8 didn't like it, so he fired me.

9 Q Okay. And you mentioned that they, you said,  
10 I think, they gave you a new badge without the customs  
11 seal on it. Was it your employer that --

12 A The badging office.

13 Q Is it the badging office that said that you  
14 needed to get a new badge?

15 A So, they contacted my employer.

16 Q Okay.

17 A My employer told me to go to the badging  
18 office.

19 Q This is your manager, your direct manager?

20 A Yes.

21 Q Okay. Is this the same manager you were  
22 talking about before?

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

ANAS ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF RANDY HOWE**

I, Randy Howe, hereby state as follows:

1. I am the Executive Director for Operations, Office of Field Operations (OFO), U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).
2. I was deposed in this action on March 22, 2018 and provided testimony on behalf of CBP regarding CBP’s policies and procedures in conducting searches and inspections at the border, among other topics.
3. I executed Declarations on April 27, 2018 and June 14, 2018, to provide additional information which CBP determined could be disclosed and/or to clarify my deposition testimony.
4. I am making this Declaration in support of the motion for summary judgment filed by the government in *Elhady v. Kable*, 16-cv-375 (E.D.V.A.), and to provide additional information which CBP has determined can be disclosed and/or to clarify my deposition testimony. As set forth below, I address several topics concerning CBP’s law enforcement mission and the use of the Terrorist Screening Database (TSDB) in executing that mission, that

are raised or implicated by the claims raised by the Plaintiffs, including (1) CBP's nominations to the TSDB, (2) CBP's access to the TSDB, (3) CBP's use of the TSDB in connection with the inspection of international travelers, (4) CBP's use of the TSDB in CBP vetting, and (5) CBP's role in the Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP) process.

5. This declaration is based on my personal knowledge, my personal review of information, and other information conveyed to me by my staff and other knowledgeable CBP personnel in the course of my official duties and responsibilities.

#### **CBP Nominations to the Terrorist Screening Database**

6. A limited number of CBP officials may nominate an individual for inclusion in the TSDB or propose removing someone from the TSDB. These nominations are made by CBP officials who, taking into account all available information, assess whether the applicable standard for inclusion in the TSDB or one of its subsets has been met.

7. To meet the reasonable suspicion standard for inclusion in the TSDB as a known or suspected terrorist, the nominator must rely upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities. The TSDB also includes certain limited records that do not meet the reasonable suspicion standard. CBP uses certain limited records in the TSDB of foreign nationals who do not meet the reasonable suspicion standard in connection with CBP's administering and enforcing the Immigration and Nationality Act (INA). These TSDB records are used to alert CBP that additional information is available that may be considered with

all available information, for example, to determine admissibility to the United States under the INA. As previously explained in my April 27, 2018 declaration, additional details regarding CBP's use of these records is protected from disclosure by the law enforcement privilege.

### **CBP's Access to Terrorist Screening Database Information**

8. As I explained in my deposition, the Terrorist Screening Center shares TSDB information with CBP through the DHS Watchlist Service (WLS). CBP maintains information that is exported from the TSDB via the DHS WLS, including in TECS. TECS is the principal system used by CBP officers at the border to assist with inspections and determinations regarding admissibility of arriving persons. While TSDB information is maintained in TECS, TECS generally does not contain the underlying derogatory information that is the basis for the individual's inclusion in the database.<sup>1</sup>

9. CBP treats TSDB information as law enforcement sensitive, and handles TSDB information accordingly, including by limiting access to personnel who have a need to know the information, have a job function requiring access to the information, and are required to access the information in a manner consistent with the law and DHS and CBP policies. Such CBP personnel may access TSDB information through CBP systems such as TECS.<sup>2</sup> All users of CBP systems, including TECS, must undergo a background investigation prior to obtaining access, and CBP has further access requirements including training, review, and access controls. Furthermore, access to CBP systems is monitored and audited to ensure that data is accessed

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<sup>1</sup> As explained during my deposition, access to this underlying derogatory information is limited to certain CBP personnel and is generally not accessible by frontline CBP officers.

<sup>2</sup> Contractors working on behalf of CBP to accomplish a CBP mission may also access TSDB information if they have a need to know the information in furtherance of their work responsibilities. The same rules regarding access to and handling of TSDB information which apply to CBP personnel also apply to CBP contractors with access to TSDB information.

only by those who have a need-to-know and appropriate authorization to access the data, and to ensure that users are not inappropriately accessing or using the data. CBP continuously monitors the use of TECS, including reviews of the extensive audit logs that TECS maintains, which identifies the users who have accessed records.

10. CBP does not provide information from the TSDB or direct access to the TSDB to any private company.

**CBP Use of TSDB Information in Connection to the Inspection of International Travelers**

11. As explained in my prior Declarations, as Executive Director for Operations, I am familiar with CBP's administration and enforcement of federal law at the border. These requirements include the enforcement and administration of customs, immigration, and agriculture laws and the inspection, processing, and admission of persons who seek to enter or depart the United States. Among other things, OFO is responsible for coordinating the enforcement activities of CBP personnel at ports of entry (POEs) to deter and prevent terrorists and terrorist weapons from entering the United States and to develop and implement targeting capabilities to identify travelers and cargo which may need additional scrutiny. *See* 6 U.S.C. § 211(g).

12. In order to accomplish its mission responsibilities and enforce legal requirements at the border, CBP considers all available information to assess potential threats to border security, including TSDB information. This requires using a variety of investigative and law enforcement techniques. It also entails the exercise of border search authority, which permits CBP officers to detain and search all persons and property at the border without suspicion or a warrant.

13. All travelers, including U.S citizens, attempting to enter the United States are required to present themselves and their effects for inspection at a POE to ensure that they are legally eligible to enter (as a U.S. citizen or otherwise) and that their belongings are not being introduced into the United States contrary to law. It is not until those processes are complete that a traveler, with or without his/her belongings, is permitted to enter the United States. Among other things, this process includes verifying the identity of the individual, asking questions about the nature of their trip, asking questions about what they are bringing into the United States, and, in the case of foreign nationals, asking questions to ensure that they are admissible to the United States. This may also include searching the traveler, their baggage or their vehicle. In addition, as part of the inspection and/or admissibility process, CBP performs law enforcement system queries regarding travelers prior to and/or at the time of performing an inspection, including querying TSDB information.

14. CBP officers inspecting international travelers are law enforcement officers advancing the agency's law enforcement mission, and they have discretion in conducting their inspections, subject to legal and policy requirements and in accordance with their training and experience. As part of that discretion a CBP officer may refer a traveler for additional scrutiny, sometimes referred to as secondary inspection. A secondary inspection is a continuation of the border inspection and an officer may refer any traveler to secondary inspection. Examples when an officer may exercise their discretion to refer a traveler for additional scrutiny include circumstances in which there is a question about the documentation presented, an indication that the traveler may have exceeded his duty exemptions and may therefore need to pay duties, or a concern regarding the traveler's merchandise. An alert in TECS that notifies the CBP officer that the traveler is a confirmed or suspected match to a TSDB identity or has a prior conviction

or offense, may also indicate additional scrutiny is warranted. In addition, one technique CBP employs is the random referral of a percentage of travelers for additional scrutiny.

15. Consideration of TSDB information, along with other available law enforcement data, is an important step taken by CBP to effectively carry out its border security responsibilities. On a typical day in FY2018, CBP processed approximately 1,133,914 travelers, 285,925 privately owned vehicles and 81,438 truck, rail and sea containers. CBP's access to information from the TSDB assists CBP in effectively allocating its finite resources by identifying people who, or merchandise which, may require additional scrutiny during the inspection process. This is particularly true in the land border environment where CBP generally does not require advance information regarding individuals seeking to cross the border (in conveyances or as pedestrians), which is unlike the air and sea environments where CBP requires information from commercial air and sea carriers on all passenger and crew members who arrive in or depart from the United States.

16. As noted above, a traveler may be referred to secondary inspection for numerous reasons unrelated to the TSDB and, therefore, the fact that a traveler is referred to secondary inspection does not inherently indicate that the traveler is a match to a TSDB identity.

17. Once a traveler is referred for additional scrutiny, the specific actions taken during the secondary border inspection vary depending on the officer's evaluation of each traveler's situation. For example, an officer may choose to conduct further questioning of the traveler or search that traveler's luggage or other belongings, subject to legal and policy requirements. CBP conducts personal searches in accordance with its publicly available Personal Search Handbook, and CBP conducts border searches of electronic devices in accordance with its publicly available

CBP Directive No. 3340-049A, Border Search of Electronic Devices (January 4, 2018). The inspection process also varies based on geographical and logistical circumstances at specific POEs.

18. Furthermore, as I noted in my April 27, 2018 declaration, CBP does not have policies that require its officials to draw a weapon or use handcuffs whenever they encounter a traveler who is a potential or confirmed match to a TSDB identity. CBP also does not have a policy which dictates that all individuals who are potential or confirmed matches to a TSDB identity be designated as “armed and dangerous.” Any determination of the propriety of a CBP official’s use of such actions during the inspection of any person, including but not limited to a person who is a potential or confirmed match to a TSDB identity, is based upon the totality of the circumstances of each individual encounter.

19. There is no set amount of time an inspection might take in order for CBP to fulfill its border responsibilities. The amount of time any individual inspection takes will depend on many factors, such as the traveler’s individual circumstances and the conditions of the POE at that time. CBP endeavors to treat all travelers courteously and professionally and may provide food and water or seek medical attention for a traveler, as appropriate, in each individual circumstance.

20. Additional details regarding the ways in which CBP’s inspection process may vary implicates the law enforcement privilege. As I explained in my April 27, 2018 Declaration, the effectiveness of CBP’s mission is dependent to a large extent on the use of sensitive investigative techniques and methods that are not known to the general public. The disclosure of these techniques and methods, including specific techniques and procedures employed by CBP officials when inspecting individuals who are potential or confirmed matches to a TSDB identity, would seriously compromise CBP’s ability to perform its law enforcement mission to safeguard the borders of the United States. In addition, disclosure of an individual’s TSDB status -- beyond

those circumstances contemplated by the Government's TRIP procedures -- would similarly harm CBP's law enforcement mission. Advance knowledge of the process to be employed in connection with a specific border inspection -- including the likelihood that a specific individual will undergo additional scrutiny or the reason additional scrutiny is applied -- would enable those seeking to harm U.S. interests to take evasive measures. Such measures could include, for example, obscuring or failing to disclose information regarding the nature and purpose of the international travel or asking a co-traveler to carry merchandise across the border. Such evasive actions would negatively impact CBP's border security mission by undermining CBP's ability to evaluate who and what is crossing the border.

#### **CBP's Use of TSDB Information for CBP Vetting**

21. CBP also uses TSDB information to assist in vetting activities, including, for example, vetting of applicants for customs seals.

22. Aside from certain enumerated exceptions, an approved access or "customs seal" is required for all personnel who have unescorted access to the CBP security area in furtherance of their employment. 19 C.F.R. § 122.182.

23. Pursuant to applicable regulations, "[a]ccess to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation security." 19 C.F.R. § 122.183(a).

24. The regulations set forth the grounds for denial, revocation or suspension of access. 19 C.F.R. §§ 122.183(a), 122.187(a). The regulations also provide procedures for notice and appeal. 19 C.F.R. §§ 122.183(b)-(d), 122.187(c).

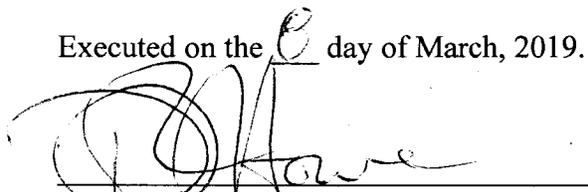
25. CBP considers all available information when making a determination to grant, revoke or suspend a customs seal. While not dispositive, TSDB status is one of many factors considered in making a determination to grant, revoke or suspend a customs seal. Inclusion on the TSDB may indicate that additional research regarding an individual's eligibility for a custom's seal is needed and the derogatory information supporting TSDB status is one of many factors considered in making a determination to grant, revoke or suspend a customs seal. CBP's determinations are based upon all available information, including derogatory information supporting TSDB status.

**CBP's Role in the DHS TRIP Redress Process**

26. As I explained during my deposition, DHS TRIP is a single point of contact for individuals who have any complaints or concerns about travel difficulties with CBP. When a DHS TRIP inquiry pertains to a CBP inspection, DHS TRIP sends the inquiry to CBP and CBP conducts research into the encounter at issue and provides the results of that research to DHS TRIP, which responds to the inquiry.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on the 6 day of March, 2019.

A handwritten signature in black ink, appearing to read "Randy Howe", written over a horizontal line.

Randy Howe  
Executive Director, Operations  
Office of Field Operations  
U.S. Customs and Border Protection

UNCLASSIFIED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

_____	)	
ANAS ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375
	)	
CHARLES H. KABLE, et al.	)	
	)	
Defendants.	)	
	)	
_____	)	

**DECLARATION OF ROBIN A. STARK-NUTTER  
FEDERAL BUREAU OF INVESTIGATION**

1. I, Robin A. Stark-Nutter, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

I am the Section Chief of the National Instant Criminal Background Check System (NICS) Section, Criminal Justice Information Services (“CJIS”) Division, Federal Bureau of Investigation (“FBI”), United States Department of Justice (“DOJ”). I was designated as the Section Chief of NICS in January 2017. As the Section Chief of NICS, I oversee the operational functions of the Section. I entered on duty with the FBI in October 1995 as a Management and Program Analyst.

2. I submit this declaration in support of the motion for summary judgment being filed by Defendants. I understand that, within the FBI, separate declarations from the Terrorist Screening Center, the Counterterrorism Division, and the CJIS Division’s Operational Programs Branch, are being submitted concurrently.

3. This declaration explains the relationship between the NICS and the National Crime Information Center’s (“NCIC”) Known or Suspected Terrorist (“KST”) File.

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4. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

5. The NICS is a computerized system designed to determine if a person is disqualified from receiving or possessing firearms by conducting a name based search of available records using the individual's required biographic descriptors (i.e., name, sex, race, complete date of birth, and state of residence). Title 18, U.S.C. § 922(g) prohibits certain individuals from purchasing or possessing a firearm. Being listed in the NCIC KST File is not a prohibition on purchasing or possessing a firearm. The current federal statutory prohibitors for firearms possession involve either a disqualifying adjudication (felony convictions, indictments, fugitives, mental defective, and dishonorable discharge from the Armed Forces), a voluntary renunciation of citizenship, unlawful drug use, or unlawful alien status. Specifically, 18 U.S.C. § 922(g)(1-9) and (n) prohibit the following individuals from possessing, shipping/transporting, or receiving any firearm or ammunition:

- (1) a person convicted of a crime punishable by imprisonment exceeding one year;
- (2) a person who is a fugitive from justice;
- (3) a person who is an unlawful user of or who is addicted to a controlled substance;
- (4) a person who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) an alien who is unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa;
- (6) a person who has been discharged from the Armed Forces under dishonorable conditions;

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- (7) a person who, having been a citizen of the United States, renounces his citizenship;
- (8) a person subject to a court order that was issued after a hearing in which the person participated, which order restrains the person from harassing, stalking, or threatening an intimate partner or partner's child, and which order includes a finding that the person is a credible threat to such partner or partner's child, or by its terms prohibits the use, attempted use or threatened use of such force against such partner or partner's child;
- (9) a person who has been convicted of a misdemeanor crime of domestic violence;
- (10) any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year.

6. The Brady Handgun Violence Prevention Act of 1993, Public Law No. 103-159, 107 Stat. 1536 (November 30, 1993) (Brady Act), codified in part, 18 U.S.C. § 922(1), requires Federal Firearms Licensees (FFLs) (e.g. firearms dealers) to contact the NICS to determine whether a prospective firearm transfer would violate the provisions of 18 U.S.C. § 922(g) or (n) or state law.

7. When an FFL requests a NICS check, a name search is conducted to search three national databases for possible matches: (1) the NCIC, containing records on wanted persons, protection orders, and other persons such as those listed in the KST File; (2) the Interstate Identification Index (III), which contains criminal history records, and (3) the NICS Indices, which contain information on prohibited persons as defined in 18 U.S.C. § 922(g) or (n) or state law.

8. A NICS check will result in a response – either from NICS or through a point-of-contact state-designated law enforcement agency (POC), which serves as an intermediary between the FFL and the federal databases searched by NICS – to the FFL indicating one of three possible

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determinations: (1) proceed with the purchase of the firearm; (2) deny the purchase of the firearm; or (3) delay the purchase of the firearm.

9. If the NICS check reveals no record indicating the person seeking to purchase the firearm is a prohibited person, the NICS generates a “proceed” response. A “delayed” response is issued when the information supplied by the prospective firearms purchaser matches a record contained in one or more of the databases that requires more extensive research, to determine if any prohibitions exist and obtain additional information when necessary. Finally, a response of a “denial” indicates the individual has been determined to be prohibited from receiving or possessing a firearm due to matching a record in one or more of the aforementioned databases. If the response is to delay or deny the purchase of the firearm, the underlying reason for the denial or delay is not given to the FFL.

10. When an FFL receives a “delayed” response, the Brady Act prohibits the FFL from completing the transfer for no more than three business days while the FBI or POC attempts to determine whether or not the prospective purchaser's receipt of a firearm would violate federal or state law. If by the time this three-business-day period expires no determination has been made as to whether the prospective purchaser's receipt of a firearm would be unlawful, 18 U.S.C. § 922(t)(1)(B)(iii) permits (but does not require) the FFL to complete the sale and transfer the firearm to the individual.

11. A match to the KST File is not a basis for denial of a firearm but will generate a “delayed” response until it is determined whether or not the person in question is legally eligible to purchase a firearm. When there is a potential match to a KST File record whether through the FBI or a POC, an FBI NICS Examiner contacts the Terrorist Screening Center (“TSC”) and provides the TSC with applicable identifying information on the individual. The TSC will

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confirm whether or not the potential transferee is a positive match to an identity in the KST File. If the TSC confirms the match, the TSC contacts the relevant nominating officials, who check for any information that has not yet been entered into the databases the NICS searches, that would prohibit the transfer of a firearm under 18 U.S.C. § 922(g) or (n) or state law.

12. If the potential transferee is determined not to be a positive match to an identity in the KST file, or no prohibiting information is provided by the nominating officials, and, if no other prohibiting information has been discovered by NICS, the FFL receives a "proceed" response.

13. The NICS does not inform the FFL of any listing in the NCIC KST File, or any information that would support such a listing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8<sup>th</sup> day of March 2019.



Robin A. Stark-Nutter  
NICS Section Chief  
Criminal Justice Information Services Division  
Federal Bureau of Investigation

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANAS ELHADY, *et al.*, )  
)  
Plaintiffs, )  
)  
v. )  
)  
CHARLES H. KABLE, Director of the )  
Terrorist Screening Center; in his official )  
capacity, *et al.*; )  
)  
Defendants. )

Case No. 16-cv-00375  
Hon. Anthony J. Trenga  
Mag. Hon. John F. Anderson

PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT

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*\*Mr. Abbas licensed in VA, not in D.C.  
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Admitted to practice in this Court*

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**TABLE OF EXHIBITS**

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1A	Detroit Medical Center and Hart EMS Medical Services Records	Elhady Medical	January 25, 2018
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2	Deposition of Baby Doe 2, by his next friend, Father Doe 2	Baby Dep.	January 17, 2018
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3	Deposition of Yaseen Kadura	Kadura Dep.	November 30, 2017
3A	Kadura Redress Letter		May 8, 2013
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4	Deposition of Osama Hussein Ahmed	Ahmed Dep.	February 20, 2018
4A	Ahmed Boarding Passes		August 8, 2016
5	Deposition of Ahmad Ibrahim Al Halabi	Al Halabi Dep.	February 23, 2018
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6	Deposition of Michael Edmund Coleman	Coleman Dep.	February 6, 2018
7	Deposition of Dr. Wael Hakmeh	Hakmeh Dep.	March 2, 2018
7A	Hakmeh Boarding Passes		June 1, 2016
8	Deposition of Hassan Shibly	Shibly Dep.	February 12, 2018
8A	Shibly Boarding Passes		
8B	Shibly Redress Letter		March 8, 2011
9	Deposition of Ausama Elhuzayel	Elhuzayel Dep.	January 18, 2018
9A	Ausama Elhuzayel – April 23, 2016 travel itinerary	Elhuzayel Itinerary	April 23, 2016
9B	Elhuzayel Boarding Passes		January 18, 2018
9C	Elhuzayel Redress Letter		December 6, 2016
10	Deposition of Donald Thomas	Thomas Dep.	January 17, 2018
10A	Donald Thomas – April 27, 2016 travel itinerary	Thomas Itinerary	April 27, 2016
11	Deposition of Murat Frljuckic	Frljuckic Dep.	December 21, 2017
11A	Frljuckic Redress Letter		October 31, 2014
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14	Deposition of Dr. Adnan Khalil Shaout	Shaout Dep.	January 4, 2018
14A	Shaout Boarding Passes		October 16, 2017
14B	Shaout Redress Letter		November 5, 2015
15	Deposition of Saleem Ali	Ali Dep.	March 14, 2018
16	Deposition of Shahir Anwar	Shahir Dep.	February 15, 2018
16A	Shahir Redress Letter		March 23, 2015
17	Deposition of Samir Anwar	Samir Dep.	January 3, 2018
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17B	Samir Redress Letter		August 7, 2014
18	Deposition of Dr. Muhammad Yahya Khan	Khan Dep.	February 8, 2018
18A	Khan Boarding Passes		December 28, 2017
18B	Khan Redress Letter		July 14, 2015
19	Deposition of Dr. Hassan Fares	Fares Dep.	January 2, 2018
19A	Fares Boarding Passes		August 3, 2016
20	Deposition of Zuhair El-Shwehdi	El-Shwehdi Dep.	November 29, 2017
20A	El-Shwehdi Boarding Passes		June 2, 2016
21	Deposition of John Doe 2	JD2 Dep.	January 8, 2018
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22	Deposition of John Doe 3	JD3 Dep.	April 11, 2018
22A	JD3 Boarding Passes		
23	Deposition of John Doe 4	JD4 Dep.	December 18, 2017
23A	JD4 Boarding Passes		January 12, 2017
24	Transcript of Deborah Moore, DHS TRIP Designated Representative, in <i>Elbady v. Kable</i>	DHS TRIP Dep.	December 20, 2017
25	Transcript of Timothy P. Groh, TSC Designated Representative, in <i>Elbady v. Kable</i>	TSC Dep.	March 1, 2018
26	Transcript of Hao-y Tran Froemling, TSA Designated Representative, in <i>Elbady v. Kable</i>	TSA Dep.	March 20, 2018
27	Transcript of Randy Howe, CBP Designated Representative, in <i>Elbady v. Kable</i>	CBP Dep.	March 22, 2018
28	Transcript of Matthew J. DeSarno, FBI Designated Representative	FBI Dep.	April 9, 2018

#	Exhibit Title	Short Name	Date
29	Transcript of Hao-y Tran Froemling, TSA Designated Representative, in <i>Elbady v. Kable</i>	TSA Supp. Dep.	October 4, 2018
30	Homeland Security Presidential Directive/HSPD-6	HSPD-6	September 16, 2003
31	Homeland Security Presidential Directive/HSPD-11	HSPD-11	August 27, 2004
32	Review of the Terrorist Screening Center, U.S. Department of Justice Office of the Inspector General Audit Report 05-27	2005 TSC Audit	June 2005
33	Memorandum of Understanding Regarding the Screening of Employees of P&O Ports North America, Inc.	P&O Ports Screening	March 27, 2006
34	GAO-06-131: TERRORIST WATCH LIST SCREENING Effort to Help Reduce Adverse Effects on the Public	GAO TSDB Adverse Effects	September 2006
35	List of Programs Under Which TSA May Use TSDB Records and Data to Conduct Security Threat Assessments	TSA Programs List	December 18, 2006
36	Homeland Security Presidential Directive-11: An Updated Strategy for Comprehensive Terrorist-Related Screening Procedures	HSPD-11 Updated Strategy	Fall 2007
37	Follow-up Audit of the Terrorist Screening Center, U.S. Department of Justice Office of the Inspector General Audit Report 07-41	2007 TSC Follow-Up Audit	September 2007
38	Memorandum of Understanding of Terrorist Watchlist Redress Procedures	2007 Redress MOU	September 19, 2007
39	GAO-08-110: TERRORIST WATCH LIST SCREENING Opportunities Exist to Enhance Management Oversight, Reduce Vulnerabilities in Agency Screening Processes, and Expand Use of the List	GAO Expand Screening	October 2007
40	Declaration of Tracey A. North in <i>Ibrahim v. Department of Homeland Security</i>	FBI North <i>Ibrahim</i> Decl.	November 20, 2009

#	Exhibit Title	Short Name	Date
41	GAO-10-401T: HOMELAND SECURITY Better Use of Terrorist Watchlist Information and Improvements in Deployment of Passenger Screening Checkpoint Technologies Could Further Strengthen Security	GAO Screening Tech.	January 27, 2010
42	Declaration of Mark F. Giuliano, Federal Bureau of Investigation in <i>Latif v. Holder</i>	FBI Giuliano <i>Latif</i> Decl.	November 16, 2010
43	Declaration of Christopher M. Piehota in <i>Latif v. Holder</i>	TSC Piehota <i>Latif</i> Decl.	November 17, 2010
44	OIG-11-96 Transportation Security Administration Vetting of Airmen Certificates and General Aviation Airport Access and Security Procedures	TSA Airmen Certificates	July 2011
45	GAO-14-531: SECURE FLIGHT TSA Should Take Additional Steps to Determine Program Effectiveness	GAO Secure Flight	September 2014
46	"Safeguarding Privacy and Civil Liberties while Keeping our Skies Safe," Statement of Christopher M. Piehota, Director, Terrorist Screening Center, before the U.S. House Subcommittee on Transportation Security	TSC Piehota 2014 House Testimony	September 18, 2014
47	Declaration of G. Clayton Grigg in <i>Mohamed v. Holder</i>	TSC Grigg <i>Mohamed</i> Decl.	December 9, 2014
48	Declaration of Michael Steinbach in <i>Latif v. Holder</i>	FBI Steinbach <i>Latif</i> Decl.	May 28, 2015
49	Declaration of G. Clayton Grigg in <i>Latif v. Holder</i>	TSC Grigg <i>Latif</i> Decl.	May 28, 2015
50	Declaration of John Giacalone in <i>Latif v. Lynch</i>	FBI Giacalone <i>Latif</i> Decl.	October 19, 2015
51	Terrorist Screening Center Redress Program Standard Operating Procedures	2015 Redress SOP	December 8, 2015
52	Declaration of Michael Steinbach in <i>Mohamed v. Holder</i>	FBI Steinbach <i>Mohamed</i> Decl.	March 2, 2016

#	Exhibit Title	Short Name	Date
53	Declaration of Roderick Allison in <i>Mohamed v. Lynch</i>	TSA Allison <i>Mohamed</i> Decl.	March 2, 2016
54	Privacy Impact Assessment Update for the Watchlist Service, DHS/ALL-027(e)	USCIS PIA	May 5, 2016
55	FinCEN Awards Recognize Partnership Between Law Enforcement and Financial Institution to Fight Financial Crime	FinCEN Release	May 10, 2016
56	Baltimore Policy Policy 802, Handling Codes: Terrorist Response	TSC Handling Codes	September 8, 2016
57	Terrorist Screening Center: Frequently Asked Questions	TSC FAQ	January 2017
58	Terrorist Screening Center: Weekly Export Metrics	TSC Sample Weekly Report	September 4, 2017
59	Terrorist Screening Center: Director's Monthly Report - September	TSC Sample Monthly Report	October 16, 2017
60	Excerpts of FBI/TSC Privilege Log	TSC Priv. Log	November 15, 2017
61	Excerpts of Defendants' Responses to Plaintiffs' First Set of Requests for Admissions to Official Capacity TSC Defendants	TSC RFA	December 27, 2017
62	Overview of the U.S. Government's Watchlisting Process and Procedures	Overview	January 2018
63	Executive Order 13780: <i>Protecting the Nation From Foreign Terrorist Entry Into the United States</i> , Initial Section 11 Report	Travel Ban Report	January 2018
64	CBP Directive No. 3340-049A: Border Search of Electronic Devices	CBP Electronic Search Policy	January 4, 2018
65	On a Typical Day in Fiscal Year 2017, CBP...	CBP 2017 Factsheet	February 13, 2018
66	Excerpts of Defendants' Objections to Plaintiffs' First Set of Interrogatories to TSC	TSC 1st Rog	February 21, 2018
67	Excerpts of Defendants' Objections to Plaintiffs' First Set of Interrogatories to FBI	FBI 1st Rog	February 22, 2018

#	Exhibit Title	Short Name	Date
68	Declaration of Timothy P. Groh Submitted In Camera, Ex Parte, in <i>Elbady v. Kable</i>	TSC Groh Decl. I	April 23, 2018
69	Declaration of Timothy P. Groh Submitted In Camera, Ex Parte, In Response to Plaintiffs' Second Motion to Compel in <i>Elbady v. Kable</i>	TSC Groh Decl. II	April 27, 2018
70	Declaration of Timothy Joseph in <i>Elbady v. Kable</i>	TSA Joseph Decl.	April 27, 2018
71	Defendants' Supplemental Responses to Plaintiffs' First Set of Interrogatories to FBI	FBI 1st Rog Supp.	May 17, 2018
72	Declaration of Timothy P. Groh in <i>Elbady v. Kable</i>	TSC Groh Decl. III	May 30, 2018
73	Declaration of Randy Howe in <i>Elbady v. Kable</i>	CBP Howe Decl.	June 14, 2018
74	Declaration of Timothy P. Groh in <i>Elbady v. Kable</i>	TSC Groh Decl. IV	July 5, 2018
75	Myth Buster: TSA's Watch List is More Than One Million People	TSA Myth Release	July 14, 2018
76	Supplemental Declaration of Timothy P. Groh in <i>Elbady v. Kable</i>	TSC Groh Decl. V	September 5, 2018
77	Email from Amy Powell to Gadeir Abbas re: Meet/Confer Request re NSC Approval of WLG	NSC Email	October 11, 2018
78	National Strategy to Combat Terrorist Travel of the United States of America	2018 National Strategy	December 2018
79	TSC's Supplemental Response to Interrogatory 30	TSC. Supp. Rog 30 I	February 8, 2019
80	TSC's Addendum to Supplemental Response to Interrogatory 30	TSC Supp. Rog 30 II	February 21, 2019
81	TSC's Second Addendum to Supplemental Response to Interrogatory 30	TSC Supp. Rog 30 III	March 1, 2019
82	CJIS Supplemental Response to Interrogatory 30	CJIS Supp. Rog 30	March 1, 2019

#	Exhibit Title	Short Name	Date
83	FBI Nominations & VGTOF Training, Redacted Exhibits as filed by the Government in <i>ACLU v. U.S. Department of Justice</i> , 2:09-cv-00642 (W.D. Wa. July 7, 2011)	ACLU KST Lawsuit Docs	January 28, 2008

**TABLE OF ACRONYMS**

<b>Acronym</b>	<b>Definition</b>
ACLU	American Civil Liberties Union
CAIR	Council on American-Islamic Relations
CBP	Customs and Border Protection
DHS	Department of Homeland Security
DHS TRIP	DHS Traveler Redress Inquiry Program
DOJ	Department of Justice
FAQ	Frequently Asked Questions
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
GAO	Government Accountability Office
HSPD	Homeland Security Presidential Directive
KST	Known or Suspected Terrorist
MOU	Memorandum of Understanding
MSJ	Motion for Summary Judgment
NCTC	National Counterterrorism Center
NSC	National Security Council
NSPM	National Security Presidential Memorandum
OFAC	Office of Foreign Asset Control
OIG	Office of the Inspector General
OPIC	Overseas Private Investment Corporation
PIA	Privacy Impact Assessment
RFA	Request for Admission
Rog	Interrogatory
SOP	Standard Operating Procedures
TSA	Transportation Security Administration
TSC	Terrorist Screening Center
TSDB	Terrorist Screening Database a/k/a “the watchlist”
TSDB Listee	An individual with identifying information stored in the Terrorist Screening Database
USAID	U.S. Agency for International Development
USCIS	U.S. Citizenship and Immigration Services
VWP	Visa Waiver Program
WAC	Watchlisting Advisory Council
WLG	Watchlisting Guidance
WLS	DHS Watchlisting Service

## INTRODUCTION

**“If I am not guilty, why should you ruin my life? Why should you devastate my family life? ...[The watch list] destroyed my family. It destroyed me. It destroyed me.”** MSJ Ex. 22, John Doe 3 Dep. at 130

The federal government has imposed a kind of second-class citizenship on the Plaintiffs and thousands of American Muslims throughout the country. Without charges, without arrests, without even an investigation sometimes — the agency Defendants act in concert to deprive thousands of innocent Americans, mostly Muslims, of their right to be free from a government that extrajudicially designates them as worthy of permanent suspicion.

It is this permanent suspicion and the consequences that accompany it that pushed John Doe 3 to leave his wife and children in the United States and exile himself to Germany. The Watchlisting System, a set of interlocking programs and joint ventures led by the federal government’s Watchlist Advisory Counsel, is so pervasive and creates such a profound fear within its targets that an innocent American fled this country in an attempt to live outside the Watchlisting System’s reach.

But the Watchlisting System is no longer a domestic effort. It is a global enterprise, disclosing to more than 60 countries the disfavored status the federal government has assigned to over one million people. At this stage of the Watchlisting System’s evolution, there really is no escaping it.

The project has now enlisted tens of thousands of public and private entities in the United States and beyond to make sure a person’s status defines the parameters of their lives and affects them no matter what they do. The disfavored status makes certain jobs, licenses, privileges, and benefits impossible to obtain. The status means a trip to Canada by land might result in the Watchlisting System’s targets being handcuffed at gun point to be detained and interrogated for the day. These Plaintiffs, who all bear the burdens of the status Defendants have assigned to them, confront distinct and more onerous processes whatever they do and wherever they go. Just as the agency Defendants

intended.

And for what? TSA acknowledges that the key parts of the Watchlisting System it manages have prevented no acts of terrorism. CBP does the same. The FBI is a bit more reserved, admitting that the agency knows, but will not reveal, whether an actual perpetrator of a violent act of terrorism inside the United States has ever been targeted by the Watchlisting System at the time they committed their despicable deed. It is the answer of an agency eager to paper over an illegal boondoggle that makes no one safer.

The Watchlisting System is a violation of the Constitution. The evidence makes it clear. This Court must bring to an end the federal government's practice of imposing on innocent Americans—people who have not been arrested, charged, or convicted of a violent offense—a status that transforms them into second-class citizens.

## **STATEMENT OF MATERIAL FACTS**

### **A. The Terrorist Screening Center and Terrorist Screening Database**

1. President George W. Bush executed Homeland Security Presidential Directive-6 on September 16, 2003. HSPD-6 directed the U.S. Attorney General to “establish an organization to consolidate the Government's approach to terrorism screening.” HSPD-6 created the Terrorist Screening Center, which is administered by the FBI. MSJ Ex. 30, *HSPD-6*; MSJ Ex. 62, *Overview* at 1.

2. The Terrorist Screening Center, alongside the National Counterterrorism Center, co-chairs a federal inter-agency body known as the Watchlisting Advisory Council. The agencies which regularly attend Watchlisting Advisory Council meetings include all Defendants in this action. MSJ Ex. 69, TSC Groh Decl. II ¶ 41; MSJ Ex. 72, TSC Groh Decl. III ¶ 3; MSJ Ex. 28, FBI Dep. 52:8-11.

3. Through a consensus-driven discussion and resolution process, the Watchlisting Advisory Council writes watchlisting policies. The Watchlisting Advisory Council sets the governing substantive standards and criteria for watchlisting, which its member agencies follow. The National

Security Council ratifies the Watchlisting Advisory Council's policies. Current watchlisting policy is embodied in the 2015 Watchlisting Guidance. The Government refuses to publish or produce the 2015 Watchlisting Guidance in any form; it is a secret document. MSJ Ex. 69, TSC Groh Decl. II ¶¶ 42-43; MSJ Ex. 76, TSC Groh Decl. V ¶ 13; MSJ Ex. 25, TSC Dep. 26:16-27:4, 27:6-12, 27:21-28:11, 28:22-29:9, 37:4-7, 196:19-197:8; MSJ Ex. 28, FBI Dep. 16:3-15, 259:9-260:15, 384:10-22, 395:11-19; MSJ Ex. 26, TSA Dep. 126:8-22, 284:8-20, 343:13-344:9, 366:4-17; MSJ Ex. 24, DHS TRIP Dep. 152:1-153:15; MSJ Ex. 27, CBP Dep. 330:6-331:10; MSJ Ex. 77, NSC Email; MSJ Ex. 48, FBI Steinbach *Latif* Decl. ¶¶ 12, 33; MSJ Ex. 49, TSC Grigg *Latif* Decl. ¶¶ 15 n.7, 23; MSJ Ex. 47, TSC Grigg *Mohamed* Decl. ¶¶ 21-22; MSJ Ex. 60, TSC Priv. Log.

4. HSPD-6 also directs the Attorney General to consolidate terrorism-related information and then use it to support (a) federal, state, local, territorial, tribal, foreign-government, and private-sector screening processes, and (b) diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes. The TSC thus houses the Terrorist Screening Database ("TSDB" or "watchlist"). The TSDB is a centralized collection of information about listed individuals (i.e. "TSDB Listees"). The individual identifying information includes biographic and biometric data, such as names, aliases, birthdates, photographs, fingerprints, and iris scans. MSJ Ex. 30, *HSPD-6*; MSJ Ex. 62, *Overview* at 2; MSJ Ex. 68, TSC Groh Decl. I ¶ 7.

5. The TSDB is updated continuously and disseminated around the country and world in real-time. The TSDB, since 2006, retains copies of "all prior versions of a person's record." *See* MSJ Ex. 62, *Overview* at 2; MSJ Ex. 66, TSC 1st Rog at 8; MSJ Ex. 47, TSC Grigg *Mohamed* Decl. ¶ 18; MSJ Ex. 26, TSA Dep. 105:17-22; MSJ Ex. 27, CBP Dep. 121:20-22; MSJ Ex. 25, TSC Dep. 300:4-13.

6. The TSC provides a centralized identity resolution service whenever federal, state, or foreign partners encounter an individual who may match a TSDB record. MSJ Ex. 62, *Overview* at 5.

7. TSDB records are unclassified. The TSDB does not include the underlying derogatory

information which supports an individual's inclusion in the database. MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶¶ 7, 9; MSJ Ex. 43, TSC Pichota *Latif* Decl. ¶ 6.

### **B. Inclusion in the Terrorist Screening Database**

8. Federal government agencies and foreign government partners may nominate individuals to the TSDB. Any suggested change to the TSDB is known as a nomination. A nomination of a new individual is known as an "Add." A nomination to change an existing record is known as a "Modify." A nomination to delist a record is known as a "Remove." MSJ Ex. 62, *Overview* at 3, 6, 8; MSJ Ex. 66, TSC 1st Rog at 7; MSJ Ex. 47, TSC Grigg *Mohamed* Decl. ¶ 13.

9. As of 2017, there are approximately 1,160,000 individuals on the watchlist, of which 4640 are U.S. Persons. In 2017, the TSC accepted 166,603 new additions of individuals to the watchlist and rejected 5,215. A decade earlier, in 2008, there were less than 400,000 individuals on the watchlist. MSJ Ex. 74, TSC Groh Decl. IV ¶ 4; MSJ Ex. 66, TSC 1st Rog at 7; MSJ Ex. 75, TSA Myth Release.

10. Federal government agencies and foreign government partners draw the information supporting their nominations from intelligence, law enforcement, homeland security, embassy, consulate, financial, and immigration records. MSJ Ex. 62, *Overview* at 3; MSJ Ex. 55, FinCEN Release.

11. New additions to the TSDB must include minimal identifying and substantive information. The minimum identifying information must be sufficient to allow screeners to determine whether an individual's identity is an actual match to a TSDB record. MSJ Ex. 62, *Overview* at 3; MSJ Ex. 48, FBI Steinbach *Latif* Decl. ¶ 9; MSJ Ex. 46, TSC Pichota 2014 House Testimony at 2; MSJ Ex. 66, TSC 1st Rog at 25.

12. The minimum substantive information must be enough to satisfy the TSDB inclusion standard, which the Government calls the "reasonable suspicion that the individual is a known or suspected terrorist" standard. MSJ Ex. 66, TSC 1st Rog at 25; MSJ Ex. 26, TSA Dep. 76:9-19; MSJ Ex. 62, *Overview* at 3; MSJ Ex. 30, *HSPD-6*; MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶ 13.

13. The Government defines a “Known Terrorist” as “an individual who has been (1) arrested, charged by information, or indicted for, or convicted of, a crime related to terrorism and /or terrorist activities by the United States Government or foreign government authorities; or (2) identified as a terrorist or member of a terrorist organization pursuant to statute, Executive Order or international legal obligations pursuant to a United Nations Security Council Resolution.” MSJ Ex. 78, 2018 National Strategy at 13; MSJ Ex. 57, TSC FAQ.

14. The Government defines a “Suspected Terrorist” as “an individual who is reasonably suspected to be engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and /or terrorist activities.” MSJ Ex. 78, 2018 National Strategy at 14; *accord* MSJ Ex. 57, TSC FAQ.

15. The Government adds individuals to the TSDB if their nomination is based “upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.” MSJ Ex. 62, *Overview* at 4.

16. There is at least one exception to the TSDB’s inclusion standard. The exception applies to foreign nationals, with undisclosed additional criteria. The exception exists to facilitate immigration and border screening by the Department of State and Department of Homeland Security. The exception is also used by the TSA to screen foreign nationals for transportation credentials. The Government will not disclose the inclusion standard for this exception. MSJ Ex. 25, TSC Dep. 64:20-65:12, 76:8-77:11; MSJ Ex. 26, TSA Dep. 83:2-12; MSJ Ex. 27, CBP Dep. 123:15-124:2, 124:22-125:12. MSJ Ex. 28, FBI Dep. 394:19-395:3; MSJ Ex. 46, TSC Pichota 2014 House Testimony at 2; MSJ Ex. 49, TSC Grigg *Latif* Decl. ¶ 15 n.8; MSJ Ex. 68, TSC Groh Decl. I ¶ 11.

17. The Terrorist Screening Center reviews all nominations to the TSDB and their

supporting facts. The final authority to accept, reject, or modify a nomination rests with the TSC alone. *See, e.g.*, MSJ Ex. 62, *Overview* at 4, 5, 7; MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶ 12; MSJ Ex. 49, TSC Grigg *Latif* Decl. ¶ 27; MSJ Ex. 47, TSC Grigg *Mohamed* Decl. ¶ 11; MSJ Ex. 26, TSA Dep. 280:19-281:8; MSJ Ex. 27, CBP Dep. 110:22-111:8, 112:11-15; MSJ Ex. 66, TSC 1st Rog at 33

18. The TSC may consider an individual's "race, ethnicity, or religious affiliation" as well as their "beliefs and activities protected by the First Amendment, such as freedom of speech, free exercise of religion, freedom of the press, freedom of peaceful assembly, and the freedom to petition the government for redress of grievances" as information supporting a nomination to the TSDB. *See* MSJ Ex. 62, *Overview* at 4; MSJ Ex. 28, FBI Dep. 305:5-18.

19. The TSC may consider an individual's travel history, associates, business associations, international associations, financial transactions, and study of Arabic as information supporting a nomination to the TSDB. MSJ Ex. 40, FBI North *Ibrahim* Decl. ¶ 20; MSJ Ex. 50, FBI Giacalone *Latif* Decl. ¶ 9; MSJ Ex. 25, TSC Dep. 340:17-341:13, 343:21-344:14; MSJ Ex. 48, FBI Steinbach *Latif* Decl. ¶¶ 24-25, 28-29; MSJ Ex. 55, FinCEN Release; MSJ Ex. 32, 2005 TSC Audit at viii.

20. TSDB records are not criminal records. The TSC includes individuals in the TSDB who have not been convicted, arrested, investigated, or suspected of any crime. Inclusion in the TSDB does not require evidence that an individual has engaged in any criminal activity. Inclusion in the TSDB does not require evidence that an individual has committed a crime, is committing a crime, or will commit a crime in the future. Individuals who have been acquitted of a terrorism-related crime may still be listed in the TSDB. MSJ Ex. 61, TSC RFA # 12; MSJ Ex. 50, FBI Giacalone *Latif* Decl. ¶ 16; MSJ Ex. 25, TSC Dep. 323:6-9; MSJ Ex. 28, FBI Dep. 254:5-255:8, 261:9-21, 264:15-18, 265:4-21, 276:13-18, 284:21-285:8; MSJ Ex. 52, FBI Steinbach *Mohamed* Decl. ¶ 9; MSJ Ex. 48, FBI Steinbach *Latif* Decl. ¶ 7.

21. To fulfill its mission as a central repository of watchlist identities, the TSC exports and

shares TSDB information with various partners, including federal, state, and foreign government agencies and officials. Governments use TSDB information to support their screening, vetting, credentialing, diplomatic, military, intelligence, law enforcement, visa, immigration, and other security functions. MSJ Ex. 62, *Overview* at 1-2, 5-6. MSJ Ex. 66, TSC 1st Rog at 6; MSJ Ex. 57, TSC FAQ.

22. Federal, state, local, territorial, and tribal personnel use the TSDB “each day” to “make countless decisions related to immigration, border security, law enforcement, intelligence, transportation security, credentialing, and critical infrastructure.” MSJ Ex. 36, *HSPD-11 Updated Strategy* § 1.

23. Based on the specific needs and missions of its various partners, the TSC annotates TSDB records. TSC assigns these annotations based on distinct criteria from TSDB’s overall inclusion standard. The final authority to accept, reject, or modify a nomination or annotation to a TSDB rests with the TSC alone. *See* MSJ Ex. 62, *Overview* at 2, 4, 5, 7; MSJ Ex. 46, TSC Pichota 2014 House Testimony at 4; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.2.2.

24. TSDB Listees may infer their watchlist status from the adverse consequences they experience, including “delay, inconvenience, or other difficulties at a point of screening where TSDB data is used to screen for terrorists.” *See* MSJ Ex. 25, TSC Dep. 174:20-175:7; MSJ Ex. 51, *2015 Redress SOP* § 2.1.1.

### **C. Custom and Border Protection Uses the TSDB to Screen Travelers at Ports of Entry**

#### **1) CBP Border Screening Policies and Practices**

25. The TSC exports the TSDB to the DHS Watchlist Service. The DHS Watchlist Service then provides CBP with access to the TSDB through CBP’s TECS system. CBP screens all individual travelers against the TSDB who are seeking to enter the United States at U.S. ports of entry, between ports of entry, and at preclearance facilities abroad. CBP may also screen and question TSDB Listees seeking to exit the United States via U.S. ports of entry. MSJ Ex. 62, *Overview* at 5; MSJ Ex.

27, CBP Dep. 28:18-21, 29:19-21, 31:4-12, 32:20-33:1, 46:19-50:3.

26. CBP and the U.S. Coast Guard use the TSDB to screen passenger and crew manifests for ships traveling through U.S. waters and seaports. MSJ Ex. 36, *HSPD-11 Updated Strategy* §§ 3.2.3, 3.3, 3.4.1; MSJ Ex. 27, CBP Dep. 36:21-37:1, 37:19-21.

27. CBP uses the TSDB to deem foreign national TSDB Listees inadmissible to the United States. CBP denies entry based on TSDB Listee status. In 2017, CBP encountered 2,554 TSDB Listees attempting to enter the United States. *See* MSJ Ex. 27, CBP Dep. 34:10-19, 58:15-18; 59:10-18, 63:8-11; MSJ Ex. 73, CBP Howe Decl. ¶ 7; MSJ Ex. 63, Travel Ban Report at 8-9. MSJ Ex. 51, *2015 Redress SOP* §§ 5.1.1 & Glossary.

28. CBP uses the TSDB to deny TSDB Listees boarding on international flights, or to recommend to foreign governments that they deny TSDB Listees boarding on international flights. CBP may deny boarding to U.S. Persons located abroad due to their TSDB Listee status, even if the U.S. Person is *not* designated as “No Fly.” *See* MSJ Ex. 59, *TSC Sample Monthly Report* at 2, 9, 10; MSJ Ex. 27, CBP Dep. 58:15-18; 59:10-18, 63:8-11; MSJ Ex. 51, *2015 Redress SOP* § 5.1.1 & Glossary.

29. Once an individual reaches a U.S. port of entry, CBP initial inspection officers are alerted if the individual is a TSDB Listee. CBP requires secondary inspection at U.S. ports of entry for TSDB Listees. MSJ Ex. 27, CBP Dep. 67:2-8, 67:19-68:17, 77:4-79:21. 80:15-19, 221:8-22.

30. The TSC and CBP assigns an “armed and dangerous” annotation to TSDB Listees based on unknown criteria the Government refuses to disclose. Initial inspection alerts inform CBP officers that some TSDB Listees are designated “armed and dangerous.” If an “armed and dangerous” alert appears in connection with a TSDB record, CBP officers may call in law enforcement reinforcements, call in an explosive-sniffing canine, draw their firearms, or handcuff the TSDB Listee. This armed and dangerous operational response will occur in public. *See* MSJ Ex. 27, CBP Dep. 135:2-15, 136:19-137:5, 138:21-139:16, 227:19-228:11, 248:4-249:8, 251:8-22, 255:5-16, 258:12-19, 262:15-

263:1, 350:20-351:6; *See* MSJ Ex. 58, *TSC Sample Weekly Report* at 2; MSJ Ex. 32, 2005 TSC Audit at 54.

31. Once a TSDB Listee is referred to secondary inspection, CBP officers may pat them down, search their wallet and copy its contents, search their cars, or search their electronics. CBP also often calls ICE agents and FBI agents in to participate in secondary inspection interviews and investigations of TSDB Listees. MSJ Ex. 27, CBP Dep. 262:20-263:1, 266:3-267:21, 281:3-19, 285:4-15, 285:18-286:8; MSJ Ex. 28, FBI Dep. 354:21-356:11; MSJ Ex. 62, *Overview* at 5; MSJ Ex. 64, CBP Electronic Search Policy § 5.1.4.

32. CBP policy provides that TSDB Listee status alone justifies and requires an “advanced search,” of their electronic devices. An advanced search entails the physical connection of the electronic device to CBP equipment in order to review, copy, and analyze the electronic device’s contents. CBP policy prohibits it from performing the advanced search of the electronic device in the TSDB Listee’s presence, or from informing the TSDB listee that the electronic device’s information has been searched, copied, or conveyed to other agencies. *See* MSJ Ex. 64, CBP Electronic Search Policy §§ 5.1.4, 5.1.6, 5.4.1.3, 5.4.2.5; MSJ Ex. 27, CBP Dep. 305:4-10, 312:15-313:4; *see also* MSJ Ex. 69, TSC Groh Decl. II ¶ 41.

33. If a TSDB Listee has any travelling companions, CBP documents the identities of the associated companions. CBP also searches and copies the contents of the traveling companions’ electronic devices. MSJ Ex. 27, CBP Dep. 270:2-16; MSJ Ex. 32, 2005 TSC Audit at 100.

34. CBP documents the results of its secondary inspections for TSDB listees in TECS. CBP retains all historical secondary inspection logs and watchlist information about travelers, even if the traveler has since been removed from the TSDB. MSJ Ex. 27, CBP Dep. 67:2-8, 67:19-68:17, 77:4-79:21, 80:15-19, 198:16-199:5, 221:8-22.

## ***2) Plaintiffs’ Adverse Land Border Crossing Experiences***

35. On his way into Canada in April 2015, Mr. Elhady was detained and interrogated by Canadian authorities. The Canadian authorities asked him to provide the exact time he would be crossing the border back into the United States. Mr. Elhady informed them that he would be crossing between 11:30 p.m. and midnight. Upon approaching the border to return to the United States that evening, Mr. Elhady handed the primary inspection CBP officer his ID and his DHS TRIP redress letter. He was immediately asked to put his hands on his steering wheel and his car was surrounded by CBP officers. He was told to get out of the car and walk to the back of the car, where he was handcuffed in public view. He was then escorted to a freezing cold room with a metal seat and “very bright light[s].” CBP officers then confiscated his shoes and outer clothing and left him in the room for more than ten hours. Every hour or hour and a half, CBP officers would come in and interrogate him about his family members and people he knew. MSJ Ex. 1, Elhady Dep. at 181-186.

36. Mr. Elhady pleaded with the CBP officers to be let out of the room. Due to the severe conditions of confinement, Mr. Elhady ultimately needed emergency medical attention. Mr. Elhady was taken on a stretcher to an ambulance, handcuffed to the stretcher, and transported to a hospital where he was handcuffed to a chair. According to his medical records, Mr. Elhady was administered Basic Life Support (BLS).<sup>1</sup> CBP officers then attempted to interfere with his diagnosis and treatment by ordering the treating doctor not to ask questions about what had happened. Upon being discharged, Mr. Elhady was handcuffed to the floor of a CBP bus and taken back to the border before being released. This incident caused Mr. Elhady to stop crossing the border altogether and from flying

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<sup>1</sup> “Basic Life Support Emergency” is defined by the American Red Cross as “the care healthcare providers and public safety professionals provide to patients who are experiencing respiratory arrest, cardiac arrest or airway obstruction. BLS includes psychomotor skills for performing high-quality cardiopulmonary resuscitation (CPR), using an automated external defibrillator (AED) and relieving an obstructed airway for patients of all ages.” See Basic Life Support for Healthcare Providers, American Red Cross, available at: [http://www.redcross.org/images/MEDIA\\_CustomProductCatalog/m48040087\\_BLS\\_Handbook\\_\(Final\).pdf](http://www.redcross.org/images/MEDIA_CustomProductCatalog/m48040087_BLS_Handbook_(Final).pdf).

for more than a year. MSJ Ex. 1, Elhady Dep. at 186-192, 194, 269; MSJ Ex. 1A, Elhady Medical at 4.<sup>2</sup>

37. On at least two prior occasions while Mr. Elhady attempted to cross the border into the United States, CBP officers surrounded Mr. Elhady, told him to step out of his vehicle, handcuffed him, stripped him of his belongings and detained him in a cell for approximately seven to eight hours. Mr. Elhady was refused repeated requests to contact his attorney. And on at least one occasion, his “car was searched and the carpet, even the carpet was tortured and removed.” The CBP officers frequently told him, “Are you serious? Someone like you should have stopped crossing the border by now.” MSJ Ex. 1, Elhady Dep. at 150, 152, 156, 165-177.

38. Like Mr. Elhady, Mr. Kadura has experienced adverse treatment while crossing back into the United States from Canada at a port of entry. On one occasion, CBP officers stopped all traffic at all inspection booths, surrounded Mr. Kadura with hands on their holsters, and then handcuffed him. At least one individual filmed the incident on her phone. Mr. Kadura was detained and left shoeless in a freezing cold room without windows or any place to sit for seven and a half to eight hours. Mr. Kadura was then released without any questioning. CBP officers refused to return his phone, which they had confiscated as part of taking him into custody. MSJ Ex. 3, Kadura Dep. at 163-167, 169.

39. The next time Mr. Kadura crossed a border, returning to the country from Mexico, he was again handcuffed as soon as his passport was swiped. “[The crowd of people were] all looking at [him] like this is El Chapo.” He was handcuffed to a seat for about four or five hours. At one point, one of the CBP officers mocked him by mimicking an explosion sound. MSJ Ex. 3, Kadura Dep. at

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<sup>2</sup> Mr. Elhady’s medical records state that he had “delayed cap [sic] refill,” an indication that he may have suffered from dehydration, shock and hypothermia. MSJ Ex. 1A, Elhady Medical at 8; “Capillary nail refill test,” MedlinePlus, U.S. National Library of Medicine, *available at*: <https://medlineplus.gov/ency/article/003394.htm>.

236-239.

40. During another border-crossing instance, CBP extended the adverse treatment to Mr. Kadura's father. Mr. Kadura's father happened to be traveling with him when CBP subjected Mr. Kadura to another lengthy detention and interrogation. One of the worst memories of Mr. Kadura's life was seeing his father "have to put his hands up on the wall, have somebody feel up his crotch, you know what I mean, and feel his whole body up, like trying to look for something on him like he's a criminal..." MSJ Ex. 3, Kadura Dep. at 138-141.

41. Mr. Al Halabi previously worked at Guantanamo Bay detention camp. On one occasion, while Mr. Al Halabi was returning from vacation at Niagara Falls, CBP handcuffed him and took him into custody in front of his entire family. CBP placed Mr. Halabi in a brightly-lit freezing holding cell with no shoes and left him there for several hours. He had "flashbacks of the time being in Guantanamo... that's how prisoners were in that holding cell." Once he and his family were released several hours later, he found his "car [was] upside down... it was like a dog was sitting there for two hours." Mr. Al Halabi described his experience as "terrifying." MSJ Ex. 5, Al Halabi Dep. at 74-81.

42. On many border-crossing occasions, Mr. Shibly has been stopped by armed officers, handcuffed and placed in custody, including once in front of his grandmother. That day, his grandmother fainted and ended up being taken by an ambulance and hospitalized because of "the stress of what we had to go through at CBP and being held for hours." Mr. Shibly described it as "a very traumatic experience." A CBP officer told Mr. Shibly that he would receive the same treatment on the way back. MSJ Ex. 8, Shibly Dep. at 74-79.

43. Mr. Shibly's friends experienced similar treatment as Mr. Shibly when they crossed the border with him. As a result, Mr. Shibly's friends started refusing to cross the border with him and drove in a separate car. However, eventually, many of Mr. Shibly's friends who had crossed with him

before, along with his wife, children, mother and sister, began experiencing the same treatment as Mr. Shibly even when they travelled without him. MSJ Ex. 8, Shibly Dep. at 110, 111, 115, 122.

44. Mr. Frljuckic has also had scary border-crossing experiences. On one occasion, Mr. Frljuckic was returning from vacation in Canada with his 70-year-old mother and four-year-old son. On another occasion, he was crossing the border with his wife and eight children. On both occasions, CBP officers drew their firearms to place Mr. Frljuckic into custody. A third time, also with his family, Mr. Frljuckic told the primary inspection CBP officer that he is always taken into custody and asked him not to panic. Nevertheless, CBP officers surrounded his car, drew guns in his direction, and again took Mr. Frljuckic into custody in front of his family, this time for six hours. One CBP officer told him that if he were to cross the border, make a U-turn and attempt to cross again, he would be subjected to the same treatment. Mr. Frljuckic described the experience as “very scary and frustrating.” Because of anxiety caused by these experiences, Mr. Frljuckic has stopped crossing the border and travelling by air. MSJ Ex. 11, Frljuckic Dep. at 47-48, 67, 82-84.

45. Once when John Doe 3 presented his passport to the primary inspection CBP officer upon returning from Canada with his wife and child, all three of them were ordered out of the car and handcuffed. CBP officers – who John Doe 3 described as “nervous” – drew guns at all three of them. John Doe 3 and his family were taken into custody and detained for approximately five and a half hours. At one point, John Doe 3 overheard CBP officers describe him as “armed and dangerous.” After this incident, because John Doe 3 and his family believed that they could have been killed that day, they made a collective decision that he should separate from the family and emigrate from the United States to Germany, which he reluctantly did. MSJ Ex. 22, JD3 Dep. at 26, 34, 37, 44, 45, 47, 50-51, 53, 59-61, 68, 77, 215.

46. Mr. El-Shwehdi has been stopped at the border and questioned. He has struggled to understand the treatment. “[I]f they book me five, six hours, they will hassle [my family] with me...

[My family] will stay with me, because we are driving the same car, yes? But myself I can stay, but why, why my kids?” After one border stop, “my family, they went to wedding, but I decide not to go to Canada. My family, they went two times to attending wedding in Canada... but I didn’t went. I stay home. Because of the hassle... so I said no, no, no. I’ll stay in America.” Mr. Shwehdi’s family has traveled on vacation to Canada without him because he wanted to avoid crossing the border. MSJ Ex. 20, El-Shwehdi Dep. at 200, 206.

47. Other Plaintiffs’ border experiences evince similar patterns. Mr. Coleman has been dissuaded from crossing the border to visit his family in Canada due to his treatment while traveling because he does not want to jeopardize missing work or subjecting his mother to lengthy interrogations. MSJ Ex. 6, Coleman Dep. at 57. Dr. Khan stopped crossing the border to Canada since 2012, where he has family, to avoid being detained at the border for seven to eight hours. MSJ Ex. 18, Khan Dep. at 93. Similarly, due to both his own experiences traveling as well as knowledge of how his brother, Mr. Samir Anwar, has been treated at the border, Mr. Shahir Anwar stopped crossing the border entirely. MSJ Ex. 16, Shahir Dep. at 66.

**3) Plaintiffs’ Adverse Experiences with Electronic Searches at the Border**

48. Mr. Kadura has had his phone confiscated twice during secondary inspections at land border crossings. CBP did not return those phones to him upon his release. During one of those trips, Mr. Kadura’s father and 17-year-old-brother were traveling with him. CBP seized his father and brother’s phones, and his father’s laptop. Mr. Kadura witnessed a CBP agent plug his brother’s phone into a computer. The second time border agents confiscated Mr. Kadura’s phone, an ICE agent contacted him afterwards and asked him to meet him at a hotel room without his attorney to discuss how he can “help America” to achieve “democracy in Libya,” in exchange for the return of Mr. Kadura’s phone and help to “fix [his] travel issues.” Mr. Kadura stopped taking his phone with him when he crosses the border and now ships it home instead. MSJ Ex. 3, Kadura Dep. at 138-140, 148-

149, 202-204, 237, 3B (Electronics).

49. Border agents have pressured Mr. Elhady to reveal his password to his phone. Border agents have questioned Mr. Elhady about the pictures and phone numbers of his phone contacts. Mr. Elhady has had his phone searched and confiscated multiple times, including after international flights and after crossing a land border. As a result of having his phone confiscated multiple times at the border, Mr. Elhady has had to purchase multiple phones. He has stopped crossing the border with his phone. An FBI agent informed Mr. Elhady once that his cell phone conversations were being monitored. MSJ Ex. 1, Elhady Dep. at 84-85, 94-95, 99, 102-103, 105, 143-144, 150, 168-170, 185.

50. Dr. Shaout has stopped carrying a cell phone because of repeated searches of his electronic devices at the border. Border agents take everything electronic in Dr. Shaout's possession, including "stick drives" and "memory drives." Then the border agents "will take a long time to copy everything... that's what they were taking, my computer, my memory stick... the more information I have, the more time I have to be waiting. Sometimes I even – I'm so tired, I sleep on the chair. And they take the computer, the laptop, and I know there's something that they did to it. Because I'm a computer engineer. The memory slows down. They filling it with some software... you feel like dirt, basically." MSJ Ex. 14, Shaout Dep. at 46-48, 192.

51. On one occasion, CBP officers demanded the access code to Mr. Al Halabi's phone and then confiscated it. They did not return his phone upon his release. An FBI Agent informed Mr. Al Halabi the following day that confiscating his phone is "a process that needs to take place." MSJ Ex. 5, Al Halabi Dep. at 76, 79, 81.

52. Several other Plaintiffs have experienced electronics searches. After returning from his last four international flights, Mr. John Doe 2 was detained and pressured to provide his password to his electronic devices, including his laptop, phone and iPad. Mr. John Doe 2's camera was searched in his presence. MSJ Ex. 21, JD2 Dep. at 69, 81-82, 95, 103. Multiple border searches of Mr. El-

Shwehdi's phone have caused him to miss flights. MSJ Ex. 20, El-Shwehdi Dep. at 57, 180-182. Mr. Samir Anwar initially refused to provide his phone password when detained at the border, but relented under pressure after a CBP officer threatened to confiscate the phone and never return it. MSJ Ex. 17, Samir Dep. at 86-87. Mr. Ali's personal phone and work phone have been confiscated at the border following border officer pressure to provide the passwords. MSJ Ex. 15, Ali Dep. at 52, 60. Dr. Khan's cell phone was seized at least twice at airports and once at a border crossing. MSJ Ex. 18, Khan Dep. at 32, 57, 95. During one of his secondary inspections at a border crossing, a border official provided Mr. Shibly with a document confirming that his electronics were searched. MSJ Ex. 8, Shibly Dep. at 81-82, 238.

53. Multiple Plaintiffs have had electronics searches extend to their traveling companions as well. Officers at both airports and the border have pressured Mr. John Doe 3 to provide the password to all electronic devices, and then confiscated his phones, his iPad, and his wife's iPad when she travels with him. MSJ Ex. 22, JD3 Dep. at 55-56, 66, 156, 208. Baby Doe's parents' phones were both seized while traveling together at an airport. MSJ Ex. 2, Baby Dep. at 45-46. The phones of Mr. Thomas and his three traveling companions were all seized when crossing the border; they were all compelled to provide their passwords. MSJ Ex. 10, Thomas Dep. at 71-73, 75.

#### **D. The Transportation Security Administration Uses the TSDB to Screen Airplane Passengers**

##### ***1) TSA Airport Screening Policies and Practices***

54. The TSC exports the TSDB to the DHS Watchlist Service. The TSA, sometimes involving CBP, then uses the TSDB to screen air travelers. MSJ Ex. 62, *Overview* at 5; MSJ Ex. 35, *TSA Programs List* §§ E, G; MSJ Ex. 27, CBP Dep. 33:10-34:8; MSJ Ex. 57, TSA FAQ.

55. For the TSA, the TSC annotates TSDB entries in three ways: (1) No Fly, (2) Selectee, and (3) Expanded Selectee. See MSJ Ex. 62, *Overview* at 4; MSJ Ex. 51, *2015 Redress SOP* § Glossary; MSJ Ex. 26, TSA Dep. 128:18-21; MSJ Ex. 43, TSC Pichota *Latif* Decl. ¶ 8.

56. The TSC assigns a No Fly annotation when the TSC determines the individual poses:

(1) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) or domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to an aircraft (including a threat of piracy, or a threat to airline, passenger, or civil aviation security);

(2) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to the homeland;

(3) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) against any U.S. Government facility abroad and associated or supporting personnel, including U.S. embassies, consulates and missions, military installations (as defined by 10 U.S.C. 2801(c)(4)), U.S. ships, U.S. aircraft, or other auxiliary craft owned or leased by the U.S. Government; *or*,

(4) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so.

MSJ Ex. 62, *Overview* at 4; MSJ Ex. 68, TSC Groh Decl. I ¶ 12.

57. TSDB Listees with the No Fly List annotation are prohibited from boarding an aircraft that traverses U.S. airspace. MSJ Ex. 57, TSC FAQ; MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶ 11; MSJ Ex. 43, Pichota *Latif* Decl. ¶ 12.

58. The TSC assigns a Selectee List annotation based on unknown criteria. The federal government refuses to disclose the Selectee List inclusion criteria. MSJ Ex. 62, *Overview* at 4; MSJ Ex. 68, TSC Groh Decl. I ¶¶ 13, 23; MSJ Ex. 26, TSA Dep. 128:18-129:6, 196:12-20; MSJ Ex. 25, TSC Dep. 317:12-16.

59. Since 2011, the TSC automatically assigns all TSDB Listees an Expanded Selectee List annotation if the TSDB Listee is not already included on the No Fly or Selectee List, and if their TSDB record has a full name and full date of birth. MSJ Ex. 45, *GAO Secure Flight* at 14; MSJ Ex. 26, TSA Dep. 197:12-198:11, 203:20-204:12; MSJ Ex. 51, *2015 Redress SOP* § Glossary.

60. The Government acknowledges that individuals flagged as potential TSDB Listees have “adverse experiences.” These adverse experiences include “experiencing delays and related inconveniences” and “being subjected to more intensive questioning and searches.” Being flagged as

a TSDB Listee can make travel “embarrassing and time consuming,” and impose economic consequences, resulting in a “loss of liberty.” MSJ Ex. 34, *GAO TSDB Adverse Effects* at 14-15; MSJ Ex. 38, 2007 Redress MOU at 1.

61. The TSA considers TSDB Listees with the Selectee or Expanded Selectee annotations to be high-risk travelers who must undergo additional security screenings prior to boarding an aircraft. TSDB Listees are subject to an onerous process where they must obtain the TSC’s permission to board a plane. TSDB Listees are unable to utilize the convenience of Internet, curbside, and airport kiosk check-in options. The TSA requires the issued boarding passes for TSDB Listees to be stamped with “SSSS.” MSJ Ex. 45, *GAO Secure Flight* at 9, 10-12, 21, 24, 29, 49; MSJ Ex. 26, TSA Dep. 143:11-144:3, 146:1-4, 202:13-19, 216:20-217:10, 218:16-219:8.; MSJ Ex. 51, *2015 Redress SOP* § Glossary; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 13-15; MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶ 11; MSJ Ex. 43, Pichota *Latif* Decl. ¶ 12; MSJ Ex. 40, FBI North *Ibrahim* Decl. ¶ 7; MSJ Ex. 38, 2007 Redress MOU § 3.I; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.2.2; MSJ Ex. 32, 2005 TSC Audit at 8.

62. Once TSDB Listees on the Selectee List or Expanded Selectee List receive their boarding passes, they are required to undergo enhanced screening at the airport security checkpoint. Enhanced screenings include, in addition to the procedures applied during a typical screening experience: advanced imaging technology; hand-wands; pat-downs; a physical search of the interior of a passenger’s carry-on luggage, electronics, and shoes; and an explosives trace detection search of the passenger’s items. MSJ Ex. 45, *GAO Secure Flight* at 10, 11, 44; MSJ Ex. 41, *GAO Screening Tech.* at 5, 9-10; MSJ Ex. 53, TSA Allison *Mohamed* Decl. ¶ 6; MSJ Ex. 26, TSA Dep. 160:21-162:15.

63. When TSDB Listees fly internationally, the TSA informs foreign governments that the United States has assigned the TSDB Listee a high-risk status and that U.S.-defined enhanced screening is required. TSA Supp. Dep. 75:16-76:2, 86:12-18.; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 13.

64. The TSA, in conjunction with CBP, uses the TSDB to identify associates of TSDB listees and designate those associates as “high-risk” and thereby required to undergo enhanced screening. Such associates are not separately listed in the TSDB; MSJ Ex. 27, CBP Dep. 190:18-191:4; MSJ Ex. 45, *GAO Secure Flight* at 19.

65. In 2017, CBP reported 585,000 encounters with individuals suspected to have national security concerns, despite only reporting 2,554 encounters with confirmed TSDB Listees. MSJ Ex. 73, CBP Howe Decl. ¶ 7; MSJ Ex. 65, CBP 2017 Factsheet.

66. The TSA may assign Federal Air Marshals to special mission coverage on a flight based on a TSDB Listee or other “high-risk” passenger (such as one associated with a TSDB Listee) traveling on that flight. The Federal Air Marshal will monitor the “high-risk” passenger’s behavior and provide a terrorist-related post-mission report to intelligence agencies. MSJ Ex. 29, TSA Supp. Dep. 11:11-12:1, 15:2-9, 104:12-18; MSJ Ex. 53, TSA Allison *Mohamed* Decl. ¶ 57; MSJ Ex. 32, 2005 TSC Audit at 136.

67. Airplanes with TSDB Listees on board may be barred from entering U.S. airspace. International flights have been diverted and delayed due to a passenger’s TSDB status, thus affecting other passengers’ travel plans. MSJ Ex. 27, CBP Dep. 56:18-57:2; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 15.

## **2) Plaintiffs’ Adverse Air Travel Experiences**

68. Since 2006, Mr. Shibly has been “treated as a suspect, second-class citizen” and a “criminal” when he travels by air. This maltreatment occurs not just in the United States, but also in other countries including in Europe and Jordan. Because of the treatment he has been subjected to while traveling, coupled with his sister being detained in Israel for approximately ten hours and interrogated mostly about him, Mr. Shibly consider the United States to have “completely prohibited

me from even considering visiting [Jerusalem]<sup>3</sup> anymore.” MSJ Ex. 8, Shibly Dep. at 52, 130-131, 176-180, 310.

69. Since 2006, Mr. Shibly has been routinely pulled aside for secondary screening, subjected to unreasonable and lengthy delays, and subjected to intrusive and abusive interrogations (oftentimes resulting in missed flights) no less than 20 times by air and once after a cruise. His treatment has caused him humiliation in front of family members, business leaders, executives and friends that have traveled with him. On more than one occasion, after being detained for an interrogation before boarding a flight with his family, Mr. Shibly urged his wife to take the children and board the flight without him because he wanted to save them from the “long-term traumatic impact” of having to “see their parents consistently being targeted by their own government. During one of those detentions, Mr. Shibly was told by a officer that he was being subjected to heightened scrutiny because “[w]e have to protect against bombs and terrorism.” MSJ Ex. 8, Shibly Dep. at 52, 59-60, 66-68, 71-83, 85-90, 91-100, 123-137, 153-154, 163-171, 180-181, 182-186, 206-208, 209-210, 216-227.

70. The treatment continued even during the time that Mr. Shibly was employed by Regional Elite and given unrestricted access to sterile areas of the airport and airplanes. It continued despite his professional relationships with senior level government officials, including former Commissioner of CBP Gil Kerlikowske and former Senior Advisor to President Barack Obama Valerie Jarrett. As Mr. Shibly summarized: “I can go meet the president, I can go meet Valerie Jarett, and the top President advisors and get into the White House complex without any extra screening, but I can’t get on [a] flight to get there.” MSJ Ex. 8, Shibly Dep. at 88, 90, 121, 125-126, 129-130, 183-184, 185-186, 208.

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<sup>3</sup> Jerusalem, claimed by both Israel and the Palestinian Authority as their capital, is one of the holiest cities for Muslims.

71. Since being removed from the No Fly List, Mr. Amri has traveled twice and has been subjected to delays and searches both times. MSJ Ex. 13, Amri Dep. at 48-49, 58, 64-83.

72. On his way to testify for his deposition in this case, Mr. Amri was subjected to six searches and chemically tested four times. First, the airline representative had to obtain clearance for him to board the first leg of his flight to Dallas. A TSA supervisor then met Mr. Amri at the security checkpoint, and took his ID and boarding pass to check them again. He was taken through the metal detector, then again through the full body scanner, and then patted down and subjected to chemical testing. A TSA official instructed him to wait again in a chair by the security checkpoint before he was cleared. Despite having been searched three times, subjected to chemical testing and cleared twice already before boarding the first leg of his trip, three TSA agents stopped him on the jet bridge before boarding his connecting flight in Dallas. There they subjected him to another body search and round of chemical testing, which tested positive for explosives.<sup>4</sup> Mr. Amri was then escorted back to the TSA checkpoint where he was searched again before he was cleared a third time.<sup>5</sup> MSJ Ex. 13, Amri Dep. at 62-83, 85.

73. Due to these delays, Mr. Amri missed his flight and was forced to book the next flight, scheduled to leave two and a half hours later. As he was waiting at the gate, a TSA agent – who appeared to be receiving instructions over the phone throughout this ordeal – told him the wrong procedure was performed and escorted him back to the TSA checkpoint for another round of chemical testing. The explosives expert subjected him to another chemical test and cleared him. Afterwards, it took the airline representatives approximately 45 minutes (15 minutes prior to

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<sup>4</sup> TSA later admitted that the chemical test was cleared as a false positive. *See* MSJ Ex. 70, TSA Joseph Decl. ¶¶ 13-15.

<sup>5</sup> Mr. Amri was not subjected to additional chemical testing, although he requested it to clear the false positive. Ex. 13 at 67; Ex. 13A at 4, FN2.

boarding for his rebooked flight) to obtain clearance for him to board his rebooked flight.<sup>6</sup> Despite having been searched five times, subjected to chemical testing three and cleared three times, he was again met by six TSA agents and a man wearing a suit who escorted him to a room to be searched and chemically tested – again, before he was finally permitted to board his flight. “I almost had tears in my eyes... I’m a man, you know. I don’t tear up that easy.” MSJ Ex. 13, Amri Dep. at 67-73, 76, 79.

74. Dr. Hakmeh is consistently subjected to heightened security whenever he flies. This has caused him to miss many flights and transfers. Among the transfers missed was a flight returning to the United States after providing emergency medical treatment to victims in Syria. For the past four years, as a result of his regular secondary screenings and delays, “so that [his] ability to come back and work as an emergency physician isn’t jeopardized,” Dr. Hakmeh has been “forced to” book all of his international trips<sup>7</sup> directly out of and back to Chicago. Dr. Hakmeh drives to and from Chicago (a five-hour drive) instead of booking connections to ensure he does not miss a connecting flight. Additionally, Dr. Hakmeh arrives at airports at least four hours before each flight to take into account secondary screening every time he flies. MSJ Ex. 7, Hakmeh Dep. at 51, 58, 62, 68-70, 94-95, 150, 166-174, 212.

75. Since 2004, for every one of Dr. Shaout’s outgoing flights, he “[has] to wait, sit like a dog, for two hours, for an hour and a half, for if I’m lucky, 45 minutes. If I’m not lucky, I leave – I miss my flight, until somebody in Washington says, yeah, he can go.” Dr. Shaout arrives at the airport at least three hours in advance of all domestic flights, and four hours in advance of all international flights to account for the secondary screening and lengthy delays he routinely experiences. On at least

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<sup>6</sup> The airline representative commented that in ten years of working as an airline representative, he has never seen this happen before. MSJ Ex. 13, Amri Dep. at 70.

<sup>7</sup> Dr. Hakmeh travels regularly in connection with medical missions to provide critical care training courses and life-saving emergency care to victims of the conflict in Syria. MSJ Ex. 7, Hakmeh Dep. at 41, 58-60, 73.

one occasion, he had already boarded a plane when he was removed from in public view and searched again. The flight was significantly delayed. Upon being allowed to board the plane again, “people were clapping their hands.” When Dr. Shaout returns from international flights, he is likewise consistently interrogated. MSJ Ex. 14, Shaout Dep.at 37, 42-47, 71-72.

76. Similarly, as a matter of course, for at least seven years, Mr. El-Shwehdi has been subjected to repeated secondary screening similar to other Plaintiffs. During two of his trips, an officer followed him around in the airport, to the point that when he went the bathroom, they waited outside the bathroom. Mr. El-Shwehdi was also singled out at the gate for an additional search and chemical testing after already having been repeatedly cleared by security. On one occasion, CBP officers and Turkish airline personnel walked onto the plane, inspected the passengers until Mr. El-Shwehdi was identified, and escorted him off the plane. MSJ Ex. 20, El-Shwehdi Dep. at 38, 51-53, 56, 66, 70, 75, 81, 88, 95, 100-110, 113, 115, 116, 119-120, 124, 126-129, 133-134, 137, 141-143, 162, 176-177, 179, 181-182, 193-194.

77. Due to the treatment he receives when flying, Mr. El-Shwehdi has missed connecting flights and been forced to spend multiple nights in a hotel. Mr. El-Shwehdi now avoids traveling by air whenever possible. Every year, Mr. El-Shwehdi and his family drive from Dayton, Ohio to Atlanta, Georgia (an 8-hour, 500-mile drive) two to three times per year to visit his cousin, despite being disabled and despite problems with his hip from two hip replacements. Mr. El-Shwehdi has also driven to Virginia from Ohio at least twice to attend funerals. For the same reasons, Mr. El-Shwehdi did not travel to Libya for the funerals of his brother or his sister’s husband. MSJ Ex. 20, El-Shwehdi Dep. at 33, 43-44, 67, 129, 138-139, 159, 180, 190-191, 195, 204.

78. Mr. Coleman, a Muslim religious scholar and leader, has also routinely been subjected to similar treatment when he travels by air. Mr. Coleman frequently takes students on religious field trips. During one of those trips, he and the students traveling with him to Mexico were subjected to

secondary screening. He now books his ticket separately from his students to avoid the stigma and humiliation. He does not want students or their families to be afraid to travel with him. He also wants to avoid the risk of the students themselves being added to the federal watchlist. MSJ Ex. 6, Coleman Dep. at 23-26, 48, 58-61, 63-67, 73-78, 80-92, 96-97, 105-107.

79. Once after having been invited to Malaysia as a guest of the Office of the Prime Minister of Malaysia, Mr. Coleman missed his connection on his way home. Despite having a three-and-a-half-hour connection, he missed the connection due to lengthy secondary screening and interrogations. On another occasion, after returning from an international trip, Mr. Coleman's name was announced on the loud speaker upon landing and he was escorted off the plane in front of the rest of the passengers. Once off the plane, he was taken to a room and interrogated. MSJ Ex. 6, MSJ Ex. 6, Coleman Dep. at 66, 73-78, 96-97, 101-102, 153.

80. Dr. Fares began experiencing air travel problems in 2005, when he was attending medical school in St. Kitts and Nevis. On one occasion, Dr. Fares was removed from the plane after passing through security and boarding. He was removed from the plane, subjected to enhanced screening and interrogations, and by the time he was done, his plane had already taken off. This experience frightened Dr. Fares to the point that he cancelled his entire trip to Jordan altogether. As a result, Dr. Fares lost a business deal that he was traveling to Jordan to finalize. MSJ Ex. 19, Fares Dep. at 29-30, 99, 101, 104.

81. Dr. Khan recounts similar air travel experiences as the other plaintiffs. Dr. Khan described it as "humiliation again, and again and again. And it's the psychological trauma that I go through, you know I cannot – I can't sleep a day before, you know, I am going to the airport. I [] start[] having upset stomach..." Dr. Khan now avoids flying and drives instead when he can "to avoid going through the hassle of going to the airport." MSJ Ex. 18, Khan Dep. at 29-33, 39, 42, 47-52, 52-60, 64-71, 74-84.

82. Mr. Shahir Anwar is also subjected to the same routine secondary screening treatment each time he travels. Once he was informed by an airline ticketing agent that he “had a special designation.” As a result of his experiences at an airport, he did not attend his cousin’s funeral in Canada because he wanted to avoid traveling. MSJ Ex. 16, Shahir Dep. at 52-54, 56, 59, 61, 67.

83. Mr. Kadura avoids domestic travel. He has also missed a lot of weddings and funerals of family members in Libya. Both are due to the treatment the TSA subjects him to at airports. Mr. Kadura has also chosen to attend a lower-ranked and more expensive masters degree program in order to avoid flying to visit his family. MSJ Ex. 3, Kadura Dep. at 259-264.

84. Baby Doe 2 was not even a year old when he first experienced watch list screening. Baby Doe 2 was “burning up, he had a fever” after returning from an international flight to Jordan. Then CBP officers pulled him and his parents aside and subjected them to a four-hour secondary inspection and search of all their personal belongings. “[H]e was still – still a baby. So this poor little infant – you know, I wouldn’t wish that upon anybody...to go through something like that.” Baby Doe 2’s family tries to avoid traveling as a result. MSJ Ex. 2, Baby Dep. at 38, 45-46, 95, 97.

85. The TSA and TSC have also used the TSDB to deny several Plaintiffs from boarding flights. Most notably, Mr. Ahmed was informed by the FBI that he was added to the No Fly List and would only be removed if he would act as an informant for the FBI. MSJ Ex. 4, Ahmed Dep. at 26-28. Mr. Ahmed’s No Fly List annotation to his TSDB record was ultimately removed, for the time being. Ex. 4-1.

86. Other Plaintiffs have been blocked from flying as well. John Doe 4 could not fly from Detroit to Morocco to meet his fiancée’s family for the first time. MSJ Ex. 23, JD4 Dep. at 30-32. Mr. Elhuzayel could not fly from Los Angeles, California to Dominica to spend time with his wife and family. MSJ Ex. 9, Elhuzayel Dep. at 125-131, 9A. Mr. Thomas attempted to move to Malaysia with his family and all his personal belongings, but could not fly from Sacramento, California to

Malaysia. MSJ Ex. 10, Thomas Dep. at 46-59, Ex. 10H. Mr. Amri, could not fly from Ontario, California to Las Vegas, Nevada for business purposes. MSJ Ex. 13, Amri Dep. at 40-45. And Mr. Kadura could not fly from Chicago to Libya to visit his mother on a religious holiday. MSJ Ex. 3, Kadura Dep. at 190-193.

***1) Plaintiffs' Suffering through Religious Questioning***

87. Being subjected to interrogations about his religious beliefs and practices has been “a consistent theme throughout each and every time” Mr. Shibly is detained at the airports and the border. Among the questions he has been asked are, “Do you recruit people for Islam?” “Do you visit any Islamic extremist website? Are you part of any Islamic tribes?” “Have you ever been to a madrassah?” “Have you ever studied Islam full-time?” Mr. Shibly has also been asked whether he attends a particular mosque, which Muslim scholars he listens to, and how many gods and prophets he believes in. An officer told him he was asking these questions because “we have to protect against terrorism.” Mr. Shibly was also interrogated about his father’s charitable work for Syrian children. MSJ Ex. 8, Shibly Dep. at 59-60, 92, 93, 94, 108, 172.

88. Dr. Shaout is interrogated with “the same [religious] questions over and over and over. The same answers that I give over and over.” These questions include where he prays, which mosque he goes to and which organizations he donates to. MSJ Ex. 14, Shaout Dep. at 45, 47. Mr. Frljuckic was asked so many religious questions during his travels, including what mosque he attends and which scholars he listens to, that it became “routine.” MSJ Ex. 11, Frljuckic Dep. at 48, 82-83.

89. Mr. Coleman was interrogated about “theological disagreements among Muslim groups and that leading to radicalization of some young people,” whether he had met someone who was radicalized, his missionary activities and his religious activities. MSJ Ex. 6, Coleman Dep. at 51-52, 102. Mr. Ahmed was interrogated about his religious views and what organizations he is affiliated with. MSJ Ex. 4, Ahmed Dep. at 24, 44. Mr. Thomas was asked, “What does jihad mean? When does

Islam allow violence? Why are you going to Malaysia? Do you know that there's a lot of extremist people in Malaysia? When did you become Muslim?" MSJ Ex. 10, Thomas Dep. at 142. Mr. Kadura was asked what his religion was and what mosque he went to. MSJ Ex. 3, Kadura Dep. at 238.

**E. The State Department and DHS Hinder TSDB Listees and Their Family Members Applying for Visas, Visa Waivers, and Immigration Benefits**

**1) State Department and DHS Policies and Practices**

90. The TSC exports the TSDB to the Department of State's Consular Lookout and Support System. The Department of State uses the TSDB to screen individuals for visa waiver, visa, and passport eligibility. MSJ Ex. 62, *Overview* at 5; MSJ Ex. 59, *TSC Sample Monthly Report* at 4; MSJ Ex. 57, TSC FAQ.

91. If a foreign national is a TSDB Listee, the State Department denies their visa application and determines them to be inadmissible. The Government may also deem a foreign national inadmissible based on them having a family member who is a TSDB Listee. *See* MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.1; MSJ Ex. 40, FBI North *Ibrahim* Decl. ¶ 7; MSJ Ex. 38, 2007 Redress MOU § 3.J; MSJ Ex. 27, CBP Dep. 340:4-15.

92. If a foreign national from a Visa Waiver Program country is a TSDB Listee, the Department of State denies or revokes their Electronic Information for Travel Authorization. If a foreign national from a Visa Waiver Program country has a family member who is a TSDB Listee, the Government may deny or revoke their Electronic Information for Travel Authorization on that basis. *See* MSJ Ex. 51, *2015 Redress SOP* § 5.1.1; MSJ Ex. 27, CBP Dep. 342:14-21.

93. The State Department also uses the TSDB to screen State Department employees. It denies employment to TSDB Listees. MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.5.

94. The TSC exports the TSDB to the DHS Watchlist Service, which in turn exports the TSDB to the USCIS Fraud Detection and National Security Data-System. USCIS uses the TSDB to screen individuals for immigration, asylum and naturalization benefits. The DHS's U.S. Citizenship

and Immigration Services denies immigration, asylum, and naturalization applications based on individuals' inclusion in the TSDB. *See* MSJ Ex. 54, USCIS PIA at 1; MSJ Ex. 62, *Overview* at 5. MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.5.

## **2) Plaintiffs' Adverse Immigration Experiences**

95. Multiple Plaintiffs have foreign national family members whose immigration cases stalled. After Mr. Halabi filed an immigration petition for his wife, her case was delayed for more than 10 years. Just so he could live with her, Mr. Halabi was forced to uproot his life, sell everything he owned and move to Dubai. MSJ Ex. 5, Halabi Dep. at 135-137.

96. Similarly, Dr. Hakmeh's immigration petition he filed for his wife was delayed five years. MSJ Ex. 7, Hakmeh at 260-261. Baby Doe's mother's citizenship application was delayed for more than two years. MSJ Ex. 2, Baby Dep. at 81-82. Mr. Elhady recently filed an immigration petition for his wife and is concerned that her petition will similarly be delayed due to his status on the watch list. MSJ Ex. 1, Elhady Dep. at 235-238.

## **F. The Department of Homeland Security Uses the TSDB to Vet for Employment and Credentialing in both Public and Private Industries**

97. DHS and CBP use the TSDB to confer travel privileges, such as TSA PreCheck and Global Entry. Individuals listed in the TSDB are considered high-risk and thus are ineligible for such privileges. *See* MSJ Ex. 26, TSA Dep. 152:2-21; MSJ Ex. 27, CBP Dep. 38:8-19, 338:4-14; MSJ Ex. 62, *Overview* at 5; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.4.4.

98. DHS and the TSA use the TSDB to determine the suitability of the TSA's employees and TSA contractors' employees. The TSC provides TSDB access to some private contractors performing work for the TSC and TSA, including IBM, InfoZen, Stopso and Sotera. MSJ Ex. 35, *TSA Programs List* §§ A-C; MSJ Ex. 26, TSA Dep. 252:6-254:3, 364:17-365:10; MSJ Ex. 25, TSC Dep. 245:4-19.

99. CBP uses the TSDB to screen all CBP applicants and employees, as well as all

applicants and employees who work at U.S. ports of entry. CBP denies and revokes “Customs Seal” certifications and employment at U.S. ports of entry based on TSDB Listee status. MSJ Ex. 27, CBP Dep. 40:8-41:7, 41:21-42:11, 341:2-9.

100. DHS, including the TSA and CBP, use the TSDB to screen individuals with any form of an airport identification, including airport employees, vendors, taxi drivers, and shuttle bus drivers. CBP also uses the TSDB to screen workers who access the international portion of domestic airports. MSJ Ex. 35, *TSA Programs List* § D; *see also* MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.9.1; MSJ Ex. 53, TSA Allison *Mohamed* Decl. ¶ 26; MSJ Ex. 26, TSA Dep. 92:14-93:1, 94:1-95:6.

101. DHS and the TSA use the TSDB to screen individuals applying for or maintaining Transportation Worker Identification Credentials. TWICs are physical cards which control access to the secure areas of ships, seaports, and other national transportation systems. MSJ Ex. 35, *TSA Programs List* § K; *see also* MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.9.2; MSJ Ex. 26, TSA Dep. 84:21-85:8; MSJ Ex. 62, *Overview* at 5.

102. DHS and the TSA use the TSDB to screen individuals applying for or maintaining hazardous material transportation licenses. MSJ Ex. 35, *TSA Programs List* § J; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.9.3.

103. DHS and the TSA use the TSDB to determine individual eligibility to attend flight school. DHS and the TSA use the TSDB to screen individuals applying for or maintaining Federal Aviation Administration airman certificates. TSDB Listees have had their airman certificates revoked due to their watchlist status. MSJ Ex. 35, *TSA Programs List* §§ F, L; *see also* MSJ Ex. 36, *HSPD-11 Updated Strategy* § 3.9.1; MSJ Ex. 44, *TSA Airmen Certificates* at 3.

104. Plaintiff Mr. Ahmed, who was employed as a supervisor at Detroit Metro Airport, had his Customs seal revoked without notice or explanation, which interfered with his ability to perform his job. MSJ Ex. 4, Ahmed Dep. at 65-70.

105. DHS uses the TSDB to screen private sector employees with transportation and infrastructure functions. DHS screens private employees against the TSDB for the following industries: airlines, airports, general aviation, port authorities, nuclear facilities, chemical facilities, and hazardous material transportation. DHS also screens the employees of private entities receiving Overseas Private Investment Corporation loans and U.S. Agency for International Development benefits and grants. MSJ Ex. 66, TSC 1st Rog at 2; MSJ Ex. 30, *HSPD-6*; MSJ Ex. 36, *HSPD-11 Updated Strategy* §§ 3.10, 3.2.2; MSJ Ex. 25, TSC Dep. 241:17-242:12; MSJ Ex. 26, TSA Dep. 255:16-256:5, 257:5-22, 259:3-13, 294:10-295:15, 337:6-13; 6 U.S.C. § 622(d)(2); 6 C.F.R. § 27.230(a)(12); MSJ Ex. 41, *GAO Screening Tech.* at 13; MSJ Ex. 39, *GAO Expand Screening* at 6, 11, 45, 47-48, 54-56; MSJ Ex. 33, *P&O Ports Screening*; MSJ Ex. 80, TSC Supp. Rog 30 II; MSJ Ex. 46, TSC Pichota 2014 House Testimony at 4.

106. Private entities in these industries are required to block TSDB Listees from accessing sensitive information or physical areas. TSDB Listees who are applicants to or employees of these private entities are ineligible for employment and/or specific job responsibilities with access to sensitive information or physical areas. MSJ Ex. 80, TSC Supp. Rog 30 II; MSJ Ex. 26, TSA Dep. 259:3-13.

**G. The FBI Works with State and Local Governments, as well as Private Entities, to Use the TSDB to Impose Consequences on TSDB Listees**

107. The FBI uses the TSDB to conduct and facilitate law enforcement screening. The TSC exports the TSDB to the FBI's National Crime Information Center system. The NCIC "is the primary criminal justice database in the country." The subset version of the TSDB provided to the NCIC is known as the "KST File." MSJ Ex. 28, FBI Dep. 86:5-19, 87:20-88:1, 144:20-146:17, 154:3-10; MSJ Ex. 62, *Overview* at 5; MSJ Ex. 59, *TSC Sample Monthly Report* at 4; MSJ Ex. 46, TSC Pichota 2014 House Testimony at 4; MSJ Ex. 57, TSC FAQ.

108. More than 18,000 state, local, county, city, university and college, tribal, and federal law enforcement agencies have access to TSDB information via the NCIC's KST File. The FBI also provides federal, state, and local criminal courts with access to TSDB information. MSJ Ex. 28, FBI Dep. 95:7-17, 97:14-21; MSJ Ex. 25, TSC Dep. 187:10-188:13; MSJ Ex. 67, FBI 1st Rog at 12; MSJ Ex. 71, FBI 1st Rog Supp. at 12; MSJ Ex. 66, TSC 1st Rog at 2.

109. The FBI further provides approximately 533 private entities with access to TSDB information via the NCIC's KST File. These private entities include the police and security forces of private railroads, colleges, universities, hospitals, and prisons. The private entities also include animal welfare organizations; information technology, fingerprint databases, and forensic analysis providers; and private probation and pretrial services. MSJ Ex. 81, TSC Supp. Rog 30 III; MSJ Ex. 82, CJIS Supp. Rog 30.<sup>8</sup>

110. State, local, and private law enforcement use TSDB information to screen individuals they encounter. Types of interactions where law enforcement screen individuals against the TSDB include traffic stops, field interviews, house visits, and municipal permit processes. MSJ Ex. 62, *Overview* at 5; MSJ Ex. 28, FBI Dep. 135:20-137:14.

111. For the FBI, the TSC annotates TSDB records by assigning standardized alerts or handling codes. The KST File is sub-differentiated by four "Handling Codes." MSJ Ex. 56, *TSC Handling Codes* at 1.

Handling Code 1: The subject is confirmed to associate with terrorism, and there is a valid, outstanding arrest warrant.

Handling Code 2: The subject is of an "investigative interest" regarding their association with terrorism.

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<sup>8</sup> At least three Plaintiffs have affiliated with private entities which have access to the NCIC KST File. Plaintiffs are not being more specific out of deference to this Court's Protective Order. *See* Dkt. 274, 296

Handling Code 3: This individual may have possible ties with terrorism.

Handling Code 4: The identity provided by this individual may have possible ties with terrorism.

112. Approximately 3% of the TSDB is designated as Handling Code 1 or 2. The remaining 97% is designated at Handling Code 3 or 4. *See* MSJ Ex. 32, 2005 TSC Audit at viii, 30; MSJ Ex. 37, 2007 TSC Follow-Up Audit at 8-9.

113. The KST File's four "Handling Codes" notify and instruct law enforcement on different required operational responses for TSDB Listees. Law enforcement officers are expected to adhere to the guidance contained in the handling codes assigned to TSDB listees. *See* MSJ Ex. 56, *TSC Handling Codes* at 1-3; MSJ Ex. 83, *ACLU KST Lawsuit* at Original ECF 3-5, 10-16, 32-39, 57-58, 63-65, 67-73, 95-100; MSJ Ex. 28, FBI Dep. 122:10-123:16, 137:22-138:22, 140:22-141:6, 143:8-20, 144:21-145:2, 149:14-18, 152:11-21, 157:4-10.

114. According to at TSC guidance published by the Baltimore Police and others, an officer who encounters any TSDB Listee is "required" to "immediately request back-up units" and "use extreme caution when approaching and conversing with the individual." Officers are warned of "the possible presence of, or materials for constructing, explosives, weapons, and weapons of mass destruction." MSJ Ex. 56, *TSC Handling Codes* at 1-2.

115. Depending on the severity level of the TSDB / KST File handling code, officers are required to either (1) arrest the TSDB listee and request a bomb detection dog, or (2) detain the TSDB listee and request a bomb detection dog, or (3) contact the TSC for instruction while gathering more information about the watchlisted individual. When contacted by law enforcement, the TSC reviews the applicable "handling code and any flags to ensure compliance with FBI procedures." MSJ Ex. 56, *TSC Handling Codes* at 2-3; MSJ Ex. 51, *2015 Redress SOP* §§ Glossary & Appendix B.3.2.

#### **H. The Federal Government Uses and Disseminates the TSDB for Other Screening, Vetting, and Investigative Functions**

116. The FBI uses the TSDB to conduct investigations. MSJ Ex. 62, *Overview* at 5.

117. The Department of Justice, Federal Bureau of Investigation, uses the TSDB to screen applicants and employees for the FBI itself. No TSDB listees are employed by the FBI. The FBI also uses the TSDB as part of a name check service for employees across the federal government, including for vetting by the Office of Personnel Management. MSJ Ex. 28, FBI Dep. 342:2-343:7, 343:9-344:3, 391:17-392:3.

118. The FBI uses the TSDB to conduct background checks on individuals seeking to purchase firearms or obtain firearm licenses. The FBI imposes a mandatory 3-day waiting period for the purchase of a firearm if the identity is a TSDB hit. TSDB status may be used to deny purchase of a firearm altogether. See GAO, Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records, GAO-05-127 (Washington, D.C.: Jan. 19, 2005). MSJ Ex. 34, *GAO TSDB Adverse Effects* at 9 n.11. See Elhady-FBITSC-001464 GAO-09-125R re: NICS and Terrorist Watch List Records; Elhady-FBITSC-001504 GAO-05-127 re: Firearms and the Watchlist.

119. The Department of Defense uses the TSDB to screen individuals accessing military bases. TSDB Listees are disqualified from accessing military bases. MSJ Ex. 62, *Overview* at 5; MSJ Ex. 57, TSC FAQ.

120. The Financial Crimes Enforcement Networks uses the TSDB to identify the financial associates of TSDB Listees, and to nominate those financial associates to the TSDB. MSJ Ex. 55, FinCEN Release.

121. The TSC enters into foreign government arrangements and then exports subsets of TSDB data to those foreign governments. The TSC currently exports TSDB data to more than 60 foreign governments, including all Visa Waiver Program countries and Albania, Bulgaria, Slovenia, and Hungary. Foreign governments are broadly authorized to use TSDB data in conjunction with

their foreign government missions and legal authorities. TSC expects foreign governments to use the TSDB information they receive. MSJ Ex. 66, TSC 1st Rog at 2, 6, 31, 32; MSJ Ex. 25, TSC Dep. 170:10-19.

### **I. The Terrorist Screening Center Does Not Provide Redress for TSDB Listees**

122. DHS TRIP provided no notice to Plaintiffs of their inclusion as TSDB Listees. Nor have any of the Plaintiffs been given an opportunity to rebut the evidence TSC relied upon to assign their TSDB status. *See* MSJ Exs. 1B, 3A, 5B, 8B, 9C, 11A, 14B, 16A, 17B, 18B (Plaintiffs' DHS TRIP Letters).

123. TSC does not notify individuals about their nominations or additions to the TSDB. TSDB Listees have no opportunity to rebut the information on which their TSDB listing is based. Federal Government policy neither confirms nor denies an individual's watchlist status. The lone exception is for TSDB Listees who are U.S. Persons, who have the No Fly List annotation, who have been denied boarding on a commercial aircraft, and who have filed a DHS TRIP complaint. Even then, there are no "adversarial hearings" regarding TSDB status. MSJ Ex. 62, *Overview* at 9; MSJ Ex. 24, DHS TRIP Dep. 17:6-7, 224:9-18, 234:235-2, 255:12-21, 297:2-11; MSJ Ex. 25, TSC Dep. 171:10-15, 183:8-16, 317:2-10; MSJ Ex. 61, TSC RFA # 27; MSJ Ex. 48, FBI Steinbach *Latif* Decl. ¶ 36.

124. The redress policy which governs No Fly List annotations (as set forth below) does not apply to any other TSDB Listees, including those who remain on the TSDB although their No Fly List annotation has been removed. TSDB Listees are never permitted to know the history of any changes to their watchlist status, or the factual basis for those changes. *See* MSJ Ex. 51, *2015 Redress SOP* § 16.3.2 & Table 5.

125. The DHS Traveler Redress Inquiry Program (DHS TRIP) provides a single point of contact for travelers screened by DHS agencies to resolve travel-related screening difficulties. DHS TRIP does not purport to address non-DHS or non-travel related difficulties stemming from TSDB

Listee status. MSJ Ex. 62, *Overview* at 7; MSJ Ex. 51, *2015 Redress SOP* § 3.1.

126. Upon initiation of a complaint, DHS TRIP generates an individual DHS Redress Control Number. The TSA recognizes and uses DHS Redress Control Numbers in connection with air travel reservations. DHS TRIP maintains a “cleared” list of individuals who have been confirmed to not match the TSDB. Including a DHS Redress Control Number in future air travel reservations may help prevent a traveler from being misidentified or mismatched to the TSDB. MSJ Ex. 62, *Overview* at 9; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 5.1; MSJ Ex. 24 DHS TRIP Dep. 19:21-20:7, 274:25-275:15; *See* MSJ Ex. 26, TSA Dep. 119:16-21; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 22, 33-35, 61.

127. DHS TRIP annotates its redress records with whether the complainant is engaged in litigation against the federal government. MSJ Ex. 24, DHS TRIP Dep. 211:19-212:22.

128. CBP does not use DHS TRIP redress control numbers. MSJ Ex. 27, CBP Dep. 319:22-320:4.

129. Approximately 2% of all DHS TRIP inquiries relate to the watchlist. DHS TRIP inquiries which relate to the watchlist are forwarded to the TSC Redress Office. The TSC Redress Office does not accept, respond, or provide redress to direct inquiries from individuals. MSJ Ex. 62, *Overview* at 8; MSJ Ex. 51, *2015 Redress SOP* § 3.2.

130. The TSC Redress Office does accept, respond, and provide redress to inquiries received from Congress through the FBI Office of Congressional Affairs, when those inquiries regard the “adverse screening experience of a constituent.” MSJ Ex. 51, *2015 Redress SOP* §§ 4.0, Glossary.

131. The TSC Redress Office coordinates research into and resolution of TSDB-related complaints. This resolution process includes notifying any original nominating agency that a TSDB Listee has submitted a complaint. MSJ Ex. 62, *Overview* at 8; MSJ Ex. 51, *2015 Redress SOP* § 8.1.

132. The TSC Redress Office has final authority to modify or remove a TSDB record

during the redress process, including by adjusting or removing No Fly List or Selectee List status. MSJ Ex. 62, *Overview* at 8-9; MSJ Ex. 24, DHS TRIP Dep. 168:5-17, 216:15-217:5, 229:7-22; MSJ Ex. 51, *2015 Redress SOP* §§ 12.0, 13.3, 15.1.

133. Following 2015 litigation in *Latif v. Holder*, the federal government modified the redress process for TSDB Listees who are U.S. Persons and who have the No Fly List annotation. If a U.S. Person on the No Fly List files a DHS TRIP complaint, DHS TRIP (following referral to and consultation with TSC) must inform the individual if they are currently on the No Fly List. The No Fly Listee may then request additional information, including TSC's unclassified summary of the information supporting their No Fly List annotation. The No Fly Listee may respond by submitting information they consider potentially relevant. MSJ Ex. 62, *Overview* at 9; MSJ Ex. 24, DHS TRIP Dep. 24:12-15; 163:2-164:13, 169:2:170-7, 184:13-187:16; *see* MSJ Ex. 51, *2015 Redress SOP* §§ 15.0 *et. seq.*

134. Upon receipt of the No Fly Listee's response, the TSC may either remove the No Fly List annotation or choose to maintain it. If the TSC chooses to maintain the No Fly List annotation, the TSC must prepare a recommendation to the TSA Administrator regarding the continuing No Fly List annotation on that TSDB Listee's record. The TSA Administrator makes the final written determination concerning the removal of the No Fly List annotation for U.S. Persons. The TSC will technically implement any change to the No Fly List annotation the TSA Administrator directs. (The TSC alone remains responsible for the U.S. Person's overall TSDB Listee status.) If the U.S. Person remains on the No Fly List following both TSC and TSA Administrator review, the TSA Administrator will issue a final order regarding the basis for that individual's continuing placement. The final order will also notify the individual with the continuing No Fly List annotation of their ability to seek judicial review. MSJ Ex. 62, *Overview* at 8-9 & n.5; MSJ Ex. 24, DHS TRIP Dep. 164:6-13; 179:22-180:5; *see* MSJ Ex. 51, *2015 Redress SOP* §§ 15.0 *et. seq.*

135. The TSA Administrator has not issued a final order regarding a No Fly List annotation since 2015, despite the fact that TSC recommendations regarding No Fly List annotations are pending for his review. MSJ Ex. 24, DHS TRIP Dep. 191:15-20, 194:21-195:10, 203:12-22; 208:13-21, 214:1-216:14.

#### **J. The TSDB Has Always Been Rife With Errors**

136. During the pendency of this litigation, TSDB information has been improperly disclosed. MSJ Ex. 25, TSC Dep. 212:15-214:1.

137. TSDB records include misidentifications and erroneous information. The TSC regularly finds and corrects quality assurance problems with TSDB data. It is normal for new information to come to light that refutes or discredits the original information supporting a TSDB Listee's status. *See* MSJ Ex. 62, *Overview* at 7; MSJ Ex. 37, 2007 TSC Follow-Up Audit at 52; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 1, 2, 5, 9, 11, 20, 22, 31, 51, 59, 61-62; MSJ Ex. 51, *2015 Redress SOP* § 14.1.2.2; MSJ Ex. 36, *HSPD-11 Updated Strategy* § 5.1.

138. Adverse experiences and outcomes occur during terrorism screening because individuals are misidentified as TSDB Listees or near matches to TSDB Listees. *See* MSJ Ex. 51, *2015 Redress SOP* § Glossary; MSJ Ex. 34, *GAO TSDB Adverse Effects* at 1, 2, 61-62; MSJ Ex. 38, 2007 Redress MOU §§ 4.A - 4.C; MSJ Ex. 37, 2007 TSC Follow-Up Audit at xvi-xix.

#### **K. The Government Can Identify No Connection Between TSDB Listees and Acts of Terrorism**

139. CBP has never publicly identified an act of terrorism the TSDB helped it prevent. *See* MSJ Ex. 27, CBP Dep. 333:12-334:3. "CBP does not track the number of individuals it arrests who are listed on the TSDB and also does not maintain information in a manner than would allow an automated comparison between encounters with individuals listed in the TSDB and arrests made by CBP." MSJ Ex. 73, CBP Howe Decl. ¶ 10.

140. The operation of the TSA’s high-risk rules, including through Quiet Skies and Silent Partner, has never led to the arrest or prosecution of a high-risk individual, or to the foiling of a terrorist plot. MSJ Ex. 29, TSA Supp. Dep. 49:15-51:8.

141. The FBI knows how many acts of terrorism have been committed in the United States, and whether each perpetrator of a U.S. act of terrorism was listed on the TSDB at the time of the act. The FBI has never publicly identified a single terrorism perpetrator as having been listed on the TSDB at the time of the act. MSJ Ex. 28, FBI Dep. 111:16-112:19, 177:10-14.

## ARGUMENT

Summary judgment is appropriate where “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Because Government watchlist policy and practice is undisputed, and there can be no material dispute as to the adverse experiences Plaintiffs have experienced without redress due to the watchlist, summary judgment for Plaintiffs is appropriate. The Government’s watchlisting system violates the Fifth Amendment’s guarantee of due process.

### I. THE WATCHLISTING SYSTEM VIOLATES PROCEDURAL DUE PROCESS

Whenever a person is deprived of “liberty or property interests within the meaning of the Due Process Clause,” procedural due process mandates “constraints on governmental decisions.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The strength and scope of those constraints vary “as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Nevertheless, there are “basic requirements” that procedural due process, in each instance, demands—including notice and a meaningful opportunity to be heard. *D.B. v. Cardall*, 826 F.3d 721, 743 (4th Cir. 2016).

“Beyond those requirements,” however, the Court must look to the *Mathews* factors to assist it in determining the “need for [further] procedural safeguards.” *Id.* To determine what the

Constitution requires those procedural safeguards to look like, the Court must balance the private interests deprived, the risk that those interests were deprived in error, and the government's interest in causing the deprivation without changes to agency practices. *Mathews*, 424 U.S. at 335.

**A. The Deprivations the Watchlisting System Imposes are Severe**

“The consequences,” the Ninth Circuit recently observed, of Defendants targeting people with their Watchlisting System “are severe.” *Ibrahim v. DHS*, 912 F.3d 1147, 1179 (9th Cir. 2019). These consequences include Mr. Kadura being handcuffed to a seat in a CBP waiting room for four or five hours when he returned by land from Mexico. *Ex. 3* at 236-237. They include Defendants aggressively searching Mr. Amri's body six times and chemically testing his hands four times before he was cleared to fly to Washington, D.C. to offer Defendants his testimony in support of his claims in this case. MSJ *Ex. 13*, *El-Shwehdi Dep.* at 64-83, 86. They include Mr. Frljuckic's humiliation and terror as CBP officers, with guns drawn, surrounded his vehicle, pulled him out of it, and handcuffed him – three times – as his family watched on in horror. MSJ *Ex. 11*, *Frljuckic Dep.* at 47, 67, 82-83. Absences at weddings and funerals, constrained employment opportunities, permanent ineligibility for certain licenses and privileges, the stigma that accompanies being targeting by the Watchlisting System and assigned a status that communicates that the target is “a disloyal American who is capable of, and disposed toward committing, war crimes”—these are all consequences the Watchlisting System metes out. *Mohamed v. Holder*, 995 F. Supp. 2d 520, 529 (E.D. Va. 2014).

The factual basis for the numerous and distinct deprivations is expansive but regards two types of liberty interests. One is Plaintiffs' “movement-related liberty interests.” *Elbady v. Piebota*, 303 F. Supp. 3d 453, 463 (E.D. Va. 2017). The other is the reputational interests accorded Due Process Clause protections by the stigma-plus doctrine. *Elbady v. Piebota*, 303 F. Supp. 3d 453, 464 (E.D. Va. 2017). With regards to both liberty interests, the Watchlisting System dilutes Plaintiffs' liberty interests so substantially that Defendants' imposition of a TSDB status constitutes a deprivation under *Mathews*

whatever legal formulation of the two liberty interests the Court adopts.

### **B. The TSDB burdens the right of international travel**

While the right to international travel is not unqualified in the same manner as interstate travel, it is an “‘aspect’ of the liberty protected by the Due Process Clause.” *Califano v. Gautier Torres*, 435 U.S. 1, 5 n.6 (1978); *see generally Mohamed v. Holder*, No. 1:11-CV-50, 2015 WL 4394958, at \*6 (E.D. Va. July 16, 2015). In *Mohamed*, this Court identified a right of international travel, finding “a protected liberty interest in traveling internationally.” *Mohamed v. Holder*, No. 1:11-cv-50, 2015 U.S. Dist. LEXIS 92997, at \*21 (E.D. Va. July 16, 2015).

The Watchlisting System deprives its targets of their right of international travel not only because it forbids such travel entirely<sup>9</sup> but instead because Defendants impose consequences so grievous that Plaintiffs stop exercising the right. Mr. Elhady’s treatment at the border was so severe that he was rushed to the hospital and administered emergency Basic Life Support. MSJ Ex. 1, Elhady Dep. at 186-190, 269; Ex. 1A, Elhady Medical at 4. He traveled by land to Canada three times and Defendants handcuffed him each time in public view, including to a stretcher inside an ambulance, to the floor of a CBP bus, as well as to a hospital chair. MSJ Ex. 1, Elhady Dep. at 150, 156, 165-177, 184-185, 186-192. Mr. Elhady now refrains from exercising his right of international travel to avoid certain humiliation and senseless government conduct. *Id.* at 194. Other Plaintiffs have done the same.<sup>10</sup>

Mr. Frljuckic stopped traveling internationally so that his wife and children, all eight of them, would not have to see him get detained and handcuffed at gunpoint a fourth time. MSJ Ex. 11,

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<sup>9</sup> John Doe 4 (Ex. 23 at 30-32), Mr. Elhuzayel (Ex. 9 at 125-131, 9K), Mr. Thomas (Ex. 10 at 46-59, 10H), Mr. Amri (Ex. 13 at 40-45) and Mr. Kadura (Ex. 3 at 190-193) have all been denied boarding on international flights.

<sup>10</sup> Mr. Frljuckic (Ex. 11 at 84), Mr. El-Shwehdi (Ex. 20 at 200, 204, 206), Mr. Coleman (Ex. 6 at 57), Dr. Khan (Ex. 18 at 93), Mr. Shahir Anwar (Ex. 16 at 66), Mr. Amri (Ex. 16 at 126) and Dr. Fares (Ex. 19 at 104) have all avoided international travel.

Frljuckic Dep. at 47-48, 67, 82-83. Defendants also handcuffed army veteran Mr. Al Halabi in front of his family as they returned to the country from a trip to Niagara Falls. MSJ Ex. 5, Al Halabi Dep. at 74, 77. As Defendants handcuffed him, his daughter “started screaming” and his sister “started crying.” *Id.* at 75. Dr. Fares was removed from a full plane, screened yet again, and interrogated until his international flight departed without him. MSJ Ex. 19, Fares Dep. at 99. Dr. Fares was frightened to the point that he cancelled his trip causing him to lose a business deal. *Id.* at 101, 104. Mr. Shibly’s grandmother was hospitalized after seeing Defendants handcuff<sup>11</sup> her grandson during an international trip. MSJ Ex. 8, Shibly Dep. at 75-79.

Fears about these kinds of things happening during international travel have dissuaded many of the plaintiffs to not exercise that right. Mr. El-Shwehdi, for example, did not travel internationally to attend two family weddings. MSJ Ex. 20, El-Shwehdi Dep. at 200. He missed his brother’s funeral in Libya as well as the funeral of his sister’s husband. *Id.* at 204. Mr. Shahir Anwar missed his cousin’s funeral in Canada. MSJ Ex. 16, Shahir Dep. at 67. Mr. Kadura missed several weddings and funerals of family members in Libya. MSJ Ex. 3, Kadura Dep. at 262-263.

As a TSDB listee, the process of exercising one’s right to international travel is subject to a border crossing process so harrowing that John Doe 3, who was once handcuffed along with his wife and child at gunpoint, exiled himself to Germany and separated from his family in the United States. MSJ Ex. 22, JD3 Dep. at 26, 34, 37, 44-45, 47-51, 59-61, 215. However, the Court formulates the right of international travel, the Watchlisting System deprives it.

### **C. The TSDB burdens the right of interstate travel**

This Court has previously observed that it is “well established that there is a fundamental right

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<sup>11</sup>“You don’t want your grandma seeing you in handcuffs no matter what, because it hurts her heart, she loves you. And you hope that she doesn’t think anything bad of you, but at the same time, you don’t want her seeing you in handcuffs.” MSJ Ex. 8, Shibly Dep. at 75.

to interstate travel.” *Mohamed v. Holder*, 266 F. Supp. 3d 868, 877 (E.D. Va. 2017). The right accords all persons the freedom to travel domestically “uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). Undaunted by the clarity in this area of law, the Watchlisting System deprives Plaintiffs of their right to interstate travel by deterring its exercise.

The operation of Defendants’ Watchlisting System generates substantial fear of interstate travel. Dr. Khan described the fear as a “psychological trauma that I go through...I can’t sleep a day before, you know, I am going to the airport. MSJ Ex. 18, Khan Dep. at 29-33, 39, 42, 47-52, 52-60, 64-71, 74-84. He avoids flying and drives instead. *Id.* at 77. Mr. Shibly urges his wife to take their children and board their flight without him when he is detained to save them from the “long-term traumatic impact” of having to “see their parents consistently being targeted by their own government.” MSJ Ex. 8, Shibly Dep. at 87, 153-154. The anxiety has obvious sources. Mr. El-Shwehdi, for instance, observed “an officer follow[ing] him around the airport” who also had the gall to “wai[t] outside the bathroom” as he used the facilities. MSJ Ex. 20, El-Shwehdi Dep. at 75, 95, 181-182. He now, despite being disabled and having two hip replacements, avoids traveling by air and drives cross-country to visit family. *Id.* at 33, 43-44, 67. In another incident, Defendants removed Dr. Shaout from a fully-boarded flight and searched him yet again. When Defendants returned Dr. Shaout to the plane, his humiliation defined the moment as the passengers began “clapping their hands” while he looked for his seat. MSJ Ex. 14, Shaout Dep at 72. Dr. Hakmeh drives to avoid domestic connections for international trips so his ability to provide emergency medical care is not jeopardized. MSJ Ex. 7, Hakmeh Dep. at 68-69. These are the types of incidents that deter those targeted by the Watchlisting System from exercising their right of interstate travel.

But with the Watchlisting System, worse is possible. During a single domestic trip, Defendants physically searched Mr. Amri six times, subjected him to chemical testing four times, resulting in a

missed flight because TSC would not clear him to fly. MSJ Ex. 13, Amri Dep. at 64-83, 86. “I almost had tears in my eyes... I’m a man, you know. I don’t tear up that easy.” *Id.* at 73, 76. These indignities present a formidable deterrent dissuading TSDB listees from exercising their right of interstate travel.

#### **D. The Watchlisting System deprives Plaintiffs their reputational interests**

The federal government’s Watchlisting System also deprives Plaintiffs of their reputational interests protected by the Due Process Clause’s stigma-plus doctrine. To satisfy the stigma-plus doctrine, which establishes constitutional protections against government defamation, plaintiffs must show a “stigmatic statement” by the government accompanied by “state action that distinctly alter[s] or extinguishe[s]” the defamed’s status or otherwise burdens his interests. *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012). A stigmatic statement is any statement that “might seriously damage his standing and associations in his community.” *Bd. of Regents v. Roth*, 408 U.S. 564, 573 (1972). Because the defamatory statement must affect one’s standing, some type of dissemination or publication of the statement must be demonstrated. And the requirement for state action beyond the defamation, the “plus” factor, is simply “other government action adversely affecting the plaintiff’s interests.” *Doe v. Dep’t of Pub. Safety ex rel. Lee*, 271 F.3d at 55 (2d Cir. 2001).

#### **3) A TSDB designations is stigmatizing**

TSDB status is a stigmatizing label. As this Court previously explained with respect to the No Fly List, the label identifies a listee as a “disloyal American who is capable of, and disposed toward committing, war crimes.” *Mohamed v. Holder*, 995 F. Supp. 2d 520, 529 (E.D. Va. 2014). The status “transforms a person into a second-class citizen, or worse.” *Id.* It is a stigma that the Watchlisting System imprints on each of its targets.

#### **i. The Watchlisting System makes a TSDB Listee’s stigmatizing status known**

The government-imposed stigma, to satisfy the stigma plus doctrine, must be such that it “might seriously damage his standing and associations in his community.” *Bd. of Regents v. Roth*, 408

U.S. 564, 573 (1972). This means that Plaintiffs do bear the burden of demonstrating at least a likelihood that TSDB status becomes known to the people and organizations in the lives of Plaintiffs. Though this Court has previously observed that “it is unsettled precisely how broadly defamatory information must be disseminated by the government to satisfy the stigma prong,” the overwhelming facts of this case meet the stigma prong no matter how the Court formulates the requirement. *Mohamed v. Holder*, No. 1:11-cv-50, 2011 U.S. Dist. LEXIS 96751, at \*20-22 (E.D. Va. Aug. 26, 2011).

a. Defendants make Plaintiffs’ TSDB status available to tens of thousands of entities and likely more than one million individual persons.

Defendants make TSDB information available to tens of thousands of public and private entities and individuals, in addition to every single federal agency and more than 60 foreign governments. Statement of Facts (“SOF”) ¶ 121. While the federal government appears to not know the number of individuals with access to TSDB information, the total certainly exceeds one million people.<sup>12</sup> In addition to every state, local, and tribal law enforcement agency and many railroad and university security forces, the FBI and TSC make TSDB information available to the following motley group organization types:

“private correctional facilities, private security services for governmental facilities and hospitals, companies providing criminal justice dispatching services or data processing/information services providing services to governmental criminal justice agencies, private probation and pretrial services companies, private city attorneys,” as well as “a private police department for an airport, a private police department for a transportation authority, private police departments for two private incorporated communities...an inmate transport service, an entity that provides forensic services to detect and identify criminals, court constable services,” and even animal shelters. SOF ¶ 109; MSJ Ex. 82, CJIS Supp. Rog 30.

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<sup>12</sup> The federal Government employs more than 2.5 million people, and there are more than 670,000 law enforcement officers in the United States. *See generally* <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/employment-trends-data/2011/december/> and <https://www.statista.com/statistics/191694/number-of-law-enforcement-officers-in-the-us/>.

The dissemination of TSDB information is difficult to overstate. The Watchlisting System effects a global disclosure, making Plaintiffs' TSDB status accessible to an uncountable sum of people who Defendants do not know individually and cannot determine their quantity in the aggregate.

Aside from tens of thousands of public and private entities and individuals, every federal agency, and more than 60 foreign governments to which the FBI disseminates TSDB information, DHS separately discloses to for-profit companies through an administrative scheme through which DHS uses TSDB information to screen prospective and current-employed private sector workers whose jobs are within various parts of the economy—commercial aviation, port work, trucking, chemical plants, and the nuclear power industry, among other areas. SOF ¶¶ 105-106. Meanwhile, the FBI disseminates the TSDB to more than 500 private entities, including police forces for private universities, hospitals, and railroads, as well as information technology and fingerprint database providers. SOF ¶ 109.

The startling extent of the dissemination—revealed by the federal government for the first time in this case—is independently sufficient to satisfy the stigma-plus doctrine's disclosure element whatever test the Court adopts.

b. The Watchlisting System's standard process publicly discloses a listee's status to co-travelers, to family, to friends, to coworkers, among others

This Court previously held that the operation of the Watchlisting System effects a public disclosure of the government-imposed stigma insofar as it will “likely become known over time to persons beyond government agencies or the airlines.” *Mohamed v. Holder*, No. 1:11-cv-50, 2015 U.S. Dist. LEXIS 92997, at \*22-23 (E.D. Va. July 16, 2015). The Court's rationale in *Mohamed* was based on the fact that “any member of the general public who would actually witness a person being excluded from boarding might draw an adverse inference concerning that person's reputation” and that coworkers, “extended family members,” and others who Plaintiffs know through “religious, professional, or social organizations” would come to learn of their stigmatizing status as well. *Id.* This

logic, though applied by the Court in *Mohamed* to the No Fly List, holds true no matter how a person's TSDB status is annotated.

When Mr. El-Shwehdi travels across the country by car rather than plane, when he misses funerals and weddings of close relatives, whenever and however he tries to mitigate the impact his TSDB status has on his life—his disfavored status becomes “known to those outside of government.” *Mohamed v. Holder*, No. 1:11-cv-50, 2015 U.S. Dist. LEXIS 92997, at \*23 (E.D. Va. July 16, 2015); MSJ Ex. 20, El-Shwehdi Dep. at 33, 43-44, 67, 138-139, 204. His children know. His wife knows. His friends and his extended family know as well.

When Mr. Shibly and his wife debate whether it's better for the family to go through the airport separately from him to shield their children from the “long-term traumatic impact” of having to “see their parents consistently being targeted by their own government,” Mr. Shibly's family becomes fully acquainted with his TSDB status. MSJ Ex. 8, Shibly Dep. at 87, 153-154. When Mr. Kadura was handcuffed to a seat at the land border, the other travelers within eyesight were “looking at [him] like this is El Chapo.” Ex. 3 at 236. During another border stop where CBP officers, with hands on holsters, stopped all traffic at all inspection booths as they handcuffed him, a traveler filmed the incident on her phone. MSJ Ex. 3, Kadura Dep. at 164. The spectacle communicated to the people witnessing it that Mr. Kadura was a danger to them, an enduring hazard that justifies detainment, threats of deadly force, and physical restraints.

When John Doe 3 and his family made a collective decision that he should separate from the family and emigrate from the United States to Germany after they were all handcuffed at gunpoint, they were fully aware of his status. MSJ Ex. 22, JD3 Dep. at 26, 45, 215. When Mr. Shibly's friends refused to cross the border with him and drove in a separate car, they were aware of his status. MSJ Ex. 8, Shibly Dep. at 110-111. And when Mr. Shibly's wife, children, mother, sister and friends began experiencing problems at the border after traveling with him, they were aware of his status. *Id.* at 111,

115-122.

Mr. Coleman, a religious scholar, understands how this dynamic works to disclose to others his TSDB status – which was confirmed to him when students traveling with him on a field trip were all pulled aside for secondary inspection. MSJ Ex. 6, Coleman Dep. at 63-64. That is why he goes through airport and border security separately from his students and why he books his tickets separately as well. *Id.* at 63-64. Nevertheless, the Watchlisting System’s efforts to broadcast Mr. Coleman’s TSDB status are multilayered, unrelenting, and ultimately successful. During one particularly intimidating incident, for example, Mr. Coleman’s name was announced on the loudspeaker as his international flight arrived back home to Michigan. He was then escorted off the plane in front of still-seated passengers and then interrogated. *Id.* at 96-97, 101-102, 153. Among the travelers observing Mr. Coleman’s uniformed-officer-escort departing the plane, there are some who drew “an adverse inference concerning [Mr. Coleman’s] reputation.” *Mohamed v. Holder*, No. 1:11-cv-50, 2015 U.S. Dist. LEXIS 92997, at \*22-23 (E.D. Va. July 16, 2015).

Because the Watchlisting System discloses who it targets in public settings—at land borders, ports of entry, and airports, for example—Defendants cannot credibly assert that TSDB status is some well-kept government secret. The reality that Defendants will ask this Court to deny is that the TSDB status of every listee is known to some part of each listee’s personal and professional networks. The Court should do the opposite and acknowledge what all the plaintiffs know: it is impossible to bear, in private, the burden of their TSDB status.

**ii. There is a plus**

The stigma-plus doctrine has never been applied to something like the Watchlisting System. Most Fourth Circuit cases have dealt with the stigma-plus doctrine in the context of government employment. And while those cases provide some guidance as to how the stigma-plus doctrine should work here, this is a unique set of claims unlike others adjudicated by the Fourth Circuit.

a. The plus can be due to Government-imposed consequences

The nature of this case calls for the Court to determine what types of facts establish a “plus,” making government-imposed stigma actionable. Plaintiffs assert that, because the Supreme Court created the stigma-plus doctrine to protect reputation-based liberty interests not otherwise protected by the Constitution, the “plus” need not be a standalone constitutional violation. A standalone constitutional violation certainly qualifies as a “plus,” but the bare existence of government conduct distinct from the imposition of a stigma is sufficient. Therefore, to demonstrate the existence of a “plus,” Plaintiffs may simply show that the federal government, in addition to the stigma, imposed further consequences against the Watchlisting System’s targets.

The Second Circuit has explained why, though it did so in a case the Supreme Court reversed on grounds unrelated to the stigma-plus doctrine. *Doe v. Dep’t of Pub. Safety ex rel. Lee* articulates this. 271 F.3d 38 (2d Cir. 2001). In *Doe*, the Second Circuit sought to determine what would be sufficient to constitute a plus factor in accordance with the seminal stigma-plus decision, *Paul v. Davis*, 424 U.S. 693, 711 (1976). *Id.* at 54. *Doe* explained that the Supreme Court’s aim in creating the stigma-plus doctrine was to ensure that constitutional protections do not “encompas[s] an individual’s unadorned interest in his or her reputation.” This was objectionable to the Supreme Court, because it did not want the existence of a federal procedural due process claim to depend “entirely on whether the defendant happened to be a state officer or a private citizen.” *Id.* at 53–54. It did not want reputation-based constitutional claims to turn the Due Process Clause into “a font of tort law.” *Paul v. Davis*, 424 U.S. 693, 701 (1976).

In order to avoid this outcome—which is why the Supreme Court brought the “plus” factor into existence—a plaintiff must identify “some material indicium of governmental involvement beyond the mere presence of a state defendant.” *Id.* at 54. It would be enough, then, for “an allegation of defamation” to be accompanied by “other government action adversely affecting the plaintiff’s

interests.” *Id.* at 55. The plus factor, in short, does not have to be a standalone violation of Plaintiffs’ legal rights; it can be something less.

*Doe’s* rationale is also consistent with Supreme Court precedent. *Seigert v. Gilley* instructs that a plus factor exists so long as the damage identified does not “flo[w] from injury caused by [defendants] to [a plaintiff’s] reputation.” 500 U.S. 226, 234 (1991). In *Seigert*, the defendant provided a former employee’s prospective employer with a negative reference that prevented the employee from being hired. *Id.* The employee alleged that the defendant’s negative reference was defamatory and that, because it prevented him from being hired by the prospective employer, he also satisfied the plus prong. In deciding against the defamed litigant, the Supreme Court identified the single key inquiry to determine whether the facts of a case satisfy the plus prong. With respect to this part of the stigma-plus doctrine, federal courts must assess whether the consequence alleged “flow[ed] from the injury to [the employee’s] reputation” or from other government conduct. *Id.* at 234. In *Seigert*, the defamed litigant lost prospective employment as a result of the stigmatizing negative reference and complained of no other government conduct that accompanied the reference. That is not the case here.

The Statement of Facts is stuffed with examples of “government action adversely affecting the plaintiff[s]’ interests.” *Paul v. Davis*, 424 U.S. 693, 701 (1976). Plaintiffs are screened aggressively and invasively at airports, they are detained at borders and ports of entry, and they move through their lives and our world “adversely affect[ed]” by the dozens of government actions triggered by TSDB status alone. *Id.*

- b. The plus need not even alter or extinguish a right; it is enough for the plus to be a legal requirement that entities consult the TSDB prior to conferring a right or benefit

This Court should follow the Ninth Circuit and identify a “plus” in how the Watchlisting System requires tens of thousands of entities to use TSDB information before determining a course of action with respect to a listee. In *Humphries*, the Ninth Circuit adjudicated stigma-plus claims based

on inclusion in the Child Abuse Central Index (CACI), a state-maintained database of investigated child abusers. *Humphries v. Cty. of L.A.*, 554 F.3d 1170, 1176 (9th Cir. 2009). California required that certain licensing agencies “search the CACI and conduct an additional investigation prior to granting a number of rights and benefits.” Unlike the TSDB, CACI did not legally require licensing agencies to deny CACI listees particular rights and benefits. *Humphries*, 554 F.3d at 1188.

Though, the Ninth Circuit acknowledged that a person’s status as a CACI listee did not necessarily “fully extinguish [the claimants’] rights” to particular jobs or licenses, *Humphries* held that even a “tangible burden on a legal right...satisfies the ‘plus’ test.” 554 F.3d at 1188 (finding a tangible burden wherever, “as a practical matter, the law creates a framework under which agencies reflexively check the stigmatizing list...prior to conferring a legal right or benefit.”)

The Watchlisting System works in the exact same way. By encouraging and often compelling recipients of TSDB information—a roll of entities almost 20,000 names long—to “reflexively check the stigmatizing list,” the Plaintiffs can satisfy the plus prong in a manner identical to the *Humphries* plaintiffs. *Humphries v. Cty. of L.A.* 554 F.3d 1170, 1188 (9th Cir. 2009).<sup>13</sup>

**c. Because TSDB status is a legal status, Plaintiffs satisfy the “plus” prong no matter how the Court formulates it**

TSDB status is a legal status. Through it, the federal government imposes a life-spanning set of consequences, applied automatically, in accordance with a person’s TSDB status. A legal status is nothing more than a predictable set of consequences levied against people based on the bare fact of their particular status. And the desire to enact a change of legal status is why the operational scale of the Watchlisting System is so important to its leaders: the federal government’s already accomplished

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<sup>13</sup> While the Supreme Court later reversed the Ninth Circuit's decision regarding an aspect of the *Monell* claim, the Circuit’s language regarding the registry remains. See *Los Angeles Cty., Cal. v. Humphries*, 562 U.S. 29, 39 (2010). Accord *Foley v. Arostegui*, No. 2:14-cv-00094, 2018 U.S. Dist. LEXIS 17179, at \*8 (D. Nev. Jan. 31, 2018).

goal is to disfavor and disrupt the lives of listees wherever they go and whatever they do.

The distinctiveness of a TSDB listee's legal status is reflected in the numerous disabilities imposed on Plaintiffs. They are all subject to a 3-day waiting period for gun purchases. SOF 76. Defendants will not grant listees certain travel privileges, such as TSA PreCheck and Global Entry. SOF ¶ 97. USCIS unreasonably delays and/or denies any immigration benefits sought by TSDB listees based on their status. SOF ¶¶ 90-94. Mr. Halabi uprooted his life, sold everything he owned, and moved to Dubai so that he can live with his wife because his immigration petition he filed for her was delayed more than 10 years. Ex. 5 at 135-137. Dr. Hakmeh's immigration petition for his wife was delayed more than five years and Baby Doe's mother's citizenship application was delayed more than two years. Ex. 2 at 81-82; 7 at 260-261.

Listees cannot enter military bases, even if only for a delivery driver to drop off his precious cargo. SOF ¶ 119. And it goes without saying that, for TSDB listees, the FBI is not a potential employer. SOF ¶ 117. DHS denies airport identification to all TSDB listees. SOF ¶ 100. In fact, the Watchlisting System renders commercial aviation, as an industry, effectively off limits to TSDB listees. SOF ¶¶ 105. Mr. Ahmed, who was employed as a supervisor at Detroit Metro Airport, had his Customs seal revoked without notice or explanation, which interfered with his ability to perform his job. SOF ¶¶ 99, 104.

If Plaintiffs cross travel with electronic devices, CBP policy requires agents to conduct an "advanced search" of those devices in order to obtain their contents.<sup>14</sup> SOF ¶ 32. For Dr. Shaout, a professor at the University of Michigan College of Engineering, he could discern malware installed on

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<sup>14</sup> Mr. Kadura along with his father and brother (Ex. 3 at 138-140, 148-149), Mr. Elhady (Ex.1 at 84-85, 94-95, 99, 150, 168-170, 185), Dr. Shaout (Ex. 14 at 192), John Doe 2 (Ex. 21 at 69, 81-82, 95, 103), Mr. El-Shwehdi (Ex. 20 at 57, 180-182), Mr. Samir Anwar (Ex. 17 at 86-7), Mr. Ali (Ex. 15 at 52, 60), Mr. Al Halabi (Ex. 5 at 76, 79), Dr. Khan (Ex. 18 at 32, 57, 95), Mr. Shibly (Ex. 8 at 81-82, 238), John Doe 3 and his wife (Ex. 22 at 55-56, 66, 156, 208), Mr. Thomas and three travel companions (Ex. 10 at 71-73), and Baby Doe 2's parents (Ex. 2 at 45-46) all had their electronics seized.

his phone after CBP officials seized it. Ex. 14 at 7, 46-48, 192. Moreover, Plaintiffs traveling are likely to be interrogated about their Islamic religious beliefs and practices. See SOF ¶¶ 87-89 (religious interrogators of Mr. Shibly, Dr. Shaout, Mr. Frljuckic, Mr. Coleman, Mr. Ahmed, Mr. Thomas, and Mr. Kadura).

In the aggregate, all of these consequences indicate that a person's TSDB status is a novel legal status invented by Defendants to impact the lives of innocent people—people who have not been arrested, charged, or convicted of a terrorism-related offense.

## II. THE WATCHLISTING SYSTEM'S RISK OF ERRONEOUS DEPRIVATION IS HIGH

*Mathews* establishes that the “nature of the relevant inquiry” is, ultimately, “central to the evaluation of any administrative process” aimed at determining that scheme's risk of erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 343 (1976). Thus, while an inquiry regarding risk suggests a numerical assessment, an assessment for which Defendants' Watchlisting System fares poorly, the Supreme Court has explained that this *Mathews* factor has a qualitative dimension as well. An administrative inquiry that is “sharply focused and easily documented” will have a lower risk of erroneous deprivation than an inquiry that regards a “wide variety of information” and raises issues of “witness credibility and veracity.” *Mathews v. Eldridge*, 424 U.S. 319, 343-44 (1976). Determinations that, by their nature, are “fact specific” present a “grave risk of erroneous deprivation.” *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 395 (4th Cir. 1990).

The nature of Defendants' inquiry, as reflected in the TSDB inclusion standard they adopted, presents such a “grave risk.” *Id.* This is because none of the Plaintiffs qualify as “known” terrorists, a low risk inquiry this Court previously described as “straightforward and based on certain formal actions taken within the criminal justice system.” *Mohamed v. Holder*, 995 F. Supp. 2d 520, 531 (E.D. Va. 2014). All the Plaintiffs, rather, are TSDB listees because Defendants have labeled them as

“suspected terrorists,” a determination that appeared to this Court “to be based to a large extent on subjective judgments.” *Id.*

This subjectivity is extreme. The inclusion standard is satisfied by demonstrating a reasonable suspicion that an individual is “engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and /or terrorist activities.” SOF 12. The nature of this open-ended inquiry, and the word salad that miserably fails to give it focus, led this Court to observe in *Mohamed* that the inclusion standard makes it easy to imagine “completely innocent conduct serving as the starting point for a string of subjective, speculative inferences that result in a person's inclusion.” *Mohamed v. Holder*, 995 F. Supp. 2d 520, 532 (E.D. Va. 2014). What this Court wrote about the TSDB inclusion standard more than five years ago is still true today: “the Court has little, if any, ability to articulate what information is viewed by the TSC as sufficiently “derogatory” beyond the labels it has provided the Court.” *Id.*

The inclusion standard allows the federal government to consider “race, ethnicity, or religious affiliation” alongside a prospective listees’ beliefs and activities protected by the First Amendment.” SOF ¶ 18. Officials may consider an individual’s travel history, his personal and professional associations, and his financial transactions. SOF ¶ 19. As this Court previously reasoned, many protected activities<sup>15</sup>, including the study of Arabic, could provide a basis for satisfying the inclusion standard. *Id.* Based on this weak inclusion standard, the watchlist has ballooned over time, increasing by a half-million Listees in just the last five years. SOF ¶ 9 Meanwhile, government oversight agencies

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<sup>15</sup> “[I]s the academic study of terrorism or the investigative reporting of terrorist activities ‘related to terrorism and terrorist activities’? Is providing financial support to a charitable organization enough, even without knowledge that some of the organization’s activities are ‘in aid of . . . terrorist activities’? Is it enough to be a member of a lawfully operating social or religious organization whose membership may include other persons suspected of terrorism? Is studying Arabic abroad, as Mohamed concedes he did, conduct ‘in preparation for . . . terrorist activities?’” *Mohamed v. Holder*, 995 F. Supp. 2d 520, 532 (E.D. Va. 2014).

raise alarms.

### **III. THE GOVERNMENT’S INTEREST IS LOW IN OPERATING A SPRAWLING WATCHLISTING SYSTEM THAT TARGETS INNOCENT PEOPLE, WITHOUT EVER PROVIDING NOTICE AND USING A SECRET RUBBER-STAMPING INCLUSION STANDARD**

With respect to the final *Mathews* factor this Court must take into account, the “Government’s interest” is not simply a generic assertion of a sweeping interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Rather, the Court must assess the Government’s interest in maintaining its Watchlisting System as it is, and the effect “additional or substitute” procedures would have on that interest. *Id.* It is misleading to conceive of this *Mathews* factor as simply the “government’s interest”; instead, the Court must determine the government’s interest “in proceeding without providing such [additional] procedures.” *Pa. Coal Mining Assn. v. Ins. Dep’t*, 471 Pa. 437, 450 (1977).

#### **A. The Government’s Interest in its Watchlisting System Would Not Be Meaningfully Impacted if the Court Require Defendants to Provide TSDB Listees with Notice**

“Notice is the most basic requirement of due process.” *Pa. Coal Mining Assn. v. Ins. Dep’t*, 471 Pa. 437, 452 (1977). Absent notice, deprived parties “cannot take advantage of any of the other procedural safeguards made available to it.” *Id.* It is also not an aspect of procedural due process that varies from case to case. So long as the case does not regard a “de minimis” deprivation, “some form of notice and hearing...is required.” *Fuentes v. Shevin*, 407 U.S. 67, 90 n.21, 92 S. Ct. 1983, 1999 (1972).

#### **B. The Government’s Interest in its Watchlisting System is not Furthered by Maintaining a Secret Inclusion Standard**

While Defendants have publicly revealed the inclusion standards for the TSDB and the No Fly List, the federal government has continued to insist on its need to keep the Selectee List’s inclusion standard a secret. But such secrecy is “not congenial to truth-seeking.” *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring). By hiding one of their core inclusion

standards from listees, the federal government precludes adequate process; “without knowing the exact reasons” or even simply the “regulations they are accused of having violated,” injured persons cannot “clear up simple misunderstandings or rebut erroneous inferences.” *Gete v. I.N.S.*, 121 F.3d 1285, 1297 (9th Cir. 1997). Indeed, as this Court previously explained, the “Government’s ‘trust us’ approach [to defending the lawfulness of its Watchlisting System] is inconsistent with the fundamental procedural protections applicable to the deprivation of a protected liberty interest.” *Elbady v. Piebota*, 303 F. Supp. 3d 453, 465 (E.D. Va. 2017).

**C. The Government’s Interest in its Watchlisting System is Compatible with the Court Requiring Defendants to Utilize a Higher Inclusion Standard**

The Government’s TSDB inclusion standard adopts a novel threshold that is satisfied more than 150,000 times each year. *See* SOF ¶ 9. The inclusion standard is so permissive that the TSDB effectively lacks “any ascertainable standard for inclusion or exclusion.” *Smith v. Goguen*, 415 U.S. 566, 578 (1974). And though the standard purports to borrow the language of *Terry v. Ohio*’s reasonable suspicion test, there are no other substantive similarities. 392 U.S. 1 (1968). *Terry*’s reasonable suspicion standard requires a level of suspicion that criminal activity is afoot, while the Government’s TSDB inclusion standard, “is not necessarily related to any unlawful conduct.” *Mohamed v. Holder*, 995 F. Supp. 2d 520, 531 (E.D. Va. 2014). The result is what this Court previously characterized as a “reasonable suspicion” based on a “reasonable suspicion” standard—an administrative innovation, without precedent or analogue, that Defendants conjured out of thin air. *Mohamed*, 995 F. Supp. 2d at 532.

The appropriate substance of an inclusion standard is not entrusted to the Government’s imagination but, instead, is “the kind of question which has traditionally been left to the judiciary to resolve.” *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 284 (1966). And for decades, federal courts have outlined the types of standards that maintain the Government’s interests in

imposing various kinds of deprivations. In matters about money, for example, a "fair preponderance of the evidence" standard preserves the government interest. *Santosky v. Kramer*, 455 U.S. 745, 755 (1982). In civil cases where "individual interests at stake ... are both particularly important and more substantial than mere loss of money," an intermediate standard like "clear and convincing evidence" must be used. *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (internal quotes and cites omitted).

But the TSDB's inclusion standard sits far below even the lowest standards federal courts require agencies to use. Simply put, the Government's interest is compatible with this Court requiring Defendants to adopt a higher standard such as a clear-and-convincing or a preponderance of evidence standard.

#### **IV. DHS TRIP LACKS THE MOST BASIC ELEMENTS OF DUE PROCESS**

There are "basic requirements" that procedural due process, in each instance, demands: (1) "notice of the reasons for the deprivation," (2) some information regarding the "evidence against" the person injured, and (3) "an opportunity to present [the deprived person's] side of the story." *D.B. v. Cardall*, 826 F.3d 721, 743 (4th Cir. 2016). DHS TRIP comports with none of these basic requirements.

DHS TRIP provided no notice to Plaintiffs—not of the deprivation nor of the inclusion standard Defendants used to determine whether to impose the deprivation. The administrative scheme provides no information to TSDB listees about the evidence TSC relied upon to assign people a TSDB status. This Court previously described DHS TRIP determination letters as "non-substantive," because they do not reveal whether an alteration in status has been accomplished. *Mohamed v. Holder*, No. 1:11-cv-50, 2011 U.S. Dist. LEXIS 96751, at \*30 n.6 (E.D. Va. Aug. 26, 2011). And none of the Plaintiffs were given an opportunity to rebut the evidence TSC relied upon to assign them TSDB status. See MSJ Exs. 1B, 3A, 5B, 8B, 9C, 11A, 14B, 16A, 17B, 18B (Plaintiffs' DHS TRIP

Letters).

### CONCLUSION

The Court should **GRANT** Plaintiffs' Motion for Summary Judgment and find that the TSDB fails to provide constitutionally sufficient procedural due process, and thereby also violates the Administrative Procedures Act. The Court should **ORDER** supplemental briefing regarding the procedural remedy necessary to cure the constitutional harm.

DATED: March 11, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2019, I filed the foregoing document via the Court's CM/ECF system. I further certify that counsel for Defendants will automatically receive service of this filing via electronic mail.

*/s/ Gadeir I. Abbas* \_\_\_\_\_  
Gadeir I. Abbas



Deposition of:  
**Anas Elhady**

*February 22, 2018*

In the Matter of:

**Elhady vs. Kable**

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<p>1 don't know. I'm here being delayed for extra 2 screening and search. So I don't know if I'm going to 3 catch my flight to Detroit, but if I do, I'm going to 4 arrive at the flight time, which I don't remember what 5 was it. But I told him I'm going to arrive on time if 6 I get off here early. 7 Q Okay. Did you catch your flight to Detroit? 8 A Yes. 9 Q Did you post or write about this experience 10 at the Chicago airport on any of your social media 11 accounts? 12 A No. 13 Q Were there any consequences from your 14 interactions with Customs in Chicago in August 2017? 15 MS. MASRI: Objection, calls for a legal 16 conclusion. Calls for speculation. Objection as to 17 form. 18 THE WITNESS: I do not understand that 19 question. 20 MS. KONKOLY: Were there any consequences 21 that followed from your interactions with Customs at 22 the Chicago airport in August 2017?</p>	<p>1 flight in Detroit? 2 A No. 3 Q Did you have any issues going through 4 security in Detroit? 5 A No. 6 Q Did you have any issues boarding your flight 7 in Detroit once you got to the gate? 8 A No, no. 9 Q Okay. Did you have any issues on your plane 10 once you boarded the flight from Detroit? 11 A No, but there -- it was an issue. It was the 12 person was sitting next to me also asked me to change 13 my seat. I shouldn't call it an issue honestly, 14 because he asked me to change my seat so his daughter 15 can come next to him, and I asked the flight attendant 16 to move me to a seat. 17 There was behind me four other seats and he 18 moved me and then he came two minutes after to move me 19 to a different seat, which is I did move. 20 Q Okay. It initially started because the 21 person who was sitting next to you wanted to sit next 22 to his daughter?</p>
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<p>1 MS. MASRI: Same objections. 2 THE WITNESS: Just the fact, the effect on me 3 that I get delayed every flight, every time I cross a 4 border. It just makes me hate traveling and crossing 5 the border more and more, and just makes me hate even 6 moving from the city I'm at. Just the same feeling 7 every time. 8 BY MS. KONKOLY: 9 Q Have you flown internationally since August 10 2017? 11 A No. 12 Q Did you fly to D.C. for your deposition 13 today? 14 A Yes. 15 Q When did you fly in? 16 A Yesterday. 17 Q Okay. From Detroit to which airport? 18 A D.C. airport, the Ronald, Ronald something 19 airport. 20 Q Ronald Reagan? 21 A Yes. 22 Q Did you have any issues checking into your</p>	<p>1 A Wants his daughter to come next to him. 2 Q Okay, and do you allege that these seat moves 3 had anything to do with your being on a watch list? 4 MS. MASRI: Objection, calls for a legal 5 conclusion. Calls for speculation. 6 THE WITNESS: Yes. 7 BY MS. KONKOLY: 8 Q What makes you believe that? 9 A Because I am always being picked crossing the 10 border or traveling, and I've been -- I always feel 11 based on my experience at airports and at the border 12 that I'm being picked, and the same reason these 13 happened to me are the same reason that I'm being 14 picked to move my seat out of the -- everyone in the 15 flight. So it has, must have something to relate to 16 that, of course, being on the watch list. 17 Q So you believe that his -- the reason he 18 provided, that he wanted his daughter to sit next to 19 him was a pretext? 20 A Yes. 21 MS. MASRI: I'm going to object, that it 22 misstates prior testimony.</p>

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<p>1 A Three, two, around three hours.</p> <p>2 Q And how long did you stay in Canada on this</p> <p>3 trip?</p> <p>4 A Same day I came back.</p> <p>5 Q Okay. What was -- I can't remember if I've</p> <p>6 asked this question for this particular trip. What</p> <p>7 the purpose of this trip?</p> <p>8 A Visit friends.</p> <p>9 Q Just for one day?</p> <p>10 A Yeah.</p> <p>11 Q The same friends?</p> <p>12 A Yes.</p> <p>13 Q You didn't stay overnight?</p> <p>14 A Actually we, there was like lunch because my</p> <p>15 friend there got engaged, so I just went there for</p> <p>16 lunch and came back.</p> <p>17 Q Okay, and what time did you intend to come</p> <p>18 back?</p> <p>19 A I told them I'm coming back at between 11:30</p> <p>20 and 12:00, and I got there between 11:30 and 12:00.</p> <p>21 Q P.M.?</p> <p>22 A Yes.</p>	<p>1 A Took the bridge.</p> <p>2 Q Which bridge?</p> <p>3 A The Detroit-Windsor Bridge.</p> <p>4 Q Okay, and what happened when you arrived at</p> <p>5 the Detroit-Windsor Bridge?</p> <p>6 A Okay. At that time, I was -- I had just</p> <p>7 gotten a car, a new car. I had -- the person at the</p> <p>8 booth, I was actually -- when I got to the booth at</p> <p>9 the bridge, I gave him my ID and the letter that I had</p> <p>10 from Homeland Security that I received after</p> <p>11 submitting that first, the travel inquiry.</p> <p>12 I received a letter for a number that I had</p> <p>13 to present when I cross the border, and when they did</p> <p>14 that, he swiped my ID and had the same reaction, and</p> <p>15 because they're not used to me crossing the bridge,</p> <p>16 there was different people and a different scenario.</p> <p>17 Basically, I was asked to put my hands on the wheel</p> <p>18 until three agents or four came to the back of the</p> <p>19 car.</p> <p>20 They asked me to get out, leave everything in</p> <p>21 the car, the keys. I was also asked by the agent at</p> <p>22 the booth how did -- he asked me where I work, and I</p>
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<p>1 Q Did you write or post about your experience</p> <p>2 crossing into Canada in April 2015 on any of your</p> <p>3 social media accounts?</p> <p>4 A No.</p> <p>5 Q Did you talk to anyone about that crossing,</p> <p>6 aside from your attorney?</p> <p>7 A I talked to friends, family, every students</p> <p>8 in my school and everyone that knew about this</p> <p>9 incident I was questioned by.</p> <p>10 Q So how many people would you estimate that</p> <p>11 you talked to about this crossing into Canada in April</p> <p>12 2015?</p> <p>13 A Into Canada?</p> <p>14 Q Yeah, into Canada.</p> <p>15 A Oh. More than ten people.</p> <p>16 Q Okay. Did you write about this experience</p> <p>17 anywhere?</p> <p>18 A No.</p> <p>19 Q So you came back the same day?</p> <p>20 A Yes.</p> <p>21 Q Okay. Did you take the Windsor Tunnel or a</p> <p>22 different crossing?</p>	<p>1 told him I work at a gas station, and he told me how</p> <p>2 can you work at a gas station and afford this car? Is</p> <p>3 that really yours or not?</p> <p>4 I told him it's mine, and it was registered</p> <p>5 under my uncle's name. So he was just making fun of</p> <p>6 that, and then when I got out of the car, I was</p> <p>7 basically handcuffed in the back of my car, walked</p> <p>8 into the building at the bridge. They took me to a</p> <p>9 cell that was very bright light and very cold, and for</p> <p>10 -- they took my shoes, they took my watch, my phone,</p> <p>11 everything I had, even my belt.</p> <p>12 They even the seat in that room was a metal</p> <p>13 seat and it was freezing. So I tried to stand up or</p> <p>14 stay away from it because it was cold either way I sit</p> <p>15 or stand. So I was asked questions every -- at the</p> <p>16 beginning, I was asked a lot of questions for about an</p> <p>17 hour, and then they left me alone. They sent another</p> <p>18 agent, basically asked me the same questions just in a</p> <p>19 different form, and I couldn't say I already answered</p> <p>20 the questions because it was a different person.</p> <p>21 Until the fourth time I was approached by</p> <p>22 another agent, and I told them, you know, there's</p>

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<p style="text-align: right;">Page 186</p> <p>1 three other agents that came and asked me the same 2 exact questions over and over, just different 3 questions. He told me this is a different shift. If 4 you want to get out, you have to answer my questions, 5 and I just have to repeat myself even though I was 6 freezing. 7 I stayed there for approximately more than 8 ten hours. Every hour, hour and a half I get agent 9 coming to the cell, ask me questions, more everything 10 about my family, everyone I knew, even like my 11 cousins, my cousins' names, my uncles, everyone I 12 knew, and everything I'd done in my past. 13 Also, they asked me to -- one of the last 14 ones I was feeling so cold and my head started hurting 15 because of the bright light, I asked the officer if I 16 can get my shoes or a blanket because it's getting so 17 cold, and he told me that we're almost there to let 18 you out. I waited another hour, and then started 19 knocking on the door for -- 20 I know when they walked me, it was at the end 21 of the hall. So I started knocking on the door. They 22 hear me, no one answered and I also waited for like</p>	<p style="text-align: right;">Page 188</p> <p>1 he took me -- he realized that it's dangerous. So he 2 told me to get up and asked for -- he called on the 3 radio. 4 Another two officers came and took me to the 5 waiting room, and I was still shaking by then, and 6 they told me you okay? What's going on? I was like I 7 can't hold it. It's freezing in there. I've been 8 asking you guys to give me my shoes, something that 9 can keep me warm. 10 They said okay, we'll let you out in a few 11 minutes. Just hold on. I told them I can't, I cannot 12 leave in this situation. My whole body is shaking. I 13 don't think I'm going to be able to drive. I really 14 need to go to the hospital. So they called an 15 ambulance. When the ambulance arrived, they took me 16 to the -- by the way I was -- in the waiting room I 17 was handcuffed. 18 When I walked to the ambulance they -- I was 19 -- no, I'm sorry. I did not walk to the ambulance. 20 The ambulance brought the bed. They put me in the bed 21 and then took me to the ambulance outside, and then 22 the officer handcuffed me to the bed in the ambulance.</p>
<p style="text-align: right;">Page 187</p> <p>1 10, 15 minutes and I heard someone came by, and I 2 started asking for help. Hey, can someone hear me. 3 But I heard the officers talked by the cell, listen to 4 what I was saying and then kept on walking. 5 All I remember after that is I started 6 getting so drowsy and the headache started getting 7 more and I started shaking, and I started asking for I 8 need to go to the hospital, I need an ambulance. Then 9 an officer came and told me what's going on, why you 10 need the ambulance? 11 I told him I'm freezing. I'm freezing to 12 death. Please let me out or let me out, at least in 13 the waiting room. I cannot wait here longer, and he 14 told me okay, we're almost there. Just hang up, just 15 hang on. We'll let you out shortly. I waited, you 16 know, another like 30 minutes. I couldn't hold it. 17 All I remember after that is I was laying on the 18 floor, and the officer was waking me up, asking me if 19 I'm okay and I was shaking when he woke me up. 20 That was my first time falling unnoxious 21 (sic) ever in my life. Never felt like I was freezing 22 to death. I never felt like I was going to die, and</p>	<p style="text-align: right;">Page 189</p> <p>1 The nurse that was at the ambulance asked the officer 2 why are you still handcuffed him, he's barely moving, 3 and he told her to shut up and that's not her 4 business. 5 And I remember like she was back and forth, 6 like why are you still doing this to him? He's barely 7 moving. I was just trying to grab the blanket and 8 stay warm at that time. When I was listening to them, 9 I felt like it's an echo, it's not real what's 10 happening because I was so -- I never felt that way. I 11 felt like I was going to die, and what happened is 12 something I never experienced in my life. 13 I was just thinking of if I die, these people 14 that, referring to the Border agents that kept me in 15 the cell for more than ten hours, nobody knows about 16 me, I can die and they can -- they can do whatever 17 with my body, and nobody would know what happened to 18 me. So I was just trying to stay strong and trying to 19 stay awake so I know everything that's happening 20 around me. 21 I remember going to the hospital and they put 22 me on a chair because I couldn't walk, cuffed me into</p>

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<p>1 the chair. We were -- the officer took me inside and 2 then I was -- I was taken to a room inside the 3 hospital. They put me in a bed and I asked -- I 4 remember asking the nurse for extra blankets, because 5 I cannot stop shaking from how cold I was. 6 She gave me blankets and then a doctor came 7 and asked me what happened, and I remember the officer 8 told him not to ask me these kind of questions, and 9 the doctor asked him to step outside and he talked to 10 him, that he have to do this in order to process me or 11 in order to help me. 12 I heard them getting into an argument, and 13 then the doctor told the Border Patrol agent or 14 officer to stay out the room if he wants me to get 15 medical treatment. At the end, the doctor came and I 16 told him everything happened to me. 17 I was actually, I was so happy that I was 18 left alone with the doctor, I started telling him 19 everything, thinking I was going to die, and if I die, 20 there's someone I can trust that would send the story 21 or give it to my family so they know what happened to 22 me.</p>	<p>1 which is metal seats and they handcuffed me to the 2 floor of that bus. It was -- there was a handcuff 3 area they can handcuff me to the floor, until we got 4 to the bridge. 5 They gave me everything back the minute I 6 exited the bus, and they gave me everything, and they 7 gave me my car keys. They told me you're ready to go. 8 I wasn't feeling good, but I drove home and it was 9 about noon at that time when I arrived home, and I was 10 also -- I was -- yeah, after I got home, I remember my 11 brother was home and he was asking me what happened. 12 I just couldn't talk. I told him can we talk 13 about this a different time. After that experience, I 14 remember staying home, not going to school, not going 15 to work for about four days, just scared leaving the 16 house. I got scared of my situation. I stayed in 17 bed. My body couldn't actually function. Every time 18 I wake up, I feel like I'm hearing sounds in my head. 19 I'm hearing the questions that guy repeated 20 to me in the cell, and so I kept -- I stayed home for 21 about four days sleeping most of the time, and just 22 scared of travel again. After that was basically my</p>
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<p>1 So I started telling him everything. I 2 started telling him what kind of treatment I had in 3 the past on the border, and I remember like explaining 4 everything for about an hour or so. That's when I 5 felt real comfortable and came down. He gave me I 6 believe it was -- we did the blood tests and urine 7 test and also, he gave me a pill or a shot, I do not 8 remember. 9 All I remember just it put me to sleep. I 10 slept and my body just calmed down. I felt so 11 comfortable after I was speaking to the doctor, and 12 told him what happened and because honestly, I felt 13 like at that point I was -- I was dying and I just 14 wanted my mom to know what happened to me. 15 So after I woke up, the doctor came to 16 release me and he woke me up and told me you're ready 17 to go, how do you feel? I told him I feel better, but 18 I don't know why my head's going -- is still hurting 19 me. He said you'll feel better, just as long as you 20 can get up and walk. 21 He released me. We got back in the Border 22 Patrol bus, and they put me in the back of the bus,</p>	<p>1 last time crossing the border until August or June 2 2017. 3 Q June of 2017? 4 A Yes, when I went to -- drove to JFK, then -- 5 Q Saudi Arabia and Yemen? 6 A Yes. 7 Q Okay. Have you crossed the border by land 8 since this April 2015 incident? 9 MS. MASRI: I'm sorry. I don't want to 10 interrupt. I just want a quick clarification, that 11 last one. You said fall noxious. What was -- 12 MS. KONKOLY: Wait, I'm going to -- Lena, 13 this is my deposition. I don't think this is proper 14 for you to be correcting your witness' testimony in 15 this matter. 16 MS. MASRI: Well I mean -- 17 MS. KONKOLY: If you have a question you'd 18 like to ask on redirect -- 19 MS. MASRI: I'll redirect. 20 MS. KONKOLY: --I'm going to ask you to save 21 it for then. 22 MS. MASRI: That's fine. I'll redirect.</p>

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<p>1 BY MS. KONKOLY: 2 Q Have you crossed the United States border 3 into Canada or Mexico since this incident in April 4 2015? 5 A No. 6 Q Okay, and I believe you said you were 7 traveling alone on April 11th, 2015; is that correct? 8 A Yes. 9 Q Okay. Was anyone else there who you knew, 10 who witnessed this incident crossing back into the 11 United States? 12 A No. 13 Q Did you write or post about this on any of 14 your social media accounts? 15 A No. 16 Q Did you talk to anyone, aside from your 17 attorney, about this incident? 18 A I talked to everyone I knew that knew about 19 what happened to me, and that's probably more than 30 20 people. 21 Q More than 30? 22 A Yes.</p>	<p>1 because I did not answer phone. I did not leave my 2 bed, just to the bathroom and back. I was so -- 3 sometimes I used to wake up in the middle of my sleep 4 shaking, feel my body still cold inside, even though I 5 was covered with blankets at home. 6 I basically felt like that four days was the 7 worse four days of my life, because I used to hear 8 sounds like in my head. The only person I talked to 9 at that four days was my brother that used to live 10 with me. 11 Q Are there any consequences from this April 12 11th, 2015 incident that we haven't already discussed? 13 MS. MASRI: Objection, calls for a legal 14 conclusion, calls for speculation. Objection as to 15 form. 16 THE WITNESS: Consequence was actually after 17 that, and actually before that, but this made it very 18 clear, that my friends and family used to make fun of 19 me about what happened, and not just fun. Even 20 friends that I used to hang out with, they used to 21 tell me all the time oh, I don't know if we should go 22 out together. How about we just meet up over there,</p>
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<p>1 Q Okay. Did you write about it anywhere? 2 A No. 3 Q Do you believe that this happened to you 4 because you were on a watch list? 5 A I do, and I -- yes, I do. 6 Q Did anyone tell you at the time? Did any CBP 7 officials tell you that you were on a watch list? 8 A No. 9 Q What is your basis for believing that this 10 happened because you were on a watch list? 11 A Because of the treatment I had on the kind of 12 questions I was being asked, and every time I was 13 asked, especially that April 11th crossing, when I was 14 asked about terrorist groups and what I have been 15 doing in -- who do I contact in Yemen and if I have -- 16 they started asking me about people that I knew from 17 TV happened to be terrorist people like bin Laden and 18 others. 19 Q You mentioned that you missed class and work 20 for three or four days. Is that -- did I understand 21 that correctly? 22 A I missed my life in that three and four days</p>	<p>1 because we cannot trust you after what happened to 2 you. 3 We don't know if it's true or not. If the 4 government is taking it serious, why wouldn't we take 5 it serious? So it affected me and also made me stay 6 away from my friends. I stayed away from my cousins 7 that used to bring this up all the time, because it 8 used to affect me emotionally. 9 Also, that also one of the things that made 10 me stop crossing the border and I -- made me also 11 doubt myself, am I a bad person that needs to be given 12 or treated this way, even though I'm going to school, 13 work, paying for rent and trying to stay -- live like 14 a normal person. 15 But every time I used to, you know, hear this 16 from my friends or family or anyone that knew about 17 it, I used to feel like I'm -- I need to take a step 18 back and realize who I am and if I'm really a bad 19 person like the people at the Tunnel and Bridge think 20 I am. 21 But there is nothing I have done in my life 22 that makes me being suspicious or anything. It</p>

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<p style="text-align: right;">Page 234</p> <p>1 foreign countries? 2 A At this time? 3 Q Yes. 4 A No. They live in Michigan. 5 Q Okay. Do any of your siblings live in 6 foreign countries right now? 7 A My older brother. 8 Q Okay. Where does he live? 9 A He lives in Saudi Arabia. 10 Q And your wife lives in Yemen; is that 11 correct? 12 A Correct. 13 Q Have you ever sponsored by relative for 14 immigration into the United States? 15 A What does that mean? 16 Q Have you ever tried to use the benefit of 17 your citizenship to bring someone to the United States 18 who otherwise would not have the right to be here? 19 A No. 20 Q Did you say earlier that you had applied for 21 a visa for your wife? 22 A I did.</p>	<p style="text-align: right;">Page 236</p> <p>1 December, and I haven't heard any from immigration and 2 I've been checking my status, and there is nothing 3 listed after the receipt being sent to me. I believe 4 that will not move forward based on me being on the 5 watch list, and that will affect my wife coming here. 6 That's it. 7 Q What is the basis for that belief? 8 MS. MASRI: I'm going to object. To the 9 extent your response involves attorney-client 10 privileged communications, then don't disclose it. 11 Otherwise, answer if you can. 12 THE WITNESS: I won't answer that. 13 MS. KONKOLY: No, you need to answer. You 14 are not -- you need to answer it to the extent that it 15 doesn't -- your answer doesn't involve a communication 16 with your attorney. I'm asking you for your personal, 17 what is your -- what is the basis for your belief that 18 her visa will not be granted? 19 MS. MASRI: I'm going to repeat my objection. 20 If you're not able to answer the question without 21 disclosing attorney-client privilege, then state that 22 as your answer. Otherwise, if you're able to answer</p>
<p style="text-align: right;">Page 235</p> <p>1 Q So that's what I mean by sponsoring for 2 immigration. 3 A Okay. You said -- you asked me about my 4 wife, and then you asked me another question about any 5 other person. So that was definitely not referring to 6 my wife. 7 Q Well, I would consider your spouse a 8 relative, but I'll define that. Have you ever 9 sponsored any relative, by which I mean either your 10 parents, your siblings, spouse or a child for 11 immigration to the United States? 12 A My wife only. 13 Q Okay. You haven't sponsored anyone else? 14 A No. 15 Q Okay. When did you make that application? 16 A In December, the beginning of December. 17 Q Of 2017? 18 A Yes. 19 Q Okay, and what action, if any, that you know 20 of has been taken on that application so far? 21 A All I know is I received the receipt of my 22 application fees through the mail on December, mid-</p>	<p style="text-align: right;">Page 237</p> <p>1 then answer. 2 MS. KONKOLY: I mean that is a highly 3 improper speaking objection. 4 MS. MASRI: It is not improper. 5 MS. KONKOLY: You are coaching your witness 6 to provide that answer. That's not proper. 7 MS. MASRI: It's not proper -- 8 MS. KONKOLY: That's not proper. 9 MS. MASRI: I mean what you're saying is not 10 proper. I'm instructing my client to answer your 11 question if he's able to answer your question. 12 MS. KONKOLY: I'd like to be clear that this 13 isn't a choice that you have about whether you would 14 like to answer the question. You're required to 15 answer the question to the extent it does not 16 implicate the privilege. 17 THE WITNESS: I believe if me, every time I 18 come to the United States as a U.S. citizen being 19 harassed and get this kind of treatment at every 20 border I cross, have difficulty to enter the United 21 States, and not any other country, I would highly 22 believe that my spouse that I'm sponsoring to come to</p>

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<p>1 Q How did this person come to know about this 2 then? 3 A They saw a video on the You Tube about the 4 case. 5 Q He saw a You Tube video about this case? 6 A Yes. 7 Q Okay. Were you in the video? 8 A Yes. 9 Q Were you talking about being a plaintiff in 10 the case? 11 A Yes. 12 Q Okay, and he told you that he'd seen the 13 video? 14 A Yes. 15 Q Okay. How about at your other job, at the 16 U.S. Security Associates? Do any of your colleagues 17 at that job, to your knowledge, believe you are on a 18 watch list? 19 A No. 20 Q Have you ever not applied for a job as a 21 result of your alleged inclusion on a watch list? 22 A Can you repeat that question?</p>	<p>1 A Police officer and reserved police officer, 2 and officer, security officer. 3 Q What you mean by security officer? 4 A There was a job for the City of Dearborn as a 5 security officer for the library or the City Hall 6 Building they needed, but it was at the time that this 7 incidents were happening to me at the border. 8 But I really wanted something to be as 9 experience for me for my field, but I pushed back 10 because I believed that I will be denied based on 11 what's going on, because I did not know what's 12 happening in light of this is happening to me at that 13 time. 14 Q Okay. Was the police officer job that you 15 wanted to apply for but didn't, was that also with the 16 City of Dearborn? 17 A Not just with the City of Dearborn. Also, 18 the Lavonia; with the Brayloc (ph) I believe. 19 Q Any others? 20 A Not that I know of. 21 Q Have you ever applied for a job but not 22 received it, to your knowledge, as a result of your</p>
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<p>1 Q Has there ever been a job that you wanted to 2 apply for but decided not to because you believed you 3 were on a watch list? 4 A Yes. 5 Q What job? 6 A Any government job. 7 Q What government jobs have you specifically 8 wanted to apply to? 9 A Anything in my field that I'm going for, 10 which is law enforcement and most of law enforcement 11 jobs are government jobs. 12 Q But I'm asking like a specific job opening. 13 I'd like you to list any specific openings that you 14 saw and that you wanted to apply for. 15 A Police officer, security officer. The job I 16 mentioned earlier at the airport. 17 Q You did apply for that job? 18 A Yeah, I did apply. Are you asking what the 19 thing that pushed me back not to apply? 20 Q I'm asking if there's any time that you saw a 21 job announcement and said I'd like to apply for that 22 job but I'm not going to?</p>	<p>1 alleged inclusion on a watch list? 2 MS. MASRI: Objection, calls for speculation. 3 THE WITNESS: I did later on believe in 2017 4 applied for many jobs, but with the City of Dearborn 5 and Novi (ph) and Allen Park, but never even heard a 6 denial on that application. 7 BY MS. KONKOLY: 8 Q What types of jobs were you applying for? 9 A I'm sorry, give me a second. Reserved police 10 officer, police officer, internship at the police 11 department. I'm not sure what job was it for the City 12 of Novi. 13 Q Can you spell Novi? 14 A N-O-V-I. 15 Q Okay. These are all jobs that you did in 16 fact apply for? 17 A Yes. 18 Q Okay, and do you allege that you did not get 19 the job as a result of your placement on a watch list? 20 MS. MASRI: Objection, calls for a legal 21 conclusion. 22 THE WITNESS: Yes.</p>

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<p style="text-align: right;">Page 262</p> <p>1 BY MS. KONKOLY: 2 Q Okay, and what is the basis for that belief? 3 A Because I know and I had friends that applied 4 for other jobs with these cities, and they get either 5 interview request or a denial to their application 6 within two months of their application. But for me, I 7 never get anything back. That makes me believe that 8 I'm being on a watch list. 9 Q Do you know -- let me go back to Tab A of the 10 binder. I'm going to ask you to read the list of 11 names in the caption, and my question to you is 12 whether you know any of the persons listed there. 13 MS. MASRI: And I'm going to state the same 14 objection that I on the previous depositions, in that 15 there's no way for him to know the identities of all 16 of the Does, which there are five in the complaint. 17 THE WITNESS: I'm sorry. Do I know any of 18 them? I do not know them personally, but I know what 19 happened to them, some of them. 20 BY MS. KONKOLY: 21 Q Have you met any of the persons listed in 22 this caption in person?</p>	<p style="text-align: right;">Page 264</p> <p>1 me believe other -- that I'm on the watch list, other 2 than the ones we've talked about? 3 BY MS. KONKOLY: 4 Q No. I'm asking about consequences of your 5 belief that you're on the watch list, aside from 6 things that we've already talked about. I don't need 7 to repeat any testimony that you've already given? 8 A You mean things that happened to me. 9 Q Yes. Any consequences that you have, you 10 know, suffered as a result of your alleged status on 11 the watch list? 12 A Yes, there is an incident. I do not remember 13 if it's after being handcuffed the first time or the 14 second time on crossing the tunnel, but it was around 15 that time. I was being followed by random cars 16 everywhere I go to work, to school and home, and 17 everywhere I go. 18 Every time I get in a car, I had a car would 19 follow me everywhere, and it was -- the reason I know 20 they were following me because it was seven cars that 21 I remember everywhere I go. I see one of them being, 22 following me, and one time I was driving to work on</p>
<p style="text-align: right;">Page 263</p> <p>1 A No. 2 MS. KONKOLY: If I could take a quick break, 3 I think I might be almost done. 4 MS. MASRI: Okay. Could we just do a quick 5 check on the time stamp while we're -- 6 (Whereupon, a short recess was taken.) 7 MS. KONKOLY: Are we back on the record? 8 COURT REPORTER: Yes. 9 BY MS. KONKOLY: 10 Q I just have one last question for you, which 11 is that we spent a lot of time today discussing your 12 travels and other statements and allegations in this 13 complaint. I understand you believe that you are on a 14 watch list. My question for you right now is whether 15 you believe there are any other consequences of being 16 on that watch list, other than what we've already 17 talked about today? 18 MS. MASRI: Objection, calls for a legal 19 conclusion, calls for speculation. You can ahead and 20 answer. 21 THE WITNESS: Can you clarify that question 22 more? Are you saying if there's anything that makes</p>	<p style="text-align: right;">Page 265</p> <p>1 6th and Jefferson, on 16 Mile Road, and I was being 2 followed by one of the cars. 3 I went to a neighborhood and stopped, and the 4 car was following me stopped behind me. So I got out 5 of the car and walked to see who was following me. 6 That was the first day I was being followed, and 7 walked toward the car and the driver -- by the way, I 8 forgot to mention. All the cars that were following 9 me were tinted. I cannot see who were driving them. 10 So that first day I walked into the car, trying to see 11 who's that person that's following me. 12 The driver turned, made a turn on the grass 13 of one of the houses, just to get away from me so I 14 can see who is inside the car. The other time, the 15 other incident when I parked, every time I go to work 16 they will park across the street, watch every move or 17 make sure I'm the person inside the gas station. 18 And the other incident they also had with 19 these people that's following me, I was in 13th and 20 Hoover gas station, where I mentioned earlier I was 21 working, and I believe it was the third or fourth day 22 I was being followed, and I called the police so I can</p>



Deposition of:



*January 17, 2018*

In the Matter of:

**Elhady vs. Kable**

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<p style="text-align: right;">Page 78</p> <p>1 were being detained, on average, six to eight hours. 2 You don't recall, either way, an instance where your 3 infant son and wife were waiting for you to six to 4 eight hours at the border? 5 MS. MASRI: Objection. Objection. Misstates 6 prior testimony. 7 THE WITNESS: I don't recall. 8 BY MS ROTH: 9 Q You don't recall? 10 A I don't recall. 11 MS. ROTH: Okay. We've been going a little 12 bit over an hour. I'd like to take a five-minute break 13 if that's all right? 14 MS. MASRI: Sure. 15 MS. ROTH: Okay. We'll go off the record, 16 please. 17 (Off the record.) 18 MS. ROTH: Okay. We're back on the record. 19 BY MS ROTH: 20 Q Mr. [REDACTED] we just took a short break. During 21 that break did you talk to anyone other than your 22 attorney?</p>	<p style="text-align: right;">Page 80</p> <p>1 month? 2 A No, I have not. 3 Q Okay. But your testimony was that on that 4 trip with your family to Amman you did not experience 5 any travel difficulties? 6 A I did in -- in Istanbul, leaving there, to 7 board the plan. Yeah, I was pulled aside. I still got 8 the sticker on my passport. My wife and my son and 9 daughter got a yellow sticker, mine was red. And I 10 questioned the guy, I'm like, why is my sticker red. 11 And he was just -- what did he say? He -- oh, he said, 12 you're getting a special, you know, screening or a 13 special search. Then he pulled me aside, front of 14 everybody, and he swabbed, you know, my clothing and 15 things like that. And after a few minutes he came 16 back, you know, whatever came back they let me go, so. 17 Q And this was in Istanbul? 18 A Yeah. 19 Q But your wife and your children did not have 20 anything swabbed or additionally screened, right? 21 A No. 22 Q Okay. When you landed at O'Hare did you</p>
<p style="text-align: right;">Page 79</p> <p>1 A No, ma'am. I just texted my wife. I told it 2 might be an hour. 3 Q Fair enough. So we were talking a few minutes 4 ago about travel by land, to and from Canada. And what 5 I wanted to ask is, the last time you recall traveling 6 by land into Canada and back. Did you have that six to 7 eight period of questioning, detainment that last time 8 that you recall traveling? 9 A Yeah. Every single time for the past many 10 years. Yes. 11 Q Okay. So what I'm asking is on your most 12 recent trip to Canada, you still had the same -- 13 A Yeah. 14 Q -- secondary screening? 15 A Yes, ma'am. 16 Q Okay. How did you travel to Washington, D.C. 17 for this deposition? 18 A I drove. 19 Q You drove? 20 A Yes. 21 Q Okay. Have you traveled by air since the 22 flight -- the trip to Amman with your family last</p>	<p style="text-align: right;">Page 81</p> <p>1 experience any additional screening or questioning? 2 A No, a miracle happened that day, it was very, 3 very different than we were accustomed to. 4 Q Okay. I'm going to ask a series of questions 5 now that are going to sound strange in the light of the 6 fact that I'm asking it -- them -- I'm asking you to 7 answer them about your son, who is -- just turned 8 three. 9 Does your son have a bank account? 10 A He does not. 11 Q He does not? Have you ever tried to open a 12 bank account for your son? 13 A I have not. 14 Q Have you ever tried to wire money to anyone in 15 your son's name, like on behalf of your son? 16 A No. 17 Q Have you, so not your son but you, have you 18 ever sponsored anyone to become a United States 19 citizen? 20 A My wife. 21 Q And was that resolved positively, she became a 22 citizen?</p>

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<p>1 A No, it was horrible actually. It's been 2 almost two years we applied for her citizenship, her 3 N400. I know they state it takes approximately five 4 months and it's been almost two years now. She's been 5 in -- waiting for an interview since -- since August of 6 2017, so it's been six months now waiting for an 7 interview where she should have been done with the 8 whole process. 9 Q Where is she is a citizen of? 10 A Jordan. 11 Q To your knowledge is she a citizen of any 12 other country? 13 A She is not. 14 Q Okay. But your son is a citizen of the United 15 States, right? 16 A He is. 17 Q Have you sponsored anyone else other than your 18 wife for citizenship? 19 A I have not. 20 Q Mr. [REDACTED] do you own any firearms? 21 A I do. 22 Q Have you had any difficulties purchasing</p>	<p>1 A No. 2 Q Have you ever -- do you know what a hazmat 3 license is? 4 A I do. 5 Q Have you ever applied for one? 6 A No, I don't know what -- I have my hazmat 7 operations through, you know, work that I need to have 8 to identify, you know, possible hazardous things of -- 9 you know, to stay away from them. But can you clarify 10 what hazmat -- 11 Q Yeah. 12 A -- (inaudible), please? 13 Q Sure. It's -- hazmat stands for hazardous 14 materials -- 15 A Yeah. 16 Q -- and so you need to have a special license 17 in order to transport them or otherwise possess them 18 for any purpose. So I take it you've never applied for 19 a hazmat license? 20 A No. 21 Q Okay. In your work as a fireman -- or as an 22 EMS for the fire department, however, it sounds like</p>
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<p>1 firearms? 2 A I just have one and I didn't have any 3 difficulty purchasing it. 4 Q Okay. Have you ever tried to purchase a 5 firearm in your son's name? 6 A No. 7 Q Have you ever applied for a job to a 8 contractor with the federal government? 9 A Not that I can remember. 10 Q Have you ever taken your son on a trip by 11 boat? 12 A You mean boat like going -- not like just 13 going out to, like, the lake or something like that, 14 right? 15 Q Correct. Not just like going on the lake. 16 A No. No, he's never traveled like that. 17 Q Have you ever traveled in a boat? 18 A Not -- not that I can remember, no. 19 Q Have you ever tried to rent a boat? 20 A No. Do people still travel by boat? So, I'm 21 sorry. Okay. No. 22 Q Do you own a boat?</p>	<p>1 you've had some training with how to deal with 2 hazardous materials? 3 A Yes. 4 Q Okay. Have you ever had any problems 5 obtaining any training that you've needed to do your 6 job to deal with hazardous materials? 7 A No. 8 Q Okay. Have you ever applied to work at an 9 airport? 10 A I can't remember if I did. There was a phase 11 before I got that job in 2014 where I was kind of 12 applying everywhere and anywhere. I don't know if I 13 applied for the fire department there or not, or -- I 14 don't remember. I don't think I did, but I don't 15 remember. 16 Q So the fire department at the airport you 17 mean? 18 A Yeah. 19 Q So you can't recall whether or not you applied 20 to work at the fire department at the airport? 21 A Correct. 22 Q Would that be the Detroit Wayne County</p>



Deposition of:  
**Yaseen Kadura**

*November 30, 2017*

In the Matter of:  
**Elhady vs. Kable**

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<p>1 you're proposing, and that would address the 2 missing pages in his passport? 3 MS. KONKOLY: Of the American 4 passport. We still need the Canadian 5 passport. 6 MR. ABBAS: Okay. That's fair. So 7 if we can have a quick conversation, and 8 then, if we're going to leave, we'll have to 9 go back through security, right? 10 MS. KONKOLY: Where is the 11 passport? 12 MR. ABBAS: I'm not going to -- I 13 don't know if it's outside. I'm not going to 14 ask him now, but so why don't you -- 15 BY MS. KONKOLY: 16 Q Where is your passport? 17 MS. KONKOLY: He can answer that 18 question. 19 BY MS. KONKOLY: 20 Q Where is your passport right now? 21 A I don't have my license right now. I 22 gave it to the lady downstairs. She gave me this. 23 Q They're not going to let you take it 24 out. 25 A I could wait.</p>	<p>1 A I mean I don't know. I had social media 2 at the time, so I guess it is. 3 Q And what social media did you have at 4 the time? 5 A So I deactivate and reactivate all the 6 time. I don't really like social media that much. 7 It's like a love/hate thing. Sometimes I get on, 8 I get annoyed, I deactivate. So it could be that 9 I had a Facebook. It could be that I had a 10 Twitter. 11 Q Is it possible that you posted about 12 your travel experience on Facebook? 13 A Okay. I mean it's possible. 14 Q Is that a search that you made? 15 A No. I don't have, I don't have those 16 accounts anymore. 17 Q Could you reactivate your Facebook 18 account if you wanted to? 19 A No. They're deleted. I said 20 "deactivate" earlier. I like axed them. They're 21 gone. 22 Q It's possible that you tweeted about 23 your travel experience? 24 A Yeah, but my Twitter is gone, too. 25 Q Okay. Did you ever maintain a blog?</p>
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<p>1 MR. ABBAS: Yeah, they're not going 2 to let him -- he can't be inside of this 3 building with that passport. 4 MS. KONKOLY: Okay. We'll need to 5 address that later. We still need to take a 6 break. 7 (Whereupon, a short recess was 8 taken.) 9 BY MS. KONKOLY: 10 Q Okay. Mr. Kadura, we were discussing 11 your July to August 2010 trip to Casa Blanca? 12 A Mm-hmm. 13 Q And my question to you is whether you 14 wrote about your travel experience in any place. 15 A I don't remember. 16 Q You don't recall? 17 A I don't recall. 18 Q Did you keep a journal? 19 A No, no. 20 Q Did you post about your travel 21 experience to any social media account, including, 22 but not limited to, Facebook, Twitter, a blog that 23 you maybe maintained, anything like that? 24 A I don't recall. 25 Q Is it possible that you did?</p>	<p>1 A I might have had like an account on the 2 Tumblr website for a little bit. Do you know that 3 website? 4 Q I do. Did you write on Tumblr? 5 A I just posted like pictures mostly. 6 Q Did you take any pictures of your 7 experience at the airport -- 8 A Oh, no. 9 Q -- on this trip to Casa Blanca? 10 A No, not that I remember. Not that I 11 recall. 12 Q And did I understand you correctly to 13 say that you encountered no delays or barriers to 14 boarding -- to proceeding through security or 15 boarding your flight to Casa Blanca? 16 A Oh, no. I, I don't remember. 17 Q You don't remember? 18 A But I did get there. 19 Q And you boarded the flight on time? 20 A So like for me, just so I can like 21 clarify a little bit. Like I've had some really 22 dramatic instances in past few years that have 23 included me getting handcuffed, that have included 24 like some really humiliating situations, so 25 anything that's kind of less than that, I forget,</p>

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<p style="text-align: right;">Page 58</p> <p>1 just because it's like that seems normal to me, 2 you know? 3 So it's a possibility that I faced extra 4 screening on that trip, but I cannot recall. I do 5 not recall. 6 Q I'm going to need to ask you that 7 question about every single one of your trips. 8 A That's fine. 9 Q All of it is at issue in your case, so 10 I'm going to need to ask you to recall -- 11 A But that's why I like to -- so like I've 12 even had -- I've had times that like -- you know, 13 when I was getting detained for like eight hours 14 at a time, I was like please let this only be 15 three hours. You know what I mean? So it's like 16 that's why some of those things don't seem -- like 17 I may have been pulled to the side or like 18 supposedly like random searched, but I just don't 19 recall. 20 Q Okay. I'm going to ask you for every 21 trip, and starting with this one, and specifically 22 I'm talking about your trip from JFK to Casa 23 Blanca, whether you specifically recall any delays 24 or barriers to any aspect -- 25 A I don't recall.</p>	<p style="text-align: right;">Page 60</p> <p>1 back to 2009 now, to this first trip. 2 I see that you -- under number 1 here, 3 you said on November 20 you traveled from 4 Indianapolis to Atlanta, and then it looks like 5 from there you went on to Hartford. 6 Is that accurate? 7 A Yes. 8 Q Okay, and you were residing in 9 Indianapolis at that time? 10 A Fishers. 11 Q Fishers. Okay. Is that near 12 Indianapolis? 13 A Yeah, it's a suburb of Indianapolis. 14 Q Okay, and what was the purpose of this 15 trip? 16 A I don't remember. I think -- what was I 17 doing there? This is a while ago. I was 19. I 18 definitely remember the trip, because I remember I 19 didn't like the Hartford airport, but I don't 20 remember why I was there. 21 Q Do you recall whether you traveled by 22 yourself? 23 A Yeah, I was by myself. 24 Q Okay, and you said you were how old at 25 the time?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Okay. 2 MR. ABBAS: I'm just reminding you 3 to wait for the question before you answer. 4 THE WITNESS: Sorry about that. 5 BY MS. KONKOLY: 6 Q Okay, and did you stay in Morrocco the 7 entire time, or did you cross into any other 8 countries while you were over there? 9 A I stayed in Morocco the entire time. 10 Q Have you ever been denied entry to a 11 foreign country at its border? 12 A No. 13 Q And the same question for your return 14 flight from Casa Blanca to JFK, which I understand 15 was August 3, 2010. Do you recall any delays, 16 barriers to checking in, to going through 17 security, to boarding your flight? 18 A I do not recall. 19 Q Okay. 20 If you could continue to look at Exhibit 21 A, you did not list your answers chronologically, 22 but I'm going to take them chronologically, so if 23 you could go over to page 17, and -- let's see. I 24 thought we were in 2009 with this Casa Blanca, but 25 we were actually in 2010, so we will need to go</p>	<p style="text-align: right;">Page 61</p> <p>1 A In 2009 I was 19. 2 Q Were you in college? 3 A Yeah. 4 Q And you have no idea why you went to 5 Hartford? 6 A No, I'm trying to think. Yeah, I don't 7 remember. 8 Q Okay. On this, there's two legs of this 9 trip. You transferred through Atlanta. 10 Is that accurate? 11 A Yeah. 12 Q So you had two different flights to 13 board? 14 A Yes, and I remember I was by myself, 15 because I remember being on the phone with my 16 brother while I was in Atlanta. 17 Q So just for this first leg from 18 Indianapolis to Atlanta, were there -- do you 19 recall any delays, barriers to checking in, to 20 going through security, to boarding your flight? 21 A I don't remember. 22 Q Okay. From Atlanta to Hartford, same 23 question: Do you recall any delays or barriers to 24 checking in, to boarding, to going through 25 security?</p>

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<p style="text-align: right;">Page 138</p> <p>1 and be stupid. That's him. So they ended up 2 making a comment like that to my dad. 3 Then I saw them put my dad up against 4 the wall, pat him down, feel up his junk just like 5 they felt up mine, just like they felt up my 6 brother's. A very humiliating thing to see your 7 father go through. They wouldn't tell us why we 8 were stopped, they wouldn't tell us how long we 9 were going to be. 10 And they took everything that was -- 11 they took everything. They took all of our 12 phones. They took my dad's laptop. I saw them go 13 into a back room and plug my brother's phone into 14 a computer. I had like papers in my wallet from 15 like when I was a kid, like from a long time ago. 16 I saw them photocopy them front and back. They 17 wouldn't give us any reason why. 18 Q What kind of papers? 19 A Just like -- I had probably a phone 20 number of a girl or something in my wallet, you 21 know, just like whatever. I had like a thick 22 little wallet of nothing. Every single article, 23 every single piece of paper that we had on our 24 person, in our car, every single electronic 25 device, everything was taken from us, and it was</p>	<p style="text-align: right;">Page 140</p> <p>1 that's why there are some dates that are missing, 2 right? 3 So this had been going on -- I was 4 stopped at Buffalo for a couple hours once. I was 5 stopped somewhere else for -- what's up? 6 Q Keep going. 7 A I had been stopped before a couple 8 times, and then this time was kind of the first 9 time that we were super, super -- we were held for 10 a really, really long time. 11 Q What do you mean by "a really, really 12 long time"? 13 A I mean I think, yeah, six and a half 14 hours. I remember that, because I contacted my 15 lawyer and I told her that exact amount, and this 16 was the time that I had written to my lawyer then, 17 and that would have been accurate. 18 MR. ABBAS: Just a reminder to the 19 deponent to not reveal attorney/client 20 privileged communications. 21 THE WITNESS: So yeah, there was -- 22 that was kind of the first time that we'd 23 like been stopped and extensively searched 24 and not told why, and, you know, it wasn't 25 just me. It was my father who was subject to</p>
<p style="text-align: right;">Page 139</p> <p>1 all like documented, right? 2 We weren't told why, and we were held 3 for a really long time, and it was really scary 4 and it was really upsetting. I didn't know what 5 was going on. I didn't know why it was being 6 done. I was wanting to talk to somebody about 7 what can I do to possibly clear this up. I had 8 some -- I totally understood. 9 Okay, look, I had gone to Libya. You 10 know what I mean? Like I'm back now. Like I 11 understand what was going on there and why there 12 would be cause for concern, but, you know, I'm 13 willing to speak to whoever there is for there to 14 be some kind of like -- I want to be transparent. 15 I got nothing to hide, you know what I mean? And 16 there was no -- I wasn't given any answers of why 17 I was stopped. 18 They were rude to us. I mean I don't 19 remember if at this time they, you know, took my 20 fingerprints. I had already been stopped a couple 21 of times before this one time at the Buffalo 22 border, and again I did not disclose that, because 23 I never had written documentation of the exact 24 day. So I wasn't going to just say, yeah, once I 25 was stopped at Buffalo, once this, once that, so</p>	<p style="text-align: right;">Page 141</p> <p>1 it. It was my youngest brother who was 2 subject to it. They, you know, made 3 assumptions about him. 4 They were really callous, and, you 5 know, they roughed up my dad. You know what 6 I'm saying? My dad has like had a rough 7 life, and to see him have to put his hands up 8 on the wall, have somebody feel up his 9 crotch, you know what I mean, and feel his 10 whole body up, like trying to look for 11 something on him like he's a criminal. 12 No one has committed -- I never -- 13 I stop at red lights at night, you know what 14 I mean? Like I stop at stop signs at night. 15 I don't disobey the law. I'm in med school, 16 you know, like -- it's just like I never 17 committed a crime in my life, and here I am, 18 me and my family being treated like we're 19 criminals. And not only that, like we want 20 to be able to be like, hey, look, we're 21 willing for whatever, but just let us know 22 what, you know. 23 I'm sorry. I'm not very good at 24 articulating with these things. 25</p>

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<p style="text-align: right;">Page 146</p> <p>1 MS. KONKOLY: I am going to again 2 state for the record that plaintiff's counsel 3 is making speaking narrative objections that 4 have the plain intent and purpose of 5 implicitly instructing the witness as to his 6 answers. 7 MR. ABBAS: I'm instructing the 8 witness not to answer, and I stated the 9 objections in a nonspeaking way, but for 10 whatever reason, you decided that we should 11 argue. I'm arguing with you, but we can go 12 back to just making objections, and I'm 13 issuing my instruction to the witness not to 14 answer the question. 15 MS. KONKOLY: I'm entitled to know 16 what kind of contemporaneous conversations 17 may have happened about this incident that 18 your client has put at issue. 19 MR. ABBAS: Ask him about the 20 conversations. That doesn't necessitate a 21 need to know the names of the person. 22 MS. KONKOLY: It does. 23 MR. ABBAS: It doesn't. 24 BY MS. KONKOLY: 25 Q I'm going to ask you again, okay?</p>	<p style="text-align: right;">Page 148</p> <p>1 question. That's fine. 2 BY MS. KONKOLY: 3 Q I'd like to know if you're going to 4 answer my question about who you talked to about 5 this incident contemporaneously with it happening. 6 A I'm not comfortable, and I want to 7 follow the instructions of my lawyer. 8 MR. ABBAS: And his refusal to 9 answer is based upon the two objections that 10 have already been previously identified. 11 BY MS. KONKOLY: 12 Q Did you take any pictures? 13 A No. 14 Q Did you make any videos of this 15 incident? 16 A Pictures and videos where? 17 Q Of your experience on the bridge. 18 A No. 19 Q Did you make any videos? 20 A It's impossible. They took my phone, so 21 I wouldn't have been able to if I wanted to, so 22 no. 23 Q Were there any consequences of this 24 incident aside from the search itself? 25 A I mean it was just -- it's one of the</p>
<p style="text-align: right;">Page 147</p> <p>1 And you do not need to repeat the 2 objection. The objection has been made for the 3 record. The question is simply to your client 4 alone. 5 Would you like to answer the question, 6 who did you speak to about this incident at the 7 time? 8 MR. ABBAS: Objection, improper 9 purpose. Objection, beyond the limitation of 10 a court-imposed limitation. I'm instructing 11 the witness not to answer. 12 BY MS. KONKOLY: 13 Q Would you like to answer? 14 MR. ABBAS: Objection, improper -- 15 MS. KONKOLY: Gadeir, at some point 16 you need to let him actually answer the 17 question. 18 BY MS. KONKOLY: 19 Q Would you like to answer? 20 MR. ABBAS: Objection. Asked and 21 answered. I mean I'm instructing him not to 22 answer your question, so -- 23 MS. KONKOLY: And he ultimately 24 decides whether he's going to answer me. 25 MR. ABBAS: Okay. Ask the</p>	<p style="text-align: right;">Page 149</p> <p>1 worst memories of my life is seeing my dad have to 2 go through that because of me, you know? So I 3 have that on for whatever reason, but like at that 4 time -- I don't blame myself for it now, but when 5 you're treated like a criminal, you feel like you 6 did something wrong, right? And I felt like I put 7 my dad through this, and it was something that I 8 had to deal with, right? 9 And it's not like -- my whole thing in 10 life is I want to -- you know, my dad gave me 11 everything. My mom gave me everything in this 12 world. All I want to do is be able like to bring 13 them ease. They struggled a lot for me and my 14 siblings, my brothers and my sister. 15 You know, and then I'm here, and because 16 of me, at this light, I'm seeing my dad, you know, 17 being patted down, you know what I mean, like he 18 has some kind of like contraband on him or 19 something like that. They're not telling us why. 20 It's something that he later would deal with by 21 delays in his flights. My siblings would as well. 22 So there's that element of it. 23 Then there's the element of why did they 24 take my phone, why won't they tell me why they 25 took my phone, why won't they talk to me and give</p>

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<p>1 Q Okay. What do you recall about 2 September 22, 2012? 3 A Okay. So September 22, that Port Huron 4 crossing, I was coming back. It was at night. I 5 believe I was driving my mom's Toyota Camry, 2011. 6 It's a gray car, you know. Every time I cross the 7 border, I'm uneasy because of, you know, all the 8 past incidents that I had had and just the general 9 awareness of how, you know, Muslim-Americans, 10 Arab-Americans are treated. 11 I was crossing the border. I had a nice 12 conversation with the border guard. He asked me 13 where I went to school. I told him IUPUI. What 14 were you doing in Canada? I told him I was 15 visiting family. You know, it was a nice 16 conversation. 17 He ended up, you know, when he swiped 18 me -- actually, you know what? It wasn't at 19 night. I'm going to take that back. It wasn't at 20 night. I think it was around five in the 21 afternoon, but I'm not 100 percent, but it wasn't 22 at night. That's my mistake. I was let out at 23 night. 24 So anyways, I go to cross the border, 25 had a nice conversation, he scans my passport, and</p>	<p>1 me don't look back, don't make any moves. I'm 2 walking. I kind of looked to my left. I see a 3 bunch of cops were their hands on their hips to 4 the left of me. I'm walking back. I look to my 5 right, I see that all the border crossings are -- 6 no cars are going through, and like the same 7 formation is over on the right of me, behind the 8 little barrier. They have their hands on their 9 hips, right, I'm assuming near their guns. 10 I'm walking back. Then there's a voice 11 behind me that tells me come, come, come. Okay, 12 stop. Grabs my hand, handcuffs me, right, and 13 then him and all of the cops that had pulled that 14 formation on me escorted me inside. On my way 15 going inside to the building, I saw all the cars 16 are stopped up, all the traffic going from Sarnia 17 to Port Huron is stopped, right? And there's 18 literally a girl has her camera phone open and is 19 like videotaping me, you know, while I'm being 20 handcuffed and taken in for I don't know what. 21 As I'm being taken in, I asked one of 22 the cops why did you guys need to do that. I'm 23 sure you have in your computer that I've been 24 nothing but cooperative with you guys, and he said 25 oh, it's for your own safety, and I was like what</p>
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<p>1 I've been waiting for it, and that red screen 2 popped up. 3 Q Was this your American passport? 4 A Yes. 5 So then he says keep your hands on the 6 steering wheel and look forward. I keep my hands 7 on the steering wheel, I'm looking forward. I'm 8 like okay. He's like I'm going to open the door, 9 keep your hands where I can see them. He had 10 pressed some kind of button. I didn't look around 11 to see what was going on. I'm just looking 12 forward kind of in disbelief, like okay, what's 13 going on. You know, I'm just going to listen to 14 everything he says. 15 He opens the door. He tells me to get 16 out of the car with my hands first. I turn, I get 17 out of the car, and I stand up. He says put your 18 hands up in the air and look forward. I'm looking 19 forward. Hands are up in the air, you know? He 20 pats me down. Then he tells me I want you to walk 21 out into the middle of the road until -- and 22 there's going to be a voice behind you. Until he 23 says to stop. 24 So I had my hands up in the air, I'm 25 walking, I'm kind of like laughing, and he tells</p>	<p>1 do you mean? He was like, oh, so we don't shoot 2 you, right? 3 I get taken to this back room. There's 4 no windows. I'm handcuffed, I'm sitting on the 5 ground. One of them tells me to take my shoes 6 off. I'm kind of doing it, but I'm a little slow. 7 I had never had anything happen, I'd never been 8 handcuffed, you know, never had this happen to me 9 before. 10 He takes my shoe, throws it against the 11 wall. He takes my other shoe, looks in it, throws 12 it against the wall, you know, and there's just 13 someone sitting there minding the door, and I'm 14 sitting there in my handcuffs, barefoot. He had 15 patted me down, all that. I'm sitting there 16 waiting, and I'm just like really? Like what is 17 going on, you know? 18 And I had someone that was waiting for 19 me on the other side, right, because he wanted to 20 go take me to dinner, and I was thinking about how 21 do I contact him, how do I contact my family, 22 because they're always worried every time I cross 23 the border, because they want to know what's going 24 on, right? 25 Eventually, after I don't know how long,</p>

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<p>1 deponent. 2 THE WITNESS: What are you asking? 3 BY MS. KONKOLY: 4 Q How did that article come about? 5 A So after we filed my initial lawsuit, my 6 name is now Google-able, which is a big reason why 7 I wasn't filing anything was because I was trying 8 to get into medical school, and I didn't want all 9 of this information to be out there about me, so 10 that delayed my initial lawsuit. I had 11 opportunities to join other lawsuits. I waited 12 until I got into med school, joined this one. 13 And then, you know, we went for media 14 coverage. Murtaza is someone who understands 15 American-Islamic issues and all of their nuances, 16 he's someone whose writing I liked, and I thought 17 to reach out to him, and he was a contact that my 18 lawyers had, so . . . 19 Q Okay, and did he interview you for that 20 article? 21 A Yeah. 22 Q Okay. Once? Twice? 23 A Over the phone a couple times, and then 24 I met him when I flew to -- but this is in 2016, 25 so we're jumping pretty far ahead. You know, we</p>	<p>1 name? 2 A No. 3 Q Did he reach out to you or did you reach 4 out to him? 5 A It was through my attorney. 6 Q I'm not asking about communications. 7 MR. ABBAS: I'm just trying to be 8 helpful. If you would like us to send you 9 the article with Matt Barakat, The Associated 10 Press, we're happy to send that article as 11 well. 12 MS. KONKOLY: Sure. 13 MR. ABBAS: I don't know if you 14 made an interrogatory request or discovery 15 request that regards these things, but it's 16 all public, and we're happy -- if it would be 17 helpful for you, I can include Matt Barakat 18 with The Associated Press, and Matt 19 Zapotosky, a journalist with the Washington 20 Post, and then the journalist Murtaza 21 Hussain. 22 Would you like me to send you links 23 to those articles? 24 MS. KONKOLY: Yes, please. Thank 25 you.</p>
Page 175	Page 177
<p>1 still didn't get into the incident where I was 2 denied boarding a flight and I was told I was on 3 the no-fly list. 4 Q So the interview and the article came 5 later, in 2016? 6 A Yes. 7 Q Do you know if it's still up on the 8 internet? 9 A Yes. 10 MR. ABBAS: It is. We can provide 11 it to you if you like. Do you want it? 12 MS. KONKOLY: Sure. 13 MR. ABBAS: Okay. I'll email it 14 right now. 15 BY MS. KONKOLY: 16 Q Did you talk to any other reporters in 17 conjunction with this incident? 18 A With what incident? With this one that 19 we're talking about? 20 Q Yes. 21 A I talked to a reporter. I think he was 22 for either Reuters or Associated Press, like some 23 kind of syndicated news. I don't know what 24 they're called, yeah. 25 Q Okay. Do you remember the reporter's</p>	<p>1 BY MS. KONKOLY: 2 Q Okay. Are there any other media 3 accounts of any of the incidents you've put at 4 issue in this lawsuit that you are aware of? 5 A I only did those interviews. 6 Q Okay. So we were discussing the 7 September 22, 2012 incident on the Port Huron 8 Bridge, and my understanding is that you've 9 narrated the events of the 22nd itself. In a 10 moment I'll ask you about some other stuff that 11 followed after that regarding your phone, but is 12 there anything that you would like to add that you 13 left out regarding the events of what happened on 14 that day? 15 A Just the treatment by the officers was 16 just really callous. Like I wasn't just 17 handcuffed, I was roughly handcuffed, I was 18 brought in, I was told that there was a 19 possibility I could have been shot, and it was 20 really just kind of crazy to me, because I had 21 been so like courteous and nice and understanding 22 of everything, you know what I mean, until now. 23 I understand people are just doing their 24 jobs, but then to have that even be an option is 25 just pretty scary. Being like handcuffed the way</p>

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<p style="text-align: right;">Page 178</p> <p>1 that I was, being held in that initial room, and 2 then that second room, and having pictures taken 3 of me, fingerprints taken of me, you know. I was 4 so helpful, I helped them fingerprint me. I'm 5 like doing it myself, you know what I mean? 6 They copied every single piece of paper 7 that was on me. They wouldn't answer any of my 8 questions but would write down everything that I 9 said, and they would ask me where my parents were 10 born, where I went to school, the same questions 11 they're always asking, and just like didn't let me 12 have a phone call, didn't give me food. 13 Q Did you ask for food? 14 A Yeah, I think they ended up giving me 15 maybe some crackers or something, but . . . 16 Q You said you had a friend waiting for 17 you on the other side? 18 A He's not a friend anymore. 19 Q Okay, but there was a person who at the 20 time was a friend who was waiting for you? 21 A Yes. 22 Q Did you speak to that person about these 23 events? 24 A Never did. 25</p>	<p style="text-align: right;">Page 180</p> <p>1 certain point, you just start not telling people 2 about this stuff. 3 Maybe Arab-Americans might understand, 4 but people who have never had any kind of relative 5 experience, they see you treated like a criminal, 6 and they assume you are one. They see you being 7 treated like a terrorist, they assume you are one. 8 People get alarmed when they see like Arabic 9 writing on a candy wrapper, you know what I'm 10 saying? That's the context we live in. President 11 Trump's tweets and all that. 12 Q We're trying to stay on subject. 13 A That's definitely on subject for me. 14 (Exhibit E was marked for 15 identification.) 16 BY MS. KONKOLY: 17 Q Take a look at this. 18 A Yep. 19 Q Do you recognize this? 20 A I think so. 21 Q Did you provide this to us in response 22 to our discovery requests? 23 A Yes. I mean this is my lawyers. I 24 haven't seen these in a while. What's the -- 25 Q That's my question for you. What is</p>
<p style="text-align: right;">Page 179</p> <p>1 (Discussion was held off the 2 record.) 3 BY MS. KONKOLY: 4 Q Did you meet that person as planned, 5 once you were allowed to cross into the United 6 States? 7 A No. 8 Q Did you speak to that person at a later 9 time regarding the incident of this day? 10 A Not at all. 11 Q Did you talk to other people about what 12 happened on September 22, 2012? 13 A My lawyers, my father. 14 Q Did you talk to anyone besides your 15 lawyer and your father contemporaneously, meaning 16 around the same time? 17 A Around that time? 18 Q Yes, around the same time about what 19 happened that day. 20 A No. 21 Q You didn't talk to anyone else? 22 A You know, it's a possibility, but like 23 to be honest, at this point it was more scary than 24 anything, and I'm not like -- people won't hang 25 out with me if I have all these issues. After a</p>	<p style="text-align: right;">Page 181</p> <p>1 this? 2 A Okay. So I just want to look at a date 3 to make sure I'm not mistaken. 4 Right. Okay. 5 So between the time I got this in 6 between my Port Huron border crossing, I was 7 trying to fly to Libya where my mom was living at 8 the time with my sister. 9 Q Okay. 10 A And I took a bus up to O'Hare. I had a 11 flight from -- 12 Q I want to get to that later. 13 A No, I'm getting there. 14 Q Let's not get into that whole -- 15 A It's totally relevant. 16 Q I'm just asking what this is, though. 17 A So this is my phone that was shipped 18 back to me after I was denied -- like I wasn't 19 allowed to board my flight. I ended up getting a 20 phone call from the person this is sent to. I'm 21 paraphrasing a lot, but we should get into this to 22 understand this. 23 Q This is your phone that you allege was 24 taken from you at the Port Huron Bridge on 25 September 22, 2012?</p>

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Page 190	<p>1 could.</p> <p>2 My mom is a Montessori teacher, and she</p> <p>3 wanted to go teach there, and, you know, my sister</p> <p>4 kind of grew up bouncing around from school to</p> <p>5 school. We were like, hey, you know, it would be</p> <p>6 great for her to get to know her cousins. So my</p> <p>7 mom and my sister moved over there. My dad still</p> <p>8 had a mortgage, a house, kids over here. So they</p> <p>9 went over. There was like a British school my</p> <p>10 sister was enrolled in.</p> <p>11 Basically my mom and sister were over</p> <p>12 there, and I wanted to surprise them on a</p> <p>13 religious holiday, Eid, right? So I wasn't in</p> <p>14 school at the time. I was like working at a gas</p> <p>15 station. I made enough money to buy myself a</p> <p>16 ticket to fly over there. I bought the ticket,</p> <p>17 was going to surprise my mom. Took a bus up to</p> <p>18 Chicago. I think it was a Mega Bus.</p> <p>19 Then I get to the airport like five</p> <p>20 hours ahead of time because I'm like, all right,</p> <p>21 there might be an issue with my flying, you know?</p> <p>22 They didn't allow check-in, I think, until three</p> <p>23 hours before.</p> <p>24 Q Let me pause you there. You say you</p> <p>25 took a Mega Bus up to Chicago?</p>	Page 192	<p>1 They are not telling me anything. They</p> <p>2 literally don't know how to respond. Okay,</p> <p>3 I'm like, yeah, well, that's not good enough,</p> <p>4 I'm not going anywhere. You know, like can I</p> <p>5 get a refund. They tell me they don't owe me</p> <p>6 a refund. I'm standing there and I'm like</p> <p>7 that's not good enough.</p> <p>8 So I wait until TSA comes. They</p> <p>9 look at the computer, they go to the back,</p> <p>10 they discuss things. TSA is like, okay, you</p> <p>11 can't get on the flight. I'm like that's not</p> <p>12 good enough, you know? What are you talking</p> <p>13 about I can't get on the flight?</p> <p>14 CPD comes, Chicago Police</p> <p>15 Department. I'm not making a scene. I'm</p> <p>16 being respectful, but I'm standing my ground.</p> <p>17 Like I paid for this ticket. You guys are</p> <p>18 telling me that I cannot get on the plane,</p> <p>19 but you're not telling me any reason why, you</p> <p>20 know, and you're telling me that I'm not even</p> <p>21 entitled to a -- you're not giving me any</p> <p>22 information. You're simply saying I can't</p> <p>23 get on the flight.</p> <p>24 Then CPD comes. They go to the</p> <p>25 back, they talk to them, they deliberate.</p>
Page 191	<p>1 A Yes.</p> <p>2 Q Did you have any issues with that leg of</p> <p>3 the journey?</p> <p>4 A No, no. Mega Bus? No.</p> <p>5 MR. ABBAS: Mega Bus doesn't go</p> <p>6 that fast.</p> <p>7 THE WITNESS: If I was on the Mega</p> <p>8 Bus watchlist, I'm in trouble. I have to</p> <p>9 catch one later today.</p> <p>10 Anyway, so I'm at O'Hare Airport.</p> <p>11 I'm there like five hours before my flight.</p> <p>12 They're like, okay, we can't even do anything</p> <p>13 with you. The counter wasn't open for</p> <p>14 Turkish Airlines. I'm like okay.</p> <p>15 I waited a couple more hours, they</p> <p>16 opened, I was the first one there, and hen</p> <p>17 everybody just starts coming up, and they're</p> <p>18 looking at the screen and they're not</p> <p>19 printing my boarding pass. They're going in</p> <p>20 the back, they're talking and then coming</p> <p>21 back out. I'm like what's going on, you</p> <p>22 know. Nobody's giving me any answers.</p> <p>23 Then finally someone comes and</p> <p>24 tells me, oh, we can't print your boarding</p> <p>25 pass. You can't get on the flight. Why?</p>	Page 193	<p>1 Then one of the cops pulled me to the side</p> <p>2 and he said, look, you're on the no-fly list.</p> <p>3 BY MS. KONKOLY:</p> <p>4 Q Who told you this?</p> <p>5 A A Chicago Police Department officer.</p> <p>6 Q A Chicago Police Department officer.</p> <p>7 Local police?</p> <p>8 A Right, and then also the local police</p> <p>9 who had come after I refused to take no for a</p> <p>10 answer went to the back and stuff, and then also a</p> <p>11 Turkish Airlines representative told me the same</p> <p>12 thing, because I wanted to know. I was like I</p> <p>13 just want to know why, you know, and that's what</p> <p>14 they told me. They told me that this is what it</p> <p>15 was.</p> <p>16 So then I was like, okay, you know,</p> <p>17 pretty dejected. They told me that -- they gave</p> <p>18 me like a number to talk to for my Turkish</p> <p>19 Airlines refund, you know, to try to get one. I</p> <p>20 ended up getting one after a while. I don't know</p> <p>21 exactly how long, and I don't think it was for the</p> <p>22 full amount.</p> <p>23 I ended up having someone come pick me</p> <p>24 up. I didn't really want to tell them what had</p> <p>25 happened. It's just like kind of a thing, and I</p>

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<p style="text-align: right;">Page 202</p> <p>1 Special Agent Arkin Fout, identified himself as 2 Special Agent Arkin Fout, and he told me that he 3 had my phone, right? And this comes after -- my 4 understanding was that my attorney had contacted 5 ICE after ICE had been unresponsive to me. My 6 understanding is that ICE told my attorney that 7 they had my phone, they wanted to talk. 8 My understanding also is that my 9 attorney told them that she would be willing to 10 engage them in a back-and-forth like written 11 correspondence, and then they -- my understanding 12 is that they completely went radio silence, hadn't 13 heard anything from them. 14 And then I had this incident on 15 October 22 at the airport in Chicago, and 16 basically I had heard nothing, right? And my 17 understanding also is that my attorney was 18 extremely explicit and said that you do not 19 contact Yaseen, you contact me, right? 20 So Arkin Fout called me. He said, 21 listen, he's like we have your phone -- I have 22 your phone. He said, you know, I understand that 23 you've had a lot of travel difficulties. He's 24 like, you know, I don't want to jam you up. He 25 said I know that you're a good guy. I know that</p>	<p style="text-align: right;">Page 204</p> <p>1 to be uncooperative, but if you could contact my 2 attorney, I'm willing to engage you guys, but I 3 want to stick with my rights. 4 Again, I was afraid of this man, and, 5 you know, I threw this out there just because I 6 didn't know what he was getting at, and I said I'm 7 just a broke college kid, like I'm just trying to 8 keep my head down and live my life. If I ever had 9 any information, of course, I'd directly go to the 10 authorities. 11 And he said, well, you're broke? 12 There's a way for us to fix that, right? He 13 mentioned, he said, oh, you're from a prominent 14 family in Benghazi. Basically he said he would 15 pay me. He said you're from a prominent family in 16 Benghazi, you know. I think that we could find an 17 arrangement that helps you the most. 18 Then I said, you know, sir, with all due 19 respect, I still want to stick to my attorney. 20 Then he said, well, call me before you call your 21 lawyer, okay? He basically told me not to talk to 22 my lawyer and then told me to contact him and to 23 give it some time and to think about it. 24 First thing I did was -- and when I 25 heard him tell me that he wanted me to go to a</p>
<p style="text-align: right;">Page 203</p> <p>1 you want democracy in Libya. I know that you're a 2 good American and you want to help America, and I 3 think there's a way for us to -- and this is what 4 he told me. He said that this is -- he's like I 5 think there's a way for us to fix your travel 6 issues and kind of help us both, right? 7 And I said listen, man, I want to stick 8 to my attorney. I don't mean to be uncooperative, 9 you know. You know, I want to stick to my 10 attorney, I don't mean to be uncooperative, but I 11 just want -- I was like, you know, I just want to 12 stick with my attorney, and I don't want these 13 things, and he's like, look, you know -- he 14 basically said that, he said that if I stuck with 15 my attorney, that my travel difficulties would be 16 nearly impossible to get rid of. He said that 17 they're not going anywhere, right? And he said 18 that, you know, if we met informally without my 19 lawyers, things would be much easier. 20 And then I said like what? And then he 21 said I'll come down. He's like, you don't even 22 have to come to Detroit. I'll come down to 23 Indianapolis and I'll get a hotel room, and you 24 can meet me in my hotel room. And then I said, 25 you know, like with all due respect, I don't mean</p>	<p style="text-align: right;">Page 205</p> <p>1 hotel room, the first thing I thought was, okay, 2 I'm going to meet this guy in a hotel room in 3 downtown Indianapolis, I'm going to go up to his 4 room, and then I walk out, someone says I pressed 5 a detonator, is going to handcuff me and put some 6 kind of charge on me, because when this guy sees 7 me, he sees a guy that was in Libya, 8 Muslim-American. All he sees are dollar signs. 9 All he sees is, okay, this is a way for me to get 10 a promotion, right? That's the first thing that 11 went through my head, because that's how they do, 12 you know? So he went around my attorney, told me 13 to meet him in a hotel, not even in a hotel lobby. 14 In his hotel room, right? Like what is that? It 15 was insane. 16 So immediately what I did is I took my 17 phone apart, put it in like five different pieces, 18 and just like scattered around my house, went and 19 parked my car, walked a mile to a pay phone. I 20 ended up -- first thing I did was I got a calling 21 card, I called my dad in Libya. My dad said, 22 okay, call your lawyer immediately. I was scared 23 to call my lawyer, because I didn't know what this 24 guy would do to me. My dad told me to call my 25 lawyer. I was 22. I didn't know how to act. You</p>

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<p style="text-align: right;">Page 234</p> <p>1 my thing, right? Went to the beach. They had 2 like surfing and stuff. Did all that. Ended up 3 taking -- flew up to Monterrey, and then from 4 Monterrey -- I booked a bus from Monterrey all the 5 way to Laredo in Texas. 6 I knew that when I got to the border, I 7 wanted to get off the bus before the bus crossed 8 the border, because I didn't want to hold up 9 everyone on the bus. I didn't want to be 10 humiliated in that way in front of everybody that 11 was on the bus. So I spoke to the bus driver, who 12 doesn't speak any English, I was like, listen, I 13 need to get off there, right? He's telling me no, 14 no, no. I just grabbed my stuff, I got off the 15 bus. 16 I walked all the way around, I don't 17 know how long, maybe a half mile, maybe a mile, to 18 the foot crossing for when you cross -- see, 19 that's what I mean like by "it's complicated," 20 because I took a bus up to the border, but I 21 didn't cross with the bus. I got off the bus, I 22 walk over to where you can cross by foot, and 23 that's how I crossed. 24 Did you want to hear that story about 25 what happened there?</p>	<p style="text-align: right;">Page 236</p> <p>1 me, some people behind me, just young kids that I 2 guess crossed over to have like a little good time 3 in Mexico and come back, that lived in Laredo or 4 something. 5 And to be honest, I looked like the 6 least criminalistic of all of them, you know what 7 I mean? And here I come, and then, you know, all 8 of a sudden they scan my passport, boom, right? I 9 get handcuffed in front of this whole crowd of 10 people. They're all looking at me like is this El 11 Chapo? I didn't know what was happening. 12 They handcuffed me. They took me into 13 the room. I see a room full of Cubans. I find 14 out later that Laredo is like a -- basically a lot 15 of Cubans present themselves at the Laredo border, 16 and then they end up getting like packages for 17 like asylum or whatever. A bunch of Cubans 18 sitting in the room looking at me like what did he 19 do, because I'm handcuffed outside of the room, 20 like to a bench, right, and like they kept me 21 handcuffed for a good four or five hours there. 22 So I was handcuffed. Basically they 23 took me in, same deal, but this time they were 24 like actually much more aggressive than at the 25 Canadian border, and I was like -- this time I was</p>
<p style="text-align: right;">Page 235</p> <p>1 Q In a minute. 2 So how many flights did you take inside 3 of Mexico altogether? 4 A I think three. I'm not sure. 5 Q What are the three that you remember, if 6 you could lay that out for me again? 7 A Monterrey to Mexico City. Mexico City 8 to Puerto Escondido. Puerto Escondido -- no, I 9 took a bus from Puerto Escondido to Oaxaca. 10 Oaxaca to Juarez -- and then a flight from Oaxaca 11 to Juarez to -- I think it was direct to 12 Monterrey, and then a bus over. 13 Q Okay. Were there any issues, delays, 14 barriers to any of that travel? 15 A Zero. Perfect. I was treated like a 16 normal human being. It felt good. 17 Q So let's get back to your recrossing 18 into the United States on August 11, 2015. Did 19 you have any issues making that border crossing? 20 A Absolutely. 21 So I walk over, right? And I'm walking 22 by myself, and I got my duffle bag, and I'm like, 23 I'm like okay, all right, here we go, you know? 24 So I'm walking through the like little walkway or 25 whatever. There's a bunch of people in front of</p>	<p style="text-align: right;">Page 237</p> <p>1 talking back a little bit. I said, look, you 2 know, I'm a medical student, I have my master's 3 degree, you know what I mean? And I have been 4 nothing but cooperative every single time, and 5 courteous, you know? Like why would you be 6 treating me this way? 7 I know this isn't -- like this is not 8 typical. I've never been kept handcuffed to a 9 seat. Even when I was handcuffed in Port Huron, 10 they ended up taking them off after a couple 11 hours. This one, they kept me there for a long 12 time, and they were tight, and they wouldn't 13 loosen them up. 14 And they started asking me questions. 15 They were like why are you crossing over, and I 16 didn't even have my cell phone with me. Because 17 I'm so used to it, what I did was I shipped my 18 cell phone back home, and I just crossed the 19 border. I would have crossed in a G string if I 20 could, you know what I mean? 21 I'm just kidding. Sorry. 22 So I crossed the border with nothing but 23 my passport in my pocket and my clothes, and I had 24 one book in my duffle bag, because this is the 25 routine, right? I'm just like -- I'm used to it.</p>

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<p style="text-align: right;">Page 238</p> <p>1 And they're just asking me questions, but this 2 time they asked me like what my religion was, what 3 mosque I went to, and I was like I'm not answering 4 that question. You know, like really? We're 5 going there? 6 And I asked them for some food. They 7 didn't bring me food for a long time. Didn't 8 allow me a phone call. It was really cold. They 9 were really rude. They ended up bringing me like 10 a crushed bag of Oreos and I think some chips, I'm 11 not sure, you know, but not like a good bag of 12 chips. It was like very little chips in the bag, 13 probably crushed, too. 14 And then like after I finished the chips 15 and the Oreos, I went to throw it away. I stood 16 up to throw it away, and then I went to drop it, 17 and then literally one of the guys made an 18 explosion sound after I dropped it, like boom, and 19 I turned around, and it was like did I really just 20 hear this guy just do that, you know. 21 And they held me for all the way to a 22 whole seven hours. I had to like memorize the map 23 of like Laredo, basically, so that -- they let me 24 out in the morning after like the whole seven 25 hours, let me loose into this random town. I</p>	<p style="text-align: right;">Page 240</p> <p>1 A Definitely not. 2 Q Did you make any social media postings 3 about it? 4 A No. That's something I'm happy I got 5 rid of. I no longer put my feelings up on social 6 media. Silver lining. 7 Q Is there anyone who was present there 8 you could identify as a witness to those events? 9 A No. 10 Q Okay. If we could go back to Exhibit A, 11 that's your original responses. I am looking at 12 page 18, paragraph 9 which states "ORD to LGA." 13 Can you elaborate what the travel 14 disclosed in that paragraph was? 15 A Okay. So after my lawsuit got to a 16 certain stage where it was then, you know, you 17 could Google it -- 18 Q Let me just start by ORD to LGA. Is 19 that O'Hare to LaGuardia, New York? 20 A Mm-hmm, yes, O'Hare to LaGuardia. 21 Q And what do you recall about this 22 travel? 23 A So this travel took place after you 24 could publicly find my name associated with the 25 lawsuits against the government that I was a part</p>
<p style="text-align: right;">Page 239</p> <p>1 ended up walking. I had to memorize where the 2 Greyhound station was. I walked over to the 3 Greyhound station, booked a bus ticket to -- I 4 think it was San Antonio, maybe all the way to 5 Dallas, and then from Dallas I took a bus all the 6 way back to Chicago. 7 That's paraphrasing the whole seven, 8 eight hours that I was stopped. 9 Q Okay. 10 A And they handcuffed me in front of a 11 bunch of people, asked me about my religion, made 12 an explosion sound when I threw away my bag of 13 chips that they gave me, kept me handcuffed to a 14 bench for an extremely long time, and they didn't 15 keep me in a room with anyone else. 16 Q Did you talk to anyone about your 17 experiences on this day? 18 A No. Maybe like somebody on the bus. 19 Q I'm sorry. Anybody aside from your 20 attorney about your experiences on that day. 21 A Okay. No. I mean not that I recall. 22 It's just routine at this point. So much has 23 happened, I forget. 24 Q Did you make any writings in any form 25 about this?</p>	<p style="text-align: right;">Page 241</p> <p>1 of, and I was like, okay, that's it, you know, my 2 name is out there. It's time to go to media, 3 because what's done is done, right? 4 I had been avoiding that, and it's 5 something I'm going to have to, you know, deal 6 with when I apply to residency next year is what 7 people can find about me online, right, and this 8 is some scary stuff is to be no-fly-listed at a 9 certain point in time. 10 So I was like, okay, let's talk to 11 Murtaza at The Intercept. A journalist named Ryan 12 Deveraux had covered -- at The Intercept, he had 13 covered my lawsuit, so it just made sense that, 14 you know, they would keep following my lawsuit and 15 do it in a little detail by interviewing me. 16 So this was my first time trying to fly 17 after that incident when they had denied me 18 flight, being able to get on the plane, and I go 19 to check in at the kiosk. They can't. I've tried 20 to check in online. They won't let me. I didn't 21 get any sleep the night before, of course, right? 22 Arguing with everybody, freaking out, like 23 stressed out about it. Went and tried to check in 24 online. Couldn't check in online. Go to the 25 kiosk. Couldn't check in at the kiosk.</p>



Deposition of:  
**Osama Ahmed**

*February 20, 2018*

In the Matter of:  
**Elhady vs. Kable**

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<p style="text-align: right;">Page 26</p> <p>1 Kelso. I don't remember his partner's name. They came 2 to my house and they gave it to me, and then they 3 proceeded to try to recruit me to be an informant for 4 them. They took me out to eat. 5 Q Just to help you refresh your memory, there is 6 more information, I believe, about this in the original 7 complaint, which I have in tab A, if you'd like to look 8 it over, to make sure that everybody is looking at the 9 same place, if you want to hear information about this. 10 If you look at the first page. 11 (OSAMA AHMED Exhibit A was marked for 12 identification.) 13 So, if you look at the first page just to sort 14 of make sure that we understand where we are in this 15 document. Do you recognize this document? 16 A Yes. 17 Q Okay. Do you see the list of names on the 18 left? Do you recognize your name? 19 A Yes. 20 Q Do you recognize any of the other people on 21 this list? 22 A No.</p>	<p style="text-align: right;">Page 28</p> <p>1 into video games and such, so they told me that they'll 2 teach me how to skydive and I'll be able to shoot cool 3 guns, amongst other things. 4 Q I don't mean to interrupt you but the -- 5 A Go ahead. 6 Q When did this happen compared to the 7 experience that you had getting off the plane in 8 Detroit? Like, how long was that? Was this like a 9 couple days later, a couple weeks later? 10 MR. ABBAS: Objection, vague. Objection, 11 compound. You can answer if you understand the 12 question. 13 A I don't remember. 14 Q Okay. Was it more or less than a month later, 15 if you recall? 16 A I believe it was less than two months. 17 Q Less than two months, okay. 18 A Yeah. 19 Q So, just start, if you can, chronologically, 20 is there anything else that happened to you in the 21 airport when you were detained and questioned that 22 you'd like to include in your testimony?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q Okay. Have you ever spoken with any of these 2 people on this list? 3 A No. 4 Q Okay. So, if you turn to page -- I have it 5 written down -- paragraph 201 on page 37. I believe 6 that's the part that has your testimony. Okay. If you 7 would just take a look at that. It looks like the 8 section that documents the experience you were talking 9 about before ends at paragraph 210; is that right? 10 A Yes. 11 Q All right. So, if you could just tell me a 12 little bit more about what happened, your experience 13 with Agent Kelso and other allegations? 14 A So, after they gave me back the USB drive, 15 they told me I was on a no-fly list. And I asked him 16 will that affect my employment in the airport which I 17 was applying for? They said possibly, and they told me 18 that if I cooperate with them, they can get me off the 19 list. 20 After that, then they took me out to eat and 21 they tried enticing me to become an informant for them. 22 From talking to me the first time they knew that I was</p>	<p style="text-align: right;">Page 29</p> <p>1 A No. 2 Q Okay. And when this -- you had this 3 experience afterward, less than two months later, these 4 folks who you interacted with, is there anything else 5 that happened that you'd like to share? 6 A Yes. So, they told me that they were going to 7 get me off the no-fly list, which they didn't. So, 8 then I found out about CAIR, and my attorney at CAIR -- 9 MR. ABBAS: Objection. I'm going to instruct 10 the witness not to provide any attorney-client 11 privileged communications. 12 Q So, did you agree to work with them? How did 13 the -- what was the result of the conversation you had 14 with them? 15 MR. ABBAS: Objection as to -- objection vague 16 as to them. You can answer if you understand what he's 17 talking about. 18 A The FBI agents? 19 Q Yes. 20 A No, I did not work with them. 21 Q All right. So, you said they -- you didn't 22 agree to work with them and they said goodbye and they</p>

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<p>1 A Around the customs officers and whatnot. And 2 they -- while I was working at the airport, they took 3 away my customs seal without giving me any reason why 4 they did that. And they told me that I will receive a 5 reason in the mail, which I didn't. 6 Q And when you say they, who is they? 7 A Customs. 8 Q Okay. Is it customs and border patrol that 9 make these decisions? 10 A I don't know. 11 Q Okay. So, who told you that you didn't have a 12 customs seal? 13 A So, there is a seal that's printed on the 14 badge, and I was told to go to the badging office, and 15 they gave me a new badge without that seal. 16 Q Okay. So you worked in domestic terminals? 17 A Yes. 18 Q Exclusively? 19 A Yeah. 20 Q And that was during the year that you were at 21 the airport, worked at the airport? 22 A Over two years, and it was while I was working</p>	<p>1 Q And can you give us a little bit more 2 description about exactly what happened? 3 A Me and the manager didn't get along. And then 4 I don't want the responsibility of being a supervisor, 5 so I told him to demote me. And after he demoted me, 6 he was putting me in positions where I didn't want to 7 work. So, one day I confronted him about it and he 8 didn't like it, so he fired me. 9 Q Okay. And you mentioned that they, you said, 10 I think, they gave you a new badge without the customs 11 seal on it. Was it your employer that -- 12 A The badging office. 13 Q Is it the badging office that said that you 14 needed to get a new badge? 15 A So, they contacted my employer. 16 Q Okay. 17 A My employer told me to go to the badging 18 office. 19 Q This is your manager, your direct manager? 20 A Yes. 21 Q Okay. Is this the same manager you were 22 talking about before?</p>
Page 67	Page 69
<p>1 there. And I was a supervisor, so it was kind of 2 difficult for me to supervise people working in an area 3 where I wasn't allowed to go to. 4 Q And why did you leave your job at the airport? 5 A I was fired. 6 Q Okay. 7 A It was a dispute. 8 Q A dispute, not having to do with -- 9 A No, it hasn't to do with it. 10 Q -- any watch list you said? 11 A No. 12 Q Okay. Well, thank you very much. We're going 13 to take a quick break and then we'll be back. 14 MR. ABBAS: Okay, great. Excellent. 15 BY MR. HEALY: 16 Q A couple of questions about -- are we back? 17 Sorry. Did you speak with anyone besides your attorney 18 during the break? 19 A No. 20 Q Okay. A couple questions about losing your 21 job at the airport. When did that happen? 22 A I don't remember, maybe 2015, 2014.</p>	<p>1 A No, this is the general manager. 2 Q Okay. And that person contacted you and said 3 -- 4 A "You need to go and get a new badge. They 5 took away your customs seal. I don't know why." 6 Q So, the manager told you that they took away 7 the customs seal or you just noticed it? 8 A Yes. No, they told me. 9 Q Okay. But the communication that you had was 10 just with your -- with the general manager? 11 A About the customs seal? 12 Q Yeah. 13 A I told -- I mean, the manager knew because 14 they have to know if you have a customs seal if they 15 can place you in an area to work. 16 Q Right. 17 A So, they knew that when it was taken away, all 18 the managers knew that I didn't have it anymore. 19 Q Right, okay. So, but the communication that 20 you had, you personally -- 21 A It was the general manager. 22 Q -- was with you and the general manager.</p>

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Page 70	Page 72
1 A Yeah.	1 I have -- who live abroad ever visited the United States?
2 Q And not with anyone else?	2 A That are -- no.
3 A No.	3 Q Okay.
4 Q Okay. Um, you mentioned before that that	4 A Not that I know of.
5 certain people try to distance themselves from you.	5 Q That you know of?
6 You were talking about your personal -- consequences to	6 A Not that I know of.
7 your personal reputation. How did those people that	7 Q So, when you go see them, it's you going to
8 you mentioned know about these issues? Was it because	8 Yemen, it's not any of them coming to the United
9 you told them?	9 States?
10 MR. ABBAS: Objection, compound. You can	10 A Correct.
11 answer if you understand the question.	11 Q Are any of those family members who live in
12 A They could have found out multiple ways, from	12 Yemen green card holders or lawful permanent residents
13 hearing from other people or from me directly. I also,	13 of the United States?
14 I volunteered for a video that was on YouTube, so they	14 MR. ABBAS: Objection, calls for a legal
15 could have seen the video.	15 conclusion. You can answer if you know.
16 Q Okay. Any of these people that you mentioned,	16 A No.
17 do you believe any of them were contacted by people in	17 Q How did you get here today; did you drive or
18 the government?	18 did you fly?
19 A No.	19 A From Detroit?
20 Q No. You mentioned before that that you	20 Q From Detroit.
21 traveled with four friends during one of your trips.	21 A I flew.
22 During that trip, were any of those four friends	22 Q You flew, okay. Were there any issues
Page 71	Page 73
1 screened normally?	1 arriving here today?
2 A Yes.	2 A Arriving, no.
3 Q Okay. You mentioned during your testimony	3 Q Were there any issues at the airport --
4 that you've been pulled over multiple times. Was there	4 A No, there were no issues.
5 anything out of the ordinary in the behavior of the	5 Q -- during your travel?
6 policemen in those instances in which you were pulled	6 A It was very weird.
7 over?	7 Q Okay. You mentioned during your flight in
8 MR. ABBAS: Objection, vague as to out of the	8 January 2017 from Boston to Detroit that you were
9 ordinary. You can answer if you know.	9 questioned. You mentioned specifically that you were
10 A You mean like traffic violations?	10 questioned by TSA. Are you -- do you know that the
11 Q Did you notice that they acted in a way that	11 folks who questioned you were actually from TSA or were
12 was out of the ordinary, what you expected to be	12 they from CBP, from customs?
13 ordinary?	13 A By TSA?
14 MR. ABBAS: Objection, vague as to out of the	14 Q Yeah.
15 ordinary.	15 A No, I was not questioned by TSA.
16 A Yeah. I mean, everybody is different, so I	16 Q Okay. So, you were questioned by --
17 don't know what is out of the ordinary.	17 A I was questioned by customs, yes.
18 Q But you didn't notice them acting in a way	18 Q -- customs, okay. I just wanted to clarify.
19 that you thought was peculiar?	19 I asked you before how much extra time you give
20 MR. ABBAS: Objection, vague as to peculiar.	20 yourself at the airport. How much total time do you
21 A I don't know.	21 allow yourself at the airport for an international
22 Q Okay. Um, have any of your family members who	22 flight? How far before a flight would you arrive?



Deposition of:  
**Ahmad Al Halabi**

*February 23, 2018*

In the Matter of:  
**Elhady vs. Kable**

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<p style="text-align: right;">Page 74</p> <p>1 Q You traveled to Canada? 2 A Yes, that's correct. 3 Q You described here, obviously, a lot that's 4 happened. What do you remember about this incident? 5 A Well, we -- I wanted to take my wife to 6 Niagara Falls, and me, my dad, and my sister -- my 7 sister came from California to see -- to meet my wife. 8 And we all wanted to, you know, go on a family trip. 9 So me, my brother, my wife, my sister, my dad, we all 10 drove through Canada. We had a good time in Niagara 11 Falls for three days -- three days, two nights, I 12 think or something, and then we came back. 13 Crossing the bridge was -- you know, as soon 14 as we -- as soon as I gave all of the passports, the 15 agent was scanning through, and you could hear a green 16 light. You know, deet, deet, deet (makes sounds). 17 And when mine was scanned, like, err, err, err (makes 18 sounds); you hear that noise as if, you know, 19 something wrong. 20 So the agent said something to the effect of 21 don't move, and he called in into his mic, and -- as 22 if something happened -- something terrible happened.</p>	<p style="text-align: right;">Page 76</p> <p>1 me in a holding cell. The cell was concrete. There's 2 nothing. There's -- there was a toilet and just a 3 seat, just concrete, I think, I don't know what it -- 4 what it was. And it was very cold. 5 And I was like, you know, this is how -- not 6 how we normally do it, but let me see the manager. 7 Let me talk to a supervisor. Like, we'll get to you. 8 You sit tight. And some time passed. I -- I don't 9 know how much. 10 It was -- actually, when we arrived, it was - 11 - it was late at night, so it was already late, I 12 think 11:00 or something at night. 13 And I called for a supervisor. She came. 14 She asked me what's your mobile PIN number. I'm like, 15 I'll give it to you, no problems. I gave her my PIN 16 number, and -- 17 Q Can you just explain what you mean by that? 18 Your cell -- like your cellphone number? 19 A Yeah. Cellphone PIN code, so she wants to 20 access my cone (sic) -- 21 Q I see. Okay. 22 A -- my phone. All right. Probably about an</p>
<p style="text-align: right;">Page 75</p> <p>1 So he came out. He asked me to step out of the car. 2 Two or three other agents came, and as soon as I 3 exited, he took my hand, put it on the back, he shoved 4 me on the car -- van. And he said, you know, this is 5 for your safety. We're going to handcuff you. I'm 6 like, this never happens. Let's talk about it. I 7 know how things go. Like, be quiet. 8 And I looked to the right, and you see all of 9 these cars just -- you know, lights, lots of lights, 10 lots of cars just looking at me being arrested. My 11 daughter from inside the car was -- started screaming 12 because now she sees me being handcuffed, and she was 13 terrified. My sister started crying. 14 And I was handcuffed, and I didn't have 15 anything on me, I just had a T-shirt. So we were 16 walking to the holding cell, it was like, you know, 17 don't -- don't talk, don't walk, we're just going to 18 talk about it inside. 19 So they took me inside, asked me to take off 20 my shoes. I took off my shoes. I was -- you know, 21 they took everything I had, so cellphone, wallet, 22 everything, money, whatever I had, watch, and they put</p>	<p style="text-align: right;">Page 77</p> <p>1 hour passed. The -- the cell -- the holding cell was 2 -- was very, very cold. A lot of lights, and there 3 was only a very small window that you can talk to 4 people through, probably a feet -- one feet by one 5 feet. And everything was concrete. My feet were 6 frozen, my -- I was shivering, it was just cold. 7 I -- I mean, I had like a flashbacks of the 8 time being in Guantanamo. And that's when -- that's 9 how prisoners were in that holding cell. Terrified, 10 not knowing what happened with my family or my dad. 11 My dad was with me, my sister, and the kids and my 12 wife. She was pregnant. So the last thing we need is 13 more trouble. So I was hoping that, you know, they 14 would let them go or something. 15 About an hour later, they came back and they 16 gave me my shoes, and they put me -- or they let -- 17 left me for -- for I don't know how much time, maybe 18 another 30 minutes or so, and then they said, we're 19 going to move you to be with your family. So I walked 20 out, and I saw my family just all sitting down, very 21 small chairs, very uncomfortable. My dad couldn't 22 stand, himself. He -- he looked extremely tired. My</p>

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1 sister, she was with him, she's a doctor. And he --  
2 he had this heart condition where you need to put the  
3 pill under your tongue. They're like, do we need to  
4 call you an ambulance, and he said no, just let us go.  
5 So the kids were all sleeping by that time,  
6 and there was nowhere to sleep, so they were on the  
7 laps, my dad, my sister, my wife. I took one of them  
8 also, and we were just waiting and waiting and waiting  
9 to see what's going on. No questions.  
10 Every time I asked, maybe every half an hour,  
11 any updates, like, just wait. We will call you.  
12 Very, very rude people. They -- they didn't want to  
13 answer any questions. They didn't want to provide any  
14 -- any water, any food, or, you know, at least let my  
15 dad go and sit in the car or, you know -- it was very,  
16 very cold. It was a very cold night. Nope. Didn't  
17 happen. My dad -- we were -- we were three cars. So  
18 my brother passed through with his car, then he came  
19 back after probably two hours or three hours, you  
20 know, just to check on us. So he dropped off his  
21 family, and he came back to the border.  
22 So as soon as he walked in, like, what're you

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1 doing here? You -- he's like, I'm -- I'm asking about  
2 my family, what's going on with my family. Like,  
3 nope, you go sit there. Don't say anything. So very  
4 rude to them -- to him also. They put him in a  
5 different room, a different holding -- not holding but  
6 waiting room. So he -- he -- he didn't even -- he was  
7 not allowed to talk to us, even an attempt. Like, we  
8 want to say something, you know, what happened, no, be  
9 quiet. Shut up, don't say anything, to -- to that --  
10 to that effect.  
11 It was about 4:30 in the morning when they  
12 told us that -- they called my name, and they said you  
13 can go. They gave us my passport -- our passports  
14 back, and they said we're going to hold onto your  
15 iPhone. They asked for a mailing address so in case  
16 that phone would be mailed back. I assume that it's  
17 not going to be mailed back anymore, so it -- it was --  
18 -- I didn't care. I just want to get out of there.  
19 Extremely terrible experience.  
20 And then we were let go, so we went to the  
21 car, and we found the car upside down. They -- it was  
22 like a dog was sitting there for two hours.

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1 Everything all -- papers and, you know, food and  
2 everything was just -- it was a mess. They messed it  
3 all up. I don't know what they were looking for.  
4 There's nothing.  
5 And then, yeah, so we drove home, finally,  
6 and we had a flight out two days later. But before  
7 that, after we reached home, the following day -- I  
8 believe it was the following day or maybe two days  
9 later -- one or two days after the incident, two FBI  
10 agents knocked on the door and like, can we talk to  
11 you? I'm like, of course you can talk to me, come in.  
12 So I asked them to come in into the house, gave them  
13 coffee, tea, whatever, and we just sat there. They  
14 sat for about three hours in my brother's house, and  
15 we were just talking about it, you know, what  
16 happened.  
17 We talked about the incident. And one of the  
18 agents, he's like, I'm the person -- I'm the authority  
19 for the Canada bridge, and as soon as I received the  
20 clearance request, I cleared you. I'm like, why did --  
21 -- why did it take them four hours to clear me, I mean,  
22 if you cleared me immediately? I don't know to -- the

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1 answer to that question. And, you know, I asked him  
2 about the phone. He said, you know, this is something  
3 -- a process that has to be taken to -- it's a process  
4 that needs to take place, I don't know. I assume they  
5 copied everything. I don't care. I've got nothing to  
6 hide.  
7 And one day before our travel -- so I think  
8 we stayed for three days after the incident, so when  
9 did we travel out, the 25th? Anyways, just one day  
10 before we traveled, I received the phone back in the  
11 mail. But that was probably the worst -- very, very  
12 worst experience that I ever had, especially with my  
13 dad and my sister and everyone. I mean, being  
14 arrested like that -- the -- the kids seeing me like  
15 that, and it was terrifying.  
16 Q How long, if you recall, were you with the  
17 FBI agents that next day?  
18 A About three hours in my house -- my brother's  
19 house.  
20 Q What more do you remember about that  
21 questioning?  
22 A They were fairly reasonable people. I mean,

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<p style="text-align: right;">Page 134</p> <p>1 somewhere. 2 Q Okay. I think we'll ask for that 3 information. So if you could give that to your 4 counsel. 5 So aside from Bank of America and the issues 6 you just described, have you ever had a problem wiring 7 money out or receiving money by wire in the United 8 States? 9 A No. 10 Q Are there any other difficulties that you've 11 experienced with financial institutions, aside from 12 the Bank of America, that you attribute to your 13 allegations in this case? 14 MS. MASRI: Objection as to form. Go ahead 15 and answer if you know. 16 BY MS. ROTH: 17 Q And again, I'm asking specifically about 18 financial institutions? 19 A Um hmm. No. That is the -- that is the one 20 bank. Yeah. 21 Q Have you ever sponsored anyone to become a 22 U.S. citizen?</p>	<p style="text-align: right;">Page 136</p> <p>1 active duty and I was -- I interviewed for a few jobs, 2 I've got a couple of classes left to graduate. And I 3 was ready, I found a house, was ready to settle in in 4 Orange County. But my wife's visa was not approved. 5 The first time took like three -- three or four 6 months, now it's been six months, seven months, eight 7 months and they're not even saying anything. 8 So I had to make that call to go to Dubai and 9 see what the situation is. I went and I stayed with 10 the wedding party, whatever. And I came back, waited 11 a little bit more, nothing happened. And I had to 12 make that decision, very, very difficult decision to 13 move because I wanted to be with my wife. And so I 14 had to uproot everything that I -- that I'd done here. 15 Sold what I had to sell, gave up, you know, apartment 16 and everything and I moved to Dubai. 17 And I stayed there for three months, hoping 18 that things would -- you know, maybe she would get 19 approved and we move back, because we haven't done 20 anything yet. So I stayed with my in-laws in her -- 21 in their houses. 22 Q This is in Dubai?</p>
<p style="text-align: right;">Page 135</p> <p>1 A Yes. We -- we've got different things here 2 going on with this issue. I first submitted 3 sponsorship to my wife, which then was my fiancé. So 4 I was in the Air Force and I went to the JAG Office, 5 they drafted the document saying that this is so-and- 6 so, he needs his wife, approve his visa, with some 7 backup. We sent that document to the embassy and that 8 was approved immediately. So she got her visa. That 9 was a fiancé visa. 10 Q I'm sorry to interrupt you. Would this have 11 been sometime around 2004? 12 A Yes. 13 Q Okay. 14 A Well actually, earlier. 2002. 15 Q Okay. 16 A Yeah. So given my military service and 17 whatever happened next, as far as the case and things, 18 she wasn't able to use that visa and that was expired. 19 So they give you a visa for six months. She came in - 20 - my wife came, or fiancé then, came in 2004, we got 21 married, now the case turned into an I-130. It is now 22 a wife. That case stayed pending. I finished the</p>	<p style="text-align: right;">Page 137</p> <p>1 A In Dubai and one hour from Dubai, in 2 (inaudible) it's called. Nothing happened, then I 3 started looking for a job, because I thought this is 4 going to be a long process. We waited years, not 5 months. So from 2005, '6, '7, '8, '9, '10, '11, '12 I 6 think sometime 2012 or '13 we finally received would 7 from USCIS that you are -- your visa is being 8 processed. Now you start paying the fees, you submit 9 the documents, the originals, you know, all of that, 10 which we did. 11 A few more month later we get called by the 12 embassy to come to the embassy and get the visa 13 stamped, which was amazing. You know, because it's so 14 many steps that you have to do. Medical, shots, x- 15 rays, you know, you gather all that, sponsorship from 16 the states. You have to show that you're domiciled in 17 the states, that you want to go back and live and it's 18 so much. It's a huge process. So we did that, we 19 paid everything and we went for the interview. 20 Interview went great. They said, just drop 21 off your Syrian passport, come back Monday. Simple as 22 that. I came back Monday to pick up the passport, and</p>

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<p style="text-align: right;">Page 138</p> <p>1 you think said, well, your passport is not ready 2 because it's going to go under security process, 3 security clear -- there's a term, security clearance 4 or something like that. 5 How long? They said, we'll let you know. 6 About eight month or nine month later that we get 7 called. They said, your passport is ready. So that's 8 how long it took. I went to get -- to get the 9 passport. They gave me the passport, I found the visa 10 that was stamped two days after the interview date, 11 but now the visa is expired because the visa is only 12 six months. 13 So I'm like, the visa's expired, I'm glad I 14 checked. And she's like, oh, yeah. Let me get that 15 passport back. So they took the passport back. And 16 we had to wait probably another two weeks to get the - 17 - you know, about -- I don't know how long, probably a 18 week or so to get a new visa now. And that's when she 19 was approved for that -- for that visa. 20 So something that normally takes, you know, a 21 couple of years, it took us, I think, almost, I don't 22 know nine -- eight -- eight years or nine years.</p>	<p style="text-align: right;">Page 140</p> <p>1 applied almost in the same month. Her friend received 2 a letter to come and interview for citizenship four 3 months later. My wife, to date she has not received 4 anything. We're still waiting to get a date for an 5 interview. So now we're talking about almost nine -- 6 nine months, almost nine month later and I think it's 7 all because of this case or this complaint or my case, 8 or whichever you want to put it under. 9 So that is now affecting not only me and, you 10 know, I have to explain to my wife, and explain to the 11 kids. Because now the kids misses their -- they miss 12 their grandparents and, you know, back in Dubai. My 13 wife's sister is getting married. She was supposed to 14 get married in the spring, now in a couple of months, 15 but since my wife cannot leave while an N-400 is 16 pending for the U.S. citizenship, she cannot leave and 17 -- or she doesn't want to leave until we get that 18 citizenship and she cannot enter UAE anyways. 19 Q Why is that? 20 A Because you need a sponsor or you need a visa 21 and for Syrians, no, there's no visas available. So 22 she has to have a U.S. citizen or passport. They UA</p>
<p style="text-align: right;">Page 139</p> <p>1 Q The passport you're describing right now, 2 this is your wife's passport? 3 A Yes. 4 Q So this would be the U.S. passport, which 5 will have her visa in it? 6 A The Syrian passport. 7 Q It's a Syrian passport -- 8 A Yes. 9 Q -- with a U.S. visa? Okay. 10 A Yes. 11 Q Has she since become a U.S. citizen? 12 A That is another story. We applied -- well, 13 now that she entered in 2015 and there is time limit 14 that she has to wait before she can apply for 15 citizenship, which is 18 month plus one day, in the 16 states, and three years as a permanent resident, which 17 she met -- she met those requirements, I did apply -- 18 or we did apply in May of 2017. And a month later we 19 received a letter to go and get the fingerprints, 20 which means the process was going smooth in the 21 beginning. 22 Normally my wife and her -- her friend</p>	<p style="text-align: right;">Page 141</p> <p>1 government have stop giving visas for Syrians for one 2 reason or another. 3 So now her sister's wedding is postponed, 4 hopefully end of the summer, if things go as planned, 5 you know, my wife would get citizenship, she get the 6 passport and travel to -- to see the wedding. But 7 that is still now in the air, we don't know. That is 8 one case. 9 A second case is my sister. My sister is a 10 doctor, she's a midwife, she delivers. It's the 11 second one, one in California, one in Syria, the third 12 one was a pharmacist, she died. But my sister's house 13 was destroyed in Syria, Damascus. So she had to live 14 with some family and she was given like a five foot I 15 want to say second room, on top of a room, you know, 16 so the height of that room is five foot and that's 17 where she's been -- she stayed for almost a year after 18 her house destroyed. 19 And she -- she works for the UNICEF, the 20 United Nations Children Fund, whatever. She teaches - 21 - she lectures on, you know, safe practices about 22 woman's health and all of that and babies and she</p>



Deposition of:  
**Michael Coleman**

*February 6, 2018*

In the Matter of:  
**Elhady vs. Kable**

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Elhady vs. Kable

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<p>1 MS. ROTH: And I'll introduce this as Exhibit 2 C, so we'll need to let court reporter just put a 3 little sticker on it for you. 4 (Whereupon, the document 5 referred to was marked for 6 identification as Exhibit C.) 7 THE WITNESS: Okay. 8 BY MS. ROTH: 9 Q Mr. Coleman, this is a -- appears to be an 10 Expedia itinerary that you've provided us, and on page 11 two of this document is an itinerary for March 2nd, 12 2015 from Detroit to Mexico City, and then returning it 13 looks like March 6th, 2015, but arriving back in 14 Detroit on March 7th. Is that right? 15 A Detroit? March 7th, 2015? That's what's 16 there, yep. 17 Q Is this itinerary the itinerary of the trip to 18 Mexico that we were just talking about? 19 A To my best recollection. 20 Q Do you recall if you traveled with anyone else 21 on this occasion? 22 A I'm not certain, but it's not unlikely, yeah.</p>	<p>1 sensitivities. 2 Are they going to be afraid to travel with me? 3 Are their families going to be afraid for them to 4 travel with me? Are they going to be placed on a list? 5 And you know, honestly, it's a factor. Like if we do 6 big trips, that I have to lead or be a servant on, it's 7 not unlikely that we'll try to book me coming aback 8 separate from the other travelers, just to avoid the 9 unpleasant experience for them, you know. 10 That's a factor that I'm trying to weigh, you 11 know. I remember at least one of those trips some 12 young people were with me and we got secondary, but I 13 don't remember which one it was. It could have been 14 that one, it could have been another. 15 Q Okay. Turning back to Exhibit B at page six, 16 this document right here? 17 A This one? 18 Q No, that document. 19 A This one? 20 Q Page six, paragraph three. 21 A Uh-huh, yep. 22 Q On or about May 2nd, 2015, do you see that?</p>
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<p>1 Q And if you were traveling, for example, with 2 someone in your family, would their information likely 3 be on this itinerary as well? 4 A Yeah. I've never -- I don't ever recall 5 traveling with family to Mexico, yeah. 6 Q I'm sorry if I asked this already, but I don't 7 recall the answer. Do you recall how long the 8 secondary questioning lasted? 9 A I don't, I don't. 10 Q Okay. Back to Exhibit B -- 11 A I recall on some of my Mexico trips, but I 12 don't know if it was this one or others. That's why I 13 said it's not unlikely that I had young students that 14 we work with in Detroit who traveled with me, and I 15 recall at least one secondary with them. 16 That's significant because like religious 17 institutions, one of the things you'll do is you'll 18 take essentially field trips, you know, as part of the 19 study of the young people. So they're -- if they're 20 subjected to secondary along with me, that's a factor 21 that I have to worry about, stigma for me in the 22 community and then also their, you know, their</p>	<p>1 A Uh-huh. 2 Q This describes leaving the United States from 3 PHL, which I believe is Philadelphia, is that right? 4 A Yes. 5 Q To DOH. Is that Doha? 6 A Yes. 7 Q Why don't you describe this, this experience 8 for me? 9 A Okay. So this was the second leg of a trip 10 that began in Detroit, and that appears in the 11 discussion of U.S. travel. So when I arrived to 12 Philadelphia, I did not have a boarding card for the 13 next leg of my journey, though I was in the terminal, 14 right. 15 So then I came to the gate and prior to being 16 issued a boarding card, the agent at the gate had to 17 make a call to get clearance for me to be issued a 18 boarding card. Then I was issued a boarding card and I 19 believe I was issued for the subsequent leg outside of 20 the United States, from Doha and Malaysia. I was 21 traveling to Malaysia and this was the first -- like 22 this trip was its first leg and this leg, and the</p>

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<p>1 return, that was the first time I had the Quad S where 2 I had to have phone calls and everything. 3 It was really a very, what do you say, caused 4 a lot of anxiety, right? I showed up at the airport 5 without forewarning to the Detroit airport, and then 6 again had to have this call there, and I had to have 7 this call. Took them -- sometimes it takes them a long 8 time. I don't remember if that took a long time. 9 You're worried about missing your flight, and 10 then, you know, I was -- I was a guest of like the 11 Office of Prime Minister of Malaysia for a conference, 12 and the conference is like we're trying to essentially, 13 I don't know if this is relevant to you, but like 14 combat like Wahhabi ideology, which is what Muslims 15 tend to -- many Muslim scholars believe is like kind of 16 a foundation for a lot of the radical groups. 17 So we're trying to like preserve, you know, 18 mainstream Sunni creed in the foreign country where the 19 government's happy to host me and fly me first class 20 there and participate, and my own government is telling 21 me I'm a suspected terrorist. It was, you know, it was 22 difficult. That's when, you know, I began paying real</p>	<p>1 person. My carry-on items and at least my hands being 2 -- doing a chemical swab, and that would take place 3 with every TSA. 4 Q Was that happening in the normal security 5 screening area or somewhere else? 6 A Normal security screening area, yeah. Though 7 I believe for a pat-down, the pattern seemed to be they 8 offered you to go to a private area for a pat down 9 should you request it. I don't remember whether I 10 requested it or not, yeah. 11 Q Do you recall how long it took you to get your 12 boarding pass in Detroit for the flight to Philly? 13 A I don't, but I recall that there was a delay, 14 yeah. I recall that it took them -- like it took a 15 while. 16 Q But you did make the flight, right? 17 A I made the flight, yeah. 18 Q Once you were in Philadelphia, you still did 19 not have the boarding pass for the next flight; 20 correct? 21 A Right, until I got to the gate and they made 22 the call and issued my boarding pass, Philadelphia to</p>
<p>Page 67</p> <p>1 close attention just during those times of the Quad S. 2 Q When you went to the Detroit airport, which 3 was the beginning of the trip, were you able to check 4 in for your flight from Detroit to Philadelphia? 5 A Not without assistance from the agent, and not 6 without them making a phone call, and it took a while. 7 It took a while, and I had never experienced that 8 before. 9 Q Okay. After that, after you were able to get 10 your boarding pass to Philadelphia, did that boarding 11 pass have a Quad S on it? 12 A Yes. 13 Q So and again, I want to be clear. I'm talking 14 about the boarding pass from the flight from Detroit? 15 A Detroit, yes. 16 Q To Philadelphia? 17 A Yes. That's what I recall, yeah. 18 Q Okay. 19 A And as I recall, I recall during that period 20 always being walked by the check-in agent, an agent 21 from the check-in to TSA, and then taken to TSA and 22 being more thoroughly searched, my carry-on and my</p>	<p>Page 69</p> <p>1 Doha. 2 Q Did anything else happen in Philadelphia, 3 other than needing to request assistance to get the 4 boarding pass from that point? 5 A No, no. However, you can imagine that there's 6 anxiety there, you know, because they didn't -- they 7 reluctantly gave me my boarding card in Detroit, and 8 I'm trying to catch a conference and I don't know if 9 I'm going to get in the next leg, you know. 10 It's good for dependence on God. I mean I'm 11 going as far as you let me go, but it was frustrating 12 though, frustrating, or causes anxiety. 13 Q Do you recall if you were traveling alone on 14 this trip? 15 A I was traveling alone, yeah. 16 Q And once you landed in Doha, if I understood 17 you correctly you also were then continuing on to 18 Malaysia, right? 19 A Yeah. 20 Q How long were in Doha? 21 A Hours, just a regular -- 22 Q Just a layover?</p>

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<p>1 A That transit, yeah. Just the transit, yeah.</p> <p>2 Q Did you encounter any problems replanning from</p> <p>3 the Doha to Malaysia?</p> <p>4 A Not Doha Malaysia, but Malaysia -- but Doha-</p> <p>5 Philadelphia I did.</p> <p>6 Q On the return trip?</p> <p>7 A On the return.</p> <p>8 Q Okay. We'll talk about that in just a second.</p> <p>9 Can you turn to page -- Tab 12 of this binder in front</p> <p>10 of you, and I'll introduce this as Exhibit D, so the</p> <p>11 court reporter can just put this little sticker on it.</p> <p>12 If you look at this exhibit, Mr. Coleman, does this</p> <p>13 reflect the itinerary and the trip that we're talking</p> <p>14 about?</p> <p>15 (Whereupon, the document</p> <p>16 referred to was marked for</p> <p>17 identification as Exhibit D.)</p> <p>18 THE WITNESS: It appears to.</p> <p>19 BY MS. ROTH:</p> <p>20 Q Which isn't to say you started in Detroit.</p> <p>21 You flew through Philadelphia, connected in Doha to</p> <p>22 Kuala Lumpur. About a week later, approximately from</p>	<p>1 being reinvited, and it took a while, and then</p> <p>2 eventually I was given a card just as far as Doha.</p> <p>3 Q Do you recall roughly how long it took?</p> <p>4 A No, other than that there was a delay.</p> <p>5 Q Would you say an hour?</p> <p>6 A I don't think I would say an hour. I think I</p> <p>7 would say maybe a half hour give or take.</p> <p>8 Q Were you -- in addition to the time it took,</p> <p>9 the extra time it took to get the boarding pass, were</p> <p>10 you subjected to any additional screening, security</p> <p>11 screening?</p> <p>12 A Not in Kuala Lumpur.</p> <p>13 Q Right. So you arrive at Doha for a connection</p> <p>14 to Philadelphia; correct?</p> <p>15 A Yeah.</p> <p>16 Q Can you describe what happened on that leg of</p> <p>17 the trip, if anything?</p> <p>18 A At the gate, I was issued my boarding card and</p> <p>19 I recall additional screening at the gate returning to</p> <p>20 the United States.</p> <p>21 Q Do you recall whether other passengers were</p> <p>22 also being additionally screened, or was it your sense</p>
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<p>1 Kuala Lumpur back to Doha, Doha to Philadelphia,</p> <p>2 Philadelphia to Detroit; correct?</p> <p>3 A Yes, except that I missed this Philadelphia-</p> <p>4 Detroit leg on the return home.</p> <p>5 Q Okay. So let's just start with leaving Kuala</p> <p>6 Lumpur to Doha. Did you experience any difficulties</p> <p>7 getting a boarding pass for that leg?</p> <p>8 A Yes, yeah. They wouldn't -- at first, they</p> <p>9 wouldn't issue it, and then the Malaysians were helping</p> <p>10 us, you know, talk to the agent or talk to someone in</p> <p>11 the back or phone calls were made, and then they would</p> <p>12 only issue me a card to Doha, and there was a delay,</p> <p>13 you know.</p> <p>14 So I'm being delayed, wondering wow, am I</p> <p>15 going to be allowed to fly home basically, and then</p> <p>16 also these are people that are not personal associates,</p> <p>17 but I guess you would call them business associates. I</p> <p>18 call it my field of service. They might have been some</p> <p>19 of them representatives or volunteers for the Malaysian</p> <p>20 government, because it was put on by the government.</p> <p>21 So you know, they're having to witness this,</p> <p>22 and that's potentially a problem, you know, for me</p>	<p>1 that you were the only one being additionally screened?</p> <p>2 A I don't recall.</p> <p>3 Q But this was at the gate?</p> <p>4 A This was at the gate.</p> <p>5 Q Do you remember it taking additional time to</p> <p>6 get that boarding pass or if it all happened pretty</p> <p>7 kind of quickly?</p> <p>8 A I don't recall.</p> <p>9 Q You don't recall either way?</p> <p>10 A No.</p> <p>11 Q Okay. So other than that, from Doha to</p> <p>12 Philadelphia, anything else unusual about that leg of</p> <p>13 the trip?</p> <p>14 A Prior to my arrival in Philadelphia?</p> <p>15 Q Prior to your arrival in Philadelphia.</p> <p>16 A No, no. Just again, the anxiety of whether</p> <p>17 I'm going to be allowed on the flight home.</p> <p>18 Q Okay. So then now you're landed in</p> <p>19 Philadelphia. Describe what happened then.</p> <p>20 A I recall being brought into an office, which</p> <p>21 is what I'm referring to a secondary questioning. So</p> <p>22 that would have been after my passport, after I was</p>

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<p style="text-align: right;">Page 82</p> <p>1 A No. Another detail that I recall certainly on 2 the return, though I do not recall if it happened in 3 Chicago, is I don't know if I'm overhearing what's 4 taking place on the phone, or if I'm understanding 5 based on the answer of the agent that he's answering to 6 the effect that or being asked is he traveling with 7 anyone else? Yes, he's traveling with so and so and so 8 and so and so and so, right? 9 And that's of concern because, you know, I 10 don't want my family to end up on a watch list because 11 they traveled with me and I'm on a watch list, 12 especially my kids. But I specifically remember either 13 going or/and coming, or definitely returning. But 14 maybe going as well on this trip, them asking who I was 15 traveling with. 16 Q The return trip, is that -- if we look back at 17 Exhibit B, paragraph three, one or about November 4th, 18 2015, is that paragraph describing the return trip from 19 Oakland back to O'Hare? 20 A Yeah, yeah. 21 Q So you -- can you just describe what happened 22 when you got to Oakland Airport to board that flight</p>	<p style="text-align: right;">Page 84</p> <p>1 anybody, can you just explain for me one more time who 2 you recall? 3 A I recall observing this from the conversation 4 that's taking place with the airline agent with whoever 5 they're calling. 6 Q But it was the airline agent who you saw on 7 the phone? 8 A Yeah. 9 Q And you don't know who was on the other side 10 of the phone? 11 A Yeah. I've been informed that it's Homeland 12 Security, but I don't have the phone number, so I don't 13 -- I can't say for sure. 14 Q Anything else about that trip in October- 15 November 2015 with your family other than what you've 16 described? 17 A Nothing that really sticks out in my memory. 18 Q Back to Exhibit B, paragraph four. You see 19 where I am on page 11? 20 A Uh-huh. 21 Q On or about November 27th, 2015, Plaintiff 22 Coleman traveled by air from DTW to FLL on Jet Blue</p>
<p style="text-align: right;">Page 83</p> <p>1 home? 2 A Let me just double-check one thing. Does this 3 have the itinerary? 4 Q Yes. 5 A I'm allowed to look at this? 6 Q Yes. 7 A Okay. 8 Q I think the return trip was on the previous 9 page. 10 A Okay, Oakland, San Francisco. Okay. I just 11 recall checking in and what I do recall that I should 12 have included here, but it's easier speaking about it, 13 that they asked was he traveling with anyone else. I 14 remember that other times it might have been going to, 15 but I remember, you know, specifically that being asked 16 and just thinking, you know I hope that doesn't 17 adversely affect my family, yeah, and just the normal 18 Quad S. 19 Get a Quad S, get -- I remember being walked 20 to security. That's what I recall, and then just more 21 thorough security and TSA. 22 Q The question about is he traveling with</p>	<p style="text-align: right;">Page 85</p> <p>1 flight -- 2 A Fort Lauderdale. 3 Q Okay. So this is from Detroit to Fort 4 Lauderdale? 5 A Uh-huh. 6 Q This would have been approximately three weeks 7 after you returned from Oakland, right? 8 A Yeah. 9 Q Do you recall the purpose of this trip? 10 A That was to visit friends, and give lectures. 11 I don't remember if they're Muslim schools or mosques. 12 Q And if you turn the page to page -- 13 A And again, I consider it work, but I don't 14 recall negotiating pay for it. But it's work. I 15 recall that a work trip, a service. 16 Q Were you traveling alone? 17 A Yes. 18 Q So if you'd turn the page to page 12 of 19 Exhibit B, just one page over, paragraph five there. 20 On or about November 29, 2015. Would this be the 21 return trip from Fort Lauderdale back to Detroit? 22 A On number five?</p>

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<p style="text-align: right;">Page 98</p> <p>1 have taken an hour, and I had to wait until everyone 2 finished, and then they guy called me up and he said 3 "Some things we can do and some things we can't do, and 4 we can't issue your passport today." 5 And I asked them what if am I not issued a 6 passport? They said you'll be issued a travel document 7 allowing you to return to the United States, and then 8 they said that they would call me and I was issued my 9 passport the next day, right? So what should have been 10 a one-day renewal took until the next day, and it was 11 -- 12 What I understood it was due to information 13 about me that they had, that they needed additional 14 clearance from someone, I assume the United States, in 15 order to issue me a passport. And then but I don't 16 remember the details of returning on that flight. 17 Q How did you come to that understanding? 18 A That they -- that they couldn't issue me my 19 passport? 20 Q The reasons for why they weren't able to? 21 A I mean from that conversation with the 22 consular agent.</p>	<p style="text-align: right;">Page 100</p> <p>1 the other end, you know. I mean I don't know what they 2 do to people who come back having been denied a 3 passport. But I would assume it's relatively 4 difficult. So you could say it was an anxious, it was 5 an anxious day, yeah. 6 Q When you were told that they weren't able to 7 renew the passport and gave you a travel document which 8 will let you return back to the United States did -- 9 was there any suggestion in that conversation that you 10 would be exposed to any consequences -- 11 A No, just my fear. 12 MR. ABBAS: Wait for the question to finish. 13 THE WITNESS: Oh sorry, thank you. Thanks. I 14 wanted to apologize too. I think it's a motor issue, 15 and thank God, I'm a good simultaneous interpreter 16 because I have to talk while people talk. But I have a 17 bad habit of interrupting people. I'm really sorry, 18 yeah. 19 BY MS. ROTH: 20 Q It's quite all right, and we're working 21 through it. 22 A Yeah, okay, all right.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q So this was at the U.S. Embassy in London? 2 A Yep, London. 3 Q And your U.S. passport that you were traveling 4 on this trip just expired in its due course while you 5 were on this trip? 6 A It was -- there wasn't sufficient time to 7 continue traveling on, and I wanted to do some other 8 travel, and I needed more months. So it was like 9 within six months, so I wanted to renew it, yeah. 10 Q But you were ultimately able to renew it, just 11 it took another day? 12 A Yeah, it took another day. 13 Q Did that -- sorry, go ahead. 14 A It took another -- yeah. It took another day 15 and then again, you know, I'm a man with no passport in 16 a foreign country, you know. So there's the time and 17 there's also the anxiety, that I'm traveling around a 18 foreign country without a passport. 19 With the ominous possibility of being issued a 20 document that only allows me to enter the United States 21 not as a passport holder, and whatever type of, you 22 know, detention or charges or whatever could occur on</p>	<p style="text-align: right;">Page 101</p> <p>1 Q So you were saying no one told you it would be 2 a problem to travel on that travel document, but it was 3 your own understanding, your own -- 4 A It was my own fear. 5 Q And ultimately, of course, you got the 6 passport, you were able to travel? 7 A Yes. 8 Q Okay. So then let's talk about what happens. 9 You board the flight in London. You land in Detroit. 10 You pull up to the gate. Somebody goes on the loud 11 speaker. They say your name. That's the first time 12 that's ever happened to you? 13 A Yes. 14 Q Has it happened since? 15 A No. Yeah, it hasn't. 16 Q And you said that two individuals, one 17 plainclothes, one uniformed, met you. Would that 18 -- were they on whatever it's called the, you know, the 19 -- 20 MR. ABBAS: Gangway. 21 BY MS. ROTH: 22 Q The gateway that gets you to the airport?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A Yeah, yeah. They were right at the door to 2 the plane. 3 Q So they take you to a room for questioning? 4 A Yes. 5 Q I apologize. We're dealing with an errant 6 phone ringing. 7 MR. ABBAS: Is anybody on the line? 8 VOICE: No, I didn't answer it. 9 MR. ABBAS: Okay. They rejected the call. 10 BY MS. ROTH: 11 Q So they take you into a room for questioning, 12 but what more do you remember about that? 13 A I remember -- I remember that after I left the 14 room, they did an additional chemical screening in the 15 Customs area prior to exiting, and I remember -- I 16 remember there being like questions about my religious 17 activities. 18 I don't recall the details of those, and I 19 remember the officer trying to be intimidating when I 20 wasn't going to answer questions about associates, by 21 asking me if I had ever been arrested, which is, you 22 know, I don't know if you have had any run-ins with</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Your family? 2 A Yes, specifically my father-in-law because I 3 was traveling on this trip with my wife. We were 4 traveling for the pilgrimage, the haj to Mecca. He was 5 very anxious, to the point where like an argument took 6 place in the home about how early we needed to get to 7 our flight so that we could be subjected to my 8 screening. 9 And so I recall, you know, I would say that 10 that's one of the difficulties of being on that list, 11 is that it causes anxiety for your family members and 12 your associates. You know, there's like a stigma. 13 He's worried, you know. Is my daughter going to be 14 properly taken care of, making him pilgrimage that he's 15 helping her with, and I want to make sure to get them 16 out early enough in order for that to occur. 17 But then, you know, I remember, I told him I'm 18 going to leave in the way God makes me leave, and I got 19 to the airport and I didn't have a Quad S. Thank God 20 that happened. I remember very clearly it was just -- 21 you know, got a boarding card, went through. It was 22 normal.</p>
<p style="text-align: right;">Page 103</p> <p>1 police. I'm African-American young man. We have that 2 clearly intimidating behavior, you know. 3 Like I'm asking this question, you're not 4 answering this question. Well, have you ever been 5 arrested? Like maybe I'll arrest you know if you don't 6 answer this question. But I didn't answer and thank 7 God, I wasn't arrested, yeah. 8 Q Anything else that was intimidating about that 9 experience, other than asking if you've been arrested? 10 A Maybe you could say being taken off by the 11 officers itself is intimidating, and but you know, 12 nothing, nothing else that I recall specifically, yeah. 13 Q Okay. Let's jump to the next trip. Turn to 14 page eight, paragraph seven at the top. We talked 15 about this earlier. This is an August 27th, 2016 from 16 Chicago O'Hare to AMM, which I believe is Amman, is 17 that right? 18 A Yeah. 19 Q I think you stated earlier that you actually 20 had a normal check-in process for this flight? 21 A Yes, yes. What I recall about that is the 22 family who is aware of me being on the watch list?</p>	<p style="text-align: right;">Page 105</p> <p>1 Q So you flew to Amman and from Amman you flew 2 to Saudi Arabia? 3 A Yes. 4 Q Any other travel problems outbound or, you 5 know, going to -- 6 A Not that I recall. 7 Q So in paragraph eight there, same page, "On or 8 about September 16th, 2016, Plaintiff Coleman entered 9 the United States at ORD from Amman." Is that the 10 return trip from your haj? 11 A Uh-huh. 12 Q Okay. Why don't you tell me about that trip 13 if you remember? 14 A So I just -- as is stated here, they didn't 15 tell everyone else to wait for us to exit, but they 16 waited for us at the door to the plane, and took us 17 through. We were not taken into a back room, and I 18 remember it being three officers, because I joked with 19 them. I said little old me, got three guys. You must 20 really think I'm dangerous or something. 21 I was pushing them a little bit. By this 22 point, you know, I'm worn out from all of this, and I</p>

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1 board a flight.  
2 Q But did they ever say because of a watch list?  
3 A No, no. Who knows?  
4 Q You've also mentioned today various travels  
5 you made with students or other people in your  
6 community, and that when subjected to the screening in  
7 front of those people, you know, it can have an effect  
8 on you. Can you -- other than those instances, can you  
9 describe any other times you believe the security  
10 procedures that you were subjected to, had a public  
11 effect on you?  
12 A Yeah. So other than the time when I traveled  
13 with the accompaniment of students or community  
14 members, where it had a public effect, I don't recall.  
15 I do, I'll mention it, yeah.  
16 Q So on the occasion where you were traveling  
17 with students, can you describe more what happened on  
18 that occasion?  
19 A Yeah. There was one trip that I recalled  
20 after we submitted the documents, and if you -- you'll  
21 see there's one of my itineraries from Detroit to South  
22 Africa, which probably would have been 2015, probably

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1 2015. So I had students and family. When I, when we  
2 began --  
3 After the gate and prior to the airplane, we  
4 were stopped by Customs. Everyone was stopped, but  
5 they gave more scrutiny to me and they revealed that  
6 they were looking -- like they were waiting for me to  
7 arrive, and they took me aside and questioned me. This  
8 is in front of, you know, my wife, father-in-law and  
9 two students.  
10 One of the things they asked me was if someone  
11 was preaching hate would I inform them, and another  
12 with meaning, I can't give you a quote, was do I mean  
13 any harm to the United States. That's what I remember  
14 about the questioning, just that they were waiting for  
15 me specifically, and then they asked me those  
16 questions.  
17 And I remember that especially my father-in-  
18 law, it caused a lot of anxiety for him specifically.  
19 He became very worried about it, and then would always  
20 caution me about upcoming travel thereafter, yeah.  
21 Q Would on those occasions where you were asked  
22 these questions, were you isolated and out of earshot

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1 of other people or --  
2 A No. Yeah, so that's an example. That's yeah,  
3 people walking by, yeah. And clearly everybody  
4 understood that I was the target of the additional  
5 questioning, and that they experienced it as a result  
6 of accompanying me, yeah.  
7 Q Has it had any tangible effects on your work,  
8 on your -- or on your work?  
9 MR. ABBAS: Objection, asked and answered.  
10 BY MS. ROTH:  
11 Q You can answer the question.  
12 A I don't mind reiterating.  
13 MR. ABBAS: Yeah, that's fine. Yeah, you can  
14 reiterate.  
15 THE WITNESS: So I mean we've, like we've  
16 factor it in organizationally if we're going to arrange  
17 a trip, you know, and thank God, it's never happened  
18 like on the haj trips I've done, because that's one of  
19 the things that imams will do. There will be company  
20 haj trips, you know.  
21 So conceivably, you could have an experience  
22 like that where you're leading 10, 20, 30 pilgrims,

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1 right, and you're the group leader and you go through  
2 that getting ready to get on the flight with those  
3 pilgrims.  
4 So it's something that, you know, where it's a  
5 detriment that we're hoping to take measures to  
6 mitigate by being particularly cautious returning to  
7 the United States, because it doesn't happen that often  
8 exiting. But I expect secondary when I return, so  
9 yeah.  
10 Q And that's the case, even though it's been  
11 almost, more than two years since you last experienced,  
12 you know, more screening returning to the country?  
13 A Yeah. It's just -- I've just gotten so used  
14 to it, you never know when it's going to rear its head,  
15 yeah, yeah.  
16 Q You mentioned -- you mentioned earlier that  
17 you have a potential travel later this year to, I think  
18 you said Seattle?  
19 A Uh-huh.  
20 Q Do you have other future travel plans listed  
21 here?  
22 A A whole lot between the east coast and



Deposition of:  
**Wael Hakmeh**

*March 2, 2018*

In the Matter of:  
**Elhady vs. Kable**

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<p>1 about to die. He's in his 50s and had to have a chest 2 tube, and they had to basically cut his chest open and 3 reinflate his lung. And he was -- he was basically 4 out of commission from work for several months. So, I 5 helped support him and his family. 6 Q And when did you send him money? 7 A Within the past year or so. 8 Q Was it just once? 9 A Either once or twice. Not more than that. 10 Q Okay. 11 A I don't remember exactly. 12 Q And were there any delays associated with 13 that -- those transfers? 14 A I don't recall. 15 Q Okay. How about anyone else? Any other 16 instances of wire transfers? 17 A Those are the ones I remember right now. 18 Q Okay. 19 A I don't recall any other ones. 20 Q Okay. You mentioned you have immediate 21 relatives who reside in foreign countries. Could you 22 go through the list of immediate relatives -- by which</p>	<p>1 MR. HEALY: I mean immediate relatives -- 2 MR. ABBAS: -- immediate -- 3 MR. HEALY: -- who live -- reside in foreign 4 countries. 5 THE WITNESS: So, can you define that for me 6 again? 7 BY MR. HEALY: 8 Q Siblings, parents, spouses, children. 9 A Zero. 10 Q Zero. And you said you have in-laws -- at 11 least one brother-in-law who lives in Turkey. Any 12 other -- 13 A He's my sister-in-law's husband. 14 Q Your sister-in-law's husband. Okay. 15 A So, I consider him a brother-in-law. 16 Q Right. No, that makes sense. 17 A But he's a sister-in-law's husband. 18 Q Okay. Okay. Have you ever sponsored any 19 relative for immigration to the United States? 20 MR. ABBAS: Objection. Calls for a legal 21 conclusion. You can answer if you understand the 22 question. Or know.</p>
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<p>1 I mean siblings, parents, spouse, children -- who live 2 in foreign countries? 3 MR. ABBAS: I think we need to -- I'm -- if 4 you're -- are you asking for their names? 5 MR. HEALY: I'm not asking for their names. 6 I'm just asking who -- individuals. 7 MR. ABBAS: Like -- 8 MR. HEALY: How many individuals, and how are 9 you -- 10 MR. ABBAS: -- brother, sister -- 11 MR. HEALY: - related to them? 12 MR. ABBAS: -- is fine -- 13 MR. HEALY: Yes. Exactly. 14 MR. ABBAS: Okay. Don't give their names. 15 You can brother, sister, mother cousin -- 16 THE WITNESS: Well, which category of 17 relatives did you want? 18 MR. HEALY: I'm just asking -- 19 MR. ABBAS: He might have like a hundred 20 cousins. How many -- 21 MR. HEALY: Well, I don't mean cousins. 22 MR. ABBAS: Okay. Good. So, just --</p>	<p>1 THE WITNESS: My wife. 2 BY MR. HEALY: 3 Q Okay. And were you successful in that 4 process? 5 A Yes. 6 Q And how long did that process take? 7 A Five years. 8 Q And do you allege that that wait of five 9 years happened due to the fact that you believe you're 10 on a watch list? 11 A I don't know what effect the watch list had 12 on it. 13 Q Okay. 14 A I don't know. I mean, this whole term is so 15 nebulous and there's so much confusion. I'm being 16 asked as to whether the watch list affected things 17 when the people in charge of the TSA can't even 18 confirm or deny or tell me anything about the watch 19 list, or anything I can do to, you know, ameliorate 20 all these problems that are happening, or prevented 21 from happening. So, I think it's a little, you know, 22 unfair to expect me to know the ramifications of a</p>



Deposition of:  
**Hassan Shibly**

*February 12, 2018*

In the Matter of:

**Elhady vs. Kable**

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<p>1 And what really stuck out, it wasn't one of those 2 instances where I was like -- not that it would 3 justify, but I wasn't snarky, I wasn't having an 4 attitude, I wasn't just the Lawyer Shibly that you 5 see before you today, you know, I was, I believe, 6 you know, maybe Law Student Shibly, Student Shibly. 7 And I didn't expect to be in handcuffs when I'm 8 driving my grandmother to take her home. 9 I mean, there were -- the officers 10 were relatively polite, I remember, at that time. 11 He said, "Look, we want to search you, but for our 12 safety we're going to want to put you in handcuffs. 13 There's no choice." 14 Okay. And it was the first time, I 15 remember, and never having broken the law, besides 16 again maybe a speeding ticket, or something like 17 that, a minor traffic infraction just to be honest, 18 which wasn't at that incident, being put in 19 handcuffs while they searched me. Growing up, it 20 was a traumatizing experience. 21 I believe that may have been the -- 22 the incident where there was sort of some hint</p>	<p>1 long it was, but we were left go. And then the 2 next day, when we were going back and was being 3 stopped again. And I'm trying to sort of shift 4 through my memory and this may clarify later, 5 because, like I said, the difficult thing with this 6 is they all merge together. 7 There was the time when my 8 grandmother -- and I don't remember if it was in 9 the interrogatories here or in the original 10 complaint, we were driving back with my 11 grandmother, I don't remember the exact date or if 12 it's the exact incident or not, I can double-check 13 quite easily, but just speaking from my memory, the 14 date I was driving back with my grandmother and she 15 ended up being in the hospital, you know. And I 16 think it was just the stress of what we had to go 17 through at CBP and being held for hours. That's 18 the gist of what I recall. 19 Q So let's look back at the complaint. 20 So that's Exhibit 1. 21 A Uh-huh. 22 Q I think if you go to paragraph 273 of</p>
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<p>1 through conversation, although these kind of 2 conversations happened on more than one occasion 3 of, hey, you're on some sort of list, we've got to 4 do what we've got to do. Like, it's not me, don't 5 blame me -- the officer -- it's not me looking at 6 you looking like a Muslim and wanted to pick you 7 out. It's, I've got to do what I've got to do, 8 type of thing. 9 So that's what I remember, just being 10 put in handcuffs for the first time. What hurt the 11 most about it was having your own grandmother sort 12 of being a witness to that. You know, you don't 13 want your grandma seeing you in handcuffs no matter 14 what, because it hurts her heart, she loves you. 15 And you hope that she doesn't think anything bad of 16 you, but at the same time, you don't want her 17 seeing you in handcuffs. 18 So I remember that. And I remember 19 taking her to her sister's house. You know, I 20 think at that time being fingerprinted and 21 photographed. And then, you know, I don't remember 22 particularly right now off the top of my head how</p>	<p>1 your complaint. 2 A Wait, what did you say, paragraph 3 273? 4 Q Yes. That's on page 45 at the 5 bottom. 6 A Okay. 7 Q Do you see where it says, "On 8 November 25, 2009"? 9 A Yes. Yes. 10 Q If you could just take an opportunity 11 to read through the next few paragraphs -- 12 A Yes. 13 Q -- and see if that helps refresh your 14 recollection. 15 A Thank God, that was adding up with 16 what I recall. Because I definitely remember it 17 was in Michigan going in in handcuffs. I will 18 never forget -- like whenever I -- now, whenever I 19 cross the bridge between Michigan and Canada, I 20 always remember the handcuffs. 21 Yes, and I remember being warned by 22 the officer that I would likely receive the same</p>

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<p>1 treatment on the way back. And I remember the 2 1022s being mentioned as well. I don't know what 3 that means. I remember being stopped by armed 4 officers. And yes -- so yeah, my grandmother was 5 with me. It was that date when she fainted and she 6 was sent to the hospital. I couldn't even go with 7 her. Here I am an American citizen, I verified my 8 ID, being held for God knows why, and my 9 grandmother had to go to the hospital. 10 So that was one of the most troubling 11 times, really because of the handcuffs and seeing 12 what happened to my grandmother. Again, for no 13 reason. 14 Q Do you remember, was it just you and 15 your grandmother on this trip? 16 A Most likely it would have just been 17 my grandma and myself, yes. I don't recall there 18 would have been anyone else with us at the time. 19 Q When it says that she fainted and 20 then was taken by ambulance to a hospital, do you 21 recall that being once you were already back in 22 Buffalo? You were at the Buffalo --</p>	<p>1 It's easy to smile and talk about it now, it wasn't 2 easy to go through. 3 Q I understand. 4 A Yeah. 5 Q Let's turn back to Exhibit 2. 6 A Sure. 7 Q So you -- 8 A Sure. 9 Q Back to the top of page 9. 10 A Sure. Sure. Sure. Sure. Page 9, 11 yes. 12 Q Top of page 9. And this -- I don't 13 mean to be nitpicky -- 14 A Sure, exactly. 15 Q -- I just want to make sure it's 16 clear for the record, on November 26, 2009, it 17 says, "Plaintiff Shibly exited the United States by 18 car at the Lewiston-Queens Bridge border crossing," 19 is it possible "exited" should say "entered," 20 because you were -- the day on the 25th -- 21 A Oh, correct. 22 Q -- you drove out of Buffalo through</p>
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<p>1 A I believe this was at the Buffalo -- 2 I don't remember -- I'd have to double-check the 3 notes, maybe it was Lewiston-Queens, which exact 4 point of entry around Buffalo, but I remember it 5 the hospital. And I believe it was just not far at 6 all from the point of entry. 7 Q So she would have entered into 8 Buffalo and the ambulance -- 9 A Correct. 10 Q -- took her somewhere -- 11 A Correct. 12 Q -- alone? 13 A Correct. 14 Q Meaning not with you? 15 A Yes, as far as I remember. And 16 that's part of what sucked about it, pardon my 17 language, is they took her and I'm still stuck 18 there. Now it's the added stress of why is my 19 government stopping me, when are they going to let 20 me out, and my grandmother is at the hospital, is 21 she okay, and why are we being subjected to all of 22 this again. It was a very traumatic experience.</p>	<p>1 Ontario in to Detroit, where you had the issues you 2 described -- 3 A Correct. 4 Q -- the next day you drove back 5 through Ontario and then entered the United 6 States -- 7 A Yeah. 8 Q -- to Buffalo? 9 A Maybe it just should have said, 10 exited to the United States or exited Canada to 11 the -- but yes, you're -- it's correct, what you're 12 saying is correct. 13 Q That's fine. And, again, I don't 14 mean to be nitpicky, it's just I wanted to make 15 sure it's clear. 16 A No, I appreciate that opportunity for 17 a clarification correction. 18 Q Okay. Is there anything else about 19 this November trip that you remember but you 20 haven't said yet? 21 A The key things that -- giving a 22 document that the car and electronics were</p>

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Page 86	<p>1 And I believe around this time, my --</p> <p>2 I might have been employed with Regional Elite</p> <p>3 because yeah, I finished law school around -- no,</p> <p>4 this time wouldn't be Regional Elite, this time may</p> <p>5 have been when I got discount tickets from a friend</p> <p>6 who worked for the airlines, yeah, if it's 2010.</p> <p>7 So, anyway, I remember my problem</p> <p>8 being that I could not check in online. I remember</p> <p>9 that I would have to -- this was a new experience</p> <p>10 then. I don't recall exactly when it started, it</p> <p>11 would have been whenever it was in the notes, but</p> <p>12 this was sort of the additional now next layer of,</p> <p>13 oh, my God, now there is this as well.</p> <p>14 And this is unlike everybody else, I</p> <p>15 cannot print my tickets online, I can't print them</p> <p>16 at home, I can't put them on my phone. What I've</p> <p>17 got to do is go to the -- I try to get them at the</p> <p>18 kiosk. They may or may not print at the kiosk,</p> <p>19 then we've got to go to the desk, then the desk has</p> <p>20 to call a security line. And it would say some</p> <p>21 interesting things on the computer like call the</p> <p>22 adjuster or whatever. And then sometimes the</p>	Page 88	<p>1 House and still not being able to print my ticket</p> <p>2 in time to board the flight and having to buy a</p> <p>3 whole new ticket.</p> <p>4 And I'm like, how ridiculous is this,</p> <p>5 I can go meet the president, I can go meet Valerie</p> <p>6 Jarett, and the top President advisors and get into</p> <p>7 the White House complex without any extra</p> <p>8 screening, but I can't get on flight to get there.</p> <p>9 Do these guys even know what they're doing? Are</p> <p>10 they even official? Are they even really keeping</p> <p>11 us safe? What's going on here?</p> <p>12 Q And we'll get to that occasion</p> <p>13 later --</p> <p>14 A Sure.</p> <p>15 Q -- I want to assure you, you --</p> <p>16 A You got it.</p> <p>17 Q -- will have a chance to fully talk</p> <p>18 about that.</p> <p>19 A Sure.</p> <p>20 Q On this occasion, given everything</p> <p>21 you just said in July of 2010, do you recall</p> <p>22 whether or not you weren't able -- let me back up.</p>
Page 87	<p>1 employees didn't even know what to do or not.</p> <p>2 Like I remember sometimes literally</p> <p>3 having to walk them through and -- you know, it</p> <p>4 would take time to get my boarding pass and then --</p> <p>5 again, even when I go the to gate -- and, again, I</p> <p>6 don't remember the exact date or time, but again</p> <p>7 within the time frame, I remember going to the</p> <p>8 gate. And even one time at the gate, and I show</p> <p>9 them the ticket, and this past TSA security, still</p> <p>10 the agent doesn't know how to clear me, like she's</p> <p>11 got to enter something on the computer, maybe even</p> <p>12 make another call potentially.</p> <p>13 And it was a hassle. And the worst</p> <p>14 part was in particular, I remember ending up not</p> <p>15 being able to make a flight in time. I don't</p> <p>16 remember if this was the date or another time, but</p> <p>17 the worst part I remember not being able to get on</p> <p>18 a flight in time with my wife and my kid. You</p> <p>19 know, having to take separate flights because I</p> <p>20 couldn't get cleared enough. Which reminds me of a</p> <p>21 later time, I was going to meet at the White House</p> <p>22 and being cleared to have a meeting at the White</p>	Page 89	<p>1 You were flying first from Buffalo to</p> <p>2 JFK and then from JFK to Amman. Do you remember</p> <p>3 whether or not you were unable to print out your</p> <p>4 boarding pass for any leg of that trip or --</p> <p>5 A Which trip are you talking about?</p> <p>6 Q July of 2010. So we're still on</p> <p>7 paragraph 5.</p> <p>8 A You know, I -- generally what I</p> <p>9 recall, if I'm not able to print it out at one, I'm</p> <p>10 not able to print it out at any, unless it's</p> <p>11 already sort of like cleared and then it's like a</p> <p>12 continuing leg or reprinting something that's been</p> <p>13 printed already.</p> <p>14 But I remember for quite a long time,</p> <p>15 that once -- once I couldn't check in one at the</p> <p>16 airline, you know mobile, then I couldn't. And</p> <p>17 then it just became a really long time,</p> <p>18 significantly, including throughout my employment</p> <p>19 eventually with Regional Elite.</p> <p>20 And there I did quite a bit of</p> <p>21 traveling too because it's free, it's pretty</p> <p>22 awesome. But even then, you know, if I want to</p>

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<p>1 even the room you remember, because it was just</p> <p>2 ingrained in your memory so bad, because it stuck</p> <p>3 out as so wrong, so unnatural, essentially,</p> <p>4 un-American, at least un-American to the America</p> <p>5 that we imagined America should be. Then you</p> <p>6 remember Jim Crow, and then you're like, well,</p> <p>7 maybe it isn't so un-American.</p> <p>8 Q Do you recall either when you were</p> <p>9 leaving the United States to go to Amman or when</p> <p>10 you were coming back if you were subjected to any</p> <p>11 enhanced screenings, security screening, of any</p> <p>12 kind, beyond the boarding pass problem and the --</p> <p>13 A I want to say typically, from what I</p> <p>14 recall, is if I had an issue printing the boarding</p> <p>15 pass, I would typically be also receiving sort of</p> <p>16 extra screening by the TSA folks. But I don't</p> <p>17 recall if that was necessarily every single time or</p> <p>18 if that happened in that particular time or not.</p> <p>19 Q If it's not written here, should we</p> <p>20 take that to mean it's possible that it didn't</p> <p>21 happen on that occasion?</p> <p>22 A You can --</p>	<p>1 Q Would you recall on this trip if you</p> <p>2 had missed a flight because of any other, you</p> <p>3 know --</p> <p>4 A Yeah, I really would have to dig</p> <p>5 through the notes, or, you know, at least what's</p> <p>6 written here. I don't recall particularly whether</p> <p>7 it was this trip or another one when the flight was</p> <p>8 missed, but I definitely recall seeing my wife and</p> <p>9 kids go on down the gate and being able to catch a</p> <p>10 flight and me not being able to make it in time</p> <p>11 because I couldn't get the clearance fast enough.</p> <p>12 When, I don't remember off the top of my head.</p> <p>13 Q Okay. Mr. Shibly, let's turn to page</p> <p>14 9 of Exhibit 2.</p> <p>15 A Okay.</p> <p>16 Q Paragraph 5.</p> <p>17 A Sure.</p> <p>18 Q Again, the reason that I'm turning</p> <p>19 you here is because I believe it's the next trip in</p> <p>20 time. We were just talking about July and August</p> <p>21 of 2010 --</p> <p>22 A Uh-huh.</p>
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<p>1 MS. MASRI: Objection. Calls for</p> <p>2 speculation.</p> <p>3 But go ahead and answer.</p> <p>4 BY MS. ROTH:</p> <p>5 Q You can still answer.</p> <p>6 A You can take it that it's possible it</p> <p>7 happened or it's possible it didn't happen. It's</p> <p>8 just that part wasn't the most, you know, damning</p> <p>9 thing. And when you have -- especially when you're</p> <p>10 traveling and you're tired and a few different</p> <p>11 things happened, sort of the most damning thing</p> <p>12 sticks out.</p> <p>13 So for me, the most damning thing --</p> <p>14 like even if I close my eyes and not look at notes,</p> <p>15 I remember the religious questioning more than</p> <p>16 anything. So the most damning thing, pardon my</p> <p>17 language, burns out sort of the things that are</p> <p>18 still troubling, but unfortunately the troubling</p> <p>19 things become more routine as you've been through</p> <p>20 them more and more.</p> <p>21 So it may have, it may not have. I</p> <p>22 honesty don't recall at this point.</p>	<p>1 Q -- paragraph 5 says October 31st,</p> <p>2 2010, so this would be two months later.</p> <p>3 A Yeah. I appreciate the effort that</p> <p>4 you put into organizing that. That is helpful.</p> <p>5 Yeah, nothing besides what was</p> <p>6 written sticks out. I mean, the date is not</p> <p>7 engraved in my memory.</p> <p>8 Q Do you know or can you tell me where</p> <p>9 Rainbow Bridge border crossing is? Like between</p> <p>10 what cities?</p> <p>11 A So I want to guesstimate that the</p> <p>12 Rainbow Bridge is the Niagara Falls one. We have</p> <p>13 Lewiston-Queens. I don't remember what it is, but</p> <p>14 assuming that's not called Rainbow, which it may</p> <p>15 be. And then the Peace Bridge, I believe, is the</p> <p>16 Buffalo, like City of Buffalo bridge, which thank</p> <p>17 God I crossed last night. And this one,</p> <p>18 probably -- probably the Rainbow Bridge is the</p> <p>19 Canadian one, I'm assuming. I could find out.</p> <p>20 Q Any recollection about whether or not</p> <p>21 this trip was -- between what cities this trip</p> <p>22 might have been on?</p>

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<p>1 I was in college and law school, we all sort of 2 would like to go and we would visit an Islamic 3 school in Canada, we'd visit a mosque in Canada, we 4 would visit Sufi spiritual masters in Canada. You 5 know, we focus on purifying the heart of arrogance, 6 creed, jealousy, filling it with love, compassion 7 and mercy, you know, sort of the Sufi meditating 8 tradition. That roomy is well known to be a part 9 of, just by way of background. 10 And it was just a thing where like, 11 okay, who's going to right with Hassan? Hassan, 12 who are you going to ride over there? Hassan, 13 maybe we'll drop you off and you can cross, because 14 likely Hassan is going to get stopped and that 15 means all of us are going to get stopped. It 16 became a thing. 17 And then eventually, I remember this 18 thing morphing into my friends were all -- a lot of 19 them started began getting stopped more and more. 20 So it just became a thing. I don't remember each 21 and every date off the top of my head, but I just 22 remember throughout the college and law school</p>	<p>1 specifically about land border crossing. 2 A Land border, okay. 3 Q -- what's the fastest you would say 4 it took if you were being questioned? 5 A Okay. So if I wasn't being stopped 6 or -- sorry. 7 MS. MASRI: Hold on. 8 I just want to object as to form. 9 You didn't specify what time line you're talking 10 about. 11 BY MS. ROTH: 12 Q You can still answer the question. 13 A Okay. Sure. 14 So there are times, including last 15 night, when we were not pulled in for secondary. 16 So I'm just going to answer as it doesn't relate 17 to -- as it relates to secondary inspection only. 18 So if we do get pulled into secondary, I want to 19 say the least it could has been 15 minutes or 30 20 minutes. A lot of times it was like an hour or 21 two, plus, possibly, from what I recall. 22 But maybe my memory is mixing land</p>
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<p>1 years, you know, us going to visit the Sufi Shaykh 2 in Canada and coming back and being subjected to 3 this treatment myself. And my friends not 4 necessarily wanting to travel with me because of 5 that, but then a lot of them eventually being 6 subjected to similar sort of treatment. So it's 7 just part of the troubling culture. 8 And we would actually always sort of 9 call each other, thank God we made it this time. 10 Oh, thank God I was only stopped for an hour. 11 Thank God I was only stopped for two hours. You 12 know, it just became a thing, we would all check in 13 with each other. It became part of the culture, 14 the second-class culture that you just began to 15 unfortunately recognize that is how it is. 16 Q This occasion on December 11th of 17 2010, do you recall how long you were held for 18 questioning from start to finish? 19 A I don't remember, no. No. 20 Q So stepping back on your experiences, 21 generally speaking, if we had to put outside ranges 22 on how long it took -- and I'm -- I'm asking</p>	<p>1 and air, I don't know, but generally, I remember 2 like an hour or two being the norm. If you were 3 out in 15, 20, 30 minutes, it was like awesome, you 4 know. But that's the gist that I recall. 5 Q December of 2004 which -- 6 A Six hours. 7 Q -- sticks out in your memory of six 8 hours? 9 A Probably one of the longest. 10 Q Okay. Unusually long? 11 A Well, it was the first, so there's 12 nothing to compare. But I guess usually long 13 compared to the subsequent. And I want to say -- 14 but my memory could be wrong, and I would have to 15 double check, I want to say like right after that, 16 we weren't necessarily -- after the lawsuit was 17 filed and everything, we weren't necessarily 18 getting picked on. And I was like, all right. 19 Maybe the lawsuit worked. And then it just sort of 20 started picking back up again, so I don't know. 21 You guys would, say, have more info than me. 22 Q Okay. I'd like to go through a few</p>

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<p>1 more and then we'll get to a lunch break.</p> <p>2 MS. ROTH: Is everyone okay for the</p> <p>3 time being?</p> <p>4 THE WITNESS: Yeah. Yeah. You're</p> <p>5 good.</p> <p>6 BY MS. ROTH:</p> <p>7 Q So let's go back to tab 2. I think</p> <p>8 you're already in tab 2. Page 7, paragraph 7.</p> <p>9 A Okay.</p> <p>10 Q Do you see where it says March 17,</p> <p>11 2011?</p> <p>12 A Uh-huh.</p> <p>13 Q Looking over that paragraph, after</p> <p>14 you've had a chance to do so, can you tell me if</p> <p>15 you recall this trip?</p> <p>16 A Yes. This was probably the one thing</p> <p>17 that really stuck out, which was seeing my wife and</p> <p>18 child could board, but I couldn't. And, you know,</p> <p>19 decided, you know what -- it's one of those things</p> <p>20 where you all stay as a family, you know, wife and</p> <p>21 children first, and you stay back, and we felt --</p> <p>22 not knowing how long I would be detained, what I</p>	<p>1 an hour or so in the middle of the night. And just</p> <p>2 to be bastards, decide not to let my brother-in-law</p> <p>3 in the country.</p> <p>4 And I pleaded with them, my wife</p> <p>5 pleaded with them and said, "We're driving from</p> <p>6 Montreal to Tampa, Florida. It is extremely</p> <p>7 dangerous to let my wife and three kids have to</p> <p>8 drive all the way to Florida by themselves for no</p> <p>9 damn good reason."</p> <p>10 And the officer insisted -- I said,</p> <p>11 "Have a sense of humanity. He's not -- there's no</p> <p>12 reason he shouldn't be let in. There's no reason</p> <p>13 my wife should be stopped."</p> <p>14 And then often they mentioned me or</p> <p>15 they ask me about me. And, you know, why the hell</p> <p>16 would you subject a woman and her three kids to</p> <p>17 have to do that when it's absolutely clear they</p> <p>18 pose no threat.</p> <p>19 I said, "Officers, listen, she's</p> <p>20 driving alone, it's dangerous, she could fall</p> <p>21 asleep, there's kids, she may have to stay at some</p> <p>22 random hotel. I mean, why in the hell would you</p>
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<p>1 would be subjected to, what I would go through, if</p> <p>2 my wife and kids can be safe and free, let them go</p> <p>3 safe and free.</p> <p>4 Unfortunately, now it seems like your</p> <p>5 system of targeting me has caught up with them, so</p> <p>6 now even my wife gets stopped, along with our kids,</p> <p>7 including a recent damning incident which put her</p> <p>8 life at jeopardy and I'm extremely angry about.</p> <p>9 But some of these guys, I'm going to</p> <p>10 be very frank, are just -- have no sense of decency</p> <p>11 and shame and humanity. And I don't think you</p> <p>12 recognize the deep impact. And I'm sorry, I'm</p> <p>13 going to say it now unless someone is going to stop</p> <p>14 me.</p> <p>15 My wife was recently trying to cross</p> <p>16 the border into America around midnight with her</p> <p>17 brother, who is a security guard in Canada, never</p> <p>18 broke the law, unless there's a speeding ticket,</p> <p>19 I'll put that out there, with my three young kids,</p> <p>20 ages -- now ages 5, 6, and 8, this was within the</p> <p>21 past year, and the officers decided to pick on my</p> <p>22 wife, stop her, hold her for, I don't know, maybe</p>	<p>1 put us and my kids and my wife through jeopardy and</p> <p>2 put their life in danger just because of some</p> <p>3 racist policy."</p> <p>4 Excuse me, but I have been dealing</p> <p>5 with this kind of stuff for years. And when I deal</p> <p>6 with it, it's fine, but it crosses the line when my</p> <p>7 wife and kids have to deal with it. And this is</p> <p>8 why I do implore all of you, including the judge</p> <p>9 and whoever is reading this, do what's right to fix</p> <p>10 the system because you're jeopardizing the very</p> <p>11 principles that make this country great, and you're</p> <p>12 endangering people for no good reason.</p> <p>13 Thank you for your patience.</p> <p>14 Q The occasion that you just described,</p> <p>15 which was recent, involving your wife -- do you</p> <p>16 need a break or are you okay?</p> <p>17 A I mean, I --</p> <p>18 Q You're welcome to take a break if you</p> <p>19 need a minute.</p> <p>20 A No. Just a minute.</p> <p>21 Q Okay.</p> <p>22 A Let the blood pressure boil down so</p>

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<p>1 I'm not too emotional with you guys. And I'm not 2 yelling at you directly for obviously something 3 that you didn't have anything directly to do with 4 and hopefully you can do something to fix. 5 MS. MASRI: Do you want to take a 6 quick break? 7 THE WITNESS: Yeah, we can do that. 8 MS. ROTH: Yes, let's take a 9 five-minute break. 10 (Recess from 12:11 p.m. to 12:20 p.m.) 11 MS. ROTH: Okay. We are back on the 12 record. 13 BY MS. ROTH: 14 Q Mr. Shibly, during our break, did you 15 talk to anyone other than your attorney? 16 A No. 17 Q Okay. 18 MS. MASRI: Can I put something on 19 the record first before we continue? 20 MS. ROTH: Sure. 21 MS. MASRI: The notes that he was 22 referencing are notes that he put together for the</p>	<p>1 everyone can relate. It's one thing to deal with 2 yourself, but it's very difficult to remember what 3 you experience seeing your wife and your children 4 go through. So thank you for the break. 5 Q Of course. And if you need further 6 ones, please don't hesitate to ask. 7 A I appreciate it. Thank you. 8 Q I do want to ask one or two questions 9 to -- follow-up questions on the incident that you 10 described. 11 A Sure. 12 Q One of them was for -- just to make 13 sure I understood it clearly, you were not 14 traveling with your wife, rather she was with your 15 brother-in-law and your children, right? 16 A Correct. Correct. 17 Q And I think you described an exchange 18 you had with CBP? 19 A Correct. 20 Q Was that by phone? 21 A Yeah, I called -- i found the port 22 number and I called the agents who were harassing</p>
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<p>1 purpose of this litigation that he provided to us 2 in order to provide the interrogatory responses, so 3 we're going to claim a privilege on those. 4 MS. ROTH: Okay. So can we get a 5 log? 6 MS. MASRI: Yeah, we'll produce a 7 log. 8 THE WITNESS: The other thing, in 9 terms of the signing, Maria asked the date of the 10 signing, so it would have been probably close to 11 the end of the week of January 16th. 12 BY MS. ROTH: 13 Q Okay. 14 A I don't recall the exact date, but it 15 was when I was in D.C., and I remember that was the 16 week I was there for actually a Georgetown 17 leadership training. 18 Q Thank you. 19 A Yeah. 20 Q Before we broke -- are you prepared 21 to continue on with the questioning? 22 A Yes, I appreciate it. I'm sure</p>	<p>1 my family. 2 Q And do you -- did they tell you a 3 reason why your brother-in-law was being denied 4 entry? 5 A They didn't really give any reason, 6 no. I just told them, I said, "Imagine your wife 7 being in that situation, because" -- I said -- "you 8 know in your heart of hearts you have no reason to 9 deny him. You know he's not inadmissible. You 10 know from the context of everything, he's 11 absolutely safe, she's absolutely safe. You know 12 who we are." 13 I've hosted -- I might have told 14 them, "I hosted Gil Kerlikowske, the head of 15 Customs. You know us, stop picking on us and, 16 please, just put their safety first, because I do 17 worry for their safety." 18 And I said, "I'm personally going to 19 hold you liable if anything, God forbid, happens to 20 them." Thank God they made it safe. But the guy 21 was completely heartless and he denied him entry 22 in.</p>

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<p>1 I do want to add that over the last</p> <p>2 year, sort or, I've noticed it appears that now my</p> <p>3 immediate family members, like my wife, like my</p> <p>4 mother, my sister, now they're being intentionally</p> <p>5 targeted. So around Christmas of this past year,</p> <p>6 also my mom was stopped at the border again. And I</p> <p>7 called the agent, I said, "Look" -- he wouldn't</p> <p>8 give me any real reason or anything, I said, "Just</p> <p>9 let them go. You guys know us, we've verified</p> <p>10 identity, let them through. Stop harassing us."</p> <p>11 My mom called me a few minutes later</p> <p>12 and said, "Hassan, I don't know what you said, but</p> <p>13 they let us in." I said, "Thank God."</p> <p>14 But it's taken a whole other level,</p> <p>15 it's one thing, you, yourself, and now you're</p> <p>16 seeing your family members, which now you</p> <p>17 understand why people are hesitant to travel in the</p> <p>18 first place, because they're matched because they</p> <p>19 travel? What it is? I don't know. But I hope you</p> <p>20 guys fix it. Just fix it, please.</p> <p>21 Q Okay. Let's go back in time to -- we</p> <p>22 were working through your personal travel.</p>	<p>1 was elected, he said, "Oh, no" -- the young</p> <p>2 children were talking amongst themselves, this</p> <p>3 wasn't like -- it was just hearing them and it</p> <p>4 broke my heart, saying, "Oh, my God, they're going</p> <p>5 to build a wall so big and they're going to kick us</p> <p>6 out and the wall is going to be so big that even an</p> <p>7 airplane can't fly in."</p> <p>8 So all of these things that they're</p> <p>9 observing, it has long-term traumatic impact. And</p> <p>10 now, my job as a parent is just going to be that</p> <p>11 much harder making sure they don't grow up not</p> <p>12 hating this country, but like I did, appreciating</p> <p>13 the liberty and working extra hard to defend it,</p> <p>14 but not going the other way of being bitter. But</p> <p>15 it's very easy growing up -- it just makes</p> <p>16 parenting them that much harder.</p> <p>17 So whatever I can do from a young</p> <p>18 early age to get them to avoid -- I would even</p> <p>19 start sending notices to CBP saying, "Listen, I'm</p> <p>20 traveling with my family, whatever you want to</p> <p>21 know, tell me, I will tell you. But I don't want</p> <p>22 my kids to be subjected to this kind of questioning</p>
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<p>1 A Sure. Sure. Sure. Yeah. Yeah.</p> <p>2 Yeah.</p> <p>3 Q On page 7 of Exhibit 2, paragraph 7,</p> <p>4 I think this is where we were before we talked</p> <p>5 about --</p> <p>6 A Correct. So I just -- that triggered</p> <p>7 the incident with my family, yes. So paragraph 7,</p> <p>8 that's when I remember seeing my wife and kids go.</p> <p>9 And I believe, as far as I remember, not being able</p> <p>10 to catch that flight with them and just deciding</p> <p>11 it's better they go, because I don't know how long</p> <p>12 I'll be detained, I don't know when I would be</p> <p>13 cleared, I don't know what I would be subjected to.</p> <p>14 And if they can avoid that, even better.</p> <p>15 Especially with young kids growing</p> <p>16 up, I think it can be very traumatic to see their</p> <p>17 parents consistently targeted by their own</p> <p>18 government, especially if they're going to be asked</p> <p>19 about their own religion, because they pick up on</p> <p>20 these things.</p> <p>21 You know, my young child -- we don't</p> <p>22 talk about politics in the house, but when Trump</p>	<p>1 and witnessing us being treated differently,</p> <p>2 because I don't want them to have that kind of</p> <p>3 impression of their government."</p> <p>4 So I just let my family, I encouraged</p> <p>5 them to go ahead.</p> <p>6 Q Did they -- this was a return trip,</p> <p>7 right, because it was -- you're at the Montreal</p> <p>8 airport attempting to board a flight to the United</p> <p>9 States, so you're coming from Montreal, right?</p> <p>10 A You know, I think -- I'm going to say</p> <p>11 this was probably around the time I was employed by</p> <p>12 Regional Elite, and as result of that -- I remember</p> <p>13 my wife and I, we could just go to the airport and</p> <p>14 try to go different places, you know, for fun. And</p> <p>15 sometimes we would have to go to multiple -- like</p> <p>16 multiple airports, so I don't -- I don't remember</p> <p>17 whether that -- you know, if we spent time in</p> <p>18 Montreal, if Montreal was a midpoint.</p> <p>19 We might have been visiting family.</p> <p>20 I just don't remember because at that time we</p> <p>21 traveled a little bit extra because of my traveling</p> <p>22 privileges. And the traveling was so random</p>

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<p>1 to come to the front of the plane, and people still 2 see you going with an officer. So to be candid 3 with you, it still sort of sucks that you have to 4 go through that sort of special treatment to get 5 the normal treatment. But it still beats going to 6 secondary and being held for hours and being asked 7 about your religion. So it's not as great as the 8 normal treatment, but it definitely is a step up 9 from what I have been going through.</p> <p>10 Q So on this occasion, an officer met 11 you at the plane, you may have been called out to 12 deplane first --</p> <p>13 MS. MASRI: Objection. Misstates 14 prior testimony.</p> <p>15 BY MS. ROTH:</p> <p>16 Q -- but then you went to Customs and 17 on your way without any additional delay?</p> <p>18 A As far as I recall, yeah. It was 19 nice. It was new.</p> <p>20 Q When it says here in paragraph 8 that 21 your boarding pass had the SSS designation --</p> <p>22 A Yes. So I was worried that I would</p>	<p>1 experience, is just that you have an escort. It 2 doesn't mean that you're supposed to get any sort 3 of real preferential treatment or -- obviously your 4 bags and everything is still subjected to search 5 like everybody else.</p> <p>6 And I have been stopped at secondary 7 with Port Courtesy, I have been questioned and, you 8 know, subjected to things at Port Courtesy, but 9 generally, you're given a lot more respect. It 10 basically means they have a heads-up.</p> <p>11 My philosophy is this: If I'm going 12 to travel and I have a flight to catch or something 13 like that that I just can't afford missing and 14 missing time, I'll let them know. And I mean it, 15 I'm like, "Listen, if you have legitimate questions 16 that keeps our country safe, by all means, send 17 them to me. I'm happy to provide, but, otherwise, 18 I don't want to be held for hours."</p> <p>19 So generally it's resulted in me 20 getting Port Courtesy sometimes when I travel.</p> <p>21 Q Would this be the first time that you 22 were provided with Port Courtesy?</p>
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<p>1 still be going through the crazy extra stuff, but 2 as far as I recall, I surprisingly didn't.</p> <p>3 Q And this was your boarding pass from 4 Jeddah to JFK?</p> <p>5 A I think so, yes.</p> <p>6 Q The last sentence of paragraph 8 7 says, "Plaintiff Shibly met with Port Courtesy at 8 JFK." I don't know what that means. Can you just 9 explain that?</p> <p>10 A Oh, yeah. Port Courtesy is a Godsend 11 for people who have been abused and detained at the 12 border for a long time. It basically means 13 you're -- you're shown courtesy and respect by the 14 agents. I think it's something that's generally 15 given to dignitaries, people who work with 16 ambassadors, people who work with government 17 agencies. So they give a notice that, "Hey, we 18 have somebody that we know, that we work with 19 that's traveling, you know, please show them 20 courtesy."</p> <p>21 Escort them -- basically what it 22 is -- I think what it comes down to, from my</p>	<p>1 A Yes, as far as I recall.</p> <p>2 Q Anything else about that trip that 3 you --</p> <p>4 A No. It was just a pleasant 5 experience from being held for hours and asked 6 about your religion to being treated like a 7 respectful person. It was nice.</p> <p>8 Q Do you recall if you were traveling 9 alone on this trip to and from Saudi Arabia?</p> <p>10 A I mean, probably. I don't believe I 11 was traveling -- like on that flight, I don't think 12 I was traveling with my family. I think I probably 13 would have been alone, yeah.</p> <p>14 I mean, I knew people in -- I was 15 probably leading a Hajj group, like basically I 16 volunteer when people are going for Hajj that I can 17 introduce them -- or teach them, guide them along 18 the journey, the spiritual journey, so it would 19 have been people that I met on the journey.</p> <p>20 And some of them may have been on 21 that same flight, but we weren't like ticketed 22 together or traveling the same destination</p>

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<p>1 together, it was just we were all part of the -- 2 like a big travel group type of thing, you know. 3 Q Okay. 4 MS. ROTH: I'm going to propose we 5 break. We can go off the record. 6 (Recess from 12:50 p.m. to 1:50 p.m.) 7 MS. ROTH: Let's resume. 8 BY MS. ROTH: 9 Q Mr. Shibly, during your break, did 10 you talk to anyone other than your attorney about 11 your deposition? 12 A I called my wife. We did not really 13 get into the details, just things were going well. 14 I said there was like four government lawyers and 15 me. 16 Q Did you say how nice we were? 17 A I said they were fantastic people. 18 No, really. 19 Q All right. Let's resume. We -- 20 A Just on that, too. 21 Q Okay. 22 A I also posted on Facebook -- and</p>	<p>1 religion, held for hours when traveling, and 2 interrogated about their religious beliefs, it is 3 extremely empowering to be able to bring it all 4 home and testify against these destructive 5 practices that damage lives and make our nation 6 less safe and less free. Please pray that today's 7 testimony will aid in putting an end to these 8 unjust practices that countless American-Muslims 9 face, but which hurt the liberty of all Americans. 10 On a short lunch break, about to go back in, keep 11 sending the duas" -- which means prayers -- 12 "feeling the baraka" -- which means blessings -- 13 "Alhamdulillah" -- praise be to God -- "our strength 14 and victory is not through our efforts, but only 15 through God's grace. Only on Him do we rely." 16 Q That's it? 17 A That's -- that's it for this post, 18 yes. 19 Q Okay. On that note, there was a 20 question earlier about whether or not we had 21 requested things coming from your social media. 22 A Sure.</p>
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<p>1 we'll give you my public Facebook -- but without 2 going into any specifics, that things were going 3 all right with us. So you can check out my 4 Facebook for all those updates. 5 Q Okay. I'm definitely going to ask 6 for that. 7 A Okay. 8 Q So before the -- 9 A And, you know, sorry. To continue on 10 that, when you do check it out, Facebook, I urge 11 you to take a look at all of the comments because 12 you will see how many people are struggling with 13 this, so you guys will know the breadth and the 14 scope of the problem. 15 Q The post that you just posted now 16 today, can you describe it more fully? 17 A Well, I said it's -- well, let me 18 read it. Thank you. Okay. 19 I said, "Alhamdulillah the testimony 20 today is going well. After years of being 21 subjected to witnessing and assisting victims who 22 are targeted by the government because of their</p>	<p>1 Q And I would draw your attention, and 2 your counsel's attention, to the fact that we did 3 request communications, we did include within that 4 request Facebook, Twitter, and so on, so we will 5 expect a supplementation. 6 A Sure. Well, what I can do is give 7 you my Facebook link to my wall and it literally 8 will have everything there. I guess if -- 9 Q So the obligation is actually for you 10 to find the responsive material for us. That was 11 part of the discovery request so -- 12 A It's all in there. 13 MS. MASRI: And we will respond and 14 supplement, based on any social media posts that we 15 find, but I -- I am going to say again that his 16 profile is public record, it's public. 17 MS. ROTH: I hear you. This was 18 requested in October, you had an opportunity to 19 object to the scope to it being public and not 20 providing it. 21 THE WITNESS: From a purely -- 22 MS. ROTH: We don't need to linger on</p>

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<p>1 A Uh-huh.</p> <p>2 Q This is a land border crossing at the</p> <p>3 Ambassador Bridge, which I believe is the Detroit</p> <p>4 Windsor crossing. Is that right?</p> <p>5 A Correct.</p> <p>6 Q Okay. Do you recall anything about</p> <p>7 this occasion?</p> <p>8 A Nothing sticks out in my memory right</p> <p>9 now about that date in particular.</p> <p>10 Q Okay.</p> <p>11 A Besides obviously being stopped. But</p> <p>12 I don't know that date, like it's not engraved in</p> <p>13 my memory for some -- for a particular reason.</p> <p>14 Q Okay.</p> <p>15 A And, again, that's because I've been</p> <p>16 stopped so many times that they all merge together</p> <p>17 in my mind.</p> <p>18 Q So let's talk about the White House</p> <p>19 trip next. And for that, we're going to have to go</p> <p>20 back to Exhibit 1 --</p> <p>21 A Sure. Sure. Absolutely.</p> <p>22 Q -- which is the complaint.</p>	<p>1 phonetically] that he did.</p> <p>2 And I want to point out that none of</p> <p>3 those times when I was attempting to enter the</p> <p>4 White House or exit the Eisenhower Office Complex,</p> <p>5 or West Wing, which I've been to, or the time that</p> <p>6 I actually shook Obama's hand, none of those times</p> <p>7 was I subjected to any enhanced searching, you</p> <p>8 know, by the Secret Service or any other security</p> <p>9 agency on the premises of the White House.</p> <p>10 And I know for a fact I had sent them</p> <p>11 my information ahead of time, which led me to</p> <p>12 believe that they were running it by some FBI</p> <p>13 checks or something, but, nonetheless, had no</p> <p>14 issues getting access. And regularly meeting with</p> <p>15 the White House leadership.</p> <p>16 On that particular day, we had a</p> <p>17 meeting scheduled with Valerie Jarett and others,</p> <p>18 other senior people who -- you know, direct reports</p> <p>19 to the President basically. And, again,</p> <p>20 unfortunately, I could not check in online. I</p> <p>21 couldn't check in online, and it typically -- you</p> <p>22 know, when I can't check in online, it typically</p>
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<p>1 A Okay.</p> <p>2 Q And I'd like for you to look at</p> <p>3 paragraph 290, which is on page 48.</p> <p>4 A Uh-huh.</p> <p>5 Q And this -- and I'm reading for the</p> <p>6 record, it states, "In fact, on or about</p> <p>7 March 2016, Mr. Shibly appeared at the Tampa</p> <p>8 International Airport in order to board his flight</p> <p>9 to Washington, D.C. where he was scheduled to meet</p> <p>10 with senior advisors to the President."</p> <p>11 Is that right?</p> <p>12 A Correct.</p> <p>13 Q Why don't you tell me what you recall</p> <p>14 about this.</p> <p>15 A Sure.</p> <p>16 So in the last couple of years of the</p> <p>17 Obama Administration, I had been invited to meet</p> <p>18 with very senior White House leadership to talk</p> <p>19 about these issues in particular, to talk about</p> <p>20 U.S. Customs targeting Muslims, to talk about FBI</p> <p>21 targeting Muslims. And, ultimately, I ended up</p> <p>22 meeting the President himself at the ATAR [spelled</p>	<p>1 takes about 40 minutes to be able to, you know, get</p> <p>2 cleared by DHS to print my boarding pass.</p> <p>3 So I couldn't check in online. Get</p> <p>4 to the airport and there just wasn't enough time</p> <p>5 for me to be able to be cleared to -- for the</p> <p>6 airline to call DHS to clear me and get me on that</p> <p>7 flight in time. And I'm looking and time is</p> <p>8 running out, so at that point, I see Southwest --</p> <p>9 and by this point, I know it's only American</p> <p>10 Airlines that's giving me trouble, and I see</p> <p>11 Southwest has a flight, but I have to make an</p> <p>12 instant decision, I can either keep pushing with</p> <p>13 Southeast and seeing if they can somehow get me</p> <p>14 cleared in time and take the risks, and by that</p> <p>15 point, I know I already couldn't print the boarding</p> <p>16 pass, I couldn't print the boarding pass mobilely,</p> <p>17 so I made the decision at that point that, listen,</p> <p>18 it looks like there will be no way I can catch the</p> <p>19 American Airlines flight, so I had to buy on the</p> <p>20 spot a Southwest ticket. And I board the Southwest</p> <p>21 Airline without any delay, went to the meeting,</p> <p>22 thank God got there, made it to the White House.</p>

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<p>1 I remember not long after the suit being filed that 2 I didn't have issues. And I was actually surprised 3 when I was looking through my records, I'm like, 4 why don't I have too many issues in 2017? 5 And as I'm looking, I'm like, well, 6 you know what, the good news is maybe this 7 lawsuit is working because we haven't -- I don't 8 think I've really had any issues since filing it, 9 and that's why in 2017, I don't have anything 10 specific about secondary. 11 BY MS. ROTH: 12 Q Okay. But -- 13 A To be fair, 2017 also went by real 14 fast because our focus was on the Muslim band. So 15 we were just overwhelmed working on that stuff. 16 And, honestly, I focused a lot less on myself in 17 that year. We had our hands full with a lot of 18 crisis that went beyond us. So that was that. 19 MS. ROTH: We've been going for about 20 an hour, do you need a break? 21 THE WITNESS: I would need one 22 around -- before 4:00. I'm good now, but as long</p>	<p>1 A Thirty minutes or so, right? 2 Q Right. I think that's about right. 3 It's about 30 minutes. And we don't need to go 4 through the whole thing, but before I ask specific 5 questions about it, can you give any background to 6 it that you recall? 7 A Absolutely. So you may recall 8 earlier in the day I spoke to you that one of the 9 most hurtful things, in terms of getting this 10 differential treatment, is having it be at the end 11 of a very beautiful trip -- you might have 12 remembered I mentioned the cruise in particular, so 13 nothing spoils your Hajj pilgrimage or your 14 vacation with your family like having it end with 15 an armed officers, you know, pulling you aside. 16 And especially on a cruise, we were 17 the Muslim couple on the cruise. I don't know if 18 there were other Muslim couples or not, there may 19 have been, but we were the visible Muslim couple on 20 the cruise. And I tell you, there's a lot of 21 people on that ship who never have met a Muslim 22 before, you have people coming from other</p>
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<p>1 as before 4:00, I need a prayer break, please. 2 BY MS. ROTH: 3 Q All right. We'll continue on. 4 A Sure. 5 Q Top of page 11 -- 6 A Sure. 7 Q -- do you see where it says 8 November 2016? 9 A Yeah. 10 Q So this is you, through your counsel, 11 provided with us an audio recording -- 12 A Oh, yeah. 13 Q -- at this -- which your counsel 14 provided to us. 15 A Sure. 16 Q I have it here. And I'd like to 17 introduce it as an exhibit, Exhibit 4. 18 (Shibly Deposition Exhibit Number 4 19 marked for identification.) 20 BY MS. ROTH: 21 Q Before I -- it's a fairly lengthy 22 audio recording --</p>	<p>1 countries, you've got a lot of elderly folks. I 2 can't tell you how many told me, "You're the first 3 Muslim we met." 4 And honestly, initially when we meet 5 them, they're a bit like distant or a little bit 6 like nervous. You know, people have straight up 7 told me, "Oh, my God with everything I heard in the 8 media, I was really afraid to talk to you." 9 It's normal, you meet people who are 10 afraid to interact with you, but the beautiful 11 thing is when they get to know you, they see your 12 smile, especially spend a week with them, you're 13 having dinner with different people every night, 14 you're visiting different destinations, you build 15 really strong friendships and people really get to 16 know you well. 17 So what really was a downer, to put 18 it mildly, is that we had this -- one of the most 19 amazing vacations ever with my wife and I, and then 20 it's time to de-board, the cruise is over, we just 21 had a beautiful time -- and this is my safe space, 22 this is my space away from work, I don't even have</p>

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<p>1 "This is ridiculous because we are 2 Muslim, you guys..." 3 MS. ROTH: It just paused for the 4 record because the screen froze. I apologize. 5 BY MS. ROTH: 6 Q Just now we heard you -- I believe it 7 was you not answering a question about where you 8 had traveled. Is -- 9 A I mean, I answered the question in 10 the way that I did because it is not their 11 business, that it was ridiculous that we were being 12 stopped because we were Muslim. I was making clear 13 on the record that I was objecting to religious 14 profiling. 15 And that it's very ironic that a 16 month ago I was invited to meet the President, he 17 invited me, I didn't invite myself and, yet, I'm 18 still being treated like a second-class citizen 19 when I travel. 20 Q Okay. Thank you for clarifying. I 21 didn't mean to suggest that you did not answer the 22 question.</p>	<p>1 "Sunrise." 2 "Oh, that's not that far." 3 "Yeah. I always get a kick though 4 because I'm sitting next to the 5 commissioner or some other senior guy and 6 I'm like, you know, on one hand we're 7 hosting you all and connecting you with 8 the community and, you know, VIP, all 9 this garbage, and then on the other hand, 10 when we travel, we go through this every 11 time. So it's ironic." 12 "So about how many times do you think 13 we've stopped you?" 14 "At least 20, I'd say. I actually 15 documented each time since I was 17. 16 It's actually really bad because it 17 reinforces the message of, you know, 18 extremists who want to paint the world, 19 you know, as diabolically against each 20 other. And it's a..." 21 BY MS. ROTH: 22 Q I just hit pause. Was that your</p>
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<p>1 A No, I understand. I'm sorry. 2 Q All right. I'm fast-forwarding now 3 to approximately 11 minutes 30 seconds into the 4 recording -- 5 A Sure. 6 Q -- and I'm going to resume it there 7 and let it play for a minute or two. 8 (Audio recording played and transcribed 9 by court reporter.) 10 "Yeah, dude, I've made it the focus of my 11 career to challenge the disproportion of 12 the targeting our community." 13 "Okay. 14 "Like it's..." 15 "Where's your office based out of?" 16 "We're headquartered in Tampa, with an 17 office here. We've got four offices in 18 the state." 19 "Okay. You have one here in Miami, 20 Florida as well?" 21 "Yeah." 22 "What part of Miami?"</p>	<p>1 voice just now? 2 A Correct. 3 Q You were asked how many times you had 4 been stopped? 5 A Uh-huh. 6 Q How did you understand that question, 7 how many times you had been stopped by CBP? 8 A Yeah, I understand it being stopped 9 by CBP. By that time -- and I don't want to go 10 into much detail, but I was in communication with 11 my attorney, Thania Clevenger, we're talking about 12 litigation -- 13 MS. MASRI: Just make sure not to 14 divulge any attorney-client -- 15 THE WITNESS: No, I won't discuss any 16 contents of that, but I -- the gist of it, because 17 it was put on the record there was, you know, to 18 stop compiling the list of everything so they can 19 review our litigation options. 20 BY MS. ROTH: 21 Q Okay. So -- 22 A That's why I knew the answer was 20.</p>

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<p>1 please.</p> <p>2 A Sure. And I'll give it to the court</p> <p>3 reporter.</p> <p>4 Q Yea.</p> <p>5 A I'm learning.</p> <p>6 Q I'll be introducing this as Exhibit</p> <p>7 7.</p> <p>8 A Yeah, this is another redress they're</p> <p>9 forwarding me.</p> <p>10 (Shibly Deposition Exhibit Number 7</p> <p>11 marked for identification.)</p> <p>12 BY MS. ROTH:</p> <p>13 Q Okay. Do you see the date at the top</p> <p>14 left 8/26/13?</p> <p>15 A Yes, I see that.</p> <p>16 Q And this is a -- it says a little</p> <p>17 below that, "Thank you, Hassan Shibly. Your</p> <p>18 redress control number" --</p> <p>19 A Yes.</p> <p>20 Q -- "control number is 2180736."</p> <p>21 A Sure. Correct.</p> <p>22 Q Do you recall receiving this response</p>	<p>1 put us in this convoluted system, we pay the price,</p> <p>2 and we're given very little direction about fixing</p> <p>3 it.</p> <p>4 And I also -- I'm just going to add</p> <p>5 this and then stop. To be completely candid, I</p> <p>6 think DHS possibly intentionally turns a blind eye</p> <p>7 to the pervasive systematic targeting of Muslims at</p> <p>8 the hands of CBP and I think CBP turns a blind eye.</p> <p>9 And I will say that Gil Kerlikowske</p> <p>10 went on the record to the Buffalo news -- and you</p> <p>11 can look up the article -- where he says, yeah,</p> <p>12 there probably is a problem. But then when he came</p> <p>13 in, it was even a lot worse and there was almost no</p> <p>14 internal redress mechanism and he tried to do</p> <p>15 whatever he could.</p> <p>16 But I think -- especially as you read</p> <p>17 the contents of these letters from DHS and my</p> <p>18 interactions with them, they've been given enough</p> <p>19 that if they wanted to internally audit themselves</p> <p>20 and investigate to document this internal problem</p> <p>21 and fix it, they could. They just -- I think they</p> <p>22 keep turning a blind eye. And their language often</p>
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<p>1 from DHS?</p> <p>2 A I could be mistaken, but I think this</p> <p>3 is an instantaneous response that you get when you</p> <p>4 file the trip complaint, they give you this. They</p> <p>5 give you this, you've got to print out and sign it</p> <p>6 and send it to them. So this would probably -- I</p> <p>7 mean, I don't remember the day of doing that. I do</p> <p>8 remember doing that a number of times when I filled</p> <p>9 out a trip complaint, being given an instantaneous</p> <p>10 thing to print and sign, which then I do. I don't</p> <p>11 know if they still do it that way, but I remember</p> <p>12 this happening a number of times.</p> <p>13 Q This is not the number you used,</p> <p>14 right?</p> <p>15 A No. No. Like I told you, I got a</p> <p>16 number of trip complaint numbers, but I don't use</p> <p>17 this one. I've just been using the 207 one. And</p> <p>18 it actually confuses me why they give multiple</p> <p>19 numbers, it makes no sense to me. Yes, they could</p> <p>20 definitely do a better job.</p> <p>21 Q Okay.</p> <p>22 A Because what is frustrating is they</p>	<p>1 reflects that.</p> <p>2 Q Okay. I'd now like you to turn to</p> <p>3 tab 14. And I'm going to introduce this as Exhibit</p> <p>4 8.</p> <p>5 (Shibly Deposition Exhibit Number 8</p> <p>6 marked for identification.)</p> <p>7 BY MS. ROTH:</p> <p>8 Q Mr. Shibly, this is an email, it</p> <p>9 appears, from you to a number of individuals dated</p> <p>10 July 28, 2014, correct?</p> <p>11 A Correct.</p> <p>12 Q Can you say who the recipients of</p> <p>13 your email are?</p> <p>14 A Yes. So I sent it to Kareem Shora,</p> <p>15 who heads the DHS Civil Rights and Civil Liberties</p> <p>16 roundtable meetings that we have in Tampa, Florida,</p> <p>17 which re-assisted by encouraging many community</p> <p>18 members of different faiths and backgrounds to</p> <p>19 attend and participate. Eric Johnson, I want to</p> <p>20 say he's with local DoJ. Ibrahim Hooper, he's the</p> <p>21 CAIR National Communications Director. Thania</p> <p>22 Clevenger, one of my attorneys in CAIR-Florida</p>

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<p>1 them. So it's all interacted. I think the 2 watchlist is a -- is basically a Muslim list and it 3 has way too many false positives. 4 And why in the world are there so 5 many American-Muslim leaders that are all well 6 respected -- and we all know each other -- that 7 have these same issues and we all appear to be on 8 the same watchlist? It's really disturbing. 9 BY MS. ROTH: 10 Q Have you sponsored anyone else for a 11 U.S. citizenship? 12 A Not that I recall. 13 Q We spent some time earlier talking 14 about -- 15 A Before you ask, it's 3:44, I need to 16 take a break to do prayer before 4:00. 17 Q Yes. I was keeping that in mind. 18 A We should do it now, I would say. 19 MS. ROTH: Okay. Let's take a break. 20 We are off the record. 21 (Recess from 3:44 p.m. to 4:00 p.m.) 22 MS. ROTH: We are back on the record.</p>	<p>1 A Yeah. So I only needed it with the 2 handgun, so I only got it within the past year. I 3 can pull it out and check the date. 4 Q Did you encounter any obstacles or 5 problems purchasing any of the firearms that you 6 just mentioned? 7 A So in purchasing, no, in getting the 8 concealed weapon permit, the first time they made 9 me come back in and redo the fingerprints for the 10 FBI, so it -- I got it a little later than normal, 11 but I don't know what's happening on the back end 12 there. 13 Q Any reason to think any of that is in 14 connection to your allegations in this lawsuit? 15 MS. MASRI: Objection. Calls for a 16 legal conclusion. Calls for speculation. 17 THE WITNESS: Yeah, I don't have 18 enough information from side to determine that. 19 BY MS. ROTH: 20 Q I'm asking for your opinion. Do you 21 think -- 22 A I'm suspect. I've learned not to</p>
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<p>1 BY MS. ROTH: 2 Q Have you ever applied for a job as a 3 contractor for the federal government? 4 A I don't think so. No. 5 Q You mentioned earlier you own a 6 firearm? 7 A I do. 8 Q And you own that lawfully? 9 A Absolutely. 10 Q How many firearms do you own? 11 THE WITNESS: Do I have to disclose 12 that number? 13 MS. MASRI: Yes. 14 THE WITNESS: Okay. Three. 15 BY MS. ROTH: 16 Q When did you purchase them? 17 A The -- I want to say the rifles in my 18 Buffalo days. And then the handgun would be within 19 the past year, I want to say. 20 Q Do you have a concealed weapons 21 permit in connection with all of them or just the 22 handgun?</p>	<p>1 trust when it comes to engaging the federal 2 government with everything that I've seen, so I 3 would be interested to know. Sorry. 4 MS. MASRI: He's answered your 5 question. 6 BY MS. ROTH: 7 Q You've never been -- have you ever 8 tried to purchase a gun but were denied? 9 A No. 10 Q And -- 11 A Well, there was an incident in 12 Florida, the Muslim Free Gun -- Muslim Free Gun 13 Shop in Florida, it also made national media, where 14 I was denied the ability to go to that shop and 15 make any purchases whatsoever. And even though the 16 owner had agreed for me to come and meet with him 17 and visit the shop and engage with him and have a 18 dialogue about Islam and the Muslim community and 19 do business together. 20 Unfortunately, he was contacted by 21 hate groups, who I know sent him a lot of hate 22 articles about me, which referenced sort of how the</p>



Deposition of:  
**Ausama Elhuzayel**

*January 18, 2018*

In the Matter of:  
**Elhady vs. Kable**

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<p>1 leave, and you'll leave as soon a possible. We don't</p> <p>2 want you on our, on, on the premises.</p> <p>3 Q Was that April 23, 2016?</p> <p>4 A Uh-huh.</p> <p>5 Q Okay. And tell me about the trip you planned</p> <p>6 to take.</p> <p>7 A It was the same place. I was going to</p> <p>8 Dominica.</p> <p>9 Q And what was the reason for the trip?</p> <p>10 A Same reason, family, wife.</p> <p>11 Q Any other reason?</p> <p>12 A That was the reason. That was the main reason</p> <p>13 and the only reason.</p> <p>14 MS. POWELL: Can we me mark Exhibit K?</p> <p>15 (Plaintiff's Exhibit K is marked for identification.)</p> <p>16 Q And I'd like you if you can to identify this</p> <p>17 document for me. Just tell me what it is, if you know.</p> <p>18 A April 23, 2016. This is, this is the one</p> <p>19 where I was not allowed to fly.</p> <p>20 Q And this document is the itinerary for your</p> <p>21 flight to Dominica and your return flight that you</p> <p>22 obviously did not get to take?</p>	<p>1 Q Okay. And then what happened?</p> <p>2 A He asked me what my name was and I told him</p> <p>3 what my name was. And he told me I wasn't going</p> <p>4 anywhere.</p> <p>5 Q Okay. And what did you say?</p> <p>6 A Said that was horrible or something. I said,</p> <p>7 I said why, and he said I don't know anything. He</p> <p>8 doesn't know a thing. He doesn't know why he's doing</p> <p>9 what he's doing. He's just following orders. He gave</p> <p>10 me a telephone for the redress and that was your one</p> <p>11 stop, one shop, shot it. You have no other way to, to</p> <p>12 fix this except for through the redress process.</p> <p>13 Q So after he told you you weren't going</p> <p>14 anywhere, what happened then?</p> <p>15 A I left.</p> <p>16 Q Did you have you any other interaction with</p> <p>17 security?</p> <p>18 A No. I just left. Well, actually he had</p> <p>19 somebody backing him up that looked pretty</p> <p>20 intimidating, but he stayed, you know, he stayed pretty</p> <p>21 far back. They were looking at me funny like I was, I</p> <p>22 was a criminal or something. Had their guns ready to</p>
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<p>1 A Correct.</p> <p>2 Q Okay. So your plan was to fly from LAX to San</p> <p>3 Juan, to Dominica; is that correct?</p> <p>4 A Yes.</p> <p>5 Q On April 23, 2016?</p> <p>6 A Yes.</p> <p>7 Q When you got to the airport on April 23, 2016</p> <p>8 at LAX, were you traveling alone?</p> <p>9 A I was alone, yes.</p> <p>10 Q And what happened when you got to the airport?</p> <p>11 A Well, the, the, the attendant was acting</p> <p>12 strange and then, you know --</p> <p>13 Q What attendant?</p> <p>14 A The person who took my, my passport and was</p> <p>15 going to check me in was like acting weird. And then -</p> <p>16 -</p> <p>17 Q Sorry. You went to the ticket counter?</p> <p>18 A Yes. Yes, they, you know --</p> <p>19 Q And the person that, the ticket agent was</p> <p>20 acting weird?</p> <p>21 A Yeah, it was like kind of awkward for a moment</p> <p>22 and then this guy came. An agent there came after...</p>	<p>1 go.</p> <p>2 Q So the guy you talked to, do you know who he</p> <p>3 worked for or --</p> <p>4 A TSA.</p> <p>5 Q What makes you -- how do you know he was TSA?</p> <p>6 A That's how he introduced himself.</p> <p>7 Q Okay. And you said you saw other security</p> <p>8 people. Do you know who they worked for?</p> <p>9 A TSA.</p> <p>10 Q How do you know?</p> <p>11 A Because they were wearing the uniforms.</p> <p>12 Q Did they say TSA on them?</p> <p>13 A Well, I mean they were armed and they were</p> <p>14 wearing a uniform. So that's what I do know. They</p> <p>15 were --</p> <p>16 Q But you don't know if they were TSA?</p> <p>17 A It was, it was part of that. I believe they</p> <p>18 were TSA. I believe they were TSA.</p> <p>19 Q Why do you believe they were TSA?</p> <p>20 A Because no, there's nobody else in the airport</p> <p>21 that dresses that way that I know of, that dresses the</p> <p>22 way they dress. They dress specifically in that blue</p>



Deposition of:  
**Donald Thomas**

*January 17, 2018*

In the Matter of:  
**Elhady vs. Kable**

**Veritext Legal Solutions**  
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1 Q And what's the street address?

2 A [REDACTED]

3 Q And how long have you lived there?

4 A Fifteen months.

5 Q And where did you live before that?

6 A Oh, I lived before in Sacramento, but I moved  
7 down to Hesperia because I was prevented from flying to  
8 Malaysia. And I quit my job, I left everything, I was  
9 planning to move there for -- forever, not come back to  
10 America and I was prevented from flying. So I had to  
11 figure out where I had to live, so I moved down to  
12 Hesperia so I could be closer to my dad's company to be  
13 -- be a plumber and get a job, because I quit my job.

14 Q Okay. We'll talk more about the experience in  
15 a little bit.

16 A All right.

17 Q I just want to get a very general background  
18 of your residences first --

19 A Sure.

20 Q -- and go through some other things, too.

21 A Sure.

22 Q Where did you live in Sacramento before you

1 Q So you were just driving to the airport in  
2 Sacramento?

3 A Yes.

4 Q Okay. What was the purpose of this trip?

5 A To the airport?

6 Q Well, you know, the trip to Malaysia. What  
7 was the purpose of the trip?

8 A Oh, I was taking my family to a new area. You  
9 know, and we were going to live there.

10 Q Who was traveling with you?

11 A Me, my wife -- well actually, we'll make it  
12 easy for you. If you go to Page 4, Amy, you can read  
13 all the names that were going. Don Maurice Thomas,  
14 Arika Danee Shaw, Alaya Nimari Shaw, Alijah William  
15 Thomas, Abdullah Ibrahim Thomas and that was it.

16 Q And what is your relationship to those people?

17 A Arika Danee Shaw is my wife. Alaya is my  
18 daughter's -- my wife's daughter. Alijah's my son,  
19 Abdullah's my son. And Alaya is eight, Alijah and five  
20 and Abdullah is three.

21 Q Okay. And did you all go to the airport  
22 together?

1 A Absolutely. Yes.

2 Q You said the purpose of your trip was to take  
3 your family to a new area. Were you moving?

4 A Moving permanently away from the United States  
5 of America to Malaysia, to live.

6 Q And did you have a job in Malaysia?

7 A No.

8 Q Did you have a place to live in Malaysia?

9 A Yes.

10 Q And where was that?

11 A I don't -- don't remember.

12 Q Okay. Did you -- had you applied for an entry  
13 permit to Malaysia as an immigrant?

14 A No.

15 Q Did you have a visa --

16 A No.

17 Q -- to go to Malaysia?

18 A The way it works in Malaysia is you get there  
19 and you get your visa. We had friends and associates  
20 that are over there that did the same thing. So you go  
21 there and then you get your visa. You stay for three  
22 months, and then you have to leave the country for

1 three days, you come back in, three months.

2 Q And your understanding was that while you were  
3 there you could apply for an entry permit as an  
4 immigrant?

5 A Absolutely.

6 Q Or were you just planning on extending your  
7 visa?

8 A It's a regular visa, a three-month visa,  
9 that's what they give you.

10 Q Okay.

11 A Yeah.

12 MS. POWELL: Let's look at the next document.  
13 Sorry, that's not it. There it is. This is Document  
14 I.

15 (Thomas Exhibit I marked for identification.)

16 BY MS. POWELL:

17 Q This reflects -- sorry, what is this document?

18 A This was our flight from Kuala Lumpur. We had  
19 a flight -- I believe it was an hour flight to Perlis,  
20 where I was going to be staying.

21 Q So Perlis is where you were going to be  
22 living?

1 A Um hmm.

2 Q And why were you moving to Perlis?

3 MS. MASRI: Sorry. Last response was not  
4 verbal.

5 MS. POWELL: Oh, sorry.

6 BY MS. POWELL:

7 Q Perlis is where you were going to be living?

8 A Yes.

9 Q And why were you moving to Perlis?

10 A To take my family to a new place other than  
11 America.

12 Q And why Perlis?

13 A In opinion it's better than America.

14 Q Did you know someone in Perlis?

15 A Yes.

16 Q Who?

17 A He -- he doesn't want me to give names.

18 Q Did this person have anything to do with your  
19 reason for moving to Perlis?

20 A Yes.

21 Q Then I need his name.

22 A You need his name?

1 Q Yes.

2 A His government name? I don't know his  
3 government name.

4 Q What name do you know?

5 A His name is Abbaas.

6 Q Abbaas?

7 A Abbaas.

8 Q Abbaas. Can you spell that for me?

9 A A-B-B-A-A-S.

10 Q And what did he have to do with your decision  
11 to move to Malaysia?

12 A He told me how beautiful it was.

13 Q Any other reason?

14 A Easy to live. Rent's a lot cheaper, \$200 a  
15 month, foods a lot cheaper, my kids would grow up in a  
16 better environment. But it didn't happen. That's why  
17 I'm here talking to you guys.

18 Q Well, let's talk about your specific  
19 experiences then. When you first arrived at the  
20 airport with your family, what happened?

21 A Are you referring to April 27th?

22 Q Yes.

1 A What happened? I walked into the airport and  
2 security guards were in the distance looking at me.  
3 One of them had a dog and they had their hand close to  
4 their weapon, looking at me.

5 Q And did you see these people before you  
6 checked in, when you first walked in?

7 A When I first walked -- yeah, they were there.

8 Q Okay.

9 A They were all there looking at me. There's  
10 the bad guy.

11 Q Okay. And then what happened?

12 A I went to the counter, they took our bags and,  
13 oh, Donald, we have an issue here. Give us one moment.

14 Q I'm sorry, are those exact quotes, or is that  
15 your best recollection --

16 A Best recollection.

17 Q -- of what happened?

18 A Yeah.

19 Q Of about what happened?

20 A I think -- I think they're called -- what do  
21 they call it, ticket clerk? The ones behind the  
22 counter, what are they called? I don't know.

1 Q The person behind the counter.

2 A Yeah, that's -- that's working for the  
3 airline. I forgot what the airline was.

4 Q Yeah. And --

5 A Yeah.

6 Q -- what happened then?

7 A She took all our bags, they checked it in.  
8 They said, oh, Donald, you're on the No Fly List. So  
9 you can imagine --

10 Q Are those the ticket agent's exact words?

11 A Exact words. You're on the No Fly List it  
12 says here. Okay. What does that mean? What -- what  
13 does that mean? That means you -- you're on the No Fly  
14 List.

15 Q Again, are those exact words or your best  
16 recollection of (inaudible)?

17 A Those -- those are exact words that came out  
18 of my mouth. What -- what's -- what's -- what does  
19 that mean? I can't fly? No, you're -- you can't fly,  
20 you're on the No Fly List. Okay. I mean, if I was  
21 you, Amy, if you went to the airport one day. You  
22 know? You seem like a nice lady, you probably have a

1 family. You know? And they said, you can't fly. And  
2 you were leaving everything behind, tickets were 3,500,  
3 you left your job, your kids are excited, they're  
4 smiling the whole way on to the airport, ready to go.  
5 You know?

6 You're on the No -- No Fly List, Amy, you  
7 can't go. You can't fly. So as the man of the family,  
8 or the woman, whatever, where am I going to live? What  
9 do I do? What would you do?

10 Q What did you do?

11 A Started thinking. Researching.

12 Q Do you happen to know or recall the ticket  
13 agent's name?

14 A No.

15 Q And what airline was it?

16 A No.

17 Q It's probably reflected in these itineraries,  
18 right? If you look back at Exhibit H, the travel  
19 confirmation. The flight from Sacramento to LA this  
20 document reflects was --

21 A Delta.

22 Q Really?



Deposition of:  
**Murat Frljuckic**

*December 21, 2017*

In the Matter of:  
**Elhady vs. Kable**

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1 Do you recall this --

2 A 2012 --

3 Q -- incident?

4 A -- Yes.

5 Q Can you describe what occurred when you  
6 came back in the country on this trip?

7 A I went to visit my brother in Canada; me  
8 and my mom and my four-year-old son.

9 I'm sorry.

10 Q Take your time.

11 A When we came back three days later, when  
12 I came to the border, the officer swiped my  
13 passport and something started ringing. And the  
14 next thing I seen like five guys surrounded my car  
15 with guns pointing at me, and the guy told me to  
16 slowly come out, walk back. He was holding the  
17 gun on me constantly, and then they handcuffed me  
18 in front of my four-year-old kid. He was crying  
19 so much. That was the hardest thing for me to  
20 see.

21 Q Other than your four-year-old son, was  
22 anyone else in the car with you?

1 A My mom, but she's 70-years-old.

2 Q And after they handcuffed you, what  
3 happened?

4 A They take me aside. I told them what's  
5 going on. Why are you guys doing this? He says,  
6 it's for our safety. They took some of my clothes  
7 off. They pat me down. They tightened my  
8 handcuffs -- they tied the handcuffs so hard and  
9 then my wrist was hurting. They hold me like that  
10 for maybe 30 minutes. And after they took off the  
11 handcuffs, I went to finger -- how do you say  
12 that? They took my fingerprints, and they reunite  
13 me with my mom and my son.

14 And from that on, they made me wait for a  
15 while, and then they called me back in, and they  
16 asked me all kind of questions, like religious  
17 questions, like where I go -- which mosque I  
18 attend, who do I listen, who do I associate with.  
19 So very, very -- how can I say -- interrogating  
20 questions. I don't even remember some of them.

21 And then I went back in the waiting room  
22 with my son and my mom, and four hours later, they

1 16, which I'll read.

2 "In early 2013, plaintiff exited the  
3 United States to Canada by car. In early 2013,  
4 the plaintiff entered the United States from  
5 Canada by car."

6 Do you recall that trip?

7 A Yes.

8 Q Would this be a separate trip from the  
9 incident in October?

10 A Yes.

11 Q Did you have any problems crossing the  
12 border on this trip in early 2013?

13 A Yes.

14 Q Can you describe that for me, please?

15 A This is the one -- if I remember  
16 correctly, we went to a wedding, my niece got  
17 married. If I remember correctly, it was in  
18 January 2013.

19 Well, at this time, we was -- all of my  
20 family together; my eight kids and my wife. And,  
21 of course, I expect it because I had a problem  
22 from before. It was a little bit easier because I

1 mentally prepared myself. But same thing,  
2 police -- or I mean, the officers, or whatever  
3 they call them there, they surrounded my car with  
4 guns. They told me to use my left hand to shut  
5 off the car, to open the door, walk slowly back,  
6 don't look at them, put my head down, handcuff me.

7 My family, they told to drive on the side  
8 and to go in the waiting area. I was again -- pat  
9 down. And I don't remember -- I believe that time  
10 that happened that one of the officers they -- he  
11 tightened my handcuffs so hard and my wrist was  
12 hurting. I was telling him my hand hurts. He  
13 said, well, they're not designed to be  
14 comfortable. They were designed to not be  
15 comfortable. And I say, yes, but not for me. I  
16 didn't do nothing. He says we'll see about that  
17 in a minute.

18 And then, of course, after 30 minutes  
19 holding me in handcuffs, they check everything,  
20 they went through all my pockets, whatever, my  
21 I.D.s and check everything, and they took me to do  
22 the fingerprints. And then they took me in one

1 office where they interrogate me so, so much. I  
2 believe it was at least an hour.

3 Then after that, I was released and went  
4 in the waiting area, I waited with my family  
5 there. I want to say that time was three and a  
6 half hours instead of four hours. And every once  
7 in a while, I would go to them and ask them why is  
8 it taking so long, what are we waiting. They  
9 would reply that it's not -- it has nothing to do  
10 with them. It's -- they waiting phone call from  
11 Washington or somewhere -- I don't know where --  
12 to clear me out so we could leave.

13 Of course, it's very scary and  
14 frustrating, including -- all my kids are  
15 terrified. Myself, too.

16 Q Do you recall who in your family was with  
17 you in the car on this occasion?

18 A All of us; my eight kids and my wife and  
19 me.

20 Q I take it you were driving a van or --

21 A Yes.

22 MR. ABBAS: Eight kids.

1 my wife, she says go ahead. Go, guys. Go to  
2 flight. She didn't ask me nothing. No question.  
3 No nothing. She saw I was a family guy, my wife,  
4 my kids, normal people. And we went there and had  
5 no problems.

6 Coming back then was a --

7 Q Let me -- I'm sorry to interrupt. I want  
8 to talk about the return trip separately.

9 A Okay.

10 Q Before we do, so you -- I think you said  
11 earlier -- on this trip, you were traveling with  
12 all eight of your children and your wife. When  
13 you were -- when you first arrived at the Toronto  
14 airport to catch the first flight and you were  
15 going -- and you were going through all of these  
16 issues, was your family with you or were they  
17 going through security separately?

18 A No. They were with me. They actually  
19 offered them to go but they didn't want to go  
20 without me.

21 Q Okay.

22 A They said you guys can leave but he

1 is Paragraph 333, can you look this over and tell  
2 me whether or not this describes what happened to  
3 you when you crossed back into the United States  
4 from Toronto after flying home from Montenegro?

5 A I'm sorry. What did you ask me? Just to  
6 look at it.

7 Q Yeah. Look at it and tell me if you  
8 think -- because it's -- so it's talking about  
9 August 2014 --

10 A Yes.

11 Q -- which is the same -- same month and  
12 year that you returned from Montenegro to Toronto.  
13 So I want to know if you agree with me that this  
14 paragraph is describing your border crossing back  
15 from Toronto into the United States from that same  
16 trip?

17 A Yes.

18 Q Okay. Do you recall that border  
19 crossing?

20 A Yes.

21 Q Can you describe that for me?

22 A Again, it's similar situation. When we

1 pulled -- the border there, they -- I told the  
2 officer, I said, listen, I always have problems  
3 coming into the country. I don't know why.  
4 Please try not to panic. You know, I have my kids  
5 here. And the guy said, you know what? I'll do  
6 your passport last because I'm sure when I swipe  
7 your passport, then all the officers run, rush to  
8 the car, and that's what they always do. So I  
9 said, okay. So he did everybody's passport, and  
10 he did mine in the end.

11 And, of course, as soon as he did -- as  
12 soon as he swiped my passport, they all started  
13 running towards me. And the same thing again,  
14 handcuffed me, guns all over, surrounded the car,  
15 take me inside. Again, same thing, pat me down,  
16 interrogate me. They asked so much about  
17 religious questions. I don't even know half of  
18 them what they mean. And fingerprint -- again,  
19 they took my fingerprint.

20 This time something was going on in  
21 Michigan, I think, some car race or something, so  
22 it was so busy. This time I spent six hours

1 there. So I tell them why so long, and he tell me  
2 something going on that day in Michigan, some kind  
3 of car race or something. I don't know. So they  
4 were very busy. But they were trying to be more  
5 nice with the kids. They tried to -- because it's  
6 so long, some of the kinds started, you know,  
7 crying and nagging, and they offered them like  
8 snacks and coloring books so they could color.  
9 They were trying to entertain the kids.

10 But I was being tortured on the other  
11 side in the office. I don't even know what -- I  
12 don't even remember how many -- all the questions  
13 that they asked me. So much they focus on  
14 religious stuff and where do I go, who do I hang  
15 out with, from which scholar do I listen, like on  
16 the YouTube or whatever, things like that. It  
17 wasn't -- I guess it's -- becomes like a routine  
18 thing for us. You get to use it.

19 Of course every time I come to the  
20 border, I get so -- I get an anxiety attack, and  
21 my heart start -- and things -- I don't know why.  
22 I'm not guilty of it. It's just the treatment

1 they give you and the rudeness -- beginning they  
2 are so rude, and later on, they try to play nice  
3 guys. It's very hard. Sometimes if I -- like,  
4 the next day I want to travel, I can't sleep half  
5 of the night thinking about it; when I come to the  
6 border, what's going to happen to me.

7 And after that, they -- when they let  
8 us -- when they're about to let us go, they talk  
9 to me like a human being, nice. Here's the  
10 passport. Have a good day. Like nothing  
11 happened. I don't know. It doesn't make any  
12 sense.

13 And I asked one of the border guys there,  
14 whatever officers, I said, if I'm about to cross  
15 the United States border, and I just make a  
16 U-turn, come back, would I go through this again.  
17 He says, yes. I don't know why. It doesn't make  
18 no sense. I'm the same person always ten minutes  
19 ago. I don't know.

20 Just makes my life so miserable to a  
21 point that I'm actually thinking of leaving the  
22 country. And since then, I never want to travel

1 surrounded my car and pointed the guns on me and  
2 handcuffed me. Of course they told me to walk  
3 back slowly and put my head down and not to look  
4 at them. They were shouting, screaming. They  
5 were very, very loud in the way they were talking  
6 to me. They were giving me orders to proceed, but  
7 because I got so nervous, I guess I didn't -- I  
8 turn around or something, and they got so nervous,  
9 upset, and they started screaming more, pointing  
10 guns on me. And I actually thought they were  
11 going to shoot this time. They acted like that.

12 And, again, inside the office over there  
13 and pat me down. Often they say things like -- I  
14 don't know, like, you are terrorist or something,  
15 what did you do. I said, I didn't do nothing. I  
16 don't know what you guys are talking about. And  
17 then, again, they said, we'll see that in about a  
18 minute, we're going to check everything. And  
19 there was a long interview -- not interview. It  
20 was more like -- I don't know -- torture.

21 And they want to make you say things that  
22 you don't really want to say. They provoked you

1 with their words and stuff. And then, again, they  
2 make me wait, wait, wait, wait. And come out,  
3 here is the passport, you're free to go. That's  
4 it.

5 I try even talking to the supervisor.  
6 Somebody was advising me when you're on the  
7 border, ask for a supervisor. It doesn't change  
8 anything. It's just constantly -- that's -- I  
9 feel like I'm trapped here. I can't go anywhere.  
10 Since then, I just said I'm not going to travel no  
11 more.

12 Q So since May of 2016, the last time you  
13 went to Canada and came back, you've not left the  
14 United States?

15 A Right.

16 Q Have you flown domestically on a flight  
17 since then?

18 A No. I stopped flying maybe right up to  
19 2004 when I came back from Europe. And I didn't  
20 really want to go anywhere crossing the borders,  
21 but -- except last year I wanted to go because my  
22 intention was really to move there. So -- but I

1 don't want to go anywhere. I mean, two months ago  
2 my niece got married in New York, and I drove  
3 there. I came here, I drove. I just drive now.  
4 It's very hard and terrifying. It's a scary  
5 situation.

6 Q We've talked about a lot of trips today,  
7 many of them have been to Canada and back.

8 A Yes.

9 Q Others were -- there was a trip to  
10 Saudi Arabia, a few trips to Montenegro.

11 A Right.

12 Q On those -- on the trips where you leave  
13 the country, have you encountered any problems at  
14 other borders, non-U.S. borders crossing into  
15 another country?

16 A Never in my life. I -- whenever I went,  
17 I never had any problems anywhere. And even here  
18 I didn't have problems for a while, but then the  
19 problems started. I don't know from what, from  
20 where, why.

21 Q The border crossing in May 2016 that you  
22 were just describing, can you estimate how long



Deposition of:  
**Mark Amri**

*March 8, 2018*

In the Matter of:

**Elhady vs. Kable**

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<p>1 A Everything is good.</p> <p>2 Q Okay. So you -- you've signed the</p> <p>3 stipulation, Mr. Amri. And as a result of that,</p> <p>4 you're disclaiming, as part of this lawsuit, anything</p> <p>5 that's happened to you while you've been travelling</p> <p>6 internationally; is that right?</p> <p>7 MR. ABBAS: Objection, calls for legal</p> <p>8 conclusion.</p> <p>9 You can answer if you know.</p> <p>10 BY MS. ROTH:</p> <p>11 A Yeah. This is for international, yes,</p> <p>12 travel.</p> <p>13 Q Okay. And everything in this stipulation</p> <p>14 that you've signed is true and accurate as far as you</p> <p>15 know?</p> <p>16 A Yes, as far as I know.</p> <p>17 Q Okay. I understand I've put documents in</p> <p>18 front of you, and now, I'm making you go back and</p> <p>19 forth between them. Bear with me please. If you go</p> <p>20 back to Exhibit B, which is this document right in</p> <p>21 front of you, page 7. So I think you'll need to just</p> <p>22 remove this. Yup. Over there. Bottom of the page.</p>	<p>1 A I don't remember exactly the date, but yes.</p> <p>2 Q Okay. What do you remember about the -- your</p> <p>3 trip from LA to Buffalo in or around June of 2014?</p> <p>4 A That day, I travelled with my wife and my</p> <p>5 kids. You know, everything was okay. I wasn't even,</p> <p>6 you know, there was no extra security. The trip was</p> <p>7 very smooth, you know. I had no issues whatsoever.</p> <p>8 Q Okay. Paragraph 2 says, Plaintiff Amri flew</p> <p>9 from Buffalo to LAX, right?</p> <p>10 A Mm-hmm.</p> <p>11 Q Would that have been a return trip?</p> <p>12 A Yes.</p> <p>13 Q Okay. What do you remember about that trip?</p> <p>14 A Same thing. You know, everything was smooth.</p> <p>15 You know, we don't -- I didn't have any issues. I</p> <p>16 wasn't double-checked or anything like that.</p> <p>17 Q Okay.</p> <p>18 A So that's it.</p> <p>19 Q All right. So now, turn to page 8 please.</p> <p>20 Paragraph 5. Do you see where it says, January --</p> <p>21 A Yes.</p> <p>22 Q -- 21st, 2016? This is the next trip --</p>
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<p>1 Do you see the paragraphs marked 1, 2 and 3?</p> <p>2 A Yes.</p> <p>3 Q And then if you turn to page 8 of the</p> <p>4 document, there are two more paragraphs marked 4 and</p> <p>5 5.</p> <p>6 A Mm-hmm.</p> <p>7 Q What I'd like to do now is walk through these</p> <p>8 instances of travel that you've told us about.</p> <p>9 A Yes.</p> <p>10 Q And I'm going to start with the last one</p> <p>11 because it's the -- it's the furthest back in time. I</p> <p>12 believe -- actually, I apologize. Go back to page 7.</p> <p>13 The first two paragraphs described travel in June</p> <p>14 2014, or in and around June or July of 2014, right?</p> <p>15 A Mm-hmm.</p> <p>16 Q Okay. So let's start with paragraph 1</p> <p>17 please. It says here that, Plaintiff Amri flew from</p> <p>18 LAX to BUF. So first question is, am I right that LAX</p> <p>19 refers to LA and BUF refers to Buffalo, New York?</p> <p>20 A Buffalo, New York.</p> <p>21 Q Okay. So you flew from LA to Buffalo in June</p> <p>22 of 2014, correct?</p>	<p>1 domestic trip that you've described in your responses.</p> <p>2 A Mm-hmm.</p> <p>3 Q So my first questions is, between June or</p> <p>4 July of 2014 and January of 2016, had you take any</p> <p>5 other domestic trips?</p> <p>6 A I don't remember.</p> <p>7 Q Is it possible that you did, and you don't</p> <p>8 remember --</p> <p>9 A I -- I could.</p> <p>10 Q -- or you don't think you did?</p> <p>11 A I could. I mean I -- I used to go to</p> <p>12 auctions for like antiques and stuff like that. So I</p> <p>13 just don't remember. Because like I said, I didn't</p> <p>14 have record and my memory is not that good, so --</p> <p>15 Q Okay. So let's talk about what happened on</p> <p>16 January 21st, 2016.</p> <p>17 A Okay.</p> <p>18 Q You were flying from California to Las Vegas,</p> <p>19 is that right?</p> <p>20 A Yes.</p> <p>21 Q And where in California were you?</p> <p>22 A Ontario.</p>

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<p>1 Q Okay. And you're flying to Las Vegas, 2 Nevada? 3 A Yes. 4 Q Walk me through this trip, everything you 5 remember about it from the very beginning, please. 6 A I was supposed to go for a convention for 7 the -- my business. It's a tile convention that 8 happens there every year. And I -- I go to the 9 counter, and gave her, tried to check-in on the 10 computer screen. It didn't let me. 11 Then I go to the counter, gave the lady my -- my 12 ID. And, you know, she kept telling me, it's not 13 letting me check you in. And she makes phone calls, 14 and they started asking her questions and stuff like 15 that. 16 And I heard her saying, he looks normal. And I 17 was, you know, I was in a kind of shock. And then, 18 you know, at the end, she told me, it's like, I can't 19 give you a boarding pass. And I'm like, why? 20 And she said, you know, I guess you're -- you 21 cannot fly. The government doesn't let you fly. So I 22 was shocked, you know, because that never happened to</p>	<p>1 A He -- he looks normal, or, you know, 2 something like that, yeah. 3 Q How did you understand that at that time? 4 A I was shocked, honestly, you know. 5 Q Beyond shocked, was -- did you have any -- 6 was there a meaning to what she was saying that you 7 understood? 8 A No. I mean I just -- I -- I couldn't -- the 9 whole situation was like, you know, I couldn't -- I 10 didn't know what's going on. You know, this never 11 happened to me before. You know, I've never had any 12 issues flying, or travelling, or anything like that. 13 And -- and that's it. 14 Q Were you travelling alone on this occasion? 15 A Yeah. I ended up renting a car and going to 16 Las Vegas from -- from the airport because I had to be 17 there for business. 18 Q After this experience -- well, let me back 19 up. 20 How long would you say this interaction took from 21 start to finish? So from arriving at the airport to 22 when you decided to go rent the car, how long would</p>
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<p>1 me before. 2 And, you know, I asked her, is there anybody 3 I can talk to or anything like that? She's like, no, 4 I just can't give you a boarding pass, so -- 5 Q Do you remember what airline this was? 6 A If I'm not mistaken, I think it's Southwest. 7 I don't remember exactly, but I think it's Southwest 8 Airlines. 9 Q And the woman that you just described talking 10 with, was it your understanding that that was an 11 airline representative? 12 A Yes. And she was talking on the phone with 13 somebody. 14 Q You don't know who? 15 A I don't know. They, you know, they were 16 asking her questions about me. And I guess how I 17 looked and, you know, so I -- I overheard what she 18 said, so -- 19 Q I want to make sure I -- I'm not trying to 20 misstate what you said, but I believe you overheard 21 her say something along the lines of, he looks good; 22 is that -- did I get that?</p>	<p>1 that take? 2 A Oh, when I -- probably an hour and a half, 3 two hours. 4 Q So did you -- an hour and a half, two hours 5 from when you first came to try and get your boarding 6 pass until you realized there would be no boarding 7 pass, so you're going to go rent a car instead? 8 A Yeah. It took at least about an hour, 9 probably, with her. And I don't remember the exact 10 time -- 11 Q Right. 12 A But it took a long time. 13 Q During that time, is there anything else you 14 recall about what you said to her or what she said to 15 you? 16 A Hmm. 17 Q After you left the airport, what steps, if 18 any, did you take to follow up to find out why you had 19 not been given a boarding pass? 20 A I think that certain time, I didn't do 21 anything. I just -- I was concentrating, I need to 22 get to Vegas, get my business done. And then after I</p>

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Page 46	1 came back, I contacted CAIR. 2 MR. ABBAS: Objection, I'm instructing the 3 witness no to provide any attorney/client privileged 4 communications. 5 You can continue answering without providing any 6 attorney/client privileged communications. 7 THE WITNESS: Yeah. 8 BY MS. ROTH: 9 A You know, and that's it. You know -- 10 Q Did you ever fill out a form with the 11 Department of Homeland Security? 12 A To get a redress number, yes. 13 Q Would it have been following this incident? 14 A Yes. 15 Q And I think you've provided some of that to 16 your attorneys to give it to us, right? 17 A Yes. 18 MR. ABBAS: Objection, I'm instructing the 19 witness not to provide any attorney/client privileged 20 communications. 21 BY MS. ROTH: 22 Q What, if anything, did you learn or hear back	Page 48	1 Q Have you used that redress number in such -- 2 A Yes. 3 Q Has -- have -- do you have -- to your 4 knowledge, what has been the result of using that 5 number? 6 A On my next trip, you know, I said, okay, let 7 me try to fly. So I booked a flight for San 8 Francisco. And same thing, I went -- you want me to 9 tell you what happened? 10 I went to the -- so I booked a flight, you know, 11 to San Francisco. I went to the -- to get my ticket. 12 I couldn't -- I couldn't print a ticket. I gave my ID 13 to the lady on the countertop, I mean counter. And 14 she said, you know, I don't know what's happening. 15 It's not literally printing ticket for you -- a 16 boarding pass. 17 So she called another lady. And this other lady 18 started making phone calls. And eventually, after 19 probably 30 -- 30 minutes, 45 minutes, I got a 20 boarding pass. 21 Q Are you referring to a trip you took in 22 August of 2016?
Page 47	1 from the Department of Homeland Security? 2 MR. ABBAS: Objection, to the extent that the 3 question calls for attorney/client privilege 4 communication. I'm instructing the witness not to 5 provide any attorney/client privileged communications. 6 BY MS. ROTH: 7 A They sent me a letter. They sent me two 8 letters. One wasn't like too clear, you know. It's 9 that, we made the right corrections and stuff like 10 that. And -- and then a couple of months after that, 11 I received the letter that we have no reason, you 12 know, to put you on -- I mean, that for you not to fly 13 or anything like that, you know, in that meaning. And 14 that's it. 15 Q Okay. After those letters -- 16 A It's a correction letter. I got two letters. 17 Q After those letters, did you ever file 18 additional forms with the Department of Homeland 19 Security, after this back-and-forth? 20 A No. 21 Q Were you assigned a redress number? 22 A Yes.	Page 49	1 A Yeah. To San Francisco, yes. 2 Q Okay. What else happened on the part of the 3 trip that was from California to San -- I'm sorry, 4 Ontario to San Francisco? 5 A I got to a security check in Ontario. When I 6 gave my ID and my boarding pass, the -- usually, the 7 thing lights up green. I -- mine lighted up red. 8 They came and took me on the side. They want -- they 9 took me through screening. I was double-searched. 10 Of course, I had the four S's on the boarding 11 pass. Body-searched completely. They did that 12 chemical test. And, you know, it just -- it was too 13 much in front of everybody. 14 And after that, I mean I got cleared. I had a 15 friend with me, so we -- we went to the gate. And I 16 noticed that, for the first time ever, I see that 17 there's two TSA agents on the -- in front of the -- 18 the gate. And before boarding, they were starting 19 checking everybody's handbags. So I never seen that 20 happen before. So I assumed that was because of me. 21 So we went in. The flight went okay. Everything 22 was okay. On the way back, same thing happened to me.

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<p>1 A I-- I know what happened after that, but I 2 don't know exactly the date. 3 Q Okay. But as of March 4th, you've received 4 an email back, through your -- 5 A Mm-hmm. 6 Q -- attorneys, that they have received -- 7 A Yes. 8 Q Okay. Okay. I believe I asked you this 9 earlier, and I honestly just don't remember the 10 answer. Between August of 2016 and your trip to D.C. 11 today, have you flown domestically? 12 A No. 13 Q Okay. So it's now March 2018. Can you 14 please describe for me what happened on your travel to 15 the -- to Washington, D.C.? 16 A Okay. 17 Q I believe that was two days ago; is that 18 right? 19 A Yes. 20 Q Okay. 21 A I-- I went to American Airlines. First of 22 all, the lady asked me to go to the computer -- the,</p>	<p>1 put my -- take my stuff. And he said, no. He's like, 2 I need you to sit over here on the chair. I sat on 3 the chair. I assumed, because this is the first time 4 I -- like last flight, I didn't check any bags. 5 So I'm like, I'm thinking they're probably 6 checking my bag that I checked in. So it took about 7 another 10 or 15 minutes until I got the okay to take 8 my stuff. I heard them say, he's clear, you know. 9 So I take my stuff and go, sit in front of the 10 gate. Again, two TSA agents in front of the gate. At 11 the time of the boarding pass, they were checking 12 everybody for ID and all that. That went smooth. 13 So I go into the flight. I don't have any 14 handbags or anything with me, I just have my phone. 15 Q You've checked a bag, right? 16 A Yeah, I've checked a bag. Yes. I go to 17 Dallas, we fly into Dallas. I go down from the 18 flight, and I made a phone call to the business. And 19 then I go use the bathroom. 20 And then after that, I like have a couple of 21 hours, so I said I'll -- I'll eat lunch. So I went to 22 Pizza Hut. I ordered pizza with a Sprite. And I ate</p>
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<p>1 you know, self-check-in. So I put my ID. It didn't 2 allow me to check in. She sent me to the counter. I 3 go to the counter, and I gave her my ID. 4 Same thing had happened. She has to call 5 somebody. She can't get me a boarding pass. It took 6 about 30 minutes or so to get a boarding pass. So I 7 got boarding pass for both flights from Ontario to 8 Dallas and Dallas to Washington, D.C. 9 I go to the security check. The same thing 10 happened again. I gave my ID and my boarding pass. 11 The light turns red so the TSA agents asked me to -- 12 to stand on the side until he calls the supervisor. 13 He calls the supervisor. The supervisor comes in, 14 takes the boarding pass and my ID, and goes to the 15 back, about ten minutes maybe. And then he comes 16 back, and asked me to come in to go through screening. 17 I go through the, of course, I took off 18 everything. I go through the medical detector, and 19 then I go to the screening machine, and then I got 20 asked to go to the back to get patted and do that 21 test, the chemical test, whatever that is. 22 So I did all that. So I asked them, am I clear to</p>	<p>1 my food. 2 And then I went to -- in front if the gate. It 3 was Gate C-22. So I stood there -- I mean I was 4 sitting there until about the boarding time. I've 5 noticed six TSA agents with the machine that they test 6 the -- the stuff, you know. 7 So they were standing out there in front of the 8 gate. So like well, I'm thinking, but I'm like, okay, 9 maybe they're just going to check me and, you know, it 10 should be okay. 11 Two guys were checking IDs for everybody, one guy 12 in front of the gate where the tunnel goes to the 13 flight. So I gave my ticket. You know, the ticket 14 beeps the first time and then I got -- I get the okay 15 to go into the tunnel. 16 Once I go into the tunnel, I see the three guys 17 inside the tunnel, the TSA agents. They stopped me. 18 Only me. And like, he's like, sir, we need to, you 19 know, do a body-check and all that on you. 20 I was like, why did you wait until, you know, I go 21 inside the tunnel like that? Anyways, so I'm like, 22 okay, no problem. They checked me, and everything is</p>

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<p>1 okay. And then they used the -- the chemical thing 2 on. And they put it on the machine and that thing 3 starts beeping red. It says, explosive detected. 4 And I was like -- I was just -- I fell into shock. 5 And I'm like, oh, my God, these guys are just, you 6 know, trying to put something on me, trying to, you 7 know, you know -- I don't know. 8 I felt that was intentional, you know. The whole 9 thing just meant -- it's like why are they waiting for 10 me inside the tunnel? There's no cameras or nothing. 11 And then this happens. I just got checked in Ontario. 12 I mean, and I'm like, you know, I -- just all kind 13 of stuff going through my mind, you know. You know, 14 I -- I almost like -- I was really mad at the same 15 time. I was like, what's going on? You know, they're 16 just trying to make me look like a terrorist, or -- 17 or -- I mean, it just -- it looks like it was set up. 18 Okay? 19 So anyways, so they asked me like, we have to take 20 you out to the TSA area. And they unchecked me from 21 the flight, I go to their area, I got checked again. 22 Okay? I got cleared.</p>	<p>1 MR. ABBAS: Objection, I'm instructing -- 2 THE WITNESS: Yeah. 3 MR. ABBAS: -- the witness no to provide any 4 attorney/client privileged communications. 5 BY MS. ROTH: 6 A So I -- I walked down. And I think it was 7 Gate C-8, there was a lady on the counter, and I asked 8 her. I'm like, she gave me a boarding pass but it 9 doesn't have a seat. So there was like two and a half 10 hours to that flight. She said, it's not time yet, 11 you know, come and see me an hour before. And then I 12 go and sit down. 13 Five minutes later, the same TSA agent comes back 14 to me. He said, oh, we did the wrong procedure. I 15 need you to come with me. And I looked at him like, 16 what do you mean wrong procedure? And he said, I 17 can't tell you, I'm just, you know. I'm like, okay. 18 So all that, I'm just, you know, I didn't yell or 19 nothing. I'm just -- I mean from inside, I'm like 20 really pissed off. I don't know what to think. And 21 I'm like, you know, so I went with him. 22 He said, you have to wait, when we got the TSA</p>
Page 67	Page 69
<p>1 Q Okay. I'm sorry to interrupt you. When you 2 said checked again, can you describe? 3 A Yeah. I got patted and all that, and -- 4 and -- but they didn't do that test again, which I 5 thought that was weird, you know. I was like, you 6 know, I even asked them to do it. 7 I'm like, please do that test. I'm like, I 8 want -- I want to know why that -- why it beeped like 9 that, you know. But it was -- I don't know. It 10 seemed to me that it was done intentionally. 11 So I go back to the flight and then, you know, I 12 had just left, you know. It was -- it took about ten 13 minutes, and came back, and then they told me, oh, the 14 door is closed, we have to put you on another flight. 15 I wasn't too happy about that, you know. She 16 gives me a boarding pass that doesn't have a seat on 17 it. And she's like -- I'm like, this doesn't have a 18 seat or anything on it. She's just like, oh, you can 19 get it in the other -- when they're boarding the -- 20 the other flight. 21 So I'm not too happy about that. I called my 22 lawyer.</p>	<p>1 area. He said -- he was talking to somebody all the 2 time on the phone. And he said, you have to wait for 3 somebody here. 4 And you know, in my head, I'm like, you know, 5 what's going on? You know, it's just -- I'm shocked. 6 I'm still in state of shock. You know, I'm like, 7 what's going on? Why am I being treated like this? 8 You know, I wait another 15 minutes. And then a 9 guy with a black shirt comes in, it says explosives 10 expert on it. I'm like, you know -- he comes in, and 11 he's asking them, what's going on here? He said, oh, 12 we need to check this guy. And he's looking at me. 13 He's like, there is no handbag, there's nothing, 14 you know. He was like -- he's asking them, what am I 15 going to check? You know, he was even making fun of 16 it. He's like, what am I -- there's nothing to check 17 here, you know. 18 And -- and I'm like, please -- I was telling him. 19 I was like, please, check it again. I want you to do 20 that test again, because, you know, this is not fair 21 what you guys are doing. I got delayed from my 22 flight, got pulled over, I got humiliated in front of</p>

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<p>1 everybody, you know. 2 Inside the tunnel, I'm sitting -- they're 3 searching me, and everybody's passing by, and that 4 thing beeped like that, you know. And even, you know, 5 it's just like -- 6 Q Mm-hmm. 7 A Even the TSA agent, like he was wondering. 8 You know, he was nice but, you know, and he's like, I 9 can feel that he's feeling with me, you know. So that 10 guy, he's like, uh, uh, you're cleared. You know, 11 there's -- there's nothing to do. 12 So I go back to sit and wait. An hour before the 13 flight, I go see that lady on the counter. And there 14 was another -- a guy, a guy came and he actually 15 started helping me out. 16 I gave him my boarding pass, and I'm like, I need 17 to get a seat, you know, in my boarding pass. And, 18 you know, he couldn't do anything. He's like, I've 19 never seen this. He'd been working there for ten 20 years. Like, I've never seen this happen before. 21 He said, have a seat, and I'll call you when we 22 get -- when I get you a seat. It took about 45</p>	<p>1 whoever he was calling -- the -- he told me, okay, if 2 I take you right now, I'll check you and all that, you 3 just have -- I have to stay with you until you -- you 4 board the flight. 5 I'm like, no problem. You know, I just don't want 6 to be humiliated like that in front of people. You 7 know, that -- whatever happened to me. I'm like, and 8 I'll do whatever you guys want. 9 So I went with him. Okay. They put me in a room. 10 Obviously, all that time, he's on the phone with 11 somebody and telling him what to do, you know. And 12 the guy, the TSA agent was super nice. 13 All the time, he's like, I'm sorry. You know, I 14 know this is not -- not right and all that. He's 15 like, you know, he knew there was something going on. 16 He was super nice about it. 17 And then I -- they take me to a room, okay, I go 18 inside the room, took off my jacket, took off my 19 shoes, emptied all my pockets. I have bought like 20 chocolate and Sprite in a bag, too, so I gave it to 21 them. 22 I got patted everywhere -- a little bit extra,</p>
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<p>1 minutes to get me a seat. He was calling people, they 2 put him on hold, and he's like, I can't get you 3 cleared. And, you know, I finally got you cleared. 4 And then I got a seat at the end of the plane, 5 which I -- I actually paid for seats that are in the 6 front. So I ended up getting a seat at the end of the 7 plane. 8 I got my boarding pass. Not even five minutes 9 after that, okay -- it was about 15 minutes or ten 10 minutes to go into the plane, start boarding -- and I 11 see six TSA agents, with the guy wearing a suit, come 12 in to the flight. 13 They stand -- they stood in front of the gate. 14 And I'm like, okay, here we go again. I'm like, I'm 15 not going to miss this flight. So I go to them -- I 16 go to that guy, you know, that actually came to me the 17 first time. 18 I'm like, if you guys need to check me, please go 19 ahead and check me right now. I'll do whatever you 20 guys want. I just want to get into the flight. I 21 don't want no problems, okay? 22 And he said, okay, but if -- he asked his boss or</p>	<p>1 just to say, and then they take my stuff. They want 2 to get it screened. I go with them, and they started 3 putting the -- those little strips on every piece of 4 what I'm wearing. 5 And this is the first time it happened to me. And 6 they all came out green. So they put it on my shoes, 7 my pants, my -- everything was okay, you know. And so 8 I heard them say -- whoever he's talking to -- he was 9 like, everything is good, everything is good. 10 And the same guy, he's like, okay, you can just 11 walk with me to the flight. And while he was walking, 12 he's like, man, I'm really sorry, you know, I know -- 13 You know, I almost had tears in my eyes. He saw that. 14 You know, I'm like, I'm U.S. citizen. I've never 15 done anything wrong to -- to deserve this, you know, 16 so -- and he just kept saying, oh, I'm sorry. You 17 know, I just follow orders and stuff like that. 18 And so he walks me through, and I was group 8, 19 like one of the last guys to go in. And at that time, 20 there was a lady with a suit, with another TSA agent 21 standing there. Another, maybe five TSA agents, 22 they're all looking at me while I'm going to the</p>

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<p>1 flight.</p> <p>2 I go inside the tunnel, and there's another two</p> <p>3 inside the -- the tunnel. And I -- I hear him, you</p> <p>4 know, once I passed by them, like they were saying,</p> <p>5 yup, he -- he, you know, like -- like I went through</p> <p>6 in front of them.</p> <p>7 And that's it. You know, it was just very</p> <p>8 humiliating. It was -- it was -- I don't know. I</p> <p>9 felt it was intentional. It was really bad</p> <p>10 experience, a very bad experience.</p> <p>11 I wasn't too happy about it. I don't, you know,</p> <p>12 it was -- all kind of thoughts was going through my</p> <p>13 head.</p> <p>14 Q What kind of thoughts?</p> <p>15 A I mean I -- I honestly think I was -- at the</p> <p>16 beginning when that happened, I was like I'm -- I'm</p> <p>17 being set up or something. You know, they're trying</p> <p>18 to make me look like a terrorist or something like</p> <p>19 that.</p> <p>20 And I'm like, I just went -- I went crazy when</p> <p>21 I -- when I saw that screen, I was like, you know.</p> <p>22 And, you know, what can I think, you know?</p>	<p>1 patient guy. I'm very, you know, you know, I don't</p> <p>2 get mad -- get mad that easy. I don't get emotional</p> <p>3 that easy. But it sucked. Honestly, it sucked. I</p> <p>4 don't -- I'm a man, you know. I don't tear up that</p> <p>5 easy, you know.</p> <p>6 And then I felt like, you know, why has this been</p> <p>7 happening to me? You know, I'm not a bad person, why</p> <p>8 is this happening to me? You know, I've just been</p> <p>9 having the worst -- last couple of years and, you</p> <p>10 know, and this is -- this was like worst by far.</p> <p>11 Q I just want to make sure I'm asking you the</p> <p>12 question as clearly as possible. I understand that</p> <p>13 you think that the TSA agents were there to check you,</p> <p>14 but did you see any other passengers also being</p> <p>15 checked?</p> <p>16 A No. No.</p> <p>17 Q So no one else was being swabbed?</p> <p>18 A No.</p> <p>19 Q Is it your understanding that the swab test</p> <p>20 that you had done in Dallas was the same one that had</p> <p>21 been done in Ontario?</p> <p>22 A Yes. Yes.</p>
Page 75	Page 77
<p>1 Q When you described being in the tunnel, is</p> <p>2 that -- so that I make sure I understand -- is that</p> <p>3 like the jet bridge between the --</p> <p>4 A Yes.</p> <p>5 Q -- airport and the plane?</p> <p>6 A Yes. Which I thought was weird, you know.</p> <p>7 If you want to check me, why didn't you check me</p> <p>8 before I go in, in front of everybody, in front of the</p> <p>9 camera? Why would -- why are you waiting for me to go</p> <p>10 inside there and do all that to me?</p> <p>11 Q The first -- the first flight from Dallas to</p> <p>12 D.C., where you were checked in the jet bridge, were</p> <p>13 other passengers also being checked by the TSA in the</p> <p>14 jet bridge?</p> <p>15 A Nobody.</p> <p>16 Q Just you?</p> <p>17 A No -- nobody. It was meant for me. I mean</p> <p>18 it was obvious, you know. And -- and the way it was</p> <p>19 done, it was just -- it was so obvious. I mean it's</p> <p>20 just, you know, I don't know how to describe it, you</p> <p>21 know. I felt really bad.</p> <p>22 I honestly, for the first time -- I'm a very</p>	<p>1 Q Did anyone describe that test for you before</p> <p>2 it was done either time?</p> <p>3 A No. I mean they told me that I'm going to be</p> <p>4 checked and all that. But, you know, I mean even like</p> <p>5 the -- the explosive expert, when he saw the printout,</p> <p>6 I guess, of that machine, you know, he kind of smiled,</p> <p>7 laughed, you know. He's like, there's nothing I can</p> <p>8 do. And he's like, just let him go, you know.</p> <p>9 It's just -- it felt like even the TSA agents,</p> <p>10 it's like it felt like somebody is calling the shot</p> <p>11 from somewhere, and it was weird; it was weird for</p> <p>12 them. So, you know, and that's why.</p> <p>13 You know, it's -- it was -- I wasn't comfortable.</p> <p>14 And he, the guy that was walking with me, he was like,</p> <p>15 you know, it felt like he wasn't comfortable with it</p> <p>16 too, so --</p> <p>17 Q Can you describe a little bit more why you</p> <p>18 got that sense from the TSA agent, that he wasn't</p> <p>19 comfortable of what was going on?</p> <p>20 A I mean it just that it -- it felt that it's</p> <p>21 unfair. He told me that. So it -- it felt that, you</p> <p>22 know, it's like they don't usually do that to anybody.</p>

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<p>1 They pull people on the side with four S's and stuff 2 like that, they check it, but not that way. 3 Q The whole time this is happening in Dallas, 4 have you, has your checked bags been wherever luggage 5 is, or it's -- 6 A Yeah, they went -- it went -- it arrived 7 earlier with the -- with the earlier flight. 8 Q So your bag wasn't with you the whole time 9 this was happening? 10 A No. 11 Q The -- if you recall it, and it was only two 12 days ago. Relative to when you've landed in Dallas, 13 when was the first flight to D.C. supposed to take 14 off? When was that scheduled? 15 A Three -- 16 Q How many hours? 17 A 3:15. It was supposed to arrive here at 18 7 p.m. 19 Q And do you remember roughly what time you've 20 landed in Ontario -- in Dallas? 21 A In Dallas? 22 Q Yeah.</p>	<p>1 If I didn't go, I probably had to miss my flight. 2 So -- and I'm worried that this is going to happen to 3 me again, when I go -- I'm going back through Dallas 4 again, so -- 5 Q Have you ever had an experience in an airport 6 before where you were swabbed and it came up positive 7 for explosives? 8 A No. No. Never. 9 Q Did anyone explain to you -- 10 A I asked the guy if he -- I'm sorry -- you 11 know, I asked the guy. I'm like, I mean what could it 12 be, something like -- he's like, oh, it could be 13 anything. 14 And I'm like, you pulled me out of the flight and 15 all that, and it's like it could be anything? It just 16 didn't seem right to me. It just -- it was -- I don't 17 know, it felt that it was intentional. I don't know. 18 Q Can you think of any reason why you would 19 have tested positive for that, based on anything 20 you've been in contact with? 21 A There's no way. No, of course. I mean, I go 22 to construction, you know, tiles and stuff like that,</p>
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<p>1 A It was two hours before that. 2 Q So you landed around 1? 3 A I know because I know we had, yeah, I know we 4 had like about two hours. That's why I said I'll go 5 have lunch and all that. And then, it was, yeah, 6 about two hours. 7 Q And the flight that you were rebooked on, 8 that you ultimately flew on to get to D.C., what time 9 did that depart? 10 A Like 5:30? 5:30, 5:35. 11 Q Was that on schedule? 12 A Yeah. 13 Q So it wasn't delayed in any way? 14 A No. 15 Q But it was about two -- two plus hours later? 16 A Because -- because I went to them. At the 17 end, I was like, I went to them because I felt that 18 the same thing has happened, because I saw them take 19 that machine inside the tunnel. And I'm like, I'm not 20 going to let this happen again. I'm like, I'm going 21 to go before, and just tell them, hey, take your time. 22 Do whatever you want, you know.</p>	<p>1 but I don't -- there's no way anything near -- it was 2 close, or anything like that. And then they, again, 3 they checked everything, you know, everything, every 4 piece I'm wearing. And everything came back green. 5 So that's why I'm telling you, it -- it just didn't 6 make sense. 7 You know, I was even thinking, I was like, oh, 8 maybe it's the pizza I ate? And I'm not kidding. I 9 swear, I was thinking even about that. I'm like, how 10 the pizza came out of the oven. Maybe something, you 11 know, spilled on me. 12 MR. ABBAS: Parmesan cheese. 13 BY MS. ROTH: 14 A I'm like, I'm not kidding, I was -- was 15 thinking about that. I'm like, gosh, what could it 16 be? I'm like, you know, it was -- it was horrible, 17 you know. 18 Q After you were in the jet bridge, and the 19 test came back positive, was it your -- is it your 20 understanding that everything that happened subsequent 21 to that was because you tested positive? 22 A I -- I -- I believe that it was done</p>

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Page 82	1 intentionally to me. I don't know. I -- that's what 2 I believe, and I still believe that whatever happened 3 to me, the way it happened, okay, I think it was 4 intentionally to me. I don't know why. 5 But it's just the way -- they were waiting for me 6 over there. They, you know, the way it was done, you 7 know, the guy standing in front of the flight, the 8 three guys inside, you know. It was just, you know, 9 hey, this guy is coming, let's do this to him. I mean 10 there's -- I -- I see no other reason. 11 Q Did anyone from TSA say verbally or 12 communicate, in any way to you, anything that would 13 suggest that this was a deliberate attempt on their 14 part? 15 A No. But, at the same time, it's like they 16 were taking instruction from somebody else at all 17 time. You know, at all -- at all time, I can hear him 18 talking on the, you know, that guy had a cellphone 19 with him, and he was talking on it, and he had an ear 20 thing, so -- which I thought that was weird, you know. 21 If you already have the earplug and you're talking 22 to boss, why are you talking on the cellphone with	Page 84
Page 83	1 somebody else? You know. And that's why I thought it 2 was intentional. 3 Q Is there anything else about the experience 4 that you haven't described? 5 A That's it. I mean it's like I said, you 6 know, I wasn't -- I wasn't too happy about it. It's 7 just that I was going through a lot of mixed emotions, 8 and I don't want to go through that again. I honestly 9 don't want to go through that again. 10 Q Once you landed in D.C., did you have any 11 problems exiting the plain? 12 A No. No. Nobody talked to me. Nothing. You 13 know, I went, I got -- rented a car, and went to the 14 hotel. I was really tired. I got -- it got like 15 really late, so -- it was really cold, and I got sick. 16 Q I'm going to propose we take a break, go off 17 the record for about ten minutes? 18 MR. ABBAS: Up to you. I -- 19 MS. ROTH: Is it -- okay, let's do that. 20 Let's go off the record please. 21 (OFF THE RECORD) 22 (ON THE RECORD)	Page 85
	1 BY MS. ROTH: 2 Q Okay. Mr. Amri, and we're back from our 3 break. Did you talk to anyone other than your 4 attorney during your break? 5 A No. 6 Q I have a few more questions about what 7 happened on Tuesday. 8 A Sure. 9 Q I understand that it was a very unpleasant 10 experience for you, so please bear with me. And if 11 you need break at any time, feel free to ask, okay? 12 A Okay. 13 Q You testified earlier that you were swabbed 14 in Ontario, right, and negative? And -- 15 A Mm-hmm. 16 Q And then you were swabbed again in Dallas. 17 Between when you were swabbed in Ontario and when you 18 were swabbed in Dallas the first time, can you 19 describe what, if anything, you got -- you were in 20 contact with? Like you touched or did you purchase 21 anything that you recall? 22 A I went into the bathroom. And then I went	



Deposition of:  
**Adnan Shaout**

*January 4, 2018*

In the Matter of:  
**Elhady vs. Kable**

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<p>1 me --</p> <p>2 MR. ABBAS: Objection. I'm instructing the</p> <p>3 witness not to reveal any attorney client privileged</p> <p>4 communications.</p> <p>5 BY MS. ROTH:</p> <p>6 Q Did you look over any documents?</p> <p>7 A No.</p> <p>8 Q Did you talk to anyone about the deposition</p> <p>9 other than your attorneys?</p> <p>10 A No. My family, of course, knows that I'm</p> <p>11 here.</p> <p>12 Q Okay.</p> <p>13 A My wife knows that I'm here.</p> <p>14 Q Okay. Dr. Shaout, can you state and spell</p> <p>15 your full name for the record?</p> <p>16 A Adnan Khalil Mohoud Shaout.</p> <p>17 Q Can you spell that, please?</p> <p>18 A Which one?</p> <p>19 Q All of it.</p> <p>20 A A-D-N-A-N. That's my first name. We Arabs</p> <p>21 have four names. My father's name is Khalil, K-H-A-L-</p> <p>22 I-L. My grandfather is Mohoud, M-O-H-O-U-D. And my</p>	<p>1 Q Where were you born?</p> <p>2 A I was born in Jericho, Palestine.</p> <p>3 Q And where do you currently live?</p> <p>4 A I live on 68 --</p> <p>5 MR. ABBAS: Objection. I'm instructing the</p> <p>6 witness not to provide his precise address.</p> <p>7 BY MS. ROTH:</p> <p>8 Q You can tell me the city and state.</p> <p>9 A Dearborn, Michigan.</p> <p>10 Q And how long have you lived in Dearborn?</p> <p>11 A Since '88.</p> <p>12 Q 1988?</p> <p>13 A Yeah.</p> <p>14 Q Prior to 1988, where did you live?</p> <p>15 A I lived in Detroit for one year.</p> <p>16 Q And prior to that one year?</p> <p>17 A Syracuse for seven years. Syracuse, New York.</p> <p>18 Q Right. And prior to Syracuse?</p> <p>19 A I lived Elizabeth, New Jersey, for two years.</p> <p>20 Q And prior to Elizabeth?</p> <p>21 A I was in Amman.</p> <p>22 Q Okay. What -- just to line up the dates with</p>
Page 11	Page 13
<p>1 last name is Shaout, S-H-A-O-U-T.</p> <p>2 Q Thank you. Are there any -- have you ever</p> <p>3 used any other official spelling of your first or last</p> <p>4 name?</p> <p>5 A No.</p> <p>6 Q Are there any other names you've used --</p> <p>7 combinations of names you've used as an adult, that we</p> <p>8 should be aware of?</p> <p>9 A Well, as a professor I usually use Adnan</p> <p>10 Shaout, first and last name, on my papers -- my</p> <p>11 applications. Sometimes I use Adnan K. Shaout. That's</p> <p>12 usually what I use.</p> <p>13 Q Okay.</p> <p>14 A I don't use the four names. Usually it's too</p> <p>15 much.</p> <p>16 Q But --</p> <p>17 A You can't fit them.</p> <p>18 Q -- have you ever used any other last name,</p> <p>19 other than Shaout?</p> <p>20 A No.</p> <p>21 Q What's your date of birth, please?</p> <p>22 A [REDACTED]</p>	<p>1 the places, roughly what years were you living in</p> <p>2 Amman?</p> <p>3 A From 1967, when we were left after the war,</p> <p>4 until 1978, when I came to the States after I finished</p> <p>5 high school.</p> <p>6 Q And you came to Elizabethtown?</p> <p>7 A Elizabeth, New Jersey.</p> <p>8 Q Elizabeth, New Jersey. Okay. In 1978?</p> <p>9 A '78.</p> <p>10 Q Thank you. Are you a U.S. citizen?</p> <p>11 A Yes.</p> <p>12 Q And you mentioned before that you were born</p> <p>13 outside the United States. So, I just want to clarify.</p> <p>14 You're a naturalized U.S. citizen?</p> <p>15 A Yes.</p> <p>16 Q What year, if you recall, did you become a</p> <p>17 U.S. citizen?</p> <p>18 A Probably '94. I think '94 -- 1994. I'm not</p> <p>19 hundred percent sure about the date.</p> <p>20 Q And can you state your current occupation?</p> <p>21 A I'm a professor at the University of Michigan.</p> <p>22 Q And do you have a Ph.D.?</p>

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Page 14	<p>1 A I have a Ph.D.</p> <p>2 Q In what?</p> <p>3 A Computer engineering.</p> <p>4 Q So, can you walk me through your higher</p> <p>5 educational background. So, where you attended</p> <p>6 university, where you received your Ph.D., and what</p> <p>7 years?</p> <p>8 A I came in 1978 after high school. I did two</p> <p>9 years of college at the Kean University, in Union city,</p> <p>10 in New Jersey. Then I transferred to Syracuse,</p> <p>11 finished my bachelor's degree in computer engineering</p> <p>12 in 1980. Finished my master's degree in 1981, computer</p> <p>13 engineering, at Syracuse University. Finished my Ph.D.</p> <p>14 in 1980 -- the master's degree -- actually, the</p> <p>15 bachelor's degree in '82 and the master's degree in '83</p> <p>16 and the Ph.D. in 1987, all in computer engineering.</p> <p>17 Q Thank you. You mentioned you moved to Detroit</p> <p>18 in --</p> <p>19 A '87.</p> <p>20 Q -- in 1987? Have -- when did you start your</p> <p>21 employment with the University of Michigan?</p> <p>22 A '87.</p>	Page 16	<p>1 Q Okay.</p> <p>2 A Yeah.</p> <p>3 Q Dr. Shaout, have you ever served in the United</p> <p>4 States Armed Forces?</p> <p>5 A No.</p> <p>6 Q Have you ever served in any other country's</p> <p>7 armed forces?</p> <p>8 A No.</p> <p>9 Q Okay. So, mainly today what we're going to do</p> <p>10 is talk about your travel and your experiences</p> <p>11 traveling. And we're going to do that by walking</p> <p>12 through all of the trips that you've told us about that</p> <p>13 you've taken. Before we dive into trip by trip, what</p> <p>14 I'd like to do is show you some documents to see if</p> <p>15 you're familiar with them, because we'll probably use</p> <p>16 them as a guidepost as we walk through your trips.</p> <p>17 (Adnan Shaout Exhibit I was marked for</p> <p>18 identification.)</p> <p>19 MS. ROTH: So, the first document I would</p> <p>20 like to show you, which I'm going to introduce as</p> <p>21 Exhibit 1 --</p> <p>22 MR. ABBAS: And can I get a copy as well?</p>
Page 15	<p>1 Q Okay. So, you've been employed by the</p> <p>2 University of Michigan since 1987?</p> <p>3 A Since I graduated.</p> <p>4 Q Any other employment during that time?</p> <p>5 A No. No. But I did sabbaticals throughout --</p> <p>6 you know, every six years we go sabbaticals. I chose</p> <p>7 to do my sabbaticals back in Jordan.</p> <p>8 Q Okay. If you can remember, what years roughly</p> <p>9 were you on sabbatical in Jordan?</p> <p>10 A '95, '96 the first one. And then I became a</p> <p>11 director for the University of Michigan, a program --</p> <p>12 graduate program in Jordan -- from 2000 to 2002. I was</p> <p>13 a director for the University of Michigan. But I was</p> <p>14 located physically in Jordan. So, I was commuting a</p> <p>15 lot. I did sabbatical also -- actually, I was a</p> <p>16 Fulbright scholar in 2008, at Jordan University. My</p> <p>17 last sabbatical was at PSUT, Prince Sumaya University</p> <p>18 of Technology, at Amman, Jordan, in 2016.</p> <p>19 Approximately. I mean, these dates are not --</p> <p>20 Q No, that's -- thank you. That's helpful.</p> <p>21 When did you return from your last sabbatical?</p> <p>22 A June of 2016.</p>	Page 17	<p>1 MS. ROTH: Yes.</p> <p>2 MR. ABBAS: Thank you. And just to -- we're</p> <p>3 numbering anew. Right?</p> <p>4 MS. ROTH: Yes.</p> <p>5 MR. ABBAS: Okay.</p> <p>6 BY MS. ROTH:</p> <p>7 Q So, Dr. Shaout, if you could look at the top</p> <p>8 page of what I've just presented to you. I'm just</p> <p>9 going to describe it for the record. It is the front</p> <p>10 page of the complaint in this lawsuit. Do you</p> <p>11 recognize this document?</p> <p>12 A Yeah. I received a copy --</p> <p>13 Q And --</p> <p>14 A -- from my lawyer.</p> <p>15 Q And do you see your name on the left side of</p> <p>16 the page somewhere?</p> <p>17 A Sure. Yeah.</p> <p>18 Q Yes?</p> <p>19 A Yeah.</p> <p>20 Q If you could turn to page 59 of this document.</p> <p>21 Do you see your name in bold towards the bottom of that</p> <p>22 page?</p>

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<p style="text-align: right;">Page 46</p> <p>1 Because I don't have any issues, because, you know, as 2 Muslims we can pray in any mosque. It doesn't have to 3 be a certain mosque. You can pray in any mosque. So, 4 I didn't have any issues with it. So, yes, I was 5 interrogated. I was delayed, and -- I don't remember, 6 sometimes I might -- they delay me an hour, an hour to 7 two hours, two hours -- an hour and a half, sometimes 8 more.</p> <p>9 I learned later on that the less information I 10 bring with me, the faster the process will be. So, if 11 I have stick drives, memory drives, that has a lot of 12 information, then I am in bad situation. They will 13 take long time to copy everything. But I -- that's 14 what they were taking, my computer, my memory stick. 15 If I bring documents, if I bring even -- one time I 16 made a mistake. I took exams of my students. I was 17 grading them. They took copies of everything. They 18 take -- because they're employees. They are supposed 19 -- they are asked to do -- to take these copies. And 20 they take copies of my students' work, projects -- if I 21 took projects to grade or -- on my trip. So, I learned 22 later to try to minimize the information I carry with</p>	<p style="text-align: right;">Page 48</p> <p>1 engineer. The memory slows down. They filling it with 2 some software. I mean, so they were actually -- I 3 mean, I -- you feel like dirt, basically. You feel 4 like you're doing something wrong, but you -- what is 5 it, I don't know. I -- many times, I ask them, listen, 6 you know, this is my card, I mean, please let them 7 contact me. Let them talk to me and see what's going 8 on. Many times I asked. Many times. Until I put an 9 attorney.</p> <p>10 MR. ABBAS: Objection. I'm instructing the 11 witness not to divulge any attorney client privileged 12 communications.</p> <p>13 MS. ROTH: I don't think you can object to 14 your witness's own testimony.</p> <p>15 MR. ABBAS: Yeah. Yeah.</p> <p>16 MS. ROTH: Okay.</p> <p>17 THE WITNESS: Okay.</p> <p>18 BY MS. ROTH:</p> <p>19 Q Dr. Shaout, I want to just -- you said a lot 20 just now, and I want to make sure that we walk through 21 some of what you said in more detail. And see if we 22 can figure out when or on which trips you remember</p>
<p style="text-align: right;">Page 47</p> <p>1 me, because, I mean, it's just -- just delays me, my 2 arrival to my home.</p> <p>3 My family is waiting, my kids are waiting, or 4 my wife is waiting for me outside. And they -- they're 5 afraid something happened. They know that I am 6 supposed to be on the plane, and they wait outside for 7 long time. And so, I -- you know, sometimes we can't 8 help it but to bring or to take information, because, 9 you know, you have to finish the grading or something. 10 But it does happen quite often. The less information I 11 have, the faster. Because the same questions over and 12 over and over and over. The same answers that I give 13 over and over. So -- and they were feeling sorry for 14 me, actually. But, they -- this is how -- this is -- 15 so, I don't remember, I mean, and which day that I 16 carried less information than which day that I carried 17 more information. I don't remember all these details.</p> <p>18 But I remember that the more information I 19 have, the more time I have to be waiting. Sometimes I 20 even -- I'm so tired, I sleep on the chair. And they 21 take the computer, the laptop, and I know there's 22 something that they did to it. Because I'm a computer</p>	<p style="text-align: right;">Page 49</p> <p>1 certain things happening. I understand that, again, 2 it's already a long time ago. But -- so, the first 3 question I have here is we're talking about February of 4 2005, and I think you were just describing the 5 experience you had coming back into the United States 6 from a conference in Amman. Is that right?</p> <p>7 A Yes.</p> <p>8 Q Do you remember the outgoing trip -- when you 9 left the country to go to Amman, for this trip, if you 10 encountered any travel difficulties?</p> <p>11 A As I said, since 2004 when I came in December, 12 every time I leave there is two things. I have to wait 13 for the approval of somebody from Washington to allow 14 me to be on that plane. Second thing, all Ss. All Ss. 15 Four Ss. And that means I have to be interrogated -- I 16 have to be searched. I have to be tapped. I have to 17 be -- they, they -- and that sometimes if the line is 18 long, I have to -- it delays me. And it embarrasses 19 me. I mean, once in a while it's okay. I mean, it's 20 random -- fine. It was never random. It was always. 21 So, that is not written here. It's not stated here. 22 But it is the same. Every time since 2004, December</p>

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<p>1 said that during the period when you were having all of 2 the difficulties you would know to get to the airport 3 quite early. So, how early would you typically get to 4 the airport for an international flight? 5 A Usually I would go two hours. But after 2004, 6 at least four hours. 7 Q Okay. 8 A And for domestic, usually an hour and I still 9 can get -- catch my flight. No, I have to give at 10 least two and a half, three hours. 11 Q And since May of 2017, have you gone back to 12 one hour, two hours? 13 A Yeah. No, now I can go with comfort, you 14 know. I mean, I can -- I don't have to -- I don't have 15 -- it's not in my back of the mind that I have to wait 16 until they get the approval. I just -- usually I have 17 my seating and everything. So, I go very -- an hour or 18 so before the flight. 19 Q Okay. 20 A Yeah. 21 Q We've talked a lot about all of your 22 experiences at the airport, leaving, going through</p>	<p>1 consequences of maybe being on a watch list are that 2 you've experienced. 3 A I see. I see. Well, besides what you guys 4 asked me to write, I feel I am watched -- my internet 5 is watched, my phone. I don't carry cell phone, by the 6 way, because of this. I don't. I don't even have the 7 luxury of having a cell phone, because of this. My 8 ground lines are watched. And then I have nothing to 9 hide. I feel that. I feel it. Maybe I'm wrong, but, 10 yes, that's probably because of this too. 11 Q Can you tell me more about the cell phone? 12 Did you own and use a cell phone prior to December of 13 2004? 14 A Well, to -- prior 2004, cell phones were not 15 popular. So -- 16 Q Fair enough. 17 A Then they are not. I mean, for me I have -- 18 my daughter has a phone -- cell phone. My kids, my 19 wife. I pay for a lot of cell phones, but I don't 20 personally carry a cell phone because of this. One of 21 the reasons this. 22 Q Okay. So, can you just explain a little bit</p>
Page 191	Page 193
<p>1 security, coming back in. Are there any other 2 consequences of your allegation that you're on a watch 3 list that we have not talked about, that you'd like to 4 describe? 5 A I don't really -- I'm not clear about what 6 exactly you're asking. 7 Q So, you are alleging that you're on a watch 8 list. Right? 9 A Uh-huh. 10 Q And you're alleging that as a result of being 11 on that watch list for a period from 2004 to 2017 you 12 had various difficulties traveling. Correct? Other 13 than all that we've talked about, about all of the 14 things that happened to you traveling, are there any 15 other consequences that you think you've experienced 16 because you think you're on a watch list? 17 MR. ABBAS: Objection. You're asking the 18 deponent to summarize, like, four hours of testimony. 19 BY MS. ROTH: 20 Q I'm not asking you to summarize what we've 21 already talked about. I'm asking if there's anything 22 we haven't talked about, about what you think the</p>	<p>1 more fully why you would not carry a cell phone because 2 you think you're on a watch list? 3 A Because I'm on watch list, everybody connects 4 with me is watched. And I don't want people to be 5 harmed because of me. Is that fair to say? 6 Q I'm asking -- you can answer however you like. 7 I'm asking you to explain -- 8 A Yeah, I mean, that's something that -- I mean, 9 you say other circumstances. I believe I'm watched 10 throughout. But -- 11 Q Has anything happened -- actually happened to 12 you that has led you to believe you're being watched? 13 A Yeah. One time the FBI send me an email 14 saying that Dr. Shaout, we are watching your email. 15 Q When was that, roughly? 16 A I don't remember. But it was -- and then they 17 say we stopped. 18 Q Do you still have copies -- 19 A I should have saved it. I should have saved 20 it. I didn't. 21 Q You don't have a copy if that email? 22 A I didn't save it. I didn't save it. They</p>



Deposition of:  
**Zuhair El-Shwehdi**

*November 29, 2017*

In the Matter of:  
**Elhady vs. Kable**

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<p style="text-align: right;">Page 26</p> <p>1 A Yes. 2 Q Do you have any other passports? 3 A No. 4 Q Do you have any expired passports? 5 A No. With me, no. I have one before 6 this American passport, one before this, because 7 I, I renewed after, after five years. 8 Q Right. So you had one before this. Do 9 you still have the expired one? 10 A I think because of my situation, 11 maybe -- after the revolution in Libya, after 12 Gaddafi, we took Gaddafi out, we decide, me and my 13 wife and kids, they were in the transition area. 14 They are in high school. If we want to stay here, 15 because of the culture, Libyan, we said we want to 16 go back home. Now our country free. We let them 17 go to school for four years, because they have a 18 background in English, and they do good, and then 19 we go back to America for them to settle, okay, 20 but when we actually, when we go to Libya, the 21 situation went down. They start killing. I think 22 if you know, they kill American teacher. He's our 23 friend. He's the teacher of my kids, and they 24 know him very well. So they start crying. They 25 say they want to go back to America.</p>	<p style="text-align: right;">Page 28</p> <p>1 to it? 2 A Really, Benghazi, with this junta, they 3 killing every day and they throw the people in the 4 street. Yesterday my cousin, they abduct him, so 5 no way. Even if I want to go to Libya, I want to 6 go to Tripoli, and my sister, she want to come to 7 see me, since I have the only sister over there, 8 and her husband passed away about a year ago, and 9 they couldn't go, you see? This is maybe relevant 10 because of what I -- they harass me in the 11 airport. So I decide to stay. 12 Q So your sister's husband died last year? 13 A No. Two years ago. Last year my 14 brother. Also, I didn't go to the funeral to see 15 my family. 16 Q And that was last year? 17 A Yes. Ibrahim is his name. 18 Q So what was your sister's husband's 19 name? 20 A Salem, S-A-L-E-M, and my older brother 21 Ibrahim. Salem died before Ibrahim. 22 Q What's Salem's last name? 23 A Kapit, K-A-P-I-T. Kapit, I think. 24 Ibrahim Shwehdi, like me, but without the "El." 25 They didn't put the "El."</p>
<p style="text-align: right;">Page 27</p> <p>1 Q When was that? 2 A In 2013, I think. So I send them back, 3 and I try to stay to find work or to help my 4 family, because my mother died, everybody died, 5 and I have my only sister and two brothers, and my 6 older brother, he's very sick. He's handicapped, 7 and he died later. 8 So they told me, "Zuhair, you have to go 9 back to your kids," so I came back to United 10 States. 11 Q Okay. Well, those are things I was 12 going to ask questions about. 13 A So my passport and my stuff, all my 14 belongings, it's in Libya, because we, we fled the 15 country, you see? I took my passport and I went 16 back to United States to enjoy my, to reconcile 17 with my family. 18 Q Right. 19 A But I have another one, I have another, 20 the first passport I made. 21 Q You might have an older one? 22 A It's in Libya. 23 Q Oh, in Libya? 24 A Yeah. 25 Q Do you have any means of getting access</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Okay. 2 We also sent requests for documents to 3 your attorney. Have you seen our document 4 requests? 5 A What? 6 Q We sent a request for documents to your 7 attorney. Have you seen those? 8 A What's a request of documents? Just 9 show me whatever. I don't know. 10 Q Okay. I'll show you. 11 MS. POWELL: Let me mark this 12 Exhibit D. 13 (Exhibit D was marked for 14 identification.) 15 BY MS. POWELL: 16 Q Have you seen this before? 17 A No. 18 Q Okay. 19 A I don't think so. I'm not sure. 20 Q Now, you provided us, via your attorney, 21 some documents, itineraries and boarding passes 22 and things like that, related to your past 23 travels. 24 When you were looking for documents for 25 us, what did you look for?</p>

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<p style="text-align: right;">Page 30</p> <p>1 A For my case? When, when they start 2 harass me in the airport, okay, in front of 3 everybody, so I decide in 2011, when I come back, 4 I document everything, best of my knowledge. I 5 kept everything, the reservation, when the travel 6 agency, okay, or the boarding pass, so I have 7 everything copy of that. 8 So when they start with this case, they 9 told me they need everything. So I wrote this, 10 this, one, two, three, four, five, domestic and 11 international flight, with what I have from the 12 evidence, my name and ticket number. The last two 13 trips you mentioned to me inside United States, 14 that has all my family with me, because we travel 15 together. 16 Q Right. 17 A 2016. 18 Q Do you have -- you said, as I understand 19 it, that you have been trying to document your 20 experiences since 2011; is that correct? 21 A Experience? 22 Q Your, your -- 23 A No, no. What happened to me in the 24 airport, this is what -- 25 Q Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 year university. She is the one, she type me all 2 of this, so . . . 3 Q Have you ever had occasion to write it 4 down before, somewhere other than in this case? 5 A Yeah, I write, I write the, the, the 6 trip, like the trip and the date. I said I want 7 to put it in order or something to refresh my 8 refresh my memory, yes. I write for myself. 9 Q So that is something you have, and when 10 did you write -- did you write that down for this 11 case or before? 12 A No, because, see, I tried, I tried to 13 find somebody to help me to take me from this 14 unfair treatment, but -- 15 Q So you have written down -- 16 MR. ABBAS: Only one person talks 17 at a time, so let her finish the question. 18 BY MS. POWELL: 19 Q Am I correct that you have written down, 20 just for yourself, the times you've traveled and 21 what happened? 22 A Yes, because each time they harass me, 23 so I said I need to do a solution to this. Maybe 24 I go to a lawyer, maybe I found someone, and then 25 I went to CAIR, CAIR Cincinnati. This is the one</p>
<p style="text-align: right;">Page 31</p> <p>1 A Yeah. 2 Q Do you have any other written accounts 3 of what happened to you? Did you write it down in 4 a journal or a letter? 5 A No, no, no, because, you see, because it 6 happened to me in front of -- like in Washington, 7 D.C. or Chicago or whatever, in any airport I been 8 to, okay, they humiliate me, especially. I am 9 looking a foreigner in front of the -- and they 10 choose me from the line and they pull me aside, 11 and they start search me in front of everybody, 12 and -- 13 Q We'll talk about your travel experiences 14 in just a minute, I promise. I'm give you a 15 chance to talk about them, because I want to know 16 what you have to say. 17 A Everything I wrote is from my memory, 18 because I still remember what happened to me. 19 Q I'm just wondering if there has been any 20 previous time when you have written down what's 21 happened to you. Did you ever write a letter to a 22 family member? 23 A No. My wife, she knows, because I 24 explain to her. My daughters, now they are 25 already married and the other one is the third</p>	<p style="text-align: right;">Page 33</p> <p>1 they start with me. I don't know. They have this 2 branch. I went to them and I explained to them, I 3 said how you can help me to take my name, please, 4 off the, off the -- sorry. 5 Q No, actually, I don't want you to get 6 into any confidential conversations. 7 A No, no, no, because what happened, 8 ma'am, maybe everybody -- what happened when I 9 went to engage my, my daughter, really they 10 humiliate me in front of my kids, and the kids and 11 my wife, they start crying, and this is not -- 12 this is why I said I have to get rid of this, or I 13 never travel by airplane. 14 I went to Georgia, by the way, I have 15 my -- driving. I have problem with hip. I have 16 to stay. Every 200 mile, I have to stay. 17 Q When did you drive to Georgia? 18 A Every, every like year, either once or 19 two times. 20 Q What's in Georgia? 21 A We have a Libyan relative from our, 22 our -- 23 Q Who is the relative? 24 A It's my cousin. 25 Q So you have a cousin in Atlanta?</p>

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1 A Yes.  
 2 Q So you drive there?  
 3 A Yes. As a Libyan, we are few in  
 4 America.  
 5 Q And how many times have you driven to go  
 6 see your cousin?  
 7 A I went two times, three times a year  
 8 sometimes.  
 9 Q And about how long is the drive?  
 10 A Eight hours to Georgia from, from, from  
 11 Dayton. I think around eight. Depends on the  
 12 speed and traffic. This is why I can't take a  
 13 shorter. If I bring 50 bucks, I be in the  
 14 airport, it's easier for me, but because of this,  
 15 what happened to me, ma'am, I said I would rather  
 16 go with car instead of they humiliate me in the  
 17 airports.  
 18 Q Did you travel here for this deposition  
 19 by plane?  
 20 A Yes, yesterday. I came just last night.  
 21 Q Do you have your boarding pass or  
 22 itinerary?  
 23 MR. ABBAS: Zuhair, we're not going  
 24 to -- if you'd like us to give you those  
 25 documents, it's fine, but we're not --

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1 MS. POWELL: You are required to  
 2 supplement your discovery responses.  
 3 MR. ABBAS: That's fine, but we're  
 4 not going to give them to you now.  
 5 THE WITNESS: They humiliate me  
 6 more yesterday. I felt I'm coming to you, to  
 7 a government building, maybe. Really, it was  
 8 very bad.  
 9 BY MS. POWELL:  
 10 Q What airport did you fly out of?  
 11 A From Dayton to National, Reagan.  
 12 Q Was that a direct flight from Dayton to  
 13 National?  
 14 A Yes, yes. American Airlines. I have  
 15 the boarding pass.  
 16 MR. ABBAS: Well, you'll give it to  
 17 us, and we'll . . .  
 18 BY MS. POWELL:  
 19 Q Was anyone traveling with you?  
 20 A No. Just myself. Really, the night  
 21 before last, when I receive the confirmation of  
 22 coming from CAIR, they send me my name and the  
 23 reservation. I note down -- they said seats.  
 24 They already choose me the seats. I said, in  
 25 Arabic, "Thanks to God." This is my first time

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1 since 2011 they assign me a seat.  
 2 When I went to the airport, they treat  
 3 me with the four Ss, the security boarding pass,  
 4 and they start -- about one hour they took me to  
 5 give me the clearance to -- everybody came and  
 6 show his ID, go, except myself. I am standing.  
 7 Q Do you need a minute?  
 8 MR. ABBAS: Do you have a room that  
 9 we can be in?  
 10 MS. POWELL: I can find one. Let's  
 11 take a break.  
 12 (Whereupon, a short recess was  
 13 taken.)  
 14 BY MS. POWELL:  
 15 Q I have one further question about  
 16 something I asked you about before.  
 17 You said your daughter helped you type  
 18 up the list of travel experiences. How did you do  
 19 that? Were you there with her?  
 20 A Yes. I wrote it. My English is not --  
 21 I'm not original, but they are American. So I  
 22 wrote it, and she said, "no, Dad, I need to  
 23 correct," because she work in the university for  
 24 correction.  
 25 Q She corrected it for you?

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1 A Not the spelling and this stuff, but the  
 2 information, I am the one who wrote this, so this  
 3 is -- she helped me. I type by one finger. She  
 4 type like this lady exactly.  
 5 Q And she was there with you? You did  
 6 this together?  
 7 A Yeah, like this in my living room.  
 8 Q So nothing was emailed back and forth or  
 9 anything?  
 10 A No. We are living in the same house.  
 11 Q You're currently living in the same  
 12 house?  
 13 A The same house, 56 South Glen Oak, the  
 14 same house.  
 15 Q Okay. I do want to talk more about your  
 16 travel experience yesterday.  
 17 A Good.  
 18 Q What time was your flight?  
 19 A My flight is I think 5:05, American  
 20 Airlines.  
 21 Q What time did you arrive at the airport?  
 22 A Because a friend of mine, he dropped me  
 23 because he want to bring his kids from school  
 24 about 2:30, so I sit down until 3:00. I pray. We  
 25 call it Asr prayer, and there is a small

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<p style="text-align: right;">Page 38</p> <p>1 meditation area like this in the airport there. I 2 pray, and then I went I think 3:05 exactly to the 3 counter, the American Airlines counter. 4 Q And did you wait in line at the counter? 5 A No, no. Everybody come, and some people 6 they do electronic outside. I, myself, I went to 7 the lady. I gave her whatever those guys at CAIR 8 send me with the reservation. I told you. I said 9 maybe -- and the first thing they said it's around 10 the name or something like this. They have to 11 call Washington somewhere, home security or 12 something like that. 13 And they start calling, I'm waiting, and 14 because of my hip, I tell the lady I want to sit 15 down over there. I went and sit down in the chair 16 half an hour, and then I saw her, she speak again. 17 I came back, said maybe it's okay, it's half an 18 hour. She said no, I'm still waiting. I am with 19 another caller. 20 Q So she was working with another 21 customer? 22 A No, no, no. In the phone somehow. 23 Somebody call her or something. I don't know. 24 The only customer I am with that lady, like you. 25 She's African-American lady. And then around</p>	<p style="text-align: right;">Page 40</p> <p>1 When I was in Turkey, they told me you cannot go 2 to the airplane until we respond from America, 3 long time ago in 2011 or something, the Turkish 4 airline, because they put me about one hour and 5 something. 6 Q But yesterday did she tell you who she 7 was talking to? 8 A No, no, but my experience, maybe from my 9 guessing, because I know the home security land, 10 this is what they give me the permission to -- 11 they give me the SSSS. This is my guessing. 12 Nobody told me, no. 13 Q So did she call you back over? You said 14 you were sitting down. 15 A When I saw her with the phone again, I 16 came back to the counter, and I waiting about 15 17 minutes more, and around 4:00 they issue me the 18 ticket, the boarding pass, so I went from them to 19 the gate. 20 Q So it took you, you think, a little less 21 than 30 minutes to check in? 22 A About, about -- more than 45 minutes. 23 More than. 24 Q I mean you just told me you went to the 25 counter at 3:05 and you got your boarding pass</p>
<p style="text-align: right;">Page 39</p> <p>1 4:00, 4:01, they issue the ticket. When it came 2 out, it came with the SSS, the usual one. 3 Q Just so that we're clear for the record, 4 your ticket said on it "SSSS"? 5 A No, the boarding pass. I wouldn't call 6 it ticket. The boarding pass, when it came from 7 the machine, it came again. I told you before, I 8 saw it when I saw the reservation, they reserve my 9 seats, okay? I said thank God. Maybe -- even my 10 wife, she's happy. She said, "Zuhair, this is 11 your first time they assign your seat." 12 Like when we go to San Francisco, my 13 kids, they take the passport, the ID, and they put 14 it in the machine, you know, outside. Everybody 15 went through, the four of them. When they put 16 mine, I have to go to that counter. So this is 17 the previous one, but this one -- 18 Q So for this one, the woman at the 19 counter made a phone call and got another phone 20 call back; is that correct? 21 A No, no. The phone call is -- because I, 22 I was sitting outside, okay, and she is waiting 23 for a reply from somewhere, the agent. 24 Q How do you know? 25 A This is what happened to these previous.</p>	<p style="text-align: right;">Page 41</p> <p>1 about 4:00; is that right? 2 A They have the time on the boarding pass, 3 yeah, around this time, okay? 4 Q Okay. 5 A And then I went to -- they told me 6 proceed to the gate from the counter. 7 Q Okay. 8 A I went to the gate, I give it to the 9 first gentleman, and he saw the SSS, I saw that he 10 saw it, and they have to dispatch somebody from 11 inside. They gave me two guys, a lady and a 12 gentleman, and they open a special route and I 13 went inside. I know the procedure. 14 Q Did they take you to a different room or 15 just -- 16 A No, no, no, because the gate of the 17 people, they go like this, they just open the 18 belt, and I -- they escort me -- 19 Q They took you to a different part of the 20 room? 21 A Different part of the -- in front of 22 everybody, and they talk about like what happen 23 inside here. I grab everything on my pocket, my 24 belt. It's normal, and then, and then they took 25 me to the screen, the metal detector or something</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q They changed it?</p> <p>2 A And they said go to hotel, sleep, and</p> <p>3 then in the morning or afternoon, I don't know the</p> <p>4 time when I went back to my family.</p> <p>5 Q Now, your interrogatory responses say</p> <p>6 that you had a substantially similar experience to</p> <p>7 the April 3, 2011 flight.</p> <p>8 A The same, the same experience, ma'am.</p> <p>9 The same --</p> <p>10 Q So do you recall specifically how long</p> <p>11 it took you to get through check-in?</p> <p>12 A I don't. I don't have a time specific,</p> <p>13 ma'am, really. I'm -- but between 20 -- the</p> <p>14 domestic, 20 to 40, sometimes one hour, the</p> <p>15 domestic.</p> <p>16 Q So your answer for all of these is going</p> <p>17 to be the same?</p> <p>18 A The same thing.</p> <p>19 Q It's about the same amount of time, but</p> <p>20 you don't recall specifics?</p> <p>21 A Like what I explained to you exactly.</p> <p>22 This has happened to me since they put me on</p> <p>23 watchlist. The same thing.</p> <p>24 Q So I'm going to ask you the question</p> <p>25 about every flight, because I have to. I'm a</p>	<p style="text-align: right;">Page 68</p> <p>1 A No, my luggage with me. I went to the</p> <p>2 hotel, sleep, and come back to the morning, and</p> <p>3 the same procedure, the SSS, and then the counter.</p> <p>4 Even I was with them in the evening, they have to</p> <p>5 call. They give the permission. I mean the -- I</p> <p>6 don't know what company. U.S. Air or United,</p> <p>7 okay? And then the same procedure, and then I go</p> <p>8 to the gate. They -- I put my hands aside and</p> <p>9 they start to screen my body. The same thing.</p> <p>10 Q Did anyone ever tell you you were on a</p> <p>11 watchlist?</p> <p>12 A No.</p> <p>13 Q Okay.</p> <p>14 A By this verbal? I never heard it, but</p> <p>15 nobody told me.</p> <p>16 Q Is this experience one you have written</p> <p>17 down anywhere that we haven't previously talked</p> <p>18 about?</p> <p>19 A No.</p> <p>20 Q Have you told anyone about it other than</p> <p>21 your attorney?</p> <p>22 A My family and my relative. You see,</p> <p>23 when I see my family, because we are Libyan, most</p> <p>24 of us are connected to each other, but my close</p> <p>25 friends, my family, they know my situation,</p>
<p style="text-align: right;">Page 67</p> <p>1 lawyer.</p> <p>2 A Its the same thing, yes.</p> <p>3 Q I understand your answer is going to be</p> <p>4 the same.</p> <p>5 A No problem. I am willing to do whatever</p> <p>6 you need.</p> <p>7 Q Let me see if I have any other questions</p> <p>8 about -- do you recall anything specifically</p> <p>9 different about this flight on May 8, 2011?</p> <p>10 A No, no.</p> <p>11 Q When you were in screening, do you</p> <p>12 recall being in any pain?</p> <p>13 A Depend, depend, because I have two hip</p> <p>14 replacement, the first one in '99 and the second</p> <p>15 one in 2008.</p> <p>16 Q Okay.</p> <p>17 A And I have two knee cleaning with the</p> <p>18 optical or something like that. They clean it, my</p> <p>19 knee, and they have my shoulder and my other</p> <p>20 shoulder maybe December, so I have a problem with</p> <p>21 my, my physical problem.</p> <p>22 Q Okay. Were there any other consequences</p> <p>23 of the missed flights? Did you miss anything, or</p> <p>24 did everything happen because you missed the</p> <p>25 flight?</p>	<p style="text-align: right;">Page 69</p> <p>1 because of my hip. And my kids now, I told you</p> <p>2 they are older, especially with the two trips to</p> <p>3 California, they saw everything with their eyes,</p> <p>4 you see? So I think they start talking to my, my,</p> <p>5 my community or our overall friends.</p> <p>6 Q Okay. Just to confirm, you don't</p> <p>7 remember any other consequences of missing that</p> <p>8 specific flight?</p> <p>9 A Missing, no, no, no, but . . .</p> <p>10 Q Let's talk about the next one.</p> <p>11 A June 17.</p> <p>12 Q Yes. It's on page 87 of Exhibit B.</p> <p>13 A Yeah, the same.</p> <p>14 Q Were you traveling alone?</p> <p>15 A Yes, the same destination, to Doha,</p> <p>16 Qatar.</p> <p>17 Q Well, this specific flight, we're just</p> <p>18 talking about the domestic part of the flight.</p> <p>19 A Yeah, from Dayton to Dulles, I think,</p> <p>20 yes.</p> <p>21 Q Yes.</p> <p>22 A Dulles Airport, the same thing what</p> <p>23 happened in the previous one on April 3.</p> <p>24 MS. POWELL: We'll mark our next</p> <p>25 exhibit.</p>

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<p style="text-align: right;">Page 138</p> <p>1 A No. 2 Q Did you write down this experience 3 anywhere we haven't talk about? 4 A No. This is what I wrote. Maybe I 5 missed the flight. Number 16 should be 18, I 6 think. 7 Q Got it. 8 Are there any other consequences of your 9 travel at that time and your travel experiences 10 that we have not discussed? 11 A The only thing, I -- like I previously 12 said, my wife, they told me rather to drive, 13 driving instead of going with the whole hassle, 14 and I have two occasion in this city. I have a 15 guy, he passed away, one of the Libyan family, 16 okay? I came driving from Dayton to here. 17 Q When was that? 18 A When I come to United States I think in 19 2013, when I come to visit. He passed away in 20 Vienna, a suburb of Washington, I think. 21 Q Vienna, Virginia? 22 A We went over there and we bury him, and 23 second day I went -- one, one night I stayed. 24 And the other occasion last year, I came 25 driving because of the hassle of it, for wedding</p>	<p style="text-align: right;">Page 140</p> <p>1 which one to pull out. 2 A Okay. 3 Q So I'm going to do these 4 chronologically, even though some are outbound and 5 some are inbound, so we can keep the trips in 6 order. 7 A Okay. I'm ready. 8 Q The first one from page 84 of Exhibit B, 9 your interrogatory responses, is April 3, 2011. 10 The flight is from -- it is -- Exhibit E what 11 you're looking for, but don't worry about it yet. 12 A Okay. 13 Q I'm just looking at the interrogatory 14 responses for the moment, and it reflects a flight 15 on April 3, 2011, from Dulles to Doha on Qatar 16 Airways QR52. 17 A You talking about June 3? 18 Q No. April 3. 19 A April 3. Sorry, sorry. Yes. 20 Q Is that correct? 21 A Yes. 22 Q Now, this is the international portion 23 of the flight. We previously talked about the 24 domestic flight. 25 A From Dayton to Dulles.</p>
<p style="text-align: right;">Page 139</p> <p>1 of my, one of my brother's friends, his son. They 2 do it I think in Falls Church or something like 3 that, in one of the hotels. I don't remember. So 4 I drive again -- 5 Q When was this? 6 A Last year. I don't know exactly. I 7 drove from -- because of the hassle of -- it's, 8 really it's easy for me to fly one hour and 20 9 minutes instead of driving eight hours, and with 10 my situation, with my handicapped situation, but 11 my family and my kids, they say, "Dad, please 12 drive. They treat you bad in the airport." 13 So this is what happened to me 14 domestically. 15 Q Okay. I am ready to move on to the 16 foreign trips with the foreign airlines. They 17 start on page 84 of the interrogatory responses. 18 A 84? 19 MR. ABBAS: This is it right here. 20 THE WITNESS: Okay. 21 BY MS. POWELL: 22 Q We're going to jump back and look at 23 some old exhibits, too. 24 A Okay. I have the exhibits. 25 Q Don't worry about it. I'll tell you</p>	<p style="text-align: right;">Page 141</p> <p>1 Q That's correct. 2 A Okay. 3 Q Your interrogatory response here says 4 that your boarding pass had "SSSS" on it. Was 5 that for the domestic leg or the international leg 6 or both? 7 A Because they give me two. From Dayton, 8 the first one, they give me the SSS. When I 9 arrive to Dulles here somewhere, I went to the 10 counter, to the I think Doha or Qatar counter. 11 They call again, and then after a while, maybe 40 12 minutes or so, I don't know what I wrote here, 13 they give me the SSS again. Each time I go 14 overseas, the boarding pass is SSS. 15 Q Why did you have to check in again at 16 Dulles? 17 A I don't know. Ask the authorities. 18 Because I don't have -- they didn't give me two 19 from over there, no. They give me one, and then I 20 go to the international -- 21 Q So you left the terminal and had to 22 go -- 23 A To go to -- I think they have like a 24 big, big truck or something. We go inside, and 25 they -- if I still remember, if this is right, in</p>

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<p style="text-align: right;">Page 202</p> <p>1 Libya, you are in the same city, you become like a 2 friend overseas, you see? We don't have much 3 families. 4 Q Are there other occasions in which you 5 wanted to travel somewhere but did not because of 6 your belief you are on a watchlist? 7 A Of course. This is what I want to 8 explain to you, yes. 9 Q Like when? 10 A First of all, I have one daughter [sic]. 11 Her name is Fawzia. She's bigger than Sadek. 12 MR. ABBAS: Is she older? 13 THE WITNESS: She's older. She's 14 1952. About 64 now. 15 THE REPORTER: When you said 16 "daughter," you meant "sister"? 17 THE WITNESS: Sister. I'm very 18 sorry. I'm really confused. 19 When I was in Libya, her husband, 20 they discover he has a cancer. He start 21 treating. So I was with him, and then I came 22 to America, and after we came, I think two 23 years ago, I think 2014, I'm not recall, he 24 passed away, and she called me. I told 25 her -- she need me to be with her, because I</p>	<p style="text-align: right;">Page 204</p> <p>1 my older brother, Ibrahim, is handicapped, he's in 2 a wheelchair for about ten years. He passed away 3 suddenly. He's my brother. His son, he called 4 me. "My uncle, please come," but I couldn't. So 5 they do -- I open my house in Dayton. Everybody, 6 maybe hundreds of families, they came to give 7 condolence to me. 8 So because of this happen, ma'am, I said 9 no, I'm not going to go. And then now she is 10 sick, my sister. She begging me. The one I told 11 you, they throw him in the garbage, he's a Libyan 12 guy, he is my relative. They throw him in the 13 garbage area. Salem, the husband of my sister, 14 his uncle. My sister, she grow him in her house 15 like her son. They took him from the home, they 16 killed him, and they throw him. I couldn't go 17 back to stay with my sister. 18 Q And when was that? 19 A So because of this harassment, why 20 didn't, if they have something on me, they let me 21 go? If they charge me, charge me anything, I can 22 -- if I, if I am a bad person, like what happened 23 tomorrow to me, this is not all right. Sorry 24 about that. 25 MR. ABBAS: Let's take five</p>
<p style="text-align: right;">Page 203</p> <p>1 have -- my other brother, he is in Saudi 2 Arabia, and he has it tough. He cannot 3 listen or do nothing. 4 So I told Fawzia, sorry. I open my 5 house here for condolence. Everybody came 6 from our neighbors, okay, from Georgia, from 7 DC, the Libyans, they, they give me the -- 8 they stay with me for this loss of my 9 brother-in-law Salem, and I couldn't go 10 because of this, ma'am. 11 BY MS. POWELL: 12 Q So you couldn't go to his funeral? 13 A I couldn't go to Libya, yeah, to attend 14 it, to see my sister. 15 Q When was the funeral? 16 A 2014. 17 Q So during the civil war, the latest 18 civil war? 19 A Yeah, Libya in civil war since -- now 14 20 years, but she told me even come to Tripoli. She 21 want to see me. Maybe she can fly to Tripoli. 22 Tripoli is more safer than Benghazi, but I said, 23 Fawzia, please excuse me. I cannot go because of 24 that. 25 And the other time, after that one year,</p>	<p style="text-align: right;">Page 205</p> <p>1 minutes. 2 MS. POWELL: Let's take a little 3 break. 4 (Whereupon, a short recess was 5 taken.) 6 BY MS. POWELL: 7 Q To get back to where we were, I was 8 asking about occasions in which you wanted to 9 travel but decided not to because you believe 10 you're on a watchlist, and you told me about two 11 funerals you missed. 12 A Yes, my brother-in-law and my brother. 13 Q Your brother-in-law and your brother. 14 Was there another funeral you missed? 15 A No, just the two. 16 Q Were there other things you wanted to 17 travel to but did not? 18 A I wish to go to Libya tomorrow, because 19 I want to see my sister and see my relatives, but 20 because of this -- 21 Q And you would go despite the ongoing 22 war? 23 A No. To Tripoli is more safer, or I meet 24 in Turkey or I meet in Tunisia. This is what we 25 do. Benghazi, no, right now, because it is war</p>



Deposition of:  
**John Doe 3**

*April 11, 2018*

In the Matter of:

**Elhady vs. Kable**

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<p style="text-align: right;">Page 26</p> <p>1 Q And what prompted your move to Germany? 2 A My initial intention to visit Germany was to 3 check on my mother, my brother who both have medical 4 issues and were forced to go out of Damascus, to 5 Lebanon, to Turkey, to Malta and then they ended being 6 in Germany. My initial intention was to visit them 7 for vacation for a month and come back. But something 8 happened at the border crossing in Sault Ste. Marie 9 that really, it was like very traumatic experience, I 10 went through that change, that really impacted my life 11 in a very bad manner and this is what really prompted 12 me to decide to find a place out of the U.S. 13 Q Okay. I will definitely give you an 14 opportunity to speak about the incident in Sault Ste. 15 Marie. Once I finish these sort of biographical 16 questions. Give me one moment. Prior to your 17 employment at the Islamic Center in Ann Arbor what did 18 you do for living before that? Was that why you moved 19 to Ann Arbor? 20 A Yes, I had an offer to move to Ann Arbor in I 21 think 2005, towards the end of 2005 and I accepted the 22 offer, I moved to Ann Arbor.</p>	<p style="text-align: right;">Page 28</p> <p>1 you lived in Ypsilanti, what did you do for work while 2 you lived in Ypsilanti before you moved to Ann Arbor? 3 A Most people live in Ypsilanti and work in Ann 4 Arbor, so my workplace was in Ann Arbor, I moved, 5 okay, to Ypsilanti to accept the offer from Ann Arbor, 6 Michigan. 7 Q I understand. 8 A Ann Arbor is more expensive than Ypsilanti 9 and most people chose to live in Ypsilanti as opposed 10 to -- 11 Q Okay, so they're very close together. That's 12 my fault, I don't know the geography. 13 A Yeah, they do. 14 Q Okay. And prior to living in Maryland where 15 were you? 16 A In Texas, Arlington, Texas. 17 Q In Texas. Okay. And what year was that? 18 A Ever since I came to United States until 19 2000. 20 Q Until 2000, okay. And what were you doing in 21 Texas, were you working in aircraft maintenance? 22 A Same line, it's like director, imam, leader</p>
<p style="text-align: right;">Page 27</p> <p>1 Q And what were you doing before that? 2 A I was in Maryland and I was working in a 3 foundation, Dar-us-Salaam Foundation in College Park. 4 Q Sorry, what was the name of the foundation? 5 A Dar-us-Salaam, Dar-us-Salaam Foundation in 6 Maryland in College Park, Maryland. 7 Q And what did the Dar-us-Salaam Foundation do? 8 A Basically education, hosts a major school and 9 it's like educational -- it's community, this Islamic 10 Center, that provide services to the community. 11 Q And you mentioned after you moved from 12 Maryland where you were working at this Dar-us-Salaam 13 Center, there was a period of time in which before you 14 moved to Ann Arbor -- sorry, now I don't remember the 15 name of the city, what was it again? 16 A I don't understand your question. 17 Q Sorry. You said when you moved to Maryland, 18 initially you didn't move to Ann Arbor you moved to a 19 different city, I no longer remember the name of it. 20 A Ypsilanti, Ypsilanti. 21 Q Ypsilanti. Thank you. So when you moved 22 from Maryland to Ypsilanti there was a few years where</p>	<p style="text-align: right;">Page 29</p> <p>1 of the community in Arlington, Texas. 2 Q Okay. So during this period although you got 3 certified in aircraft maintenance did you ever work in 4 aircraft maintenance? 5 A Very, very limited, very -- maybe one or two 6 certification I did, I'm not sure. 7 Q I'm talking about in terms of employment. 8 A I did not, I did not. 9 Q You did not, okay. Have you ever served in 10 the U.S. military? 11 A I'm sorry. There might be, I went like to do 12 one certificate -- I'm not sure but I did like sign 13 using my certificate one or two times, I'm not sure 14 about the circumstances or anything else, but just to 15 -- 16 Q What do you mean sign using your 17 certification? 18 A Because this is the -- the A&amp;P certification 19 authorizes me to sign certifying that this aircraft 20 airworthy and can fly. 21 Q Okay. And who asked you to sign the 22 certification that -- in these instances?</p>

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<p style="text-align: right;">Page 34</p> <p>1 John Doe because you fear retribution. Why exactly do 2 you fear retribution? 3 A Because of the last incident, I have noticed 4 a trend of escalation since like 9/11, okay. And the 5 last incident that took place it was very traumatic, 6 it was very horrific. For the first time I've been 7 cuffed, for the first time a gun was pointed at me and 8 I -- at my 14-year-old son and at my wife. And the 9 most shocking to me was to learn that I was designated 10 as armed and danger which is obviously not right, 11 obviously false, okay. 12 So the thinking of the like is -- was, okay, 13 what's next, what's next, what's next if -- because 14 you should have seen the fear in the eyes of the 15 officers who were doing this. I mean, I felt that 16 they are nervous and when you have a gun and you are 17 nervous it is problematic, it is a potential for 18 something to go wrong. When I saw -- 19 MS. MASRI: Do you want to take a break? 20 Just let us know if you need a few minutes, okay? 21 THE WITNESS: Okay. 22 MS. MASRI: Do you want to take a break?</p>	<p style="text-align: right;">Page 36</p> <p>1 treatment of the government for me in the airports, 2 every security check I am stopped, and it is like 3 there are three different checkpoints they say -- that 4 I'm checked randomly, and when I ask, they say this is 5 random checking. So this is escalating. I have 6 previous like incidents where I so -- like when in my 7 trip to overseas, one of the trips overseas, I think 8 was to Qatar, at the corner, at the ticketing corner 9 there was an officer, federal officer who check your 10 passport before you proceed to the counter. When he 11 looked at my passport and just check it in the laptop 12 he has because he has a stand and laptop, he jumped 13 two steps backward so I can see that, okay, but I've 14 never, never in my mind imagined what is written, what 15 it's really, what is causing this fear to him, okay. 16 And same, in the same trip when I arrived to Doha, 17 Qatar I also after they took my passport I could see 18 the shock in the lady that was like the immigration. 19 So this is the first time somebody like revealed to me 20 that you are designated as armed and dangerous, okay, 21 and this was shocking and the situation was so tense 22 that something could have went wrong, okay. The -- I</p>
<p style="text-align: right;">Page 35</p> <p>1 THE WITNESS: Yeah. 2 MR. HEALY: Take your time. You like to take 3 a break? 4 MS. MASRI: We're going to take a break. 5 MR. HEALY: Okay. 6 MS. MASRI: Yeah, let's take 5 minutes. 7 MR. HEALY: Okay. 8 (Discussion off the record) 9 (Recess) 10 MR. HEALY: We're on the record. 11 BY MR. HEALY: 12 Q During the break did you look over any notes 13 or documents? 14 A I did not. 15 Q Okay. Did you speak to anyone other than 16 your attorney during the break? 17 A No, I did not. 18 Q Okay. You were mentioning before that you 19 had decided to proceed as a Doe because you feared 20 retribution and you had seen a trend of escalation, 21 what did you mean by that? 22 A Yeah, trend of escalation in like in the</p>	<p style="text-align: right;">Page 37</p> <p>1 have a young 14-year-old teenager. The instructions 2 sometimes were like contradicting, put and don't put 3 at the same time, they were nervous. I was afraid 4 that my son could be shot, okay, because this is first 5 experience. 6 My wife also was subjected to an 7 unprecedented treatment. So I -- and I was 8 threatened, yes, clearly threatened by the officers 9 that they told me this is how you will be treated all 10 the time you come and that you should not leave, if 11 you don't like it don't leave the U.S, okay? 12 MS. MASRI: Just a clarification for the 13 record, when he said put and don't put, he was 14 mimicking putting hands on a steering wheel and moving 15 hands from the steering wheel. 16 BY MR. HEALY: 17 Q Okay. So this incident that you mentioned in 18 -- you were referring to the Sault Ste. Marie 19 incident, is that correct? 20 A Yeah, Sault Ste. Marie, yeah. 21 Q Yeah. And that occurred in July of 2016? 22 A That's correct.</p>

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<p>1 care for the country, looked at them, I am sure that 2 there will be corrective actions for this. This is 3 why I am here, okay, otherwise I try to suppress every 4 piece of information that I have in my mind. And it 5 was so painful to recall these things. 6 Q Well, we thank you for testifying today and 7 appreciate your testimony. If you would flip to tab 8 number 2 in the binder. 9 MS. MASRI: And I just want to clarify for 10 the record that these responses have been amended. 11 MR. HEALY: Yes. 12 MS. MASRI: Did you want him to look through 13 it? 14 MR. HEALY: Not the whole thing, we are just 15 waiting for the court reporter to mark the exhibit as 16 Exhibit 2 first. 17 MS. MASRI: Okay. 18 (JOHN DOE 3 Exhibit 2 was marked for 19 identification.) 20 MR. HEALY: Thank you very much. 21 BY MR. HEALY: 22 Q Okay so if you would flip to page 100, I</p>	<p>1 Q Page 101? 2 A Page 101, okay it is the -- 3 Q It says CBP officers had their guns drawn 4 during this incident, okay. 5 A Okay, so I don't -- does this imply that they 6 were pointing at them or us -- the guns at us or not. 7 But the fact of the matter they were pointing these 8 guns at us. 9 Q Okay. 10 A Okay. 11 Q And when was it -- that happened when you 12 exited the vehicle? 13 A I have noticed that they were -- have their 14 gun pointed at us, I don't know when they did that. I 15 assume when I was just looking back I was -- I don't 16 know at what point, but they were pointing their guns 17 at us and this was what scared me. Okay, and here 18 when I say that he repeated the orders, he repeated 19 the orders, the first officer in a frantic manner, he 20 was like, it's like somebody who is like going out of 21 -- maybe like losing control okay, it's not like he is 22 repeating for me to understand, he's repeating that he</p>
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<p>1 believe that's the section that has your description 2 of this experience we are talking about right now. 3 You see at the top it says Plaintiff John Doe number 4 3? If you could just look over this section under the 5 part that says John Doe number 3 it describes this 6 incident it goes through till page 102. Might be 7 helpful for you to remember details. 8 MS. MASRI: If there is a correction that you 9 want to make -- 10 THE WITNESS: Okay. 11 MS. MASRI: Make sure to say it. 12 THE WITNESS: Okay. 13 MS. MASRI: I can't say -- 14 THE WITNESS: So from English standpoint you 15 see that the -- their guns drawn during this incident 16 and pointed at the three of us. There are three 17 officers maybe out of six they were pointing their 18 guns at us; at myself, at my child and at my wife. 19 BY MR. HEALY: 20 Q So where are you referring to exactly? 21 A This is in the middle of the page. The page 22 is -- it's --</p>	<p>1 was in a frantic, he himself was nervous okay, and 2 this is again to -- so the two points is that they 3 were pointing these guns at us. Okay and it's not 4 just drawing their guns. 5 Q Okay, and so -- 6 A So if this is a -- I am requesting that this 7 -- 8 Q I am just trying to understand where this 9 happened, was this after you exited the vehicle, 10 before the -- 11 A Yeah after the -- 12 Q -- or was this in the room when they were 13 questioning you? 14 A No, no, not in the room, it's when I was 15 outside -- after they handcuffed us, they put their 16 guns in their bag, okay, but after they handcuffed us. 17 Q Okay. 18 A So as we speak and remained in handcuffs for 19 maybe 10 minutes, okay, until we went inside and we 20 were questioned, while I was handcuffed. Okay. 21 Q Okay, I think I understand and was there a 22 second correction or addition you would like to make?</p>



Deposition of:



*December 18, 2017*

In the Matter of:

**Elhady vs. Kable**

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<p>1 Q Okay. That includes any domestic flights? 2 A Correct. 3 Q Okay. And why were you trying to go to 4 Morocco on August 1, 2016? 5 A To get engaged. 6 Q Okay. Can you tell me more about that? 7 A I met a woman online. 8 Q Okay. 9 A Online dating. 10 Q Okay. 11 A And everything was going good. So I asked her 12 if I can propose to her and go to Morocco and meet the 13 family and get the rights and I booked a flight for 14 Morocco and I went to the airport. And when I went to 15 the airport I went to the kiosk and I -- when I went to 16 the kiosk I punched in the order confirmation number 17 and I received it and I thought everything was going 18 good. So then I got my booking flight, the ticket, so 19 I went to the baggage claim and when I went to the 20 baggage claim the -- I handed my passport to them and 21 the booking ticket and when they were scanning it they 22 -- I first assumed like everything was going good and</p>	<p>1 A Okay. So he was on the phone for a period of 2 time, about ten minutes, maybe 15, just on the phone. 3 I was just sitting there waiting. And while he was 4 waiting I started noticing that there was activity 5 moving around me. I noticed that the Delta Airlines 6 supervisor was going to him, he was kind of whispering 7 in his ear a little bit. And she would kind of go 8 back and forth quite often. So I turned around and I 9 noticed two guys were staring at me intensely and I 10 knew they weren't like people wanting to fly because 11 everyone is usually in their own business and their own 12 world trying to fly. These two were just standing 13 there staring right at me in their suits. And I notice 14 that they were probably the government or TSA or 15 something. So and then I notice that TSA was going to 16 them quite often and they were kind of going back and 17 forth. And then I was just sitting there waiting and 18 then finally the person got off the phone and they told 19 me that you are not allowed to fly because you are on 20 the no-fly list. And I was kind of distraught, I was 21 mad actually, cried a little bit because I mean I was 22 getting engaged, now there goes that. And I was like</p>
<p>Page 31</p> <p>1 then they had a little bit of a pause. And then I 2 realized something was happening because they wouldn't 3 hand my passport back or the -- they wouldn't hand me 4 my itinerary. So then what happened was they -- the 5 guy picked up a white phone and he proceeded to talk to 6 a person on the other line that I do not know who -- 7 Q Can I interrupt to clarify, who do you mean by 8 the guy? 9 A The baggage claim person. 10 Q Baggage claim, okay. 11 A Yeah. 12 Q Baggage claim person or baggage check person? 13 A What's the -- 14 Q You were trying to check your bag in as 15 opposed to take your bag out. 16 A Yes the person on the other end. 17 Q Okay. The ticketing agent? 18 A Yes. 19 Q Okay. So they -- this person made a phone 20 call? 21 A Yes. 22 Q Okay. You can keep --</p>	<p>Page 33</p> <p>1 you've got to be kidding me. I was like what did I do? 2 I didn't know. And I was embarrassed because everyone 3 around me is looking at me as if I was some horrible 4 person in my life. You know I'm sitting there for 20 5 minutes. And everyone is going around me and I'm 6 sitting here barred from flying because I don't know 7 what the heck I did. And you guys never told me and 8 they handed my passport back. And they told me that 9 there is a chance that you would have to go through DHS 10 Trip. And you do that and then you might get a 11 response back and that you might be able to fly and 12 that you would get like a redress number. And then I 13 did that and I turned around and proceeded out of the 14 airport. 15 Q So you filed a DHS trip application right 16 there at the airport? 17 A No, they told me that is the only way to 18 possibly fly again. 19 Q Okay. You didn't initiate that process right 20 then and there? 21 A No. 22 Q Okay. We'll talk about that later. Did you</p>

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<p style="text-align: right;">Page 106</p> <p>1 were pulled over? 2 A Yes. 3 Q Okay. Had you taken any Tramadol prior to 4 driving that evening? 5 A No. 6 Q So what happened after the officer pulled you 7 over? 8 A He searched my car and I was handcuffed and 9 placed in the back of the police vehicle. And then he 10 searched my car for seems to be like a good 30 to 45 11 minutes. And from there he found a broken in two toy 12 like air soft gun that had an orange tip and it really 13 doesn't represent -- doesn't even resemble really 14 anything and from there I was arrested. And it started 15 off with just one officer but it seemed like within 16 five minutes the whole entire Warren and Centerline 17 police department was there. And they were all 18 surrounding the car and surrounding my vehicle and I 19 got arrested. 20 Q Was your brother also arrested? 21 A Yes. 22 Q Had your brother been smoking marijuana that</p>	<p style="text-align: right;">Page 108</p> <p>1 BY MS. KONKOLY: 2 Q Had your brother been smoking marijuana that 3 evening? 4 A That I know of, yes. 5 Q Okay. Was he smoking marijuana in the car? 6 A No. 7 Q Do you agree with the officer's statement that 8 there was an odor of marijuana inside the car? 9 A Yes. 10 Q Okay. Did your brother advise the police 11 officer that he had a marijuana bull inside his army 12 backpack? 13 MS. MASRI: Objection. Foundation, form. 14 MS. KONKOLY: You can answer. 15 MS. MASRI: Calls for speculation. 16 BY MS. KONKOLY? 17 Q Did you hear your brother tell the police 18 officer that he had a marijuana bull inside his army 19 backpack? 20 A I don't remember that specific point in time. 21 Q Okay. So was there anyone else in the car 22 with the two of you?</p>
<p style="text-align: right;">Page 107</p> <p>1 night? 2 MS. MASRI: I'm going to object on the basis 3 that it is irrelevant and I'm going to instruct my 4 client not to answer any questions. His brother is not 5 related -- 6 MS. KONKOLY: Relevance is not an objection on 7 which you can instruct you client not to answer. 8 MS. MASRI: Well, any questions about -- 9 MS. KONKOLY: That is not a privilege. 10 MS. MASRI: -- the brother has nothing to do 11 with this case. 12 MS. KONKOLY: The police report that was 13 produced to me states that Lawrence [redacted] advised 14 that he had a marijuana bull inside his green army 15 backpack and that the police office detected a strong 16 odor of marijuana. These are documents that your 17 client produced as responsive and I'm asking him about 18 the content of those documents. Relevance is well 19 established as not a ground on which you can instruct 20 your client not to answer. 21 MS. MASRI: That's fine. You can question him 22 about it.</p>	<p style="text-align: right;">Page 109</p> <p>1 A No. 2 Q Were you both arrested? 3 A Yes. 4 Q Okay. What happened after you were arrested? 5 A After I was arrested we were transported to 6 the Warren Police Department and we were in a -- we 7 both -- I was in a holding cell and then after the 8 holding cell I was placed in a single cell and from 9 there I was processed and while I was processed I was 10 not able to call anybody because the phone was 11 deactivated. From there I found out why is because 12 while I was being processed for what is it -- the mug 13 shot and -- 14 Q Okay. 15 A And the fingerprint and everything there were 16 documents laid out and I saw in special comments on the 17 police document it said FBI hold no call. And the 18 officer -- one of the officers said that I must have 19 done something really bad to get the FBI involved. And 20 then I've also noticed that I couldn't talk to any of 21 the officers because when I tried to figure out what 22 was going on because everything was snowballing very,</p>

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<p>1 very fast, the officer said that -- that he was not 2 instructed to talk to me and that he wasn't allowed to 3 talk to me. And then I said why and he said higher 4 ups. And then when I was going to court via a video 5 feed the -- one of the officers was kind of like in the 6 corner I heard before I was about to go on the video 7 feed they were talking about me and my case and he said 8 that if he would have pulled me over he would have shot 9 me. And then -- so I went to proceed to the video and 10 they said that I was being charged with I think it was 11 -- whatever is in the document. And -- 12 Q The document is before you. Can you use that 13 to refresh your recollection? 14 A This right here. 15 Q Yeah. What were you charged with? 16 A The weapons offense and I guess that's it. 17 Like the weapons offense oh, and reckless driving. 18 Q Okay. 19 A And then when I was -- they were doing the 20 online jury thing -- 21 Q Okay. Just a minute can we go back. Earlier 22 you said that something was happening fast while you</p>	<p>1 months of litigation and then the careless driving was 2 -- I mean the reckless driving was reduced to careless 3 driving. 4 Q Okay. And did you plead to that? 5 A Yes. 6 Q Okay. Is that a misdemeanor? 7 A No. 8 MS. MASRI: Objection. Calls for a legal 9 conclusion. 10 BY MS KONKOLY: 11 Q Was there -- what was the -- what was the 12 sentence for the reckless -- I'm sorry you said it was 13 reduced to careless driving? 14 A Correct. 15 Q Okay. What was the sentence or punishment for 16 that? 17 A Two points on my driver's license and if I 18 remember correctly it was a \$255 fine. 19 Q Did you pay it? 20 A Yes. Give or take some money. 21 Q Okay. 22 A I don't necessarily know exactly.</p>
Page 111	Page 113
<p>1 were in the cell, can you be more specific about what 2 was happening. 3 A Just the timeline like when I got pulled over 4 I thought that I was going to get a ticket but now I am 5 ending up going to jail and that the FBI is now 6 involved, I can't call home. The whole police 7 department is involved. And stuff like that. So it 8 started off really small and it ended up being a six 9 month, five to seven-month process. 10 Q When were you released? 11 A Next day. 12 Q Okay. 13 A On bond. 14 Q And you were charged with reckless driving and 15 a weapons charge? 16 A Correct. 17 Q And the weapons charge was -- what was that 18 for? 19 A It was for the broken air soft gun that had an 20 orange tip. 21 Q Okay. What was the result of those charges? 22 A The weapons charge was dropped after six</p>	<p>1 MS. KONKOLY: I could introduce Exhibit I. 2 MR. [redacted] Thank you. 3 (WHEREUPON, Defendant's Exhibit I was marked 4 for identification.) 5 BY MS. KONKOLY: 6 Q So this document appears to be a sentencing 7 order; do you recognize this document? 8 A I would say so. 9 Q Is this the sentencing for the careless 10 driving incident we just discussed? 11 MS. MASRI: Only answer if you know. I'm 12 going to object on the basis it calls for a legal 13 conclusion. 14 MR. [redacted] The copying is very bad so I 15 can't really read it. But it looks like what I had to 16 pay. It looks like what I had to pay. 17 MS. KONKOLY: Okay. Does this appear to be 18 the sentencing order related to this careless driving 19 charge -- 20 MS. MASRI: Objection. 21 MS. KONKOLY: -- related to the incident that 22 we just discussed.</p>

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Page 162	Page 164
<p>1 Q Have you ever sponsored anyone for immigration 2 to the United States? 3 A Besides my wife, no. 4 Q Okay. Are you sponsoring your wife -- 5 A Yes. 6 Q -- for immigration? And when did you put in 7 an application for that? 8 A U.S.C.I.S. got it priority date was September 9 15. 10 Q Of 2017? 11 A Correct. 12 Q Okay. So that application was just submitted 13 approximately two and a half months ago? 14 A 94 days. 15 Q Okay. Do you have any reason to believe that 16 that application is not being processed at a normal 17 speed as other applications? 18 MS. MASRI: Objection. Call for a legal 19 conclusion. 20 MR. [REDACTED] As of right now, the U.S.C.I.S. 21 doesn't really give a specific date but I do have a 22 feeling that because I am on the no-fly list that there</p>	<p>1 services of some type to the federal government? 2 A No, I have not. 3 Q Do you own any firearms? 4 A I do. 5 Q Okay. Tell me about each firearm that you 6 own? 7 A I have a 1878 Italian long rifle which does 8 not work. 9 Q Okay. 10 A It is basically just for looks. 11 Q And when did you purchase that? 12 A It was -- I think it was in 2015. I don't 13 know the specific dates. 14 Q Okay. And where did you purchase it? 15 A It was at a flea market. 16 Q Did you encounter any delays or problems from 17 the vendor at the flea market in purchasing that 18 Italian rifle? 19 A No. 20 Q And you said it is inoperable? 21 A Yes. Inoperable. 22 Q Okay. What other firearms?</p>
Page 163	Page 165
<p>1 will be delays or indefinite or I'll need legal -- I 2 can't think of the word, I would need a lawyer to 3 further this along. 4 BY MS. KONKOLY: 5 Q Has anything specific happened so far in the 6 processing of that application to support that 7 allegation? 8 A As of right now, no, they just have received 9 it. 10 Q Okay. Do you allege that you are still on the 11 watch list -- on the no-fly list? 12 A Yes. 13 MS. MASRI: Objection. Calls for legal 14 conclusion. 15 Q You allege that as of today you remain on the 16 no-fly list? 17 A I believe so. 18 Q Was it your testimony earlier that you flew 19 here yesterday without incident? 20 A Yeah. Then, no. 21 Q Have you ever applied for a job with a 22 government contractor meaning a company that provides</p>	<p>1 A M1 carbine. 2 Q When did you purchase that? 3 A My grandpa gave it to me. 4 Q When did he -- 5 A As a memento. 6 Q When did he give that to you? 7 A Sometime in 2015. 8 Q Does this gun work; is it operable? 9 A I don't think so. 10 Q Do you know? 11 A It shot once but I don't know if it works 12 because it is kind of rusted now. 13 Q You say it was shot once, that is very 14 specific, is there a time you know -- 15 A No, I don't. 16 Q How do you know that it was shot once then? 17 A Because shot in the backyard. 18 Q Okay. Were you there when that happened? 19 A No. 20 Q You just know about it? 21 A Yeah. 22 Q Do you have a license for that gun?</p>



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# Transcript of Deborah Moore

**Date:** December 20, 2017

**Case:** El Hady -v- Knaedle

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Transcript of Deborah Moore

Conducted on December 20, 2017

<p style="text-align: right;">233</p> <p>1 DHS TRIP inquiry. 2 Yes. And I'm instructing the witness not 3 to answer. 4 MR. ABBAS: Why? Why is that law 5 enforcement-privileged? 6 MS. POWELL: We think it reveals important 7 information about law enforcement Watchlisting 8 practices and policies and allows people to 9 analyze Watchlisting trends. 10 MR. ABBAS: You've provided that 11 information in other cases. You have. 12 MS. POWELL: I don't think we have. 13 MR. ABBAS: In the last case, you 14 absolutely provided it. 15 MS. POWELL: I don't think we did. 16 MR. ABBAS: You for sure did. We have the 17 number of redress complaints, the number of times 18 those complaints have resulted in a change in 19 Watchlisting status. 20 So that's fine, but we're going to bring 21 her back and ask her, and it's an easy issue for 22 us to learn.</p>	<p style="text-align: right;">235</p> <p>1 MS. POWELL: Objection. Vague. 2 THE WITNESS: No. 3 BY MR. ABBAS: 4 Q With regards to DHS TRIP complaints 5 submitted by U.S. persons on the Selectee List, 6 does DHS TRIP provide any type of hearing to such 7 complainants? 8 MS. POWELL: Objection. Calls for a legal 9 conclusion, and it's vague. 10 THE WITNESS: No. 11 Q With regards to DHS TRIP complaints 12 submitted by U.S. persons on the Selectee List, 13 does DHS TRIP provide them any opportunity to 14 contest the information that was the basis of 15 their placement on the Selectee List? 16 MS. POWELL: Same objections. That calls 17 for legal conclusions and is vague. 18 THE WITNESS: Is that different from your 19 prior question? You've already -- two questions 20 back? 21 Q I'm not sure. So it might -- there might 22 be overlap, but I'm not doing it on purpose. I'm</p>
<p style="text-align: right;">234</p> <p>1 So it's, like, your prerogative, but 2 you've definitely provided it in other cases, 3 which really undermines the argument that this is 4 some type of law enforcement privilege. 5 That's fine. That's your prerogative, but 6 it's an easy issue, and we'll absolutely file 7 something regarding it. 8 MS. POWELL: Okay. 9 MR. ABBAS: Okay. 10 MS. POWELL: I assume you will meet and 11 confer with us before filing -- 12 MR. ABBAS: Of course. 13 MS. POWELL: -- and we'll determine 14 whether there's some substitute information that 15 would satisfy you without running into further 16 privilege issues. 17 BY MR. ABBAS: 18 Q With regards to the Selectee List, does 19 DHS TRIP provide any opportunity for U.S. persons 20 on the Selectee List to rebut the information that 21 was the basis of their placement on the Selectee 22 List?</p>	<p style="text-align: right;">236</p> <p>1 not trying to trick you. 2 <b>A No.</b> 3 Q Okay. 4 And co-counsel is saying that I did ask 5 the same question two questions back, so you're 6 right. 7 With regards to -- does DHS TRIP play a 8 role in determining whether overlapping 9 identifying information is the cause of a 10 travel-related issue? 11 MS. POWELL: I'm sorry. Could you say 12 that again? 13 MR. ABBAS: Probably not, but I think 14 Tasiana can. 15 (Whereupon the record was read.) 16 MS. POWELL: Objection. Vague. 17 THE WITNESS: Can you explain what you 18 mean by overlapping information? 19 Q Well, I understand that sometimes travel 20 difficulties are related to, like, mismatches 21 between a person's passenger name record 22 information and identifying information in Secure</p>



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# Transcript of Timothy P. Groh, Designated Representative

**Date:** March 1, 2018

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

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Conducted on March 1, 2018

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1 BY MR. ABBAS:  
2 Q. Okay. And so in excess of 90 percent of  
3 all TSDB listees have never generated any encounter  
4 information?  
5 **A. That's correct.**  
6 MS. KONKOLY: Could we take a break? I  
7 could stand to stretch --  
8 MR. ABBAS: Yeah, I hear you. I'm not  
9 going to fight that.  
10 THE VIDEOGRAPHER: We are going off the  
11 record. The time is 6:12 p.m.  
12 (A recess was held.)  
13 THE VIDEOGRAPHER: We are back on the  
14 record. The time is 6:28 p.m. And we have been on  
15 the record for 6 hours and 43 minutes.  
16 BY MR. ABBAS:  
17 Q. What is the last publicly available total  
18 of TSDB listees?  
19 **A. I believe it was a million individuals in**  
20 **2016 -- 2016.**  
21 Q. A million total?  
22 **A. Yes.**

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1 Q. How many TSC employees are authorized to  
2 remove persons from the TSDB?  
3 **A. To remove persons?**  
4 MS. KONKOLY: Objection. Vague.  
5 THE WITNESS: All of those transactions  
6 require two individuals. So I would say at least 35  
7 individuals, but it may be as high as 90 on a  
8 removal. But -- and that would require two  
9 individuals. But the second one may have to be one  
10 of the 35, but it may be as high as 90. I am basing  
11 it on that level of authority within.  
12 MR. ABBAS: Indiana.  
13 BY MR. ABBAS:  
14 Q. How many TSC employees are authorized to  
15 accept or reject nominations to the TSDB?  
16 MS. KONKOLY: Objection. Vague.  
17 THE WITNESS: There are approximately 35  
18 individuals that would be the final -- there may be  
19 other people that looked at it before that. But to  
20 be the final approval before it actually goes into  
21 TSDB, approximately 35.  
22 BY MR. ABBAS:

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1 Q. How many layers of review are there for  
2 removal actions?  
3 **A. Two.**  
4 Q. How many layers of review are there for  
5 decisions regarding TSDB nominations?  
6 MS. KONKOLY: Objection insofar as that  
7 would call for information protected by the law  
8 enforcement privilege. You can answer to the extent  
9 that you can.  
10 THE WITNESS: So I think that depends on  
11 the nomination. It is at least two. It may be more  
12 depending on particularized criteria pertaining to  
13 that nomination.  
14 BY MR. ABBAS:  
15 Q. How many persons does TSC remove from the  
16 TSDB on a yearly basis?  
17 MS. KONKOLY: Objection insofar as that  
18 calls for any information protected by the law  
19 enforcement privilege. You can answer to the extent  
20 that you can.  
21 THE WITNESS: I don't believe I can  
22 answer that.

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1 BY MR. ABBAS:  
2 Q. Does TSC know how many persons have been  
3 removed from the TSDB in 2017?  
4 MS. KONKOLY: Objection insofar as a  
5 complete answer would call for any information  
6 protected by the law enforcement privilege, but you  
7 can answer.  
8 THE WITNESS: Yes, TSC knows.  
9 BY MR. ABBAS:  
10 Q. Does TSC know how many individuals were  
11 removed from the TSDB in all calendar years?  
12 MS. KONKOLY: Same objection insofar as  
13 any answer would call for any law enforcement  
14 privileged information. But you can answer.  
15 THE WITNESS: I would say generally, yes.  
16 The only thing is you go way back to the beginning.  
17 And I can't attest to exactly when that capability  
18 came online. I believe it would be the case for  
19 everything represented on this chart.  
20 BY MR. ABBAS:  
21 Q. So for the last 10 years, TSC knows how  
22 many persons it has removed from the TSDB?



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# Transcript of Hao-Y Froemling, Corporate Designee

**Date:** March 20, 2018

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

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<p style="text-align: right;">145</p> <p>1 THE WITNESS: So generally speaking, 2 because most of these lists are vetted at a 3 certain given point in time, TSA will use its most 4 current information based on the passenger's risk 5 to determine the level of enhanced or low-risk 6 screening that they may receive. 7 BY MS. HOMER: 8 Q So if somebody is added to the TSDB 9 Selectee List after having received, previously, 10 TSA Pre-Check, that person would then be 11 designated as a Selectee by Secure Flight? 12 MS. KONKOLY: I'm going to, again, object 13 insofar as the question calls for information 14 protected by SSI or the law enforcement privilege. 15 I'm also going to, again, object that this 16 question has been asked and answered several 17 times. 18 One last time, you can answer, if you can. 19 THE WITNESS: Right. So, again, it's TSA 20 will make a determination of its most recent 21 information of a passenger's risk to determine its 22 high-risk or low-risk screening.</p>	<p style="text-align: right;">147</p> <p>1 TSA's -- so to the extent we will apply, 2 at the time of travel, our determination of what 3 type of screening to provide -- whether that's a 4 random exclusion, whether there's new overriding 5 security information -- to say that the individual 6 requires enhanced screening. 7 But since we do not revoke, potentially, 8 their reasons for potentially being on this list, 9 we just make a determination of whether they can 10 receive TSA Pre-Check on a given flight. 11 So just -- 12 BY MS. HOMER: 13 Q So does TSA -- 14 <b>A -- of the word "revoke."</b> 15 Q -- ever notify individuals that they are 16 not longer eligible for TSA Pre-Check on any 17 flight? 18 MS. KONKOLY: Objection as outside of the 19 scope of the approved topics for this deposition. 20 Objection; vague. Objection insofar as the answer 21 calls for information protected by SSI or law 22 enforcement.</p>
<p style="text-align: right;">146</p> <p>1 So to the extent that if the most recent 2 information is confirmed that they require 3 enhanced screening, TSA will apply the appropriate 4 level of screening. 5 BY MS. HOMER: 6 Q Does the TSA ever revoke a passenger's TSA 7 Pre-Check status? 8 MS. KONKOLY: Objection as to scope. 9 Objection insofar as information calls for -- the 10 answer calls for information protected by SSI or 11 the law enforcement privilege. 12 You can answer, if you can. 13 THE WITNESS: So to the extent it would 14 depend on how they received TSA Pre-Check. At any 15 given time, TSA can determine whether an 16 individual receives TSA Pre-Check in the Secure 17 Flight system on its boarding pass or not. 18 It could even be -- we've always stated 19 that we also have a component of random exclusion. 20 So by virtue of being on one of these lists, it's 21 not always a hundred percent guarantee that you 22 may receive TSA Pre-Check on every flight.</p>	<p style="text-align: right;">148</p> <p>1 You can answer, if you can. 2 THE WITNESS: At a high level, it is not a 3 flight-by-flight notification. 4 More broadly, if they have, for example, 5 applied to TSA's Pre-Check Application Program and 6 there's something that is now making them 7 disqualified, then TSA would provide that 8 notification to them, but not for a given flight. 9 It's just more being a product of being part of 10 that program. 11 BY MS. HOMER: 12 Q Okay. So if a passenger applies for the 13 TSA Pre-Check program and is denied, do they 14 receive a notice that they have been denied? 15 <b>A Yes.</b> 16 Q If a passenger applies for TSA Pre-Check 17 and was accepted, do they receive a notice that 18 they've been accepted along with the Known 19 Traveler Number? 20 MS. KONKOLY: I'm going to, again, object 21 to the scope of this line of questioning. 22 You can answer, if you know.</p>

149	1 THE WITNESS: Yes. Speaking for the TSA 2 Pre-Check Application Program. 3 BY MS. HOMER: 4 Q If a passenger has a Known Traveler Number 5 because they are on TSA Pre-Check, but then is a 6 match to a watchlist, do they receive a notice 7 that they have been removed from TSA Pre-Check? 8 MS. KONKOLY: I'm going to, again, object 9 to scope, vagueness, and so far as the answer 10 calls for information protected by SSI or law 11 enforcement privilege. 12 You can answer, if you know. 13 THE WITNESS: So at a high level, for any 14 of the criteria, if an individual on the TSA 15 Pre-Check Application Program has been deemed to 16 now be ineligible, and TSA determines that their 17 application eligibility is now revoked, TSA would 18 provide that notice to the individual. 19 Q And would they provide the reasons why TSA 20 Pre-Check had been revoked? 21 MS. KONKOLY: Objection as to scope. 22 Objection insofar as the question calls for	151	1 information is a factor in our determination of 2 your security threat assessment, and if TSA's 3 determined, in its overall review, that you're -- 4 the individual is no longer eligible for the TSA 5 Pre-Check Application Program, TSA would provide 6 notice to the individual that they have been 7 revoked. 8 BY MS. HOMER: 9 Q Would that notice state that they have 10 been revoked because the TSA has identified them 11 as being listed on a watchlist? 12 MS. KONKOLY: Objection; vague. Objection 13 as to scope. Objection insofar as the question 14 calls for any information protected by SSI or law 15 enforcement-privileged information. 16 But you can answer, if you can. 17 THE WITNESS: TSA does not provide notice 18 of individuals of their status on a watchlist. 19 TSA, in its revocation notices, identify -- 20 notifies individuals across the board that they 21 have been determined ineligible and do not meet 22 the criteria for eligibility in the program.
150	1 information protected by SSI or law enforcement 2 privilege. 3 You can answer, if you know. 4 THE WITNESS: At a high level, there would 5 be a statement in the notification of why they 6 were being revoked. 7 BY MS. HOMER: 8 Q If a person loses their TSA Pre-Check 9 status because they were now on the Selectee List, 10 would they receive a notification that they were 11 now on the Selectee List? 12 MS. KONKOLY: Objection; vague. Objection 13 as to scope. Objection insofar as the answer 14 calls for any information protected by law 15 enforcement privilege or SSI. And 16 mischaracterization of prior testimony. So 17 objection; misleading. The question. 18 But you can answer, if you understand the 19 question and you know. 20 THE WITNESS: So if there is information 21 related to the security threat assessment, 22 understanding that the Selectee or TSDB	152	1 BY MS. HOMER: 2 Q Is it possible for someone currently 3 listed in Secure Flight's version of the TSDB to 4 receive TSA Pre-Check status? 5 MS. KONKOLY: Objection insofar as that 6 question calls for information protected by SSI or 7 the law enforcement privilege; calls for 8 speculation. 9 You can answer, if you know. 10 THE WITNESS: So the question was is it 11 possible for an individual in Secure Flight's 12 export of the watchlist for them to be designated 13 for -- I'm sorry? 14 Q For TSA Pre-Check. 15 MS. KONKOLY: Same objections. 16 THE WITNESS: So, generally speaking, TSA 17 does make designations in Secure Flight of 18 ensuring that if an individual's been determined 19 to be higher risk in requiring enhanced screening, 20 that the Pre-Check -- that they would not then be 21 deemed to receive low-risk screening. 22 Q Okay.

<p style="text-align: right;">153</p> <p>1 <b>A Beyond that, I can't --</b> 2 Q Can we turn -- 3 <b>A -- say.</b> 4 Q -- back to page 19 of this GAO report. 5 So just to round out this top box on 6 low-risk, an individual who receives a TSA 7 Pre-Check boarding pass is then provided with 8 expedited screening at the airport to the extent 9 the TSA Pre-Check line is open; is that correct? 10 MS. KONKOLY: Objection; vague. 11 Objection; mischaracterizes prior testimony. 12 You can answer, if you can. 13 THE WITNESS: Generally speaking, yes. 14 However, there may be things that occur at the 15 actual airport or checkpoint that may specify that 16 the individual does not get expedited screening. 17 Q Moving down to the next box where it says 18 "unknown risk," do you see that? 19 <b>A Yes.</b> 20 Q And it says: Passengers do not match 21 high- or low-risk lists. What does that mean? 22 <b>A So going from a low-risk, they were not</b></p>	<p style="text-align: right;">155</p> <p>1 Q And does the designation of standard 2 screening apply to the majority of commercial air 3 travel passengers in America every day? 4 MS. KONKOLY: Objection insofar as that 5 question calls for information protected by SSI or 6 the law enforcement privilege. 7 You can answer, if you can, without 8 waiving a privilege. 9 THE WITNESS: So, no, I don't think we can 10 share the amounts for the different levels. 11 Q Also in this unknown risk box, it says the 12 "TSA Pre-Check Disqualification List." Do you see 13 that? 14 <b>A Yes.</b> 15 Q What is the TSA Pre-Check Disqualification 16 List? 17 MS. KONKOLY: Objection as to scope. 18 You can answer, if you know. 19 THE WITNESS: At a high level, there may 20 be particular criteria or infractions that have 21 identified passengers as being disqualified from 22 receiving TSA Pre-Check.</p>
<p style="text-align: right;">154</p> <p>1 <b>identified to receive TSA Pre-Check for that given</b> 2 <b>flight related to low risk screening, as well as</b> 3 <b>they did not meet the criteria for those that may</b> 4 <b>be designated for enhanced screening.</b> 5 <b>And as we discussed previously, that could</b> 6 <b>be matches to the watchlist, random or particular</b> 7 <b>circumstances of an individual's travel.</b> 8 <b>So this is where they go into what we call</b> 9 <b>our standard screening.</b> 10 Q Roughly what parentage of passengers on a 11 day-to-day basis are designated by Secure Flight 12 as unknown risk? 13 MS. KONKOLY: Objection insofar as the 14 question calls for information protected by SSI, 15 law enforcement. 16 And I'll instruct the witness not to 17 answer on that basis. 18 Q Okay. So you just testified that the 19 unknown risk level is sent to standard screening; 20 correct? 21 <b>A Designated for standard screening on their</b> 22 <b>boarding pass, correct.</b></p>	<p style="text-align: right;">156</p> <p>1 BY MS. HOMER: 2 Q Okay. So if somebody had applied to TSA 3 Pre-Check but been denied, would they appear on 4 the TSA Pre-Check Disqualification List? 5 MS. KONKOLY: Objection as to scope. 6 Objection insofar as that answer calls for any 7 information protected by SSI or law enforcement 8 privilege. 9 You can answer, if you can. 10 THE WITNESS: Yes. 11 Q And I want to clarify: That would be -- 12 I'm going to restate this slightly differently so 13 we're clear. 14 If somebody had applied for TSA Pre-Check 15 and been denied, for any reason unrelated to a 16 watchlist, they would appear on the TSA Pre-Check 17 Disqualification List? 18 MS. KONKOLY: Same objections. 19 You can answer, if you can. 20 THE WITNESS: At a high level, yes. 21 Q Are there persons who appear on the TSA 22 Pre-Check Disqualification List who have not</p>

<p>157</p> <p>1 submitted applications for TSA Pre-Check? 2 MS. KONKOLY: Objection insofar as that 3 question calls for any information protected by 4 SSI or law enforcement privilege, also as to 5 scope. 6 You can answer, if you can. 7 THE WITNESS: At a high level, yes, there 8 may be individuals that have not applied for TSA 9 Pre-Check that would also be potentially 10 disqualified from receiving TSA Pre-Check. 11 BY MS. HOMER: 12 Q So does the TSA proactively maintain a 13 list of individuals who, if they were to apply to 14 TSA Pre-Check, would be denied? 15 MS. KONKOLY: Objection insofar as that 16 question calls for any information protected by 17 SSI or law enforcement privilege. Also, vague. 18 You can answer, if you can. 19 THE WITNESS: So -- I'm sorry -- does TSA 20 -- can you -- proactively -- 21 MS. HOMER: Can you read back the 22 question, please?</p>	<p>159</p> <p>1 THE WITNESS: Right. At a high level, 2 this list is not TSA going out and identifying 3 anybody that should be on this list. 4 This list is primarily those individuals 5 that TSA has previously encountered, denied 6 application for -- there's multiple criteria. It 7 could be other related TSA instance for 8 infractions that have identified an individual as 9 being higher risk and should not receive TSA 10 Pre-Check screening. 11 So TSA is not proactively going out to 12 seek to expand or maintain this list, but the list 13 is updated regularly. 14 BY MS. HOMER: 15 Q Going to the right side of this chart 16 under where it says "screening" -- I just want to 17 make sure that we have this on the record -- what 18 does "expedited screening" mean? 19 <b>A So at a high level, there's TSA Pre-Check</b> 20 <b>screening and Pre-Check lanes, which may mean --</b> 21 <b>which means you can leave your shoes on, jackets</b> 22 <b>on, 3-1-1 liquids in your carry-on, laptops in the</b></p>
<p>158</p> <p>1 (Whereupon the record was read.) 2 MS. KONKOLY: Same objections. 3 THE WITNESS: So I will answer in more of 4 a rephrase, because I'm not sure I understand what 5 you mean by "proactively." 6 We regularly -- or we ensure that that 7 list is updated for any individuals that would be 8 disqualified from receiving TSA Pre-Check. 9 BY MS. HOMER: 10 Q Okay. So for -- 11 <b>A Which -- so -- yeah.</b> 12 Q So, for example, if somebody has a violent 13 criminal record such that they're listed in the 14 National Crime Information Center Database, for 15 example, would they appear on the TSA Pre-Check 16 Disqualification List even though they had not 17 applied for TSA Pre-Check? 18 MS. KONKOLY: Objection as to scope. 19 Objection; vague. Objection insofar as the answer 20 calls for any information protected by SSI or the 21 law enforcement privilege. 22 You can answer, if you can.</p>	<p>160</p> <p>1 <b>bag.</b> 2 <b>There's also other variations of expedited</b> 3 <b>screening where it may not be every single one --</b> 4 <b>it will depend on the airport -- and it may not be</b> 5 <b>in the Pre-Check designated lane. They may also</b> 6 <b>receive some form of expedited screening even in a</b> 7 <b>standard lane.</b> 8 <b>So at a very high level.</b> 9 Q Okay. What is standard screening? 10 MS. KONKOLY: Objection insofar as it 11 calls for any information protected by SSI or law 12 enforcement privileges. 13 You can answer, to the extent you can. 14 THE WITNESS: Right. So at a high level, 15 it is removing shoes, divesting of the coat, 16 having your 3-1-1 liquids in a separate bag, 17 subject to your belongings scanned via x-ray. It 18 could be a combination or some component of a 19 walk-through metal detector or advanced imaging 20 technology. 21 Q And then what is Selectee screening? 22 MS. KONKOLY: Objection insofar as that</p>



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# Transcript of Randy Howe, Designated Representative

**Date:** March 22, 2018

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

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Conducted on March 22, 2018

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1 passenger information about?

2 **A Any inbound flights to the United States**

3 **and I believe international departures from the**

4 **United States.**

5 Q Okay. But APIS does not track -- let me

6 start over.

7 APIS does not receive passenger

8 information and documents for entirely domestic

9 flights in the United States. Is that --

10 **A -- no. No.**

11 Q No, as in it is correct? Let me

12 rephrase it.

13 Is it correct that APIS does not receive

14 passenger manifest information for entirely

15 domestic flights in the United States?

16 **A That's correct. We do not.**

17 Q Does CBP receive passenger manifest

18 information for entirely domestic flights directly

19 from the TSA Secure Flight system?

20 MS. ROTH: Objection to the extent that

21 that calls for law enforcement privileged

22 information. It is vague. Answer, if you can.

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1 THE WITNESS: I don't know.

2 BY MS. HOMER:

3 Q Does TECS receive Secure Flight data

4 from the TSA?

5 **A I don't know, but since TSA is a key DHS**

6 **partner, possibly. But I don't know.**

7 Q Does APIS screen the international

8 flight data it receives against the TSDB?

9 MS. ROTH: Objection. Vague.

10 THE WITNESS: APIS is a mechanism to

11 collect the information that is shared with CBP

12 into our TECS system.

13 BY MS. HOMER:

14 Q Okay. So to the extent that TECS

15 receives APIS data about passengers on

16 international flights any screening of that data

17 would be done against the TSDB information that is

18 already in TECS?

19 MS. ROTH: Objection. Vague.

20 THE WITNESS: I think I understand your

21 question. That is, the APIS information as it is

22 shared with TECS is it -- if that person we have

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1 the information on is in TSDB would it be alerted

2 to us at that point? Is that your question?

3 BY MS. HOMER:

4 Q Yes.

5 **A Yes.**

6 Q Okay. And I will try to make that more

7 clear. TECS receives APIS data on international

8 flights. Correct?

9 **A Correct.**

10 MS. ROTH: Objection. Vague and

11 mischaracterizes prior testimony. International

12 flights that are inbound to the United States.

13 BY MS. HOMER:

14 Q Fair. I will ask to be clear.

15 TECS receives data on international

16 flights inbound to or exiting the United States

17 from APIS. Correct?

18 **A Correct.**

19 Q And TECS separately receives TSDB data

20 from the DHS Watchlist Service, which received it

21 from the TSC. Correct?

22 **A Correct.**

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1 Q And TECS will perform a match between

2 the APIS data it receives and the TSDB data it

3 receives to determine if there are any hits

4 between the two. Is that correct?

5 MS. ROTH: Objection. Vague.

6 THE WITNESS: Yes. I think I answered

7 that question earlier.

8 BY MS. HOMER:

9 Q Does the CBP ever refuse to let

10 airplanes enter U S airspace if there is an

11 individual on board that airplane who is listed in

12 the TSDB?

13 MS. ROTH: Objection, vague. Objection,

14 foundation. Objection, calls for speculation.

15 THE WITNESS: I don't know who has the

16 authority to do that.

17 BY MS. HOMER:

18 Q To CBP's knowledge has it ever occurred

19 that an airplane has been instructed to not enter

20 U S airspace because there is an individual who

21 matches the TSDB on board?

22 MS. ROTH: Same objections.

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1 THE WITNESS: I don't recall firsthand,  
2 but I believe that has happened before.  
3 BY MS. HOMER:  
4 Q Does the -- sorry. Does the CBP  
5 instruct airlines to not permit passengers  
6 attempting to board an airline to the  
7 United States -- that was a mess. Let me start  
8 over.  
9 Does the CBP instruct airlines departing  
10 a foreign country and traveling to the  
11 United States to deny boarding to persons who are  
12 listed on the TSDB?  
13 MS. ROTH: Objection, vague. Objection,  
14 asked and answered.  
15 THE WITNESS: What did you say?  
16 MS. ROTH: Vague and asked and answered  
17 earlier.  
18 THE WITNESS: Yeah, I believe I already  
19 answered that question.  
20 MS. HOMER: I'm not quite sure I asked  
21 the question exactly that way. So I'd like a yes  
22 or no answer even if you did already answer it.

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1 So could I have the court reporter please read  
2 back the question?  
3 (Court reporter read back the requested  
4 portion.)  
5 MS. ROTH: Same objections which are to  
6 vagueness. And again, I believe this question was  
7 asked and answered earlier. But you can answer  
8 the question.  
9 THE WITNESS: CBP makes recommendations  
10 to carriers based on admissibility. So if that  
11 person's bound to be found inadmissible to the  
12 United States we will make a recommendation to the  
13 carrier not to board them.  
14 BY MS. HOMER:  
15 Q Is an individual's presence on the TSDB  
16 a reason for the CBP to deny admission to the  
17 United States?  
18 **A On a case by case basis, perhaps.**  
19 Q Is a foreign national's presence on the  
20 TSDB --  
21 (Court reporter requested  
22 clarification.)

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1 BY MS. HOMER:  
2 Q Is a foreign national's presence on the  
3 TSDB a basis for the CBP to deny admission to that  
4 foreign national to the United States?  
5 **A There's a host of reasons why somebody  
6 would be found inadmissible to the United States.  
7 So the fact that somebody is on a TSDB is a  
8 contributing factor to final determination of  
9 admissibility.**  
10 Q So yes or no, is a foreign national's  
11 presence on the TSDB a reason to deny that foreign  
12 national entry to the United States?  
13 MS. ROTH: Objection. Vague.  
14 THE WITNESS: I think I already answered  
15 that question. It's one of the contributing  
16 factors to totality of circumstances case by case  
17 on how we assess somebody's admissibility to the  
18 United States.  
19 BY MS. HOMER:  
20 Q Is a U S citizen's presence on the TSDB  
21 a basis to deny that U S citizen reentry to the  
22 United States?

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1 MS. ROTH: Objection. Vague.  
2 THE WITNESS: U S citizens cannot be  
3 denied reentry.  
4 BY MS. HOMER:  
5 Q Is a U S citizen's presence on a TSDB a  
6 basis for the CBP to instruct a foreign airline to  
7 not let that citizen board the foreign aircraft?  
8 MS. ROTH: Objection. Vague.  
9 BY MS. HOMER:  
10 Q Actually, let me rephrase that. Is a U  
11 S citizen's presence on the TSDB a basis for the  
12 CBP to recommend to an airline departing a foreign  
13 country to the United States for that airline to  
14 not let the U S citizen board the airline?  
15 **A I think I already answered the question.  
16 U S citizens won't be prevented from entering the  
17 United States.**  
18 Q So the CBP does not recommend to  
19 airlines departing a foreign country that they  
20 should deny boarding to a U S citizen who is  
21 listed on the TSDB who is seeking to board that  
22 airline?

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1 BY MS. HOMER:  
 2 Q When an initial screener for the CBP  
 3 runs a query on an individual to the TECS system  
 4 will the TECS system then indicate to the screener  
 5 whether or not the individual needs to undergo  
 6 secondary screening?  
 7 MS. ROTH: Objection. Vague.  
 8 THE WITNESS: The officer, not the  
 9 screener.  
 10 BY MS. HOMER:  
 11 Q Okay. Sorry.  
 12 **A The officer as completing the**  
 13 **inspection, alerts in the system are one of the**  
 14 **contributing factors and the guidance that's in**  
 15 **that alert in determining whether or not somebody**  
 16 **should be referred to secondary.**  
 17 Q Does an officer who is completing an  
 18 initial inspection also have the discretion to  
 19 refer any individual passenger to secondary  
 20 screening?  
 21 MS. ROTH: Objection. Vague.  
 22 THE WITNESS: Yes, they have the

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1 discretion to refer individuals that wish to  
 2 continue the inspection, what we call our  
 3 secondary inspection for additional questioning.  
 4 BY MS. HOMER:  
 5 Q Okay. So secondary inspection is the  
 6 phrase the CBP uses in the circumstances where an  
 7 individual is sent by an initial inspecting  
 8 officer to further inspection?  
 9 **A Yes.**  
 10 Q Are individuals who seek entry to the  
 11 United States and who match the TSDB automatically  
 12 referred to secondary inspection?  
 13 MS. ROTH: Objection, vagueness.  
 14 Objection, compound. And objection as to the  
 15 extent that that calls for law enforcement  
 16 privileged information. If you can answer it in a  
 17 non-privileged way, you can.  
 18 THE WITNESS: The officer, based on the  
 19 information they have in front of them, they have  
 20 to make a decision whether or not to refer to  
 21 secondary or not.  
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1 BY MS. HOMER:  
 2 Q If an individual is listed in the TSDB  
 3 will an alert be displayed to the inspecting  
 4 officer that the individual is listed to the  
 5 TSDB -- is listed in the TSDB?  
 6 **A The officer would know that that person**  
 7 **would require additional questioning for being a**  
 8 **TSDB.**  
 9 Q How is the information communicated to  
 10 the officer that the person in front of them is a  
 11 match to the TSDB?  
 12 MS. ROTH: Objection to the extent that  
 13 it calls for law enforcement privileged  
 14 information. You can answer it if you can answer  
 15 it in a non-privileged way.  
 16 THE WITNESS: I don't know if I can  
 17 without jeopardizing.  
 18 BY MS. HOMER:  
 19 Q Is there a specific alert or message  
 20 that is displayed to initial inspection officers  
 21 that indicates an individual is a match to the  
 22 TSDB?

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1 MS. ROTH: I'm going to object to the  
 2 extent that calls for law enforcement privileged  
 3 information. You can answer yes or no, but that's  
 4 it.  
 5 THE WITNESS: I think I already answered  
 6 the question. The officer is aware.  
 7 BY MS. HOMER:  
 8 Q And the officer is specifically aware  
 9 that the individual is a match to the TSDB.  
 10 Correct?  
 11 MS. ROTH: Objection, vagueness.  
 12 Objection, form and foundation.  
 13 THE WITNESS: They know that that  
 14 individual is a potential match.  
 15 BY MS. HOMER:  
 16 Q A potential match to what?  
 17 **A To the TSDB.**  
 18 Q Okay. Is it CBP's policy for any  
 19 potential match to the TSDB to be referred to  
 20 secondary inspection?  
 21 MS. ROTH: Objection that that calls for  
 22 law enforcement privileged information. You can

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1 THE WITNESS: Are you asking if we are  
2 making notations to the TSDB record?  
3 BY MS. HOMER:  
4 Q I'll ask that first. Does -- I'll ask  
5 that. Does the CBP make any notations to an  
6 individual's TSDB record when they are seeking  
7 entry to the United States?  
8 **A No. The -- I'm sorry.**  
9 MS. ROTH: It's okay. Go ahead.  
10 THE WITNESS: The owner of the record,  
11 in this case the FBI administers the TSC. So we  
12 can't make any adjustments, edits to the TSDB.  
13 BY MS. HOMER:  
14 Q Does the CBP make any annotations to its  
15 own records about that same individual regarding  
16 that individual's presence on the TSDB?  
17 **A Yes.**  
18 Q What sorts of comments does the CBP add  
19 to its own records about individuals listed in the  
20 TSDB?  
21 MS. ROTH: I'm going to object to that  
22 to the extent it calls for law enforcement

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1 privileged information. If you think you can  
2 answer that in a non-privileged way.  
3 THE WITNESS: I think I can. TECS is  
4 our main system to document everything that we do.  
5 Any individual that's entering the United States  
6 is queried through our system. That entry to the  
7 U S, their primary inspection is documented in our  
8 system. If the person is referred to secondary,  
9 it's documented in TECS. And as we complete each  
10 and every secondary inspection for everything that  
11 we do, agriculture, customs work, immigration  
12 work, counterterrorism work, every single  
13 secondary inspection that we do is documented in  
14 TECS for that -- for that encounter.  
15 BY MS. HOMER:  
16 Q And if the secondary encounter -- let me  
17 start over. Does the CBP's documentation of  
18 encounters with individuals listed in the TSDB add  
19 any information in TECS about -- about whether  
20 that individual is a confirmed match to the TSDB?  
21 MS. ROTH: Objection to the extent that  
22 it calls for law enforcement sensitive

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1 information. You can answer if you can answer in  
2 a non-privileged way.  
3 THE WITNESS: Secondary results of every  
4 secondary we do are captured no matter what,  
5 agriculture, customs, immigration work, it's  
6 documented.  
7 BY MS. HOMER:  
8 Q So if an individual seeks entry to the  
9 United States and is identified as a potential  
10 match to the TSDB, would the fact that they had  
11 been identified as a potential match to the TSDB  
12 be retained in the CBP's records of that  
13 encounter?  
14 **A All of our secondary inspections are**  
15 **recorded in TECS and the results are recorded for**  
16 **everything that we do.**  
17 Q And is one of the pieces of information  
18 that is recorded regarding your secondary  
19 inspection whether or not an individual is a  
20 potential match to the TSDB?  
21 **A Yes.**  
22 Q Is one of the --

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1 MS. HOMER: Are we out of --  
2 (Discussion with court reporter  
3 concerning request.)  
4 MS. HOMER: Oh, you need a break. Let  
5 me ask one more, two more questions and then I'll  
6 take a break.  
7 BY MS. HOMER:  
8 Q Is one of the pieces of information that  
9 the CVT -- CBP retains following a secondary  
10 inspection whether or not an individual is a  
11 confirmed match to the TSDB?  
12 MS. ROTH: Objection. Vague.  
13 THE WITNESS: Yeah, could you restate?  
14 BY MS. HOMER:  
15 Q Is one of the pieces of information that  
16 the CBP documents following the secondary  
17 inspection whether or not an individual is a  
18 confirmed match to the TSDB?  
19 **A Yes.**  
20 Q If an individual begins as a potential  
21 match to the TSDB and by the end of the encounter  
22 is a confirmed match to the TSDB, will the CBP

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<p style="text-align: right;">81</p> <p>1 retain a record for future inspections of the same 2 person that they are a confirmed match to the 3 TSDB? 4 MS. ROTH: Objection to the extent that 5 that calls for law enforcement privileged 6 information. 7 THE WITNESS: All of our secondary 8 inspection results are recorded and kept for every 9 secondary inspection that we complete. 10 BY MS. HOMER: 11 Q If the TSDB determines during a border 12 inspection on day one that a potential match is in 13 fact a confirmed match will the CBP automatically 14 conclude that person is a confirmed match the next 15 time they cross the border? 16 MS. ROTH: Objection. Vague. 17 THE WITNESS: Each and every inspection 18 that we complete is completed individually. 19 BY MS. HOMER: 20 Q Will an officer -- start over. 21 Will an officer at an initial screening 22 of someone who is listed on the TSDB be able to</p>	<p style="text-align: right;">83</p> <p>1 match to TSDB? 2 THE WITNESS: I -- 3 MS. ROTH: -- Objection. I think this 4 was asked and answered also. 5 MS. HOMER: Okay. 6 (Court reporter requested 7 clarification.) 8 THE WITNESS: I don't know. I think I'm 9 with the court reporter. I would like to take a 10 break, too. 11 MS. HOMER: Okay. We'll take a quick 12 break. 13 MS. ROTH: Off the record. 14 THE VIDEOGRAPHER: We are going off of 15 the record. The time is 10:45 a.m. 16 (The proceedings recessed from 17 10:45 a.m. to 11:05 a.m.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 11:04 a.m. 20 BY MS. HOMER: 21 Q Do officers conducting the initial 22 screening at ports of entry have access to the</p>
<p style="text-align: right;">82</p> <p>1 see whether that same person has been concluded to 2 be a confirmed match to the TSDB previously? 3 MS. ROTH: I'm going to object to the 4 extent that calls for law enforcement privileged 5 information. If you can answer in a 6 non-privileged way. 7 THE WITNESS: I don't believe primary 8 inspection -- primary inspection officers have 9 access or have knowledge of previous inspections 10 as they are completing a primary inspection. 11 BY MS. HOMER: 12 Q So, if the first time an individual who 13 is listed in the TSDB crosses the border, if on 14 that first time they are listed as a potential 15 match the initial screener will see that they are 16 a potential match to the TSDB? Is that correct? 17 A Yes. 18 Q If that same individual recrosses the 19 border a week later and that individual has since 20 been confirmed to be a match in the TSDB, will the 21 officer conducting the initial screening a week 22 later see that the individual is now a confirmed</p>	<p style="text-align: right;">84</p> <p>1 underlying derogatory information that forms the 2 basis for an individual being listed on the TSDB? 3 A No. 4 Q Do officers conducting secondary 5 inspections at ports of entry have access to the 6 underlying derogatory information that forms the 7 basis for an individual being listed on the TSDB? 8 MS. ROTH: I'm going to object to the 9 extent that that calls for law enforcement 10 privileged information. You can answer if you 11 think you can. 12 THE WITNESS: No. 13 BY MS. HOMER: 14 Q Who at the CBP has access to the 15 underlying derogatory information that forms the 16 basis for an individual being listed in the TSDB? 17 MS. ROTH: Objection to the extent that 18 it calls for law enforcement privileged 19 information. You can answer if you think you can 20 in a non-privileged way. 21 THE WITNESS: As described before, our 22 National Targeting Center, NTC.</p>

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<p style="text-align: right;">133</p> <p>1 mischaracterizes his prior testimony. Objection, 2 vague. Objection to the extent it calls for law 3 enforcement privileged information. You can 4 answer if you can in a non-privileged way. 5 THE WITNESS: Sure. So I mean the 6 entity that is the owner of the record would have 7 information that would lead somebody to be 8 concerned that they're armed and potentially 9 dangerous. 10 BY MS. HOMER: 11 Q Is every individual listed in the TSDB 12 indicated to be armed and dangerous? 13 MS. ROTH: Objection to the extent that 14 calls for law enforcement privileged information. 15 Objection as to scope to the extent you are asking 16 a CBP deponent about TSDB information that it does 17 not control or maintain. 18 THE WITNESS: I don't know the 19 information that TSC administers the -- the watch 20 list. And what information they have there, I 21 don't know. 22</p>	<p style="text-align: right;">135</p> <p>1 BY MS. HOMER: 2 Q Does the CBP itself ever indicate in the 3 CBP's records about individuals who are listed on 4 the TSDB that that individual is armed and 5 dangerous? 6 MS. ROTH: Objection, vague. Objection 7 based on that it calls for law enforcement 8 privileged information. You can answer if you 9 can. 10 THE WITNESS: The CBP, as -- as we do 11 our business at the border if we independently 12 determine that somebody is a potential threat, 13 then we may make notations in our system that that 14 person could be -- you know, armed and dangerous 15 or of concern. 16 BY MS. HOMER: 17 Q How does the CBP communicate to initial 18 screeners that an individual may be armed and 19 dangerous? 20 MS. ROTH: Objection to the extent that 21 it calls for law enforcement privileged 22 information. You can answer in a general</p>
<p style="text-align: right;">134</p> <p>1 BY MS. HOMER: 2 Q Is it always the determination of 3 another law enforcement agency to annotate 4 individual records that an individual may be armed 5 or dangerous? 6 MS. ROTH: Objection to the extent that 7 calls for law enforcement privileged information. 8 You can answer. 9 THE WITNESS: It is the agency that -- 10 the owner of the record that is entering the 11 information. 12 BY MS. HOMER: 13 Q Is the CBP itself ever an owner of a 14 record that the CBP designates as being armed and 15 dangerous? 16 MS. ROTH: Objection to the extent that 17 calls for law enforcement privileged information. 18 You can answer if you can. 19 THE WITNESS: I'm sure there have been 20 situations where we have, based on previous 21 encounters or information we may have that they 22 are a threat.</p>	<p style="text-align: right;">136</p> <p>1 non-privileged way. 2 THE WITNESS: The information is 3 inputted into the system, so that would be evident 4 to the primary officer when that query is made of 5 the individual. 6 BY MS. HOMER: 7 Q If a primary officer determines at the 8 moment of an initial query that an individual is 9 potentially armed and dangerous, does that set off 10 CBP alarms in the screening area? 11 MS. ROTH: Objection as to vagueness. 12 Objection, foundation. Objection to the extent 13 that calls for law enforcement privileged 14 information. Again, you can answer if you can 15 answer in a non-privileged way. 16 THE WITNESS: I don't know what you mean 17 by alarms. 18 BY MS. HOMER: 19 Q Okay. In the initial screening area are 20 there alarms that can go off during a security 21 incident? 22 MS. ROTH: Objection as to vagueness.</p>

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1 THE WITNESS: If somebody is the -- been  
2 determined to be armed and dangerous and a threat  
3 and that has been notated in the system the  
4 officer would be alerted to that and would have to  
5 react appropriately.  
6 BY MS. HOMER:  
7 Q What are -- what is the appropriate  
8 reaction that an officer -- well, start over.  
9 What are examples of the appropriate  
10 reactions an officer may take at the point that  
11 the officer is informed that a person he or she is  
12 screening may be armed and dangerous?  
13 MS. ROTH: Objection to the extent that  
14 calls for law enforcement privileged information.  
15 But you can answer it in a non-privileged way if  
16 you can.  
17 THE WITNESS: Officer has to use their  
18 best judgment, assess the situation, the  
19 passenger, whoever else in the vehicle, and safely  
20 interact with that individual to ensure that there  
21 is no threat. If they are deemed armed and  
22 dangerous, then the officer is concerned about

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1 their safety and others.  
2 BY MS. HOMER:  
3 Q Is an officer potentially alerted that  
4 an individual may be armed and dangerous through a  
5 message on his computer screen?  
6 MS. ROTH: Objection to the extent that  
7 it calls for law enforcement sensitive  
8 information. You can answer if you can in a  
9 non-privileged way.  
10 THE WITNESS: Going back, as they query  
11 the information on system the system would alert  
12 that they are armed and dangerous. So they would  
13 be aware of the alert.  
14 BY MS. HOMER:  
15 Q What does an alert look like?  
16 MS. ROTH: Objection to the extent that  
17 calls for law enforcement sensitive information.  
18 I'm going to instruct the witness not to answer  
19 that.  
20 BY MS. HOMER:  
21 Q Could an alert that an individual is  
22 potentially armed or dangerous include a flashing

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1 message on a computer screen?  
2 MS. ROTH: Objection to the extent that  
3 calls for law enforcement privileged information.  
4 You can answer if you can.  
5 THE WITNESS: It alerts the officer.  
6 The system indicates that this person is armed and  
7 dangerous.  
8 BY MS. HOMER:  
9 Q And when you refer to the system are you  
10 talking about a computer system?  
11 A TECS system.  
12 Q Okay. So if an individual is determined  
13 to potentially be armed and dangerous the TECS  
14 system would notify the officer of that fact?  
15 A That is the system that we use, our  
16 primary, yes.  
17 Q If an individual is indicated by the  
18 TECS system to potentially be armed and dangerous,  
19 does that ever set off any flashing red strobe  
20 lights?  
21 MS. ROTH: Objection to the extent that  
22 calls for law enforcement privileged information.

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1 You can answer if you can.  
2 THE WITNESS: I don't know.  
3 BY MS. HOMER:  
4 Q Has it ever happened that an officer has  
5 been alerted that an individual is potentially  
6 armed and dangerous by seeing a red light go off  
7 as a result of his TECS query?  
8 MS. ROTH: Objection to the extent that  
9 calls for law enforcement privileged information.  
10 Objection to the extent that this has been asked  
11 and answered. Also objection as to scope.  
12 THE WITNESS: Yeah, I don't know. I  
13 don't know the exact way that it's alerted.  
14 BY MS. HOMER:  
15 Q Is it possible that one form of alerting  
16 an officer that an individual is potentially armed  
17 and dangerous is via a red light?  
18 MS. ROTH: Same objections, law  
19 enforcement privilege, scope.  
20 THE WITNESS: I don't want to speculate.  
21 I don't know.  
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189	<p>1 high risk based on the application of ATS</p> <p>2 Passenger rules?</p> <p>3 MS. ROTH: Object based on the law</p> <p>4 enforcement privilege.</p> <p>5 THE WITNESS: I don't know the answer to</p> <p>6 that.</p> <p>7 BY MS. HOMER:</p> <p>8 Q Does ATS's system consider information</p> <p>9 from intelligence agencies in establishing its</p> <p>10 rules?</p> <p>11 MS. ROTH: I'm going to object on the</p> <p>12 basis of the law enforcement privilege.</p> <p>13 THE WITNESS: Yeah, ATS relies on law</p> <p>14 enforcement information and intelligence to inform</p> <p>15 the use of ATS.</p> <p>16 BY MS. HOMER:</p> <p>17 Q Does ATS consider the country a traveler</p> <p>18 is traveling from in determining whether that</p> <p>19 traveler is high risk?</p> <p>20 MS. ROTH: I'm going to object on the</p> <p>21 basis of the law enforcement privilege. You can</p> <p>22 answer if you can do so without disclosing</p>	191	<p>1 can answer if you can do so without disclosing</p> <p>2 privileged information.</p> <p>3 THE WITNESS: Associations may be a</p> <p>4 contributing factor.</p> <p>5 BY MS. HOMER:</p> <p>6 Q Does ATS make its risk assessment</p> <p>7 determination as to every single individual every</p> <p>8 single time they cross the border? Like is it a</p> <p>9 simultaneous risk assessment?</p> <p>10 MS. ROTH: I'm going to object as to</p> <p>11 vagueness. I'm going to object as to law</p> <p>12 enforcement privilege. You can answer if you can.</p> <p>13 (Phone is playing music.)</p> <p>14 THE WITNESS: They muted it? Hold</p> <p>15 music.</p> <p>16 MS. HOMER: Just hang up. Dial back in</p> <p>17 a minute.</p> <p>18 THE WITNESS: One more time?</p> <p>19 MS. HOMER: I apologize. Can you read</p> <p>20 back the question.</p> <p>21 (Court reporter read back the requested</p> <p>22 portion.)</p>
190	<p>1 privileged information.</p> <p>2 THE WITNESS: It could be a contributing</p> <p>3 factor. There is a host of different things based</p> <p>4 on enforcement information, intelligence to</p> <p>5 include possibly where they are traveling from.</p> <p>6 BY MS. HOMER:</p> <p>7 Q Does the ATS rule assessments designate</p> <p>8 all travelers from countries listed in Executive</p> <p>9 Order 13780, known colloquially as the travel ban,</p> <p>10 as being high risk individuals?</p> <p>11 MS. ROTH: I'm going to object as to</p> <p>12 vagueness. I'm going to object as to the scope of</p> <p>13 the properly noticed subject for this deposition.</p> <p>14 I'm going to object on law enforcement privilege</p> <p>15 and I'm going to instruct the witness not to</p> <p>16 answer that question.</p> <p>17 BY MS. HOMER:</p> <p>18 Q Does ATS consider any traveling</p> <p>19 companions of an individual who is listed on the</p> <p>20 TSDB to be high risk?</p> <p>21 MS. ROTH: I'm going to object on the</p> <p>22 basis of the law enforcement privilege. And you</p>	192	<p>1 MS. ROTH: Object to the extent that it</p> <p>2 calls for law enforcement privileged information.</p> <p>3 Once again, object as to vagueness.</p> <p>4 THE WITNESS: As in the air environment,</p> <p>5 as travelers are intending to journey to the US</p> <p>6 each and every time they are a ticketed passenger</p> <p>7 the ATS system is functioning.</p> <p>8 BY MS. HOMER:</p> <p>9 Q Okay. So does the ATS Passenger system</p> <p>10 create a new risk assessment every time an</p> <p>11 individual seeks to enter the United States?</p> <p>12 MS. ROTH: Object on the basis of the</p> <p>13 law enforcement privilege. You can answer if you</p> <p>14 can.</p> <p>15 THE WITNESS: It's the same answer.</p> <p>16 Each and every time somebody travels to the US,</p> <p>17 ATS performs or CBP performs the, utilizes that</p> <p>18 decision making tool in determining passengers</p> <p>19 that need additional scrutiny.</p> <p>20 BY MS. HOMER:</p> <p>21 Q Does ATS Passenger create permanent</p> <p>22 lists of travelers who will always be designated</p>

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<p style="text-align: right;">225</p> <p>1 what a primary application is, but the only one 2 that looks new to me is this license plate reader. 3 What is the license plate reader that the CBP 4 uses? 5 <b>A The license plate reader is a scanning 6 device that scans the license plate that 7 automatically populates in TECS and runs it 8 through the system so as the vehicle approaches 9 the plate is run through the system and we are 10 able to do queries. Same thing with the RFID. As 11 the car is pulling up they can hold their RFID 12 document up, so not only the plate but also the 13 passenger information would then be on the screen 14 waiting for the officer.</b> 15 Q Okay. And then when it says perform 16 vehicle query, what does the vehicle query entail? 17 <b>A It's the same as we've spoken. It's the 18 RFID and the plates, just running it through TECS.</b> 19 Q It is crosschecking that against like a 20 list of known stolen vehicles? 21 <b>A Yes.</b> 22 Q All right. Is the -- does the license</p>	<p style="text-align: right;">227</p> <p>1 Inspector General report that published that the 2 average number of travelers referred to secondary 3 screening is approximately 5 percent per day. Do 4 I have any reason to doubt the accuracy of that 5 number? 6 MS. ROTH: Object as to foundation. 7 Object as to form. If you have a document to show 8 the witness, that would be fine. But it calls for 9 speculation -- 10 THE WITNESS: -- not. 11 (Court reporter requested 12 clarification.) 13 MS. ROTH: Speculation. 14 THE WITNESS: I'm not familiar with that 15 document. 16 MS. ROTH: Are you doing okay? 17 THE WITNESS: Doing good. 18 BY MS. HOMER: 19 Q That's fine. I'm going to move on to 20 secondary screening questions in a second. I'm 21 just making sure I covered all of my initial 22 screening questions. If -- during the initial</p>
<p style="text-align: right;">226</p> <p>1 plate reader check any license plate information 2 against the TSDB? 3 MS. ROTH: I'm going to object to the 4 extent that calls for law enforcement privileged 5 information. You can answer if you can. 6 THE WITNESS: I don't know if that's 7 privileged or not. 8 BY MS. HOMER: 9 Q Okay. Same question, if can you look it 10 up at the next break. 11 Then this flowchart, once the vehicle 12 has been scanned and the RFID has been scanned and 13 the travel document has been scanned, the overall 14 TECS query process is the same. Correct? 15 <b>A Yes.</b> 16 Q It checks against lookouts and the 17 officer asks additional questions and determines 18 whether someone needs to be referred to secondary 19 screening? 20 <b>A Yes.</b> 21 Q So I will confess I don't have this 22 document on me, but I have seen a DHS Office of</p>	<p style="text-align: right;">228</p> <p>1 screening process does the result of querying the 2 various lookout list ever result in a CBP officer 3 immediately calling in law enforcement 4 reinforcements? 5 MS. ROTH: Object to the extent that 6 calls for law enforcement privileged information 7 and to vagueness. If you think you can answer 8 that, you can. 9 THE WITNESS: If you are using the armed 10 and dangerous from this morning, that perhaps 11 might be one potential. 12 BY MS. HOMER: 13 Q Okay. So now I want to walk through the 14 secondary screening process that is on the 15 flowchart. So the result -- okay. We have two 16 diamonds that say refer to secondary as a possible 17 option at the end of the initial screening query 18 result. Do you see that? 19 <b>A Yes.</b> 20 Q They both then point to a box in the 21 middle that says secondary referral list. Do you 22 see that?</p>

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245	<p>1 MS. HOMER: Let's take a break.</p> <p>2 THE VIDEOGRAPHER: We are going off the</p> <p>3 record. The time is 3:21 p.m.</p> <p>4 (The proceedings recessed from 3:21 p.m.</p> <p>5 to 3:37 p.m.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record. The time is 3:37 p.m.</p> <p>8 BY MS. HOMER:</p> <p>9 Q Is the result of a TECS query at an</p> <p>10 initial screening point ever to direct a</p> <p>11 particular operational response by all CBP</p> <p>12 officer?</p> <p>13 MS. ROTH: Object as to vagueness and to</p> <p>14 the extent that calls for law enforcement</p> <p>15 privileged information. You can answer if you</p> <p>16 can.</p> <p>17 THE WITNESS: The primary response for a</p> <p>18 primary query is an alert or a lookout.</p> <p>19 BY MS. HOMER:</p> <p>20 Q And is there some system by which the</p> <p>21 alerts that show up on the basis of a lookout</p> <p>22 require a specific law enforcement response to</p>	247	<p>1 BY MS. HOMER:</p> <p>2 Q Are there any other annotations like</p> <p>3 armed and dangerous that can appear at the initial</p> <p>4 TECS query stage?</p> <p>5 MS. ROTH: I'm going to object to the</p> <p>6 extent that calls for law enforcement privileged</p> <p>7 information and vagueness.</p> <p>8 THE WITNESS: Sure. A vehicle could be</p> <p>9 a stolen vehicle.</p> <p>10 BY MS. HOMER:</p> <p>11 Q Are there any others?</p> <p>12 MS. ROTH: Same objections.</p> <p>13 THE WITNESS: Numerous examples.</p> <p>14 BY MS. HOMER:</p> <p>15 Q I would love to hear as many examples as</p> <p>16 you can come up with.</p> <p>17 MS. ROTH: I'll object to the extant</p> <p>18 that question calls for law enforcement privileged</p> <p>19 information. You can answer without waiving the</p> <p>20 privilege.</p> <p>21 THE WITNESS: Advising the officer to</p> <p>22 refer the person to secondary.</p>
246	<p>1 address that alert?</p> <p>2 MS. ROTH: I'm going to object to the</p> <p>3 extent that calls for law enforcement privileged</p> <p>4 information. But you can answer if you are able</p> <p>5 to.</p> <p>6 THE WITNESS: I guess I don't understand</p> <p>7 your question.</p> <p>8 BY MS. HOMER:</p> <p>9 Q If an alert appears in the TECS system</p> <p>10 as a result of a query about an individual there</p> <p>11 is more than just referring that person to</p> <p>12 secondary inspection that can happen as a result</p> <p>13 of that alert. Is that correct?</p> <p>14 MS. ROTH: I'm going to object as to</p> <p>15 vagueness and to the extent that it calls for law</p> <p>16 enforcement privileged information. You can</p> <p>17 answer in a non-privileged way and if you</p> <p>18 understand that question.</p> <p>19 THE WITNESS: It could be. For instance</p> <p>20 back to the armed and dangerous, that could be an</p> <p>21 annotation that the officer would be aware of.</p> <p>22</p>	248	<p>1 BY MS. HOMER:</p> <p>2 Q Any others?</p> <p>3 <b>A Not that I can think of.</b></p> <p>4 Q If an individual is flagged by TECS to</p> <p>5 be armed and dangerous, is one response by CBP</p> <p>6 officers to draw their weapons?</p> <p>7 MS. ROTH: Object to the extant that</p> <p>8 calls for law enforcement privileged information</p> <p>9 and also the scope of the subject matters for this</p> <p>10 deposition.</p> <p>11 THE WITNESS: The officer that is</p> <p>12 conducting the primary inspection -- the primary</p> <p>13 inspection makes an assessment and interaction</p> <p>14 based on what they see in determining the</p> <p>15 situation whether or not the person is a risk of</p> <p>16 some sort and controlling the individual as they</p> <p>17 see fit based on the totality of the</p> <p>18 circumstances.</p> <p>19 BY MS. HOMER:</p> <p>20 Q Is it common for CBP officers to draw a</p> <p>21 weapon because they see an armed and dangerous</p> <p>22 notification from the TECS system?</p>

249	<p>1 MS. ROTH: Object as to vagueness and</p> <p>2 object to the extent it calls for law enforcement</p> <p>3 privileged information. You can answer.</p> <p>4 THE WITNESS: I wouldn't use -- I</p> <p>5 wouldn't use the word common, but it is a reaction</p> <p>6 that if based on the totality of the circumstances</p> <p>7 the officer made that judgment, that's a decision</p> <p>8 that that officer made.</p> <p>9 BY MS. HOMER:</p> <p>10 Q Have CBP officers ever drawn a weapon</p> <p>11 solely because the TECS system flashed an armed</p> <p>12 and dangerous notification?</p> <p>13 MS. ROTH: Objection as to vagueness and</p> <p>14 to the extent that it calls for law enforcement</p> <p>15 privileged information. You can answer if you</p> <p>16 know and if you can.</p> <p>17 THE WITNESS: I don't know. But, again</p> <p>18 the officer that is conducting the inspection</p> <p>19 makes that judgment. The action that is taken is</p> <p>20 based on their assessment of the situation case by</p> <p>21 case.</p> <p>22</p>	251	<p>1 answer if you can.</p> <p>2 THE WITNESS: That officer will have to</p> <p>3 articulate the reasons why that they made that</p> <p>4 decision if that's the case based on the totality</p> <p>5 of the circumstances, the decision they made when</p> <p>6 they handled that inspection.</p> <p>7 BY MS. HOMER:</p> <p>8 Q If an officer chose to draw a weapon</p> <p>9 because he saw that a traveler was a match to the</p> <p>10 TSDB would the CBP consider that to be a</p> <p>11 reasonable response?</p> <p>12 MS. ROTH: Object as to vagueness.</p> <p>13 Object to the extent that it calls for a legal</p> <p>14 conclusion and to the extent it calls for law</p> <p>15 enforcement privileged information. You can</p> <p>16 answer if you are able.</p> <p>17 THE WITNESS: It seemed like the same</p> <p>18 question to me. The answer is the officer makes</p> <p>19 the judgment based on totality of the</p> <p>20 circumstances on a case by case basis, they assess</p> <p>21 that situation and what the appropriate reaction</p> <p>22 is.</p>
250	<p>1 BY MS. HOMER:</p> <p>2 Q Is it completely within the discretion</p> <p>3 of an individual officer whether or not to draw a</p> <p>4 weapon because he sees an armed and dangerous</p> <p>5 notification?</p> <p>6 <b>A It is the judgment of that officer</b></p> <p>7 <b>conducting the inspection whatever action is taken</b></p> <p>8 <b>based on that officer's judgment.</b></p> <p>9 Q Does the CBP issue any training guidance</p> <p>10 to officers about when it is appropriate to draw a</p> <p>11 weapon in response to an armed and dangerous</p> <p>12 notification?</p> <p>13 <b>A Yes. They're trained on use of force</b></p> <p>14 <b>and handling dangerous people and when to react in</b></p> <p>15 <b>certain ways.</b></p> <p>16 Q Are CBP officers instructed that drawing</p> <p>17 a weapon is an appropriate response to a</p> <p>18 notification that an individual may be a match to</p> <p>19 the TSDB?</p> <p>20 MS. ROTH: Object as to vagueness and as</p> <p>21 to foundation and to the extent it calls for law</p> <p>22 enforcement privileged information. You can</p>	252	<p>1 BY MS. HOMER:</p> <p>2 Q Would the CBP subject an officer to</p> <p>3 discipline who drew a weapon because he learned</p> <p>4 that an individual was on the TSDB?</p> <p>5 MS. ROTH: Object to the extent that it</p> <p>6 calls for deliberative process, privileged</p> <p>7 information, and law enforcement privileged</p> <p>8 information. You can answer if you know.</p> <p>9 THE WITNESS: It is difficult to</p> <p>10 speculate. If we found that the officer acted</p> <p>11 inappropriately with excessive force, potentially</p> <p>12 they could be disciplined.</p> <p>13 BY MS. HOMER:</p> <p>14 Q Has the CBP ever disciplined an officer</p> <p>15 for drawing a weapon after that officer learned</p> <p>16 that an individual was a match to the TSDB?</p> <p>17 <b>A I don't know.</b></p> <p>18 Q Would it surprise you to learn that</p> <p>19 officers had drawn weapons immediately after</p> <p>20 learning that the individual they were inspecting</p> <p>21 was listed on the TSDB?</p> <p>22 MS. ROTH: Objection as to form and</p>

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<p style="text-align: right;">253</p> <p>1 foundation. Object as to vagueness. You can 2 answer.</p> <p>3 THE WITNESS: I don't have enough 4 information to say I'm surprised.</p> <p>5 BY MS. HOMER:</p> <p>6 Q Have you ever heard of an instance 7 occurring where a CBP officer has immediately 8 drawn a weapon learning that and individual was 9 listed on the TSDB?</p> <p>10 <b>A Not that I know of firsthand.</b></p> <p>11 Q You're here to testify on behalf of the 12 CBP as an agency. Correct?</p> <p>13 <b>A I believe that's why I'm here.</b></p> <p>14 Q Is it within the knowledge of the CBP 15 whether any individual officer has ever drawn a 16 weapon at an initial screening solely because they 17 learned that the individual they are inspecting is 18 listed on the TSDB?</p> <p>19 <b>A That's something that we should be able 20 to determine.</b></p> <p>21 Q Does the CBP have written procedures 22 regarding the appropriate operational response to</p>	<p style="text-align: right;">255</p> <p>1 of the individual is necessary in order to control 2 and safely refer them to secondary, that decision 3 is made.</p> <p>4 BY MS. HOMER:</p> <p>5 Q Do the referring officers ever handcuff 6 an individual solely because they are listed on 7 the TSDB?</p> <p>8 MS. ROTH: Objection to the extent it 9 calls for law enforcement privileged information. 10 Answer if you can.</p> <p>11 THE WITNESS: I believe I have answered 12 it a few times. The officer makes a decision 13 based on the totality of the circumstances, what 14 they have before them, the individuals, and the 15 judgment that they've made what's necessary in 16 order to securely confer them to secondary.</p> <p>17 BY MS. HOMER:</p> <p>18 Q To the CBP's knowledge has an officer 19 ever handcuffed an individual while transporting 20 them between initial inspection and secondary 21 inspection solely because that individual is 22 listed on the TSDB?</p>
<p style="text-align: right;">254</p> <p>1 encounters with persons on the TSDB?</p> <p>2 MS. ROTH: Objection to the extent that 3 calls for law enforcement privileged information. 4 Objection as to asked and answered. I believe we 5 covered this already.</p> <p>6 THE WITNESS: When a decision is made to 7 refer them to secondary, the decision is to -- or 8 the part of that is to securely refer them to 9 secondary. So they receive training how to do 10 that and the safe way of getting them to secondary 11 for additional questioning.</p> <p>12 BY MS. HOMER:</p> <p>13 Q Does the process of securely 14 transferring an individual on the TSDB to 15 secondary inspection ever require handcuffing that 16 individual?</p> <p>17 MS. ROTH: Objection to the extent that 18 calls for law enforcement privileged information. 19 And again, I believe this topic has been covered, 20 so I object that it has been asked and answered.</p> <p>21 THE WITNESS: Case by case if the 22 inspecting officer determines that the handcuffing</p>	<p style="text-align: right;">256</p> <p>1 <b>A Not to my knowledge, but certainly to 2 CBP.</b></p> <p>3 Q Does CBP consider it an appropriate 4 security measure to handcuff all traveling 5 companions of an individual who is listed on the 6 TSDB?</p> <p>7 MS. ROTH: Objection. Objection as to 8 vagueness and as to foundation. Objection to the 9 extent that it calls for law enforcement 10 privileged information. You can answer if you 11 understood that question.</p> <p>12 THE WITNESS: Again, it is the judgment 13 of the officer in referring them to secondary what 14 the appropriate response would be to control the 15 individuals.</p> <p>16 BY MS. HOMER:</p> <p>17 Q Is it within the authority of a CBP 18 officer to choose to handcuff all traveling 19 companions of an individual listed on the TSDB 20 solely because they are the traveling companions 21 of an individual listed on the TSDB?</p> <p>22 MS. ROTH: Objection to the extent its</p>

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1 **A Removing a panel of a car would follow a**  
 2 **nonintrusive inspection x-ray. The removal of**  
 3 **panels to get deeper in the vehicle would always**  
 4 **be after an x-ray. And I don't know why we would**  
 5 **remove a panel if there is no -- nothing in the**  
 6 **x-ray to give us that reason to.**  
 7 Q The secondary inspections generally may  
 8 entail a CBP officer searching through an  
 9 individual's luggage. Correct?  
 10 **A Yes.**  
 11 Q Do secondary inspections for individuals  
 12 listed on the TSDB specifically always require a  
 13 search of that individual's luggage?  
 14 MS. ROTH: Objection. Objection to the  
 15 extent that it calls for law enforcement  
 16 privileged information. But you can answer.  
 17 THE WITNESS: I'd probably said  
 18 generally, yes. We are determining admissibility,  
 19 determining whether or not this person is a match.  
 20 So their belongings would certainly help us  
 21 facilitate their inspection to make that final  
 22 determination. We would want to look in their

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1 bags to help complete our inspection.  
 2 BY MS. HOMER:  
 3 Q Does secondary inspection generally ever  
 4 entail searching an individual's wallet?  
 5 **A Generally for anybody?**  
 6 Q For anybody?  
 7 **A We could dependent upon why they were**  
 8 **referred to secondary.**  
 9 Q Does secondary inspection for  
 10 individuals listed on the TSDB specifically  
 11 require a search of that individual's wallet?  
 12 MS. ROTH: Objection to the extent that  
 13 calls for law enforcement privileged information.  
 14 You can answer if you are able to.  
 15 THE WITNESS: If it helps us complete  
 16 the inspection, verify identity, verify who they  
 17 are we may choose to search their wallet.  
 18 BY MS. HOMER:  
 19 Q Does the CBP as matter of course make  
 20 copies of documents contained within an  
 21 individual's wallet who is listed on the TSDB?  
 22 MS. ROTH: I'm going to object to the

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1 extent that calls for law enforcement privileged  
 2 information and you can answer to the extent that  
 3 you are able to without -- in a non-privileged  
 4 way.  
 5 THE WITNESS: If there is some  
 6 information that is noteworthy to capture, we may  
 7 on a case by case basis.  
 8 BY MS. HOMER:  
 9 Q Does the CBP ever write down the credit  
 10 card numbers contained in an individual's wallet  
 11 in order to document it as part of an encounter  
 12 with an individual listed in the TSDB?  
 13 MS. ROTH: I'm going to object to the  
 14 extent that question calls for law enforcement  
 15 privileged information. You can answer to the  
 16 extent you are able to in a non-privileged way.  
 17 THE WITNESS: There may be instances  
 18 where we want to document, verifying credit cards,  
 19 debit cards, gift cards. You know, there could be  
 20 some verification of those credit cards,  
 21 especially if they are in various names.  
 22

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1 BY MS. HOMER:  
 2 Q Does the TSDB ever document any medical  
 3 insurance information that may be contained within  
 4 an individual's wallet?  
 5 MS. ROTH: I'm going to object to the  
 6 extent that calls for law enforcement privileged  
 7 information.  
 8 THE WITNESS: I don't know.  
 9 BY MS. HOMER:  
 10 Q Does did TSDB ever create a  
 11 documentation of any government ID information  
 12 that may be contained in an individual's wallet?  
 13 MS. ROTH: First object as vagueness. I  
 14 believe you just asked as the TSDB, if can you  
 15 clarify.  
 16 BY MS. HOMER:  
 17 Q I apologize. Does the CBP ever document  
 18 in its systems the government ID information that  
 19 is found in a TSDB individual's wallet?  
 20 MS. ROTH: I'm going to object on the  
 21 basis of the law enforcement privilege and  
 22 instruct the witness not to answer that question.

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<p style="text-align: right;">269</p> <p>1 BY MS. HOMER: 2 Q Does the TSDB ever create records of the 3 information that may be found on an individual's 4 business cards that are in their wallet? 5 MS. ROTH: I think you said TSDB again. 6 BY MS. HOMER: 7 Q I'm so sorry. Let me rephrase my 8 question. 9 Does the CBP ever create encountered 10 records containing the information on business 11 cards in a TSDB listed individual's wallet? 12 MS. ROTH: I'm going to object on the 13 basis of the law enforcement privilege and 14 instruct the witness not to answer that question. 15 BY MS. HOMER: 16 Q As a matter of course does the CBP 17 provide the information it gathers from a search 18 of an individual's wallet to the FBI? 19 MS. ROTH: I'm going to object on the 20 basis of the law enforcement privilege and 21 instruct the witness not to answer that question. 22</p>	<p style="text-align: right;">271</p> <p>1 THE WITNESS: I don't understand 2 what you -- by what you mean by detained. 3 BY MS. HOMER: 4 Q Does the CBP use the word detain to 5 describe a possible operational response at the 6 border? 7 <b>A It could, depending upon the</b> 8 <b>circumstances, whether or not they are going to be</b> 9 <b>placed into custody -- you know, by another</b> 10 <b>agency. But generally the secondary processing</b> 11 <b>not detaining somebody, it's just questioning</b> 12 <b>them.</b> 13 Q Is one result of secondary inspection 14 to, in your words, place somebody into custody? 15 <b>A That's certainly one result.</b> 16 Q How does the CBP define a detention? 17 MS. ROTH: I'm going to object to the 18 extent that calls for a legal conclusion. 19 THE WITNESS: I don't have the 20 definition of detention in my mind. But I think 21 generally speaking when we have somebody for I 22 think it is more than 12 hours. I think that's</p>
<p style="text-align: right;">270</p> <p>1 BY MS. HOMER: 2 Q Does the CBP ever search the belongings 3 of the travel companions of an individual listed 4 on the TSDB? 5 MS. ROTH: Object to the extent that 6 calls for law enforcement privilege. But you can 7 answer if you are able to. 8 THE WITNESS: We may choose to do so. 9 BY MS. HOMER: 10 Q Does the CBP create documentation of the 11 contents of traveling companions' wallets and 12 luggage in its systems? 13 MS. ROTH: I'm going to object on the 14 basis of the law enforcement privilege. 15 THE WITNESS: We may if there is some 16 law enforcement need. 17 BY MS. HOMER: 18 Q Does the CBP ever detain individuals who 19 have been referred to secondary inspection? 20 MS. ROTH: I'm going to object to the 21 extent that calls for a legal conclusion. You can 22 answer if you understand the question.</p>	<p style="text-align: right;">272</p> <p>1 the -- I don't know. 2 BY MS. HOMER: 3 Q Under what circumstances does the CBP 4 hold an individual for more than 12 hours? 5 <b>A In order for us to complete the</b> 6 <b>inspection and make a final determination. That's</b> 7 <b>just part of the -- you know, the inspectional</b> 8 <b>process.</b> 9 Q Does the CBP have a written definition 10 of detention somewhere? 11 <b>A I'm sure it does.</b> 12 Q Do you know what policy that definition 13 may be contained in? 14 <b>A The acronym I believe is TEDS, T-E-D-S.</b> 15 <b>But I'm not sure what it stands for. That's our</b> 16 <b>detention policy.</b> 17 Q But to the best of your knowledge right 18 now the TEDS, T-E-D-S, policy would contain the 19 CBP's detention policy? 20 <b>A I believe so.</b> 21 Q Is the CBP required to have probable 22 cause before it can detain an individual for more</p>

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1 be providing it to them.  
 2 BY MS. HOMER:  
 3 Q Does the CBP conduct pat-downs on  
 4 individuals as part of its general secondary  
 5 inspection processes?  
 6 **A We could, depending upon the inspection.**  
 7 Q Does the CBP conduct pat-downs on every  
 8 individual who is listed in the TSDB as part of  
 9 its secondary inspection processes?  
 10 MS. ROTH: Object to the extent that it  
 11 calls for law enforcement privileged information.  
 12 You can answer if you are able to.  
 13 THE WITNESS: I'm not sure. But if in  
 14 the totality of the circumstances if the officer  
 15 found it necessary to pat-down somebody to look  
 16 for documents or potentially -- you know,  
 17 something hidden. If they believe there is  
 18 contraband of some sort they may choose to pat  
 19 them down.  
 20 BY MS. HOMER:  
 21 Q Does the CBP have a term for a pat-down  
 22 that is more lengthy or extensive than ordinary

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1 pat-down?  
 2 **A Not that I'm aware of.**  
 3 MS. ROTH: Objection as to vagueness.  
 4 BY MS. HOMER:  
 5 Q Do CBP pat-downs ever entail body cavity  
 6 searches?  
 7 **A That wouldn't be considered a pat-down.**  
 8 **It would be considered something different.**  
 9 Q What term would the CBP use to describe  
 10 a body cavity search?  
 11 **A I can't think of the exact term. I**  
 12 **don't think it is body cavity search. More an**  
 13 **invasive. It would require supervisory approval.**  
 14 Q So invasive bodily searches require  
 15 supervisory approval. Is what I just understood  
 16 you to say?  
 17 **A Yes.**  
 18 Q Okay. Do CBP officers conduct invasive  
 19 bodily searches of individuals listed on the TSDB  
 20 as a matter of course?  
 21 MS. ROTH: Objection to the extent that  
 22 it calls for law enforcement privileged

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1 information. You can answer if you are able to.  
 2 THE WITNESS: I don't believe so.  
 3 BY MS. HOMER:  
 4 Q Do CBP officers on occasion conduct  
 5 invasive bodily searches on individuals listed on  
 6 the TSDB?  
 7 MS. ROTH: Object to the extent that  
 8 that calls for law enforcement privileged  
 9 information. You can answer if you can.  
 10 THE WITNESS: I don't know.  
 11 BY MS. HOMER:  
 12 Q If an individual who was listed on the  
 13 TSDB was subjected to an invasive bodily search  
 14 would that search be documented in the encounter  
 15 information the CBP prepared afterwards?  
 16 MS. ROTH: Objection as to vagueness.  
 17 THE WITNESS: It should be documented  
 18 within a secondary inspection results as well as  
 19 supervisory approval.  
 20 BY MS. HOMER:  
 21 Q Does secondary inspection for  
 22 individuals listed in the TSDB require officers to

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1 call the National Targeting Center as a matter of  
 2 course?  
 3 MS. ROTH: Objection to the extent that  
 4 calls for law enforcement privileged information  
 5 and objection to the extent that this has been  
 6 asked and answered.  
 7 THE WITNESS: Ports of entry regularly  
 8 correspond with the NTC when handling a TSDB and  
 9 secondary.  
 10 BY MS. HOMER:  
 11 Q Does secondary inspections of  
 12 individuals listed on the TSDB ever entail the CBP  
 13 asking the FBI to join them during the inspection?  
 14 MS. ROTH: Objection to the extent that  
 15 calls for law enforcement privileged information.  
 16 You can answer if you are able.  
 17 THE WITNESS: I'm not sure that's  
 18 privileged or not.  
 19 MS. ROTH: Okay.  
 20 BY MS. HOMER:  
 21 Q That is also a question we would like to  
 22 if possible get confirmed --

Transcript of Randy Howe, Designated Representative  
Conducted on March 22, 2018

<p style="text-align: right;">285</p> <p>1 <b>A Okay.</b></p> <p>2 Q -- if it is privileged.</p> <p>3 Does the CBP ever bring any other</p> <p>4 agency -- let me start that over. Does the CBP</p> <p>5 ever involve any other agency in the process of</p> <p>6 conducting secondary inspections for individuals</p> <p>7 listed on the TSDB?</p> <p>8 MS. ROTH: Objection to the extent that</p> <p>9 calls for law enforcement privileged information.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. HOMER:</p> <p>12 Q What other agencies might the CBP</p> <p>13 involve in the secondary inspection process for an</p> <p>14 individual listed in the TSDB?</p> <p>15 <b>A Immigration and Customs Enforcement.</b></p> <p>16 Q Any others?</p> <p>17 <b>A No.</b></p> <p>18 Q Why would the CBP involve Immigration</p> <p>19 and Customs Enforcement in the secondary</p> <p>20 inspection process for an individual listed in the</p> <p>21 TSDB?</p> <p>22 MS. ROTH: I'm going to object to the</p>	<p style="text-align: right;">287</p> <p>1 additional questions about the individual, their</p> <p>2 purpose for travel, etc.?</p> <p>3 <b>A Yes.</b></p> <p>4 Q Does the CBP specifically for</p> <p>5 individuals listed in the TSDB have a set of</p> <p>6 questions it asks individuals listed in the TSDB</p> <p>7 during secondary inspection?</p> <p>8 <b>A There's no list of questions.</b></p> <p>9 Q Does the CBP as matter of course conduct</p> <p>10 additional interviews during secondary inspection</p> <p>11 for individuals listed in the TSDB?</p> <p>12 <b>A Anybody that's referred to secondary</b></p> <p>13 <b>because the purpose is for additional questioning</b></p> <p>14 <b>to determine admissibility and further course of</b></p> <p>15 <b>action. That is what we do in secondary.</b></p> <p>16 Q Does the CBP ask the FBI to conduct any</p> <p>17 additional questioning of individuals listed in</p> <p>18 the TSDB who are referred to secondary inspection?</p> <p>19 MS. ROTH: I'm going to object on the</p> <p>20 basis of the law enforcement privilege and</p> <p>21 instruct the witness not to answer that question.</p> <p>22</p>
<p style="text-align: right;">286</p> <p>1 extent that calls for law enforcement privileged</p> <p>2 information. You can answer in general</p> <p>3 non-privileged terms if you are able.</p> <p>4 THE WITNESS: ICE is a key DHS component</p> <p>5 that handles the investigative work within the</p> <p>6 DHS. So they are a key partner with us in</p> <p>7 facilitating the processing of passengers in this</p> <p>8 regard.</p> <p>9 MS. MASRI: I'm going to dial them back</p> <p>10 -- (mumbling)</p> <p>11 (Court reporter requested</p> <p>12 clarification.)</p> <p>13 MS. HOMER: We don't need to go off the</p> <p>14 record.</p> <p>15 (Discussion off of the record.)</p> <p>16 THE WITNESS: They are going to dial</p> <p>17 into the phone.</p> <p>18 MS. HOMER: Yes.</p> <p>19 (Pause)</p> <p>20 BY MS. HOMER:</p> <p>21 Q Does the CBP generally ask individuals</p> <p>22 who have been referred to secondary inspection</p>	<p style="text-align: right;">288</p> <p>1 BY MS. HOMER:</p> <p>2 Q Does the CBP ever ask individuals listed</p> <p>3 on the TSDB about their connections to the Middle</p> <p>4 East as part of the secondary inspection interview</p> <p>5 process?</p> <p>6 MS. ROTH: Objection as to vagueness and</p> <p>7 foundation.</p> <p>8 THE WITNESS: We ask lots of questions</p> <p>9 to verify identity, verify where they are</p> <p>10 traveling from, where they are going, who they</p> <p>11 visited just to verify their identity and</p> <p>12 admissibility.</p> <p>13 BY MS. HOMER:</p> <p>14 Q Does the CBP ever ask individuals listed</p> <p>15 in the TSDB if they believe in Islam, the</p> <p>16 religion?</p> <p>17 MS. ROTH: Object as to vagueness.</p> <p>18 THE WITNESS: We don't generally ask</p> <p>19 religious questions. But depending upon how they</p> <p>20 are applying for admission, if they are traveling</p> <p>21 on a certain type of visa and it's a religion visa</p> <p>22 it might be a good question to be asking somebody.</p>

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1 BY MS. HOMER:  
 2 Q Does CBP think that right now there are  
 3 individuals listed on the TSDB who do not actually  
 4 have any ties to terrorism?  
 5 MS. ROTH: Objection to the extent that  
 6 calls for law enforcement privileged information.  
 7 You can answer.  
 8 THE WITNESS: If we did we would share  
 9 that view with the appropriate authorities, mainly  
 10 the TSC for their review and determination.  
 11 BY MS. HOMER:  
 12 Q Has the CBP's use of the TSDB at border  
 13 inspections prevented an act of terrorism?  
 14 MS. ROTH: Objection as to vagueness.  
 15 THE WITNESS: It is impossible to  
 16 speculate what we prevented.  
 17 BY MS. HOMER:  
 18 Q Has the CBP ever publicly identified an  
 19 act of terrorism that its inspective efforts  
 20 prevented?  
 21 **A Inspective efforts that we've prevented?**  
 22 **No, not that I'm aware of.**

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1 Q Has the CBP ever publicly identified an  
 2 act of terrorism that it in any capacity helped to  
 3 prevent?  
 4 **A Not that I'm aware of.**  
 5 Q Why does the CBP consider the TSDB to be  
 6 an effective tool at preventing terrorism?  
 7 **A I think I will restate what I said four**  
 8 **questions ago. National security, border security**  
 9 **is our mandate, protecting the nation. The sole**  
 10 **repository for the watch listed individuals is**  
 11 **managed by the FBI's TSC. And it is a means for**  
 12 **us to identify individuals that are of concern.**  
 13 Q In the last ten years how many  
 14 individuals listed on the TSDB has the CBP  
 15 arrested?  
 16 MS. ROTH: Objection. Asked and  
 17 answered.  
 18 THE WITNESS: Yeah, I don't know. That  
 19 was before.  
 20 BY MS. HOMER:  
 21 Q Do you know if it is more than ten?  
 22 **A I don't know.**

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1 Q More than 50?  
 2 **A I don't know. I mean we can go back to**  
 3 **the snapshot, whether there's 1600 individuals in**  
 4 **a day, so I don't know.**  
 5 Q Yeah. Okay. Would the CBP be able to  
 6 calculate how many individuals it has arrested who  
 7 were also listed on the TSDB at the time of their  
 8 arrest?  
 9 **A I'm sure we have that information.**  
 10 Q Would the CBP be able to calculate how  
 11 many U S citizens it has arrested who were listed  
 12 on the TSDB at the time of its arrest -- their  
 13 arrest?  
 14 **A I'm sure that is something we can do.**  
 15 Q To your knowledge has the CBP ever  
 16 calculated the number of individuals listed on the  
 17 TSDB who it has arrested?  
 18 **A I don't know. I'm sure we have.**  
 19 Q Does the CBP prepare any regular reports  
 20 about the encounters it has with individuals  
 21 listed on the TSDB?  
 22 MS. ROTH: Objection to the extent that

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1 calls for law enforcement privileged information.  
 2 MS. HOMER: And it was actually vague.  
 3 MS. ROTH: And vague.  
 4 MS. HOMER: It was.  
 5 BY MS. HOMER:  
 6 Q Let me rephrase. Does the CBP ever  
 7 prepare aggregate statistics on the details of its  
 8 encounters with individuals listed on the TSDB?  
 9 **A I believe they're probably incorporated**  
 10 **with the daily snapshot you provided me.**  
 11 Q Just for the record, I think that  
 12 snapshot is broader than just individuals listed  
 13 on the TSDB.  
 14 **A It's within there.**  
 15 Q Oh, it's within there. So is it your  
 16 testimony that if it choose to do so the CBP could  
 17 break down the numbers listed in the snapshot to  
 18 only instances that were connected to individuals  
 19 listed in the TSDB?  
 20 **A If it wasn't law enforcement sensitive,**  
 21 **sure.**  
 22 Q So, is it your testimony that the CBP

<p style="text-align: right;">337</p> <p>1 could calculate aggregate statistics about 2 individuals listed in the TSDB, but it may not be 3 able to publicly disclose those statistics? 4 <b>A Yes.</b> 5 Q Okay. Does the CBP ever assess whether 6 it is using TSDB information effectively? 7 MS. ROTH: Objection as to vagueness. 8 THE WITNESS: We re-evaluate the way we 9 do business daily and we reevaluate our processes 10 to look for improvements, improve our method of 11 doing our business all the time. 12 BY MS. HOMER: 13 Q Can you identify any examples of ways in 14 which the CBP has changed any policy or practices 15 related to individuals on the TSDB? 16 MS. ROTH: Objection to the extent it 17 calls for law enforcement sensitive privileged 18 information. But if you can answer in general non 19 privileged terms you can. 20 THE WITNESS: I can't point to specific 21 examples of what we changed, but we evolve the way 22 we do business day-to-day to improve our process,</p>	<p style="text-align: right;">339</p> <p>1 I wouldn't be surprised if that was the case. 2 BY MS. HOMER: 3 Q Has CBP ever refused to grant entry to 4 the relative of an individual who was listed on 5 the TSDB even though the relative themselves was 6 not listed on the TSDB? 7 MS. ROTH: Objection to the extent that 8 it calls for law enforcement, privileged 9 information and as to vagueness. 10 THE WITNESS: You're asking if somebody 11 was deemed inadmissible just by being a relative? 12 BY MS. HOMER: 13 Q Yes. 14 <b>A I'm not sure if that is privileged or</b> 15 <b>not.</b> 16 Q So you know the answer to that question 17 but you're not sure if you can provide it? 18 <b>A Yeah.</b> 19 MS. ROTH: Counsel, is there -- perhaps 20 we can get around the privilege if you rephrase 21 the questions. You're referring to an alien or 22 non alien.</p>
<p style="text-align: right;">338</p> <p>1 to streamline it with the overall goal of 2 facilitating people. 3 BY MS. HOMER: 4 Q Has the CBP ever refused to grant an 5 individual global entry status because they are 6 listed on the TSDB? 7 MS. ROTH: Objection to the extent that 8 calls for law enforcement privileged information. 9 You can answer if you can. 10 THE WITNESS: That is one of the 11 determinations. It is almost as though they are 12 applying for admission for the U.S. But if they 13 were on a terrorist watch list they would not be 14 permitted a trusted traveler document. 15 BY MS. HOMER: 16 Q Has the CBP ever revoked the global 17 entry status of an individual because that 18 individual was added to the TSDB? 19 MS. ROTH: Objection to the extent that 20 it calls for law enforcement privileged 21 information. 22 THE WITNESS: I don't know firsthand but</p>	<p style="text-align: right;">340</p> <p>1 MS. HOMER: That is fair. Let me see if 2 I can try that. 3 BY MS. HOMER: 4 Q Has the CBP ever refused to permit a 5 foreign national to enter the United States 6 because one of the foreign national's relatives is 7 listed on the TSDB? 8 MS. ROTH: I'll going to still object to 9 the extent it calls for law enforcement privileged 10 information. 11 THE WITNESS: They could be found 12 inadmissible. 13 BY MS. HOMER: 14 Q They could be found inadmissible? 15 <b>A Yes.</b> 16 Q Okay. Has the CBP ever fired a CBP 17 employee because that employee was added to the 18 TSDB? 19 MS. ROTH: Objection, to the extent that 20 it calls for law enforcement privileged 21 information. 22 THE WITNESS: I do not know.</p>

Transcript of Randy Howe, Designated Representative  
Conducted on March 22, 2018

<p>341</p> <p>1 BY MS. HOMER: 2 Q Has CBP ever revoked the customs seal 3 credential on an individual because that 4 individual was subsequently added to the TSDB? 5 MS. ROTH: Objection that it calls for 6 law enforcement privileged information. 7 THE WITNESS: I don't know for a fact 8 but if that was the case, that would be a reason 9 to have them revoked. 10 BY MS. HOMER: 11 Q And to circle back, would it -- would it 12 be a permissible reason for the CBP to fire an 13 employee if the employee had been added to the 14 TSDB? 15 A I don't know. I mean that's -- if we 16 had an employee that was a terrorist? Is that 17 essentially what you are asking me? 18 Q I'm asking you if you had an employee 19 who was listed on the TSDB? 20 A Okay. That would probably be a concern 21 for us. 22 Q And that concern might lead to firing</p>	<p>343</p> <p>1 BY MS. HOMER: 2 Q Have you read the complaint in this 3 case? 4 A You are talking about the main 5 complaint? 6 Q Yeah. 7 A Most of it. 8 Q Most of it. Are you aware of the claims 9 made by plaintiff Anas Elhady about the conditions 10 of his detention by the CBP in Michigan? 11 A That doesn't sound familiar. 12 Q Do you recall reviewing any facts 13 regarding an individual who was detained by the 14 CBP for more than six hours in a cold room with 15 bright lights, without his jacket or shoes? 16 A I'm not familiar with that. 17 Q Do you have any -- or as a result of 18 this lawsuit, has the CBP changed any of its 19 procedures regarding the secondary screening of 20 individuals? 21 A I don't know. I'm not sure. 22 Q As a result of this lawsuit, has the CBP</p>
<p>342</p> <p>1 the employee? 2 A That would be a concern for us that 3 potentially could lead to their firing. 4 Q Has the CBP ever revoked for permission 5 for an individual to participate in the Visa 6 waiver program because the individual was listed 7 on the TSDB? 8 A I'm sure -- 9 MS. ROTH: I'm sorry. Objection to the 10 extent that calls for law enforcement privileged 11 information. 12 THE WITNESS: I'm sure that is the case. 13 BY MS. HOMER: 14 Q Has the CBP ever revoked permission for 15 a foreign national to participate in the Visa 16 waiver program because one of those foreign 17 nationals' relatives was listed on the TSDB? 18 MS. ROTH: Objection to the extent it 19 calls for law enforcement privileged information. 20 THE WITNESS: I'm sure that would be the 21 case. 22</p>	<p>344</p> <p>1 evaluated whether it should make any changes to 2 its procedures regarding the secondary screenings 3 of individuals? 4 MS. ROTH: I'm going to objection on the 5 basis it is deliberative process privilege and 6 instruct the witness not to answer that question. 7 BY MS. HOMER: 8 Q Has the CBP taken any disciplinary 9 action against any CBP officer who interacted with 10 any of the plaintiffs in this case? 11 A I do not know. 12 Q Does CBP believe it would contribute to 13 national security to arrest all individuals 14 currently listed on the TSDB? 15 MS. ROTH: Objection. Vagueness. 16 THE WITNESS: You may have to restate 17 that question. I apologize. 18 BY MS. HOMER: 19 Q That's okay. In CBP's opinion would it 20 enhance national security to arrest all 21 individuals currently listed on the TSDB? 22 MS. ROTH: Same objection?</p>

Transcript of Randy Howe, Designated Representative  
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<p style="text-align: right;">349</p> <p>1 THE WITNESS: I'm not sure what you 2 mean. 3 BY MS. HOMER: 4 Q I guess the answer is implied from the 5 answer to your previous question? 6 <b>A If an individual has borrowed the -- let 7 me start over. 8 If an individual has borrowed a car that 9 is owned by a different individual who is listed 10 on the TSDB, will the driver be subjected to 11 secondary inspection.</b> 12 MS. ROTH: Objection as to vagueness. 13 Objection to the extent it calls for law 14 enforcement privileged information. Objection, it 15 calls for speculation. 16 THE WITNESS: You're asking me if 17 somebody else, if somebody is driving a vehicle 18 owned by a TSDB? 19 BY MS. HOMER: 20 Q Yes. 21 <b>A It is difficult to speculate, but if the 22 vehicle is owned by a TSDB, there mostly likely</b></p>	<p style="text-align: right;">351</p> <p>1 public. 2 MS. ROTH: Objection to the extent it 3 calls for a legal conclusion. And objection as to 4 vagueness. 5 THE WITNESS: All of the work that we do 6 is in the public, in primary. 7 BY MS. HOMER: 8 Q Would the CBP expect that other members 9 of the public who see the CBP handcuffing an 10 individual would assume that the handcuffed 11 individual had done something wrong? 12 MS. ROTH: Objection, calls for 13 speculation. Objection, vagueness. 14 THE WITNESS: I can't speculate what 15 those people believe or see or understand. Our 16 focus is on the matter at hand. And if somebody 17 is possibly armed and dangerous, for the safety 18 and security of those people, the officers and the 19 public. 20 BY MS. HOMER: 21 Q Does the CBP undertake any assessments 22 of whether its border inspection practices deter</p>
<p style="text-align: right;">350</p> <p><b>1 are going to be some questions that are going to 2 follow.</b> 3 Q And based on your earlier answer about 4 how initial screeners spend two minutes or less 5 with individuals would it be likely that those 6 additional questions would occur in secondary 7 inspection? 8 <b>A I would say it is likely, likely to 9 happen in secondary.</b> 10 Q Does CBP take steps to minimize the 11 public embarrassment to individuals who are 12 flagged as armed and dangerous during inspections? 13 MS. ROTH: Objection as to vagueness. 14 And objection to the extent that its calls for law 15 enforcement privileged information. If you 16 understand the question you can answer. 17 THE WITNESS: I don't understand what 18 you mean by public embarrassment. 19 BY MS. HOMER: 20 Q Does CBP, as part of its operational 21 response to individuals who are flagged as armed 22 and dangerous, ever apprehend those individuals in</p>	<p style="text-align: right;">352</p> <p>1 legitimate travel? 2 <b>A I think that was the second question you 3 asked me this morning. And I don't know the 4 answer to that.</b> 5 MS. HOMER: Are we out of time? No 6 further questions from plaintiff's counsel. 7 MS. ROTH: No questions from defendant. 8 THE VIDEOGRAPHER: This marks the end of 9 the deposition of Randy Howe, corporate designee 10 for Customs and Border Protection. We are going 11 off of the record at 6:25 p.m. 12 (Whereupon, at 6:25 p.m., the above 13 proceedings was adjourned.) 14 15 16 17 18 19 20 21 22</p>



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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: right;">85</p> <p>1 witness to not answer. 2 MR. ABBAS: I'm not. I'm asking -- it's 3 a yes-or-no question. 4 MS. POWELL: Answer to the extent you 5 can, yes or no only. 6 THE WITNESS: The question is 7 watchlisting -- just watchlisting all by itself? 8 Since the watchlist only includes identifiers of 9 known or suspected terrorists, by itself I'm not 10 aware of any instance where that identifying 11 information alone prevented an act of terrorism. 12 BY MR. ABBAS: 13 Q. It's the FBI's understanding that TSC 14 disseminates TSDB identifying information for use 15 by federal government agencies; correct? 16 MS. POWELL: Objections; scope and asked 17 and answered. 18 MR. ABBAS: Go ahead. 19 THE WITNESS: The TSC does disseminate 20 the information, yes. 21 BY MR. ABBAS: 22 Q. Does the FBI receive TSDB information</p>	<p style="text-align: right;">87</p> <p>1 MS. POWELL: Objection; vague, 2 potentially misleading. 3 THE WITNESS: Long before the TSC 4 existed, there was a file inside NCIC referred to 5 as VGTOF, which was the Violent Gang and 6 Terrorists Operational File. So that file has 7 been -- since the consolidated watchlisting came 8 into being after HSPD-6, there is now a file in 9 NCIC referred to as the Known or Suspected 10 Terrorist File. I don't know who a couple of 11 decades ago started the VGTOF file, but I know 12 that it has been in existence. It predates my 13 entry to the FBI. 14 BY MR. ABBAS: 15 Q. So there's no longer a VGTOF file, it's 16 just a KST file; correct? 17 <b>A. There is a KST file and I believe</b> 18 <b>there's a separate file for gang members, but I</b> 19 <b>don't know what it's called anymore.</b> 20 Q. Okay. But the KST file is the -- when 21 you say "KST file," you're referring to the subset 22 of information at NCIC that reflects TSDB</p>
<p style="text-align: right;">86</p> <p>1 from TSC? 2 MS. POWELL: Objection; vague. 3 THE WITNESS: Yes. 4 BY MR. ABBAS: 5 Q. What does the FBI do with TSDB 6 information it receives from TSC? 7 MS. POWELL: Objection; vague, a 8 comprehensive answer would require the disclosure 9 of law enforcement sensitive information, but 10 please answer to the extent you can. 11 THE WITNESS: The information received 12 by the FBI from the TSC is inclusive of the 13 information that goes to NCIC and the information 14 that comes into the FBI's case management system, 15 Sentinel. Information coming into Sentinel is 16 part of FBI investigations so that information 17 would be updating FBI investigations. And the 18 information that goes to NCIC is in NCIC for use 19 by NCIC users. 20 BY MR. ABBAS: 21 Q. Who decided to put TSDB information in 22 NCIC?</p>	<p style="text-align: right;">88</p> <p>1 information; correct? 2 <b>A. Yes.</b> 3 Q. Okay. Is it your understanding that it 4 was the FBI's decision to create the KST file and 5 make it available to NCIC users through NCIC? 6 MS. POWELL: Objection; mischaracterizes 7 prior testimony. 8 THE WITNESS: I don't know whose 9 decision it was. Similar to the TSC, NCIC and the 10 administration of NCIC belongs to the FBI, but it 11 is, you know, sort of advised by an interagency 12 policy board. So I don't know who made the 13 decision or whether it was specifically FBI's 14 decision or it was an interagency agreement that 15 to being compliant with HSPD-6 to go to one 16 consolidated terror watchlist. Clearly a decision 17 was to made to stop commingling gang members and 18 known or supported terrorists in the same file. 19 BY MR. ABBAS: 20 Q. That's a great decision. 21 So just to kind of clarify and make sure 22 that I understand, you're not -- you don't know</p>

109	<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>	111	<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>
110	<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>	112	<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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141	<p>1 issues to law enforcement officers encountering 2 TSDB listees? It's a yes-or-no question, are 3 there standard alerts? 4 MS. POWELL: I think you can answer yes 5 or no. 6 THE WITNESS: Yes. 7 BY MR. ABBAS: 8 Q. How many standard alerts are there that 9 NCIC issues to law enforcement officers 10 encountering TSDB listees? 11 MS. POWELL: And I'm instructing the 12 witness not to answer on the grounds of the law 13 enforcement privilege. 14 Q. So you're not going to tell me the 15 number of -- I think it's probably three, I'm not 16 sure, it may be more. 17 Are there -- how do -- how do these 18 alerts -- who assigns -- let me start all over. 19 Who decides what standardized alert NCIC 20 will provide to law enforcement officers 21 encountering TSDB listees? 22 MS. POWELL: Objection; vague, but</p>	143	<p>1 not to answer on the basis of the protective 2 order, but we're not there yet. 3 MR. ABBAS: Do you want the question 4 read back? 5 THE WITNESS: No, I got the question. 6 BY MR. ABBAS: 7 Q. Okay. Great. Excellent. 8 <b>A. So similar to the TSC, the NCIC is</b> 9 <b>administered by the FBI, but not solely controlled</b> 10 <b>by the user term or governed by a single agency.</b> 11 <b>There is a board of multiple state, local, federal</b> 12 <b>agencies that convene regularly to determine</b> 13 <b>things like the language in a specific guidance or</b> 14 <b>message because the FBI doesn't make traffic stops</b> 15 <b>as a matter of course so the FBI doesn't create</b> 16 <b>the language in there that says how to handle</b> 17 <b>different types of subjects during traffic stops.</b> 18 <b>Those come from a consensus among an interagency</b> 19 <b>group of experts in different fields who create</b> 20 <b>that type of guidance.</b> 21 Q. Okay. Great. See I didn't know that, 22 now I do. That's great.</p>
142	<p>1 answer to the extent you can. 2 THE WITNESS: I don't know who decides 3 that. 4 BY MR. ABBAS: 5 Q. What agency decides which alerts NCIC 6 provides to law enforcement officers encountering 7 TSDB listees? 8 MS. POWELL: I have to register a 9 general objection at this point. The court's 10 protective order specifically indicated that this 11 topic should be treated at a level of generality 12 which we are long since past. 13 MR. ABBAS: This is like a super basic 14 question. You're giving instructions so 15 right -- the FBI's testimony is they're giving 16 instructions or guidance to local law enforcement 17 that's encountering listees and I'm just asking 18 questions about where that guidance comes from or 19 who creates it. 20 MS. POWELL: And I am registering an 21 objection as to scope. And at some point if we 22 stay down in the weeds, I'm going to instruct him</p>	144	<p>1 MS. POWELL: We live to please. 2 Q. What is the board -- the interagency 3 board that oversees NCIC? 4 <b>A. I don't know the name of the board, but</b> 5 <b>I do know that it exists.</b> 6 Q. Okay. 7 <b>A. I don't know the specific name of it.</b> 8 Q. And the FBI participates in that board? 9 <b>A. Yes.</b> 10 Q. Does the FBI chair that board? 11 <b>A. I don't know who chairs it, but I would</b> 12 <b>imagine the FBI probably has a leadership role</b> 13 <b>since they administer the system.</b> 14 Q. Got it. That makes sense. 15 The board is not -- well, I'll ask, does 16 the board for each person that's in the TSDB make 17 a person-by-person determination as to what alert 18 is associated with each TSDB listee? 19 <b>A. I'm totally confused by that question.</b> 20 Q. The alerts are attaching to TSDB listees 21 at some point; correct? At some point, someone is 22 making a decision that this standardized alert is</p>

<p>145</p> <p>1 going to correspond with this TSDB listee?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Okay. When in the watchlisting process</p> <p>6 does an alert get paired with a TSDB listee?</p> <p>7 <b>A. Can I answer that?</b></p> <p>8 MS. POWELL: I think so, yeah.</p> <p>9 THE WITNESS: At nomination.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Okay. So if the FBI nominates a person</p> <p>12 to the TSDB, the FBI agent that's nominating that</p> <p>13 person is also determining if the nomination is</p> <p>14 accepted what alert will accompany that TSDB</p> <p>15 listee when that TSDB listee is queried in the</p> <p>16 NCIC?</p> <p>17 MS. POWELL: Objection; vague and</p> <p>18 misleading. And, again, scope. We're getting</p> <p>19 well beyond what the court said was appropriate in</p> <p>20 this area.</p> <p>21 MR. ABBAS: Go ahead.</p> <p>22 MS. POWELL: To the extent you can</p>	<p>147</p> <p>1 MS. POWELL: I'm sorry, could you ask</p> <p>2 again?</p> <p>3 MR. ABBAS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Which agency decides which, if any,</p> <p>6 handling code is assigned to a TSDB listee?</p> <p>7 MS. POWELL: Objection.</p> <p>8 I'm going to instruct the witness not to</p> <p>9 answer on the grounds of the law enforcement</p> <p>10 privilege, scope, and the court's protective</p> <p>11 order.</p> <p>12 MR. ABBAS: So it's secret law</p> <p>13 enforcement privilege about like who decides? I</p> <p>14 mean, it's your choice, but that seems like</p> <p>15 way -- like clearly not law enforcement.</p> <p>16 MS. POWELL: Well, handling codes are</p> <p>17 way outside the scope of the court's order at this</p> <p>18 point as well as the originally proposed topics.</p> <p>19 MR. ABBAS: The transcript which I</p> <p>20 read --</p> <p>21 MS. POWELL: And you're getting far</p> <p>22 enough into --</p>
<p>146</p> <p>1 answer.</p> <p>2 THE WITNESS: Upon nomination, the</p> <p>3 nominating agent, in this case if it was an FBI</p> <p>4 nomination, can request that the nomination be</p> <p>5 included and can request a specific handling code</p> <p>6 with the nomination. But the FBI does not make</p> <p>7 any decisions about inclusion on the list, which</p> <p>8 would mean the FBI is not determining that that's</p> <p>9 going on the list, that's just information that</p> <p>10 goes with the nomination.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. So like the FBI agent that nominates a</p> <p>13 person to be on the listee [sic] proposes a</p> <p>14 handling code to be assigned to each listee?</p> <p>15 <b>A. If the circumstances suggest that a</b></p> <p>16 <b>specific handling code should be applied, the</b></p> <p>17 <b>agent can request that.</b></p> <p>18 Q. Whose decision ultimately is it to</p> <p>19 attach handling codes to TSDB listees -- let me</p> <p>20 withdraw it.</p> <p>21 Which agency decides which handling</p> <p>22 codes are assigned to which TSDB listees?</p>	<p>148</p> <p>1 MR. ABBAS: -- in the morning, again, is</p> <p>2 very clear that handling codes are absolutely</p> <p>3 appropriate. They regard the FBI's use of TSDB</p> <p>4 information and this is like the easiest kind of</p> <p>5 compel issue we have. I would urge opposing</p> <p>6 counsel to allow the witness to answer something</p> <p>7 to avoid clearly additional deposition testimony</p> <p>8 at a later date. It's your choice.</p> <p>9 MS. POWELL: I'm happy to keep arguing</p> <p>10 with you about it if you like. We can burn</p> <p>11 through some deposition time that way.</p> <p>12 MR. ABBAS: That's my pitch. So I'm</p> <p>13 going to ask the question again and you guys do</p> <p>14 what you like.</p> <p>15 Can we go back to the last question?</p> <p>16 (Record read.)</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Which agency decides which, if any,</p> <p>19 handling code is assigned to a TSDB listee?</p> <p>20 MS. POWELL: And I'm instructing the</p> <p>21 witness not to answer on the grounds of the</p> <p>22 court's protective order, the scope of the topic,</p>

149	<p>1 and the law enforcement privilege.</p> <p>2 MR. ABBAS: Okay.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. You stated that the primary purpose of</p> <p>5 the alerts that NCIC provides to law enforcement</p> <p>6 officials that encounter TSDB listees as the</p> <p>7 safety of the law enforcement officers; correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. But it's not the only purpose; correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. You said that there's a secondary</p> <p>12 purpose; correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. What is the secondary purpose of</p> <p>15 providing alerts to local and state law</p> <p>16 enforcement officers via the NCIC?</p> <p>17 <b>A. To provide guidance to that officer as</b></p> <p>18 <b>to how to handle that subject.</b></p> <p>19 Q. Is the guidance that the NCIC alerts</p> <p>20 binding on the local or state law enforcement</p> <p>21 officer who is encountering a TSDB listee?</p> <p>22 MS. POWELL: Objection; calls for legal</p>	151	<p>1 That's not the way that works. The NCIC message</p> <p>2 is for officer's safety first, for specific</p> <p>3 handling instructions second. And based on those</p> <p>4 instructions, it may require a reasonable officer</p> <p>5 to take certain steps, it depends on the message.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Are there any messages that local and</p> <p>8 state law enforcement officers receive via NCIC</p> <p>9 that regard TSDB listees that direct them to do</p> <p>10 particular things as they encounter a TSDB listee?</p> <p>11 MS. POWELL: Objection; vague.</p> <p>12 Q. If the answer is no, that's fine.</p> <p>13 MS. POWELL: To the extent you're asking</p> <p>14 questions about what handling codes do</p> <p>15 specifically, I'm going to instruct him not to</p> <p>16 answer.</p> <p>17 MR. ABBAS: That's not what I'm asking.</p> <p>18 MS. POWELL: Okay. What are asking?</p> <p>19 MR. ABBAS: I'm just asking whether the</p> <p>20 NCIC alerts require the local and state law</p> <p>21 enforcement officers to do anything.</p> <p>22 MS. POWELL: And, again, I'm going to</p>
150	<p>1 conclusion I think. Either that or it's a vague</p> <p>2 question.</p> <p>3 MR. ABBAS: Go ahead.</p> <p>4 THE WITNESS: Binding?</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Yes.</p> <p>7 <b>A. I mean, I think that does call for a</b></p> <p>8 <b>legal conclusion, but I don't -- there may be some</b></p> <p>9 <b>that are binding or some that require them to do</b></p> <p>10 <b>something, there's some that don't, some that are</b></p> <p>11 <b>notifications.</b></p> <p>12 Q. So it's the FBI's testimony that some</p> <p>13 alerts require local and state law enforcement</p> <p>14 officials to do particular things during their</p> <p>15 encounter with a TSDB listee?</p> <p>16 MS. POWELL: Objection; mischaracterizes</p> <p>17 prior testimony, is vague, and calls for a legal</p> <p>18 conclusion.</p> <p>19 MR. ABBAS: Go ahead.</p> <p>20 THE WITNESS: There is no relationship</p> <p>21 where the FBI is requiring a local law enforcement</p> <p>22 agency to do something based on an NCIC message.</p>	152	<p>1 object that it calls for a legal conclusion.</p> <p>2 MR. ABBAS: You can still answer.</p> <p>3 THE WITNESS: I don't think I can answer</p> <p>4 without getting into specifically what the</p> <p>5 differently handling codes are which has been</p> <p>6 asserted as a privilege.</p> <p>7 MS. POWELL: Then I'm going to instruct</p> <p>8 him not to answer.</p> <p>9 MR. ABBAS: That's fine.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. But there are handling codes; correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. Are local and state law</p> <p>14 enforcement officers expected to adhere to the</p> <p>15 guidance contained in handling codes assigned to</p> <p>16 TSDB listees?</p> <p>17 MS. POWELL: Objection as to scope and</p> <p>18 protective order and potentially the law</p> <p>19 enforcement privilege; but to the extent there's a</p> <p>20 yes-or-no answer, I think you can give it.</p> <p>21 THE WITNESS: Yes.</p> <p>22</p>

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153	1 BY MR. ABBAS: 2 Q. Are you aware of any instances in which 3 local and state law enforcement officers acted 4 contrary to handling codes assigned to TSDB 5 listees? 6 MS. POWELL: I think I'm going to 7 instruct him not to answer on the grounds of law 8 enforcement privilege, unless you think there's a 9 general answer you can give. 10 THE WITNESS: No. 11 MS. POWELL: All right. I'm instructing 12 him not to answer then. 13 MR. ABBAS: On what basis? 14 MS. POWELL: Law enforcement privilege. 15 BY MR. ABBAS: 16 Q. Are the handling codes themselves stored 17 in the TSDB, the NCIC, or both? 18 MS. POWELL: Objection as to scope and 19 protective order certainly, but answer if you can. 20 THE WITNESS: What do you mean by 21 "stored"? 22	155	1 MR. ABBAS: If I'm wrong, tell me I'm 2 wrong. 3 THE WITNESS: The FBI can view TSDB 4 status of an individual in the investigative case 5 file of that individual. 6 BY MR. ABBAS: 7 Q. Which would be through the Sentinel 8 system; correct? 9 <b>A. Yes, per individual. It's not a big</b> 10 <b>list of all the people on the list. It's that</b> 11 <b>subject has -- is on the watchlist and that</b> 12 <b>handling code would be visible if he has a</b> 13 <b>handling code.</b> 14 Q. So within the Sentinel database, the FBI 15 can determine whether a person is or is not in the 16 TSDB; correct? 17 MS. POWELL: Objection; vague, 18 misleading. 19 Answer if you can. 20 THE WITNESS: Yes. 21 BY MR. ABBAS: 22 Q. Are the handling codes shared with CBP's
154	1 BY MR. ABBAS: 2 Q. Contained within. 3 If I look at the TSDB, can I see the 4 handling codes assigned to TSDB listees? 5 MS. POWELL: Objection as to scope and 6 misdirected to FBI in the first place. 7 MR. ABBAS: Go ahead. 8 THE WITNESS: The handling codes -- the 9 handling codes are attached to the entity and are 10 viewable through the KST file in NCIC. 11 BY MR. ABBAS: 12 Q. Okay. So they're viewable through NCIC, 13 I understand that; correct -- I'm sorry, let me 14 back up. 15 So the handling codes assigned to TSDB 16 listees are viewable via NCIC; correct? 17 <b>A. Yes.</b> 18 Q. Are the handling codes -- I'm sorry. 19 The FBI has the ability to query the 20 TSDB without using NCIC; correct? 21 MS. POWELL: Objection; mischaracterizes 22 prior testimony.	156	1 automated targeting system, Passenger? 2 MS. POWELL: Objection; scope, it's not 3 FBI information, the protective order and the law 4 enforcement privilege on that. 5 I'm going to instruct the witness not to 6 answer. 7 Q. Do you know whether the handling codes 8 are shared with CBP's automated targeting system, 9 Passenger? Yes-or-no question. 10 MS. POWELL: I think you can answer 11 whether you know, although I still think it's 12 outside the scope and limited by the protective 13 order. 14 THE WITNESS: If I can't answer the 15 question why -- 16 MR. ABBAS: You can answer. 17 MS. POWELL: If you can give a yes-or-no 18 answer, please do. 19 THE WITNESS: I don't know. 20 BY MR. ABBAS: 21 Q. Okay. That's an answer. 22 Does -- I think we're fine.

<p style="text-align: right;">177</p> <p>1 terrorism as having been listed on the TSDB at the 2 time of the act? 3 MS. POWELL: I'm sorry, is the question 4 how often they have publicly identified it? 5 MR. ABBAS: Yes. 6 MS. POWELL: Okay. You can answer that. 7 THE WITNESS: Can you repeat the 8 question? 9 BY MR. ABBAS: 10 Q. How many times has the FBI publicly 11 identified a perpetrator of a U.S. act of 12 terrorism as having been listed on the TSDB at the 13 time of the act? 14 <b>A. None that I'm aware of.</b> 15 Q. Great. Okay. 16 How many times has the FBI publicly 17 admitted that a perpetrator of a U.S. act of 18 terrorism has not been on the TSDB at the time of 19 the act? 20 MS. POWELL: Objection; misleading. 21 THE WITNESS: Yeah, I don't know of any 22 times.</p>	<p style="text-align: right;">179</p> <p>1 BY MR. ABBAS: 2 Q. How many FBI employees does that 3 include? 4 MS. POWELL: Objection; vague and 5 misleading. 6 Answer to the extent you can. 7 THE WITNESS: And potentially 8 classified. 9 MS. POWELL: And potentially classified, 10 potentially calls for the state secrets privilege. 11 THE WITNESS: That number fluctuates and 12 changes all the time, but it's a large number of 13 investigators and analysts working not only 14 counterterrorism, but all national security 15 investigations. I can just broadly say it's more 16 than -- more than 3,000 employees. 17 BY MR. ABBAS: 18 Q. Great. That's plenty of information. 19 How many -- I'm sorry. 20 So that number changes; correct? 21 <b>A. Correct.</b> 22 Q. And so at different -- so depending on</p>
<p style="text-align: right;">178</p> <p>1 BY MR. ABBAS: 2 Q. There's never been a time where the FBI 3 has publicly admitted that a person who committed 4 an act of terrorism inside the United States was 5 not on the TSDB, that's never happened? 6 <b>A. Not that I'm aware of.</b> 7 Q. It definitely has so I'm, again, 8 surprised that -- 9 MS. POWELL: It definitely has not. 10 Q. How many FBI agents are authorized 11 to -- I'm sorry, let me start again. 12 How many FBI employees are able to 13 nominate individuals to the TSDB? 14 MS. POWELL: Objection; vague and 15 misleading. 16 Answer to the extent you can. 17 THE WITNESS: So any persons working 18 national security investigations, primarily case 19 agents, but also analysts who are supporting those 20 investigations, have the authority to make 21 nominations to the TSDB. 22</p>	<p style="text-align: right;">180</p> <p>1 an FBI's employee's duties, they may or may not 2 have the authority to submit nominations of 3 individuals to the TSDB; correct? 4 MS. POWELL: Objection; vague. 5 THE WITNESS: Yeah, I mean, authority is 6 not -- I don't think the right term. It's they 7 may or may not be in a role where that capability 8 is either necessary or exists. 9 BY MR. ABBAS: 10 Q. So not all -- so the watch -- so the 11 watchlisting nominating process is not relevant to 12 every FBI employee's duties? 13 <b>A. Correct.</b> 14 Q. Okay. Some FBI employees have duties 15 that require them to on occasion nominate 16 individuals to the TSDB; correct? 17 MS. POWELL: Objection; vague and asked 18 and answered. 19 THE WITNESS: Correct. 20 BY MR. ABBAS: 21 Q. Okay. Does every FBI employee receive 22 training on how to nominate a person to the TSDB?</p>

237	<p>1 for identification and attached to the 2 transcript.) 3 Q. So you can feel free to peruse the 4 document. I'm going to just ask you questions 5 about the inclusion standard as it's listed at the 6 top of page 4. So if you like to kind of review 7 the document, that's fine, take your time. But 8 that top paragraph on page four is what I'm going 9 to ask you about. 10 <b>A. Okay.</b> 11 MS. POWELL: Take your time and look at 12 it if you need to. 13 MR. ABBAS: I'll eat waffle fries. 14 (Witness peruses the exhibit.) 15 MS. POWELL: Are you ready? 16 THE WITNESS: Ready. 17 BY MR. ABBAS: 18 Q. Are you familiar with this document? 19 <b>A. Yes.</b> 20 Q. What is your understanding of what this 21 document is? 22 <b>A. This is the overview document or also</b></p>	239	<p>1 don't know. 2 You can answer, if you know. 3 THE WITNESS: I don't know. 4 BY MR. ABBAS: 5 Q. Okay. What is the -- so you referred to 6 the TSDB inclusion standard as a reasonable 7 suspicion standard? 8 <b>A. Correct.</b> 9 Q. What is the TSDB inclusion standard? 10 <b>A. Reasonable suspicion. The nominator</b> 11 <b>must rely upon articulable intelligence or</b> 12 <b>information which based on the totality of the</b> 13 <b>circumstances and taken together with rational</b> 14 <b>inferences from those facts, creates a reasonable</b> 15 <b>suspicion the individual is engaged, has been</b> 16 <b>engaged, or intends to engage in conducting,</b> 17 <b>constituting, in preparation for, in aid of, or in</b> 18 <b>furtherance of or related to terrorism and/or</b> 19 <b>terrorists activities.</b> 20 Q. What is conduct related to terrorism, 21 what does that mean? 22 <b>A. Conduct related to terrorism?</b></p>
238	<p>1 <b>referred to sometimes I think as the transparency</b> 2 <b>document.</b> 3 Q. Why was this document created -- I'm 4 sorry, let me withdraw that question. 5 What is the FBI's understanding of why 6 this document exists? 7 <b>A. It's a public unclassified transparency</b> 8 <b>document that discusses the watchlisting process</b> 9 <b>and enterprise.</b> 10 Q. Is this document available on a federal 11 government website somewhere? 12 MS. POWELL: Objection; scope. 13 THE WITNESS: I don't know. 14 BY MR. ABBAS: 15 Q. Has this document been disseminated to 16 the public in any way? 17 MS. POWELL: Objection; scope. 18 THE WITNESS: I don't know that either. 19 BY MR. ABBAS: 20 Q. Okay. Was this document prepared for 21 the purposes of litigation? 22 MS. POWELL: Objection; scope and I</p>	240	<p>1 Q. Yes. 2 <b>A. That could mean -- that could mean</b> 3 <b>preparing to conduct a terrorist attack, it could</b> 4 <b>mean financing terrorism, it could mean</b> 5 <b>facilitating terrorism, it could mean</b> 6 <b>communicating with overseas terrorists. Those are</b> 7 <b>all conduct related to terrorism.</b> 8 Q. Does a person have to pose a threat to 9 commercial aviation to satisfy the TSDB's 10 inclusion standards? 11 <b>A. No, it doesn't say that in here.</b> 12 Q. Okay. Does a person have to pose a 13 threat to a U.S. land border to be included in the 14 TSDB? 15 <b>A. No.</b> 16 Q. Does a person have to pose a threat of 17 committing an act of terrorism overseas to be 18 included in the TSDB -- I'm sorry, let me rephrase 19 that question. 20 Does a person have to -- does the 21 federal government have to -- let me start all 22 over.</p>

Conducted on April 9, 2018

<p style="text-align: right;">305</p> <p>1 THE WITNESS: Your question was whether 2 or not the nomination was made based on that and 3 I'm not aware of that. 4 BY MR. ABBAS: 5 Q. So has a person's religious affiliation 6 ever been a factor in a FBI employee's nomination 7 of a person to the TSDB? 8 MS. POWELL: Objection; vague and 9 misleading. 10 THE WITNESS: I don't know that 11 religious affiliation would be considered a 12 factor. I mean, certainly no nominations are 13 based solely on any of those things. But if any 14 of those things also go to totality of 15 circumstances taken together with rational 16 inferences, they potentially could be factors, but 17 they're not -- but no nominations is based solely 18 on any of those elements. 19 BY MR. ABBAS: 20 Q. Got it. So the FBI's testimony today is 21 that it does not use religious affiliation solely 22 as a basis for nominating a person to the TSDB;</p>	<p style="text-align: right;">307</p> <p>1 is a person's religious affiliation ever 2 relevant -- I'm sorry. 3 Is a person's religious affiliation ever 4 part of the totality of circumstances an FBI 5 employee would look at in determining whether or 6 not to nominate such a person? 7 MS. POWELL: Objection; vague and 8 misleading. 9 THE WITNESS: So specifically religious 10 affiliation, no. But if there were -- if there 11 were associations with extremists, that could be 12 construed as religious affiliation when it's 13 actually an extremist association, that would be 14 considered as a factor. 15 BY MR. ABBAS: 16 Q. So associations -- so FBI employees who 17 nominate individuals to the TSDB look at the 18 associations of individuals that they're 19 considering to nominate to the TSDB; correct? 20 MS. POWELL: Objection; mischaracterizes 21 prior testimony, vague, and misleading, and a 22 comprehensive explanation in application of the</p>
<p style="text-align: right;">306</p> <p>1 correct? 2 MS. POWELL: Objection; vague and asked 3 and answered. 4 MR. ABBAS: Go ahead. 5 THE WITNESS: I think I answered that. 6 Based on the totality of circumstances taken 7 together with rational inferences, all of the 8 information together is what the decision is based 9 on. It's not based on hunches, not based solely 10 on suspicious activity, not based solely on any 11 race, ethnicity, or religious affiliation or First 12 Amendment rights. 13 BY MR. ABBAS: 14 Q. Is a person's religious affiliation part 15 of the totality of circumstances that an FBI 16 employee would look at in determining whether or 17 not to nominate a person to the TSDB? 18 MS. POWELL: Objection; vague and 19 misleading. 20 THE WITNESS: Generally not. 21 BY MR. ABBAS: 22 Q. So you say "generally" so I have to ask,</p>	<p style="text-align: right;">308</p> <p>1 inclusion standard requires disclosure of law 2 enforcement sensitive information. 3 MR. ABBAS: I'm sorry. 4 MS. POWELL: I think the general answer 5 that has been given about the standard and the 6 totality is the one that can be given. If there's 7 some further non-privileged information you can 8 add here, please do. If not, you should say so. 9 THE WITNESS: I don't know if there's 10 anything further non-privileged that I can add. 11 BY MR. ABBAS: 12 Q. So it's law enforcement privileged 13 information whether the FBI considers the 14 associations of individuals it's determining might 15 be nominated to the watchlist? You can't tell me 16 that the FBI looks at a person's associations 17 because of law enforcement privilege? 18 MS. POWELL: I'm telling you that a 19 comprehensive discussion of all the things -- 20 MR. ABBAS: I'm not asking for a -- 21 MS. POWELL: -- that could be part of 22 the totality of the circumstances. Right. But</p>

Conducted on April 9, 2018

<p style="text-align: right;">353</p> <p>1 who uses the name check system would provide 2 potential advantage to adversaries and allow them 3 to develop countermeasures to detection. 4 BY MR. ABBAS: 5 Q. Have the names of agencies that utilize 6 the FBI's name check process been publicly 7 disclosed by the FBI? 8 MS. POWELL: You can answer, if you 9 know. 10 THE WITNESS: I don't know. 11 MS. POWELL: And scope objection while 12 I'm at it. I think we've well established this is 13 outside the scope of the use of TSDB information. 14 BY MR. ABBAS: 15 Q. Aside from -- how does the FBI receive 16 requests to conduct name checks? 17 MS. POWELL: Objection; scope for sure. 18 You can answer to the extent you know. 19 THE WITNESS: The requests come from 20 other agencies who submit the requests for a name 21 check. 22</p>	<p style="text-align: right;">355</p> <p>1 of entry? 2 MS. POWELL: Objection; vague, and 3 misleading, but you can answer to the extent you 4 know. 5 THE WITNESS: So the FBI will 6 participate in encounters at border crossings 7 pretty frequently. The reasons for those 8 encounters could be a variety of reasons, one of 9 which -- one factor may be TSDB inclusion, but 10 there are a variety of reasons why the FBI would 11 be involved in a border encounter with a subject. 12 BY MR. ABBAS: 13 Q. What are the variety of reasons why the 14 FBI would be involved in a border encounter with a 15 TSDB subject? 16 MS. POWELL: Objection, a comprehensive 17 answer would certainly call for the disclosure of 18 law enforcement sensitive information and 19 potentially state secrets information. I suspect 20 there's an answer that can be given at a level of 21 generality. 22 THE WITNESS: Generally, if a CBP</p>
<p style="text-align: right;">354</p> <p>1 BY MR. ABBAS: 2 Q. How do they submit the request, pigeon? 3 <b>A. Yeah, pigeon.</b> 4 Q. But like is there like a terminal 5 that -- is there a database that everybody has 6 access to? 7 MS. POWELL: Objection; scope. We're 8 way outside the delineated topics here. I mean, 9 if he knows, he can answer as far as I'm 10 concerned. 11 THE WITNESS: I mean, it's some 12 electronic request. I don't know the system name 13 or the actual mechanics of how the request comes 14 in, but it's an electronic request. 15 BY MR. ABBAS: 16 Q. But the FBI itself performs the name 17 check query, it's not other agencies that are 18 doing the querying themselves; correct? 19 <b>A. Yes.</b> 20 Q. So like -- okay. Great. 21 Does the FBI participate in encounters 22 with TSDB listees at U.S. land borders and points</p>	<p style="text-align: right;">356</p> <p>1 officer is conducting an interview with someone at 2 a border crossing or is reviewing material on that 3 person at a border crossing pursuant to border 4 search authorities and they find something that's 5 related to terrorism, they would likely call an 6 FBI agent. Or in many cases at ports of entry, at 7 international airports, FBI agents are on scene 8 all the time anyway. So it's pretty standard for 9 them to contact an FBI agent if there's any 10 indication of terrorist activity by a subject 11 encountered at a border crossing. 12 BY MR. ABBAS: 13 Q. Has the FBI ever made a 14 terrorism-related arrest of a TSDB listee during a 15 border encounter? 16 MS. POWELL: Objection, the way the 17 question is phrased calls for law enforcement 18 privileged information. 19 I think I have to instruct the witness 20 not to answer as phrased. 21 Q. Does the FBI know whether it has ever 22 made a terrorism-related arrest of a TSDB listee</p>



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# Transcript of Hao-y Tran Froemling, Designated Representative

**Date:** October 4, 2018

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

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<p style="text-align: right;">73</p> <p>1 document reflect TSA policy -- that won't work. Let 2 me start over. 3 Do the details about the Quiet Skies program 4 you disclosed in your declaration match the 5 information in Exhibit 3? 6 MS. KONKOLY: I'm going to object on the 7 basis of SSI and the law enforcement privilege and 8 instruct the witness not to answer that question. 9 Q What other Federal Government agencies are 10 involved in the creation of the TSA's risk-based, 11 intelligence-driven rules? 12 MS. KONKOLY: Objection insofar as that 13 answer calls for information protected by the law 14 enforcement privilege and SSI, as well as the state 15 secrets privilege potentially, and I'm instructing 16 the witness not to answer that question. 17 Q What other federal agencies provide 18 intelligence that inform TSA's creation of 19 risk-based rules? 20 MS. KONKOLY: I'm going to again object 21 based on the law enforcement privilege, SSI, 22 potentially state secrets privilege, and I'm going</p>	<p style="text-align: right;">75</p> <p>1 Q Does the TSA work with any foreign 2 government agencies to create or implement its 3 high-risk rules? 4 MS. KONKOLY: I'm going to object on the 5 basis of SSI, law enforcement privilege. You can 6 answer that one to the extent that you can. 7 <b>A So also as discussed previously, because you 8 said create and implement, I want to make sure the 9 way I'm interpreting it is TSA independently 10 assesses the current intelligence to identify 11 threats. TSA independently creates the rules, 12 coordinates with CBP.</b> 13 <b>We do not coordinate with any, as stated 14 earlier, other federal agencies nor foreign 15 governments to create the rules. When you state 16 implement, as I discussed previously, we identify 17 these rules, identify passengers that present a 18 higher risk and therefore require enhanced 19 screening.</b> 20 <b>So to the extent that passengers abroad 21 require enhanced screening, those foreign 22 governments may be involved in the -- if you want to</b></p>
<p style="text-align: right;">74</p> <p>1 to again instruct the witness not to answer. 2 Q What federal agencies assist with the 3 implementation of the TSA's high-risk rules? 4 MS. KONKOLY: Objection insofar as that 5 calls for information protected by SSI or the law 6 enforcement privilege, but you can answer that one 7 to the extent that you can. 8 <b>A Sure. As discussed previously, TSA does 9 coordinate with CBP to implement its -- TSA's 10 derived rules into CBP's system to identify 11 passengers that meet TSA's higher risk rules.</b> 12 Q Aside from CBP, do any other federal 13 agencies assist with the implementation of TSA's 14 high-risk rules? 15 MS. KONKOLY: I'm going to again object 16 based on SSI and the law enforcement privilege, but 17 you can answer that one to the extent that you can. 18 <b>A So for the actual creation of the rules, 19 it's TSA coordinating with CBP because we implement 20 our rules in CBP's system. So, no, we do not work 21 with other agencies to create TSA's high-risk 22 passenger rules.</b></p>	<p style="text-align: right;">76</p> <p>1 <b>say implementation in the conducting the actual 2 screening activities, physical screening activities.</b> 3 Q What federal agencies have the authority to 4 approve or disapprove specific risk-based rules? 5 MS. KONKOLY: Objection insofar as that 6 question calls for any information protected by SSI, 7 but you can answer that one to the extent that you 8 can. 9 <b>A So TSA-specific, high-risk-based rules, it 10 is under our administrator's authority to -- sorry, 11 was the word "approve" or "implement"?</b> 12 Q Approve or disapprove. 13 <b>A -- approve and disapprove the rules.</b> 14 Q Can the Secretary of the Department of 15 Homeland Security override the TSA administrator's 16 determination? 17 <b>A So to the -- sorry.</b> 18 MS. KONKOLY: Let me just object. To the 19 extent that there is any information, the answer 20 calls for information protected by SSI, but you can 21 answer to the extent that you can. 22 <b>A Right. So generally speaking, the TSA is a</b></p>

For Immediate Release  
Office of the Press Secretary  
September 16, 2003

## **Homeland Security Presidential Directive/Hspd-6**

Subject: Integration and Use of Screening Information

To protect against terrorism it is the policy of the United States to (1) develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (Terrorist Information); and (2) use that information as appropriate and to the full extent permitted by law to support (a) Federal, State, local, territorial, tribal, foreign-government, and private-sector screening processes, and (b) diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes.

This directive shall be implemented in a manner consistent with the provisions of the Constitution and applicable laws, including those protecting the rights of all Americans.

To further strengthen the ability of the United States Government to protect the people, property, and territory of the United States against acts of terrorism, and to the full extent permitted by law and consistent with the policy set forth above:

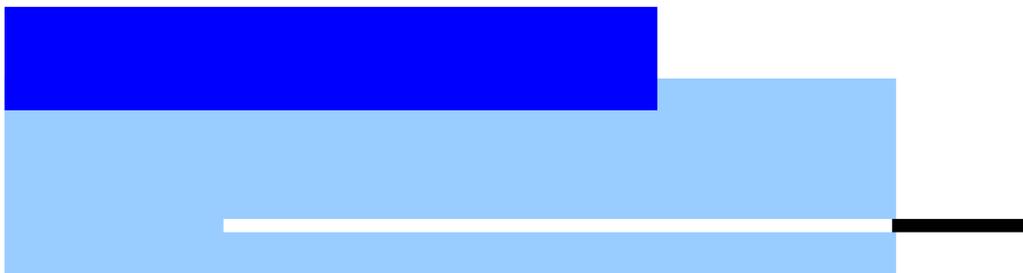
- (1) The Attorney General shall establish an organization to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening processes.
- (2) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Terrorist Threat Integration Center (TTIC) on an ongoing basis all appropriate Terrorist Information in their possession, custody, or control. The Attorney General, in coordination with the Secretary of State, the Secretary of Homeland Security, and the Director of Central Intelligence shall implement appropriate procedures and safeguards with respect to all such information about United States persons. The TTIC will provide the organization referenced in paragraph (1) with access to all appropriate information or intelligence in the TTIC's custody, possession, or control that the organization requires to perform its functions.
- (3) The heads of executive departments and agencies shall conduct screening using such information at all appropriate opportunities, and shall report to the Attorney General not later than 90 days from the date of this directive, as to the opportunities at which such screening shall and shall not be conducted.
- (4) The Secretary of Homeland Security shall develop guidelines to govern the use of such information to support State, local, territorial, and tribal screening processes, and private sector screening processes that have a substantial bearing on homeland security.
- (5) The Secretary of State shall develop a proposal for my approval for enhancing cooperation with certain foreign governments, beginning with those countries for which the United States has waived visa requirements, to establish appropriate access to terrorism screening information of the participating governments.

This directive does not alter existing authorities or responsibilities of department and agency heads to carry out operational activities or provide or receive information. This directive is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

The Attorney General, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Director of Central Intelligence, shall report to me through the Assistant to the President for Homeland Security not later than October 31, 2003, on progress made to implement this directive and shall thereafter report to me on such progress or any recommended changes from time to time as appropriate.

GEORGE W. BUSH

REDACTED FOR PUBLIC RELEASE



# Review of the Terrorist Screening Center

U.S. Department of Justice  
Office of the Inspector General  
Audit Division

Audit Report 05-27  
June 2005

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## APPENDIX IV

subject's No Fly/Selectee status as appropriate. This effort ensured that with regard to all FBI subjects, their No Fly/Selectee status is consistent with the most recent criteria.

Associates Project: The Associates Project was developed to identify possible associates of known or suspected terrorists. During their normal course of duties, law enforcement officers, DOS officials and Border Agents encounter known or suspected terrorists in the TSDB from querying their case management systems during an encounter. These encounters provide valuable information which includes who the known or suspected terrorist is with at the time of the encounter. These encounters with possible associates will be documented and provided to the office of origin for appropriate action.

[SENSITIVE INFORMATION REDACTED]

Self Inspection Audit: The Director of the TSC directed and documented a self inspection of the entire TSC operation in December 2004. The main purpose of this self inspection was to ensure the TSC was meeting all of its mandates as detailed in HSPD-6.

Quality Assurance: TSC is in the process of conducting a manual review of every record listed in the TSDB. The results for each review will be documented and will ensure that there is adequate derogatory information to justify the inclusion of each subject as a known or suspected terrorist in the TSDB. In addition, TSC is modifying its nominations procedures to ensure that such a review also occurs at the outset for all new and modified nominations to the TSDB.

Liaison: The TSC Watch Commanders implemented a policy in which they meet on a monthly basis with Watch Commanders from the National Targeting Center (NTC) and Supervisory staff from TSOU/TSC Operations. TSC Call Center personnel interact hourly on a 24/7 basis with NTC and TSOU staff and these monthly meetings have proven invaluable in streamlining TSC's daily interactions with these two partner agencies.

Tactical Analytical Group: The Tactical Analysis Unit (TAU) was formed in May of 2004 and provides intelligence analysis for the TSC and documents the conducted analysis in a daily report which is distributed to the intelligence community and TSC's customers. TAU produces a daily report each work day. This report summarizes the TSC's positive encounters for the prior day. The Intelligence Cell within TAU summarizes the type of encounter, what occurred, and what action was taken. The report notes the subject's affiliation with any groups and a summary of the derogatory information available on the individual. Maps depicting the encounters and locations are also included in the report. The report is issued in two basic versions, International Terrorist only and International + Domestic Terrorist. The reports are disseminated by email to TSC's customers in the FBI, Department of Homeland Security (DHS), Transportation Security Administration (TSA), Central Intelligence Agency (CIA), DOS, National Counterterrorism Center (NCTC), Defense Intelligence Agency (DIA), Counterintelligence Field Activity (CIFA), Federal Air Marshals (FAMs) and the HSC at the White House. The principal analysis conducted by TAU is event based, not threat based. TAU maintains situational awareness of

United States Government Accountability Office

**GAO**

Report to Congressional Requesters

September 2006

# TERRORIST WATCH LIST SCREENING

## Efforts to Help Reduce Adverse Effects on the Public



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## Results in Brief

Although the total number of misidentifications that have occurred as a result of watch-list-related screening conducted by all frontline-screening agencies and airlines is unknown, Terrorist Screening Center data indicate that about half of the tens of thousands of potential matches sent to the center between December 2003 and January 2006 for further research turned out to be misidentifications.<sup>6</sup> The frontline-screening agencies and, in the case of air travel, airlines are able use other identifying information to resolve some possible matches without Terrorist Screening Center involvement, but when the agencies are unable to do so, they are to refer the information to the center for clarification and resolution. Frontline-screening agencies and airlines generally do not have readily available statistics quantifying the number of potential matches they have been able to resolve without consulting the Terrorist Screening Center. Although the total number of misidentified persons may be substantial in absolute terms, it likely represents a small fraction of the hundreds of millions of individuals screened each year. For example, in fiscal year 2005, U.S. Customs and Border Protection alone reported that its officers managed about 431 million border crossings into the United States at land, air, and sea ports of entry. Nonetheless, misidentifications resulting from terrorist watch list screening can affect the respective individuals by, for example, delaying their travel, subjecting them to more intensive questioning and searches, and denying them conveniences such as self-serve check-in at airports. Also, in some cases, travelers have missed flights.

Misidentifications most commonly occur because the names of some persons being screened are similar to those on the terrorist watch list. The federal screening agencies we studied and most airlines use computer-driven algorithms to rapidly compare the names of individuals against the terrorist watch list.<sup>7</sup> Generally, these name-recognition technologies may be designed to balance minimizing the possibility of false negatives—that is, failing to identify an individual whose name is on the terrorist watch list—while not generating an unacceptable number of false positives (misidentifications). Thus, the computerized algorithms may be configured to return a broad set of possible matches based on the name input in order

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<sup>6</sup>According to the FBI, the specific number of potential matches sent to the Terrorist Screening Center that turned out to be misidentifications is sensitive information; however, the total is substantially less than 100,000.

<sup>7</sup>An algorithm is a prescribed set of well-defined, unambiguous rules or processes for the solution of a problem in a finite number of steps. Pursuant to Transportation Security Administration security directives and implementing guidance, airlines are to prescreen passengers by matching their names against the No Fly and Selectee lists.

to account, for example, for differences in names due to misspellings or transcription errors. The Terrorist Screening Center has formed an interagency working group to improve the effectiveness of identity matching across agencies, and the group's efforts were ongoing the time of our review. The center also has ongoing quality-assurance initiatives to identify and correct incomplete or inaccurate records that contribute to misidentifications. Further, agencies are taking actions to expedite frequently misidentified persons through the screening process. For example, in February 2006, U.S. Customs and Border Protection began annotating its database to help ensure that travelers who have been inadvertently stopped in the past—because they have the same or similar name as a watch list record—are no longer subjected to intensive screening, unless warranted by new data. As a future enhancement, the Terrorist Screening Center is planning to have links to other agencies' biometric data, such as fingerprints. According to center officials, the capability to link biometric data to supplement name-based screening may be more relevant for confirming the identities of known terrorists than minimizing misidentifications or false positives.

The Terrorist Screening Center, the Transportation Security Administration, and U.S. Customs and Border Protection have processes in place to help resolve concerns or complaints submitted by persons adversely affected by terrorist watch list screening.<sup>8</sup> The processes are interdependent in that the frontline-screening agencies are to receive all redress queries, resolve those that, based on other identifying information, clearly involve misidentified persons, and refer the other queries to the Terrorist Screening Center—particularly queries submitted by persons whose names are actually contained on the watch list. For calendar year 2005, the center reported that it processed to completion 112 redress referrals and removed the names of 31 mistakenly listed individuals from the watch list. In contrast, the frontline-screening agencies processed thousands of redress queries. Most redress queries are submitted by misidentified persons, and their names cannot be removed from the watch list because they are not the persons on the list. Instead, some frontline-screening agencies have undertaken initiatives to expedite the future

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<sup>8</sup>Any such concern or complaint raised formally by an affected individual is what the Terrorist Screening Center calls a redress query. Specifically, the Terrorist Screening Center defines a "redress query" as communication from individuals or their representatives inquiring or complaining about an adverse experience during a terrorist watch-list-related-screening process conducted or sponsored by a federal agency, including congressional inquiries to federal agencies on behalf of their constituents.

processing of persons who are frequently misidentified. For example, under the Transportation Security Administration's process, affected individuals can voluntarily provide additional personal-identifying information as a basis for the agency to determine whether their names can be put on a cleared list. Airlines are to use the cleared list to more quickly distinguish these individuals from persons who are on the No Fly and the Selectee lists. This procedure is intended to reduce delays in obtaining airline-boarding passes. The Terrorist Screening Center, from its unique position as administrator of the consolidated terrorist watch list, has noted significant differences among agencies in providing watch-list-related redress. For instance, whereas the Transportation Security Administration has designated an official accountable specifically for redress, U.S. Customs and Border Protection does not and also has not followed consistent procedures in referring appropriate redress queries to the Terrorist Screening Center. Thus, at the Terrorist Screening Center's request, the Department of Justice is leading an effort to develop an interagency memorandum of understanding to ensure that opportunities for redress are formally documented and that agency responsibilities are clear, with designated officials specifically accountable for supporting the continued success of watch-list-related redress. This effort, according to the Terrorist Screening Center, has been ongoing since fall 2005, and a final draft of the memorandum of understanding is expected to be ready for interagency clearances by fall 2006. The Department of Justice and the Terrorist Screening Center have acknowledged that, upon finalization of an interagency agreement that documents the redress opportunities and designates agencies' responsibilities, it is important that appropriately updated information on redress and points of contact be made available to the public, including updates of Web-based guidance.

We are not making recommendations at this time because the agencies have ongoing efforts to improve data quality and otherwise either reduce the number of misidentifications or mitigate their effects and to provide more effective redress.

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## Background

In April 2003, we reported that watch lists were maintained by numerous federal agencies and that the agencies did not have a consistent and uniform approach to sharing information on individuals with possible links to terrorism.<sup>9</sup> Our report recommended that the Department of Homeland

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<sup>9</sup>GAO, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322 (Washington, D.C.: Apr. 15, 2003).

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Security's Secretary, in collaboration with the heads of the departments and agencies that have and use watch lists, lead an effort to consolidate and standardize the federal government's watch list structures and policies. Subsequently, pursuant to Homeland Security Presidential Directive 6, dated September 16, 2003, the Terrorist Screening Center was established to consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. The center began "24/7" operations on December 1, 2003, and, about 3 months later, on March 12, 2004, announced that watch list consolidation was completed with establishment of the terrorist-screening database. This consolidated database is the U.S. government's master repository for all known and suspected international and domestic terrorist records used for watch-list-related screening. Records for inclusion in the consolidated database are submitted to the Terrorist Screening Center from the following two sources:

- Identifying information on individuals with possible international terrorism ties is provided through the National Counterterrorism Center, which is managed by the Office of the Director of National Intelligence.
- Identifying information on individuals with ties to purely domestic terrorism, such as Ted Kaczynski (the "Unabomber"), is provided by the FBI.

In their terrorist-screening processes, the three federal frontline-screening agencies that we reviewed use records exported by the Terrorist Screening Center. That is, the applicable exported records are incorporated, respectively, into the Transportation Security Administration's No Fly and Selectee lists, U.S. Customs and Border Inspection's Interagency Border Inspection System, and the State Department's Consular Lookout and Support System. The following listing discusses the frontline-screening agencies' use of watch list records more specifically:

- **Transportation Security Administration's No Fly and Selectee Lists:** As needed, the Transportation Security Administration provides updated No Fly and Selectee lists to airlines for use in prescreening passengers. Through the issuance of security directives, the agency requires that airlines use these lists to screen passengers prior to boarding. The agency's Office of Intelligence (formerly called the Transportation

Security Intelligence Service) provides assistance to airlines in determining whether passengers are a match with persons on the lists.<sup>10</sup>

- **U.S. Customs and Border Protection’s Interagency Border Inspection System:** U.S. Customs and Border Protection officers use the Interagency Border Inspection System to screen travelers entering the United States at ports of entry, which include land border crossings along the Canadian and Mexican borders, sea ports, and U.S. airports for international flight arrivals. This system includes not only the applicable records exported by the Terrorist Screening Center, but also additional information on people with prior criminal histories, immigration violations, or other activities of concern that U.S. Customs and Border Protection wants to identify and screen at ports of entry.
- **State Department’s Consular Lookout and Support System:** This system is the primary sensitive but unclassified database used by consular officers abroad to screen the names of visa applicants to identify terrorists and other aliens who are potentially ineligible for visas based on criminal histories or other reasons specified by federal statute. According to the State Department, all visa-issuing posts have direct access to the system and must use it to check each applicant’s name before issuing a visa.

Also, the Terrorist Screening Center makes applicable records in the consolidated database available to support the terrorist-screening activities of other federal agencies—such as U.S. Immigration and Customs Enforcement, which is the largest investigative component of the Department of Homeland Security—as well as state and local law enforcement agencies. For example, the FBI’s National Crime Information Center has a file—the Violent Gang and Terrorist Organization File—which is accessible by federal, state, and local law enforcement officers for screening in conjunction with arrests, detentions, or other criminal

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<sup>10</sup>The Transportation Security Administration is developing a new passenger prescreening program, known as Secure Flight. Under the Secure Flight program, the agency plans to take over, from commercial airlines, the responsibility to compare identifying information on airline passengers against information on known or suspected terrorists. The agency expects that Secure Flight will improve passenger prescreening as compared with the current airline-operated process. In June 2006, we reported that the Transportation Security Administration still faces significant challenges in developing and implementing the Secure Flight program. See, GAO, *Aviation Security: Management Challenges Remain for the Transportation Security Administration’s Secure Flight Program*, GAO-06-864T (Washington, D.C.: June 14, 2006).

justice purposes.<sup>11</sup> A subset of this file consists of the Terrorist Screening Center's records to be used to screen for possible terrorist links.

Figure 1 presents a general overview of the name-matching process typically used by frontline-screening agencies and airlines to screen individuals against applicable records exported by the Terrorist Screening Center, which has an important role in verifying identities. When the computerized name-matching system of a frontline-screening agency or, in the case of air travel, an airline generates a "hit" (a potential name match) against a terrorist database record, the agency or airline is to review each potential name-match. Any obvious mismatches (misidentifications) are to be resolved by the frontline agency or airline.

Conversely, clearly positive or exact matches generally are to be referred to the applicable screening agency's intelligence center and to the Terrorist Screening Center to provide law enforcement an opportunity for a counterterrorism response.<sup>12</sup> Similarly, hits involving inconclusive matches—that is, uncertain and other hard-to-verify potential matches—typically are to be referred to the applicable screening agency's intelligence center. In turn, if the intelligence center cannot conclusively determine whether a hit is an exact match, the Terrorist Screening Center is to be contacted.<sup>13</sup> Referring inconclusive matches to the Terrorist Screening Center for resolution or confirmation is important because the possible consequences of not identifying a known or suspected terrorist could be worse than the inconveniences associated with

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<sup>11</sup>Also, the FBI and designated state and local criminal justice agencies access the Violent Gang and Terrorist Organization File in conducting background checks on individuals seeking to purchase firearms or obtain permits to possess, acquire, or carry firearms. See GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005).

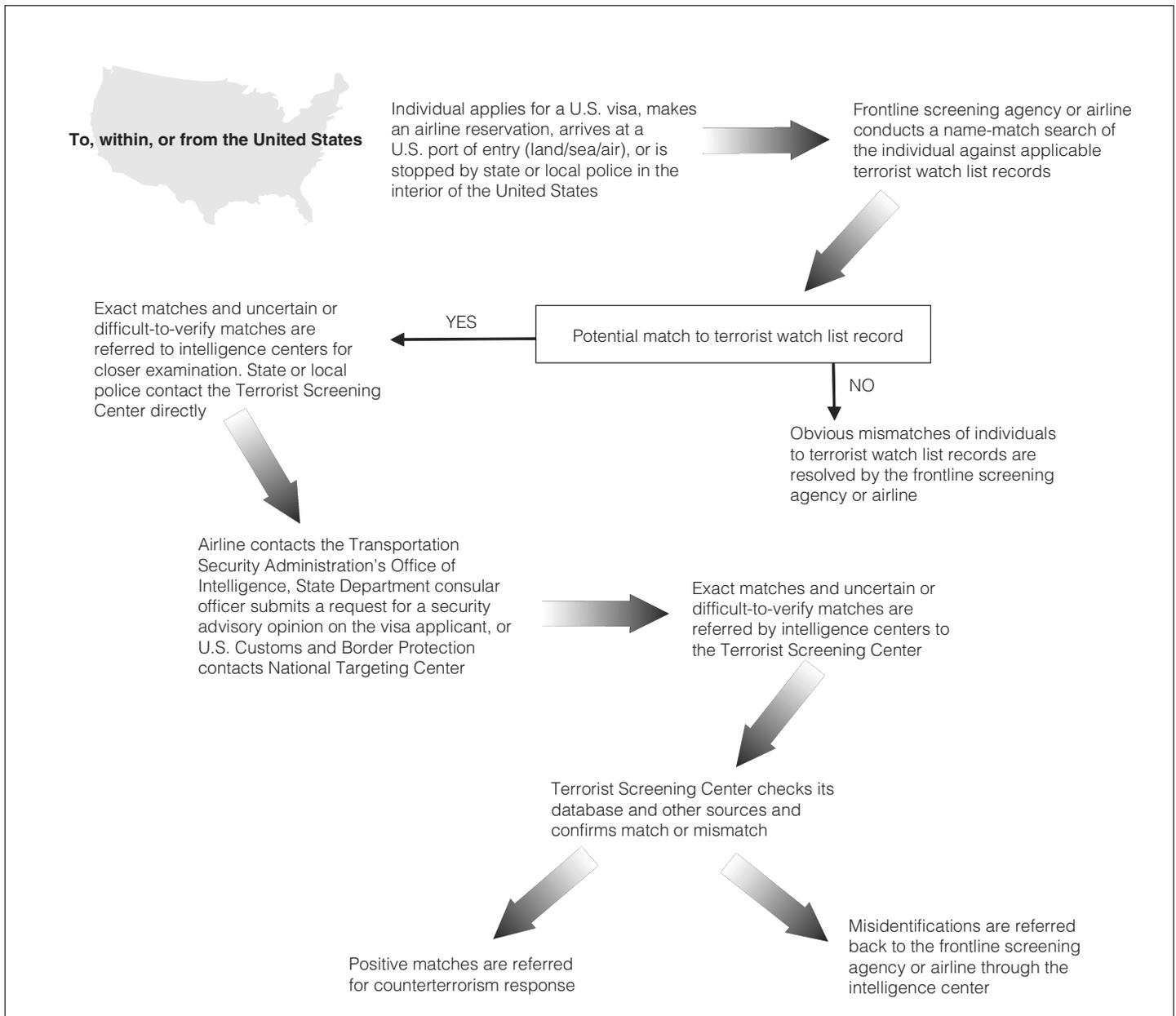
<sup>12</sup>Airlines are to contact the Transportation Security Administration, which may then contact the Terrorist Screening Center, as necessary.

<sup>13</sup>In commenting on a draft of this report, the State Department noted that the general overview presented in figure 1 is not fully reflective of the process for screening nonimmigrant visa applicants against the terrorist watch list. Specifically, the department emphasized that for any hit that clearly is not a mismatch, consular officers are required to obtain a security advisory opinion. That is, the consular post must ask Department of State headquarters to initiate a process of requesting that the Terrorist Screening Center and other relevant agencies check their respective databases or systems for the existence of any investigative or intelligence information regarding the individual and pass the results back to the department for use in recommending a course of action to the post.

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misidentifications. In conducting its research, the Terrorist Screening Center has access to classified data systems that may contain additional information not available to the referring agency. Once the Terrorist Screening Center has confirmed the individual as either a positive match or a misidentification, the frontline-screening agency is to be informed.

**Figure 1: General Overview of the Name-Matching Process Used to Screen Individuals against the Terrorist Watch List**



Source: GAO.

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Homeland security-related screening processes entail some level of inconvenience for all travelers. Also, in an operational context, people can be and frequently are screened for reasons not related to the terrorist watch list but rather for reasons related to an agency's mission. For example, U.S. Customs and Border Protection screens travelers for any conditions that may make them inadmissible to the country, including past violations of immigration, drug, customs, or other laws. The agency also randomly selects certain individuals for more thorough screening. Similarly, prospective airline passengers may be randomly selected for additional screening, and others may be selected if they exhibit unusual behavior.<sup>14</sup> Generally, screening agencies and airlines are not to disclose the reason they select an individual for more thorough screening measures, so persons may mistakenly assume it is because they are on a terrorist watch list.

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**Although Likely a Small Percentage of All People Screened, the Thousands of Persons Misidentified to the Terrorist Watch List Can Experience Additional Questioning, Delays, and Other Effects**

Annually, hundreds of millions of individuals—international travelers, airline passengers, and visa applicants—are screened against relevant portions of the Terrorist Screening Center's consolidated watch list. The number of persons misidentified during terrorist watch list screening may be substantial in absolute terms but likely represents a small fraction of the total screenings. Nonetheless, misidentifications resulting from terrorist watch list screening can affect the respective individuals in various ways, with perhaps the most common situation involving delays and related inconveniences experienced by travelers.

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<sup>14</sup>Since the late 1990s, airline passenger prescreening has been conducted using the Computer-Assisted Passenger Prescreening System (CAPPS I)—in which data related to a passenger's reservation and travel itinerary are compared against characteristics (known as CAPPS I rules) used to select passengers who require additional scrutiny—and through the matching of passenger names to terrorist watch lists. See, GAO, *Aviation Security: Secure Flight Development and Testing Under Way, but Risks Should Be Managed as System Is Further Developed*, GAO-05-356 (Washington, D.C.: Mar. 28, 2005), which reported that approximately 99 percent of all passengers on domestic flights are screened under the air carrier-operated, automated CAPPS I system, and the remaining 1 percent of passengers are screened by air carriers who do not have an automated system.

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### Although a Substantial Number, Misidentified Persons Likely Constitute a Small Percentage of All People Screened

Although the full universe of persons misidentified by terrorist watch list screening may be substantial in absolute terms, the total number likely represents a small fraction of all persons who are screened. During the 26-month period we studied—from December 2003 (when the Terrorist Screening Center began operations) to January 2006—the center received tens of thousands of screening-encounter referrals from frontline-screening agencies and determined that approximately half involved misidentified persons with names the same as or similar to someone whose name was contained on the terrorist watch list. The number of referrals to the Terrorist Screening Center does not constitute the universe of all persons initially misidentified by terrorist watch list screening because the names of many persons initially misidentified are not forwarded to the Terrorist Screening Center. Rather, by comparing birth dates or other data, the frontline-screening agencies (e.g., U.S. Customs and Border Protection) are able to resolve many initial misidentifications without contacting the Terrorist Screening Center. Additionally, for air passengers, the airlines often are able to resolve initial misidentifications without contacting the Transportation Security Administration.<sup>15</sup> The screening agencies and airlines generally do not maintain readily available statistics on these resolutions.

Nonetheless, although the full universe of such misidentifications may be substantial in absolute terms, the total number likely represents a small fraction of all persons who are subject to terrorist watch list screening procedures, as in the following examples:

- U.S. Customs and Border Protection reported that its officers managed a total of 431 million border crossings into the United States at land, air, and sea ports of entry in fiscal year 2005.
- Domestic airline flights—flights within the United States—carried 658 million passengers during the 12 months ending January 2006, according to Department of Transportation statistics.<sup>16</sup>

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<sup>15</sup>The Transportation Security Administration provides security directives and implementing guidance to foreign and domestic aircraft operators for use in ensuring that individuals who pose a threat to civil aviation are denied boarding passes or are subjected to additional screening, as appropriate.

<sup>16</sup>Also, terrorist-watch-list-screening procedures are applicable to international flights—of foreign and domestic air carriers—into or from the United States.

- The State Department reported that it processed about 7.4 million nonimmigrant visa applications in fiscal year 2005.<sup>17</sup>

In addition to these international travelers, domestic flight passengers, and visa applicants, any other person can be subject to terrorist watch list screening in conjunction with routine law enforcement activities. For instance, in stopping a motorist for a traffic violation, a state or local law enforcement officer can check the motorist's name against the National Crime Information Center's various files, which include terrorist watch list records exported by the Terrorist Screening Center. The National Crime Information Center, according to the FBI, is available to virtually every law enforcement agency nationwide, 24 hours a day, 365 days a year.

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### Misidentified Individuals Can Experience Delays and Other Effects

People who are misidentified to the terrorist watch list can be affected in various ways, most commonly experiencing delays and related inconveniences, including being subjected to more intensive questioning and searches. Generally, the extent of the effects of terrorist watch-list-related misidentification can vary by individual circumstances and the operational nature of the screening agency's mission. For example, an individual with a name similar to someone who is on the Transportation Security Administration's No Fly list likely will be unable to utilize the convenience of Internet, curbside, and airport kiosk check-in options. This effect of misidentifications is reflected in a sample of 24 complaint letters to the Transportation Security Administration that we reviewed.<sup>18</sup> Many of the complainants described their frustrations with not being able to use alternative check-in options such as the Internet or airport kiosks. Similarly, in a survey conducted in June 2006 by the National Business Travel Association, many companies' travel managers responded that their

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<sup>17</sup>A nonimmigrant is a person, not a citizen or national of the United States, seeking to enter the United States temporarily for a specific purpose, such as business or pleasure.

<sup>18</sup>As discussed in appendix I, the Transportation Security Administration provided us a selection of 24 terrorist watch-list-related complaint letters that the agency received from December 1, 2003 (when the Terrorist Screening Center became operational) to April 20, 2006. The agency attempted to select letters from different weeks throughout this time period; however, because a statistically projectable methodology was not used for the selections, the 24 letters are not representative of all complaints or inquiries (an unspecified total) that the Transportation Security Administration received during this time period.

employees have expressed frustration about repeatedly having to go to the airline ticket counter to obtain a boarding pass.<sup>19</sup>

Also, misidentifications can cause other effects, such as missed airline flights by either leisure travelers or business travelers, which could have economic and other consequences, although we found no readily available data on how frequently these effects occurred. However, according to Transportation Security Administration data, two international flights—one in December 2004 and another in May 2005—were diverted from landing at their scheduled destinations in the United States due to potential matches to the No Fly list. In each instance, following the diversions of the flights and further investigation after the airplanes landed, federal authorities determined that the respective passengers were misidentified and not true matches to the No Fly list. Nonetheless, the diversions resulted in delays and related inconveniences for all passengers on these flights.

The Transportation Security Administration has acknowledged that misidentifications can be embarrassing and time consuming for individuals and also potentially can erode the public's confidence in the agency's security efforts. Similarly, a recent Department of Homeland Security report recognized that "individuals who are mistakenly put on watch lists or who are misidentified as being on these lists can potentially face consequences ranging from inconvenience and delay to loss of liberty."<sup>20</sup>

Also, an individual can experience an immediate delay at a port of entry when U.S. Customs and Border Protection's automated search of the Interagency Border Inspection System database returns a potential match to a terrorist watch list record. For such potential matches, U.S. Customs

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<sup>19</sup>According to its Web site ([www.nbta.org](http://www.nbta.org)), the National Business Travel Association represents over 2,500 corporate travel managers and travel service providers who collectively manage and direct more than \$170 billion of expenditures within the business travel industry, primarily for Fortune 1,000 companies. In June 2006, the association conducted a survey of 1,316 corporate travel managers, and 444 responded to the survey. Of the responding travel managers, 107 reported that they have employees who repeatedly have had to go to the airline ticket counter to obtain a boarding pass. (Accessed August 2006.)

<sup>20</sup>Department of Homeland Security, *Report on Effects on Privacy & Civil Liberties—DHS Privacy Office Report Assessing the Impact of the Automatic Selectee and No Fly Lists on Privacy and Civil Liberties as Required under Section 4012(b) of the Intelligence Reform and Terrorism Prevention Act of 2004* (Washington, D.C.: Apr. 27, 2006).

and Border Protection's operating protocol is to escort the person to another screening area for further questioning and inspection (a process referred to as secondary screening). The length of time the person spends in secondary screening can be several hours, depending partly on the difficulty or ease of verifying whether the person is or is not the individual on the watch list. In the four states we visited—California, Michigan, New York, and Texas—U.S. Customs and Border Protection officers told us that given the importance of the homeland security mission, their practice is to err on the side of caution by conducting very thorough screenings.<sup>21</sup>

The effects of such misidentifications and the related secondary screenings can be emotional as well as physical, as reflected in complaint letters to U.S. Customs and Border Protection. A sample of 28 complaint letters to U.S. Customs and Border Protection that we reviewed alleged a range of effects, such as experiencing travel delays, which resulted in missing airline flights and incurring additional travel costs; being subjected to extensive questioning and searches, while not being allowed to contact family members, friends, or business associates to inform them about the delays; and feeling embarrassed and frustrated.<sup>22</sup>

The State Department's screening of nonimmigrant visa applicants against the terrorist watch list may not affect individuals in the same way as does screening by the Transportation Security Administration and U.S. Customs and Border Protection. Generally, the State Department's screening differs from other screening agencies because there is more time to search records and make decisions. According to State Department officials, the average time for processing a nonimmigrant visa application is about 2 days. However, additional processing time may be needed if initial screening of the applicant shows a possible link to terrorism—that is, the

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<sup>21</sup>As discussed in appendix I, besides conducting work at U.S. Customs and Border Protection headquarters in Washington, D.C., we visited various land and air ports of entry in four states—California, Michigan, New York, and Texas. We judgmentally selected these four states because each has major land and air ports of entry, and the states collectively have ports of entry on both the northern and southern borders of the United States.

<sup>22</sup>As discussed in appendix I, U.S. Customs and Border Protection provided us a selection of complaint letters submitted by 28 individuals. The dates of the 28 complaint letters encompassed an 11-month period, ranging from June 2005 to April 2006. The 28 letters were not selected based on a statistically projectable methodology. Thus, the 28 letters are not representative of the approximately 220 complaints or inquiries—regarding watch-list-related secondary screening at ports of entry—that U.S. Customs and Border Protection's Customer Satisfaction Unit received during the 11-month time period and forwarded for research to the agency's National Targeting Center.

applicant's name possibly matches that of a person whose name is on the terrorist watch list. The officials explained that this additional processing time is needed because a decision on the visa applicant cannot be made until a security advisory opinion is obtained. That is, the consular post must ask the Department of State headquarters in Washington, D.C., to initiate a process of requesting that various agencies check their respective databases or systems for the existence of any investigative or intelligence information regarding the individual and pass the results back to a central point. This interagency review process includes the FBI, the Drug Enforcement Administration, the Central Intelligence Agency, and others. According to State Department officials, visa applicants are routinely told not to buy tickets or incur other travel-related expenses until the clearance process has been completed and the application approved.

In acknowledging that the interagency review process may extend the processing time for a visa decision, the State Department provided us (in June 2006) the following contextual perspectives:

- In the last 2 years, the department and its interagency partners have worked to decrease the processing time in order to reduce the impact on the traveling public.
- Nevertheless, the department's position is that the time it takes to screen a visa applicant is a necessary part of the application procedure and, therefore, is not an adverse governmental action. At times, additional processing must be done in order to determine whether a visa applicant is eligible for a visa under the law, including for national security reasons. The additional processing is the inconvenient consequence of the proper functioning of the visa screening system.
- Moreover, the extended processing time generally is a one-time occurrence. Once an alien is cleared through the process, the clearance is noted in the department's consular visa database. Thus, this person may not be subject to the same processing delay when applying for another visa in the future, unless additional investigative or intelligence information arises after issuance of the first visa.<sup>23</sup>

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<sup>23</sup>The extended or additional processing time is not always a one-time occurrence. In processing visa applications, consular posts may request security advisory opinions for a variety of reasons. Thus, even though an individual previously has been the subject of a security advisory opinion, a new visa application may present facts and circumstances that lead the consular post to request another security advisory opinion.

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Screening by state and local law enforcement also differs from screening by the Transportation Security Administration, U.S. Customs and Border Protection, and the State Department. Essentially, federal agencies (or air carriers, as applicable) initiate screening when individuals make an airline reservation, arrive at a port of entry, or apply for a visa. In contrast, a state or local law enforcement agency may initiate screening by, for example, pulling over a motorist for speeding. Generally, a routine procedure for the law enforcement officer is to query the motorist's name against records in the National Crime Information Center, which contains criminal history records as well as terrorist watch list records. According to congressional testimony presented in March 2004 by the Director of Public Security for the State of New York, it takes about 12 to 15 minutes, on average, for a New York patrol officer to contact the Terrorist Screening Center and resolve a potential name match.<sup>24</sup> More recently, in July 2006, the Director of the Terrorist Screening Center told us that the average time nationally is now down to about 5 minutes—that is, the time period beginning with the center's receipt of the call from a state or local law enforcement officer and ending with the response to the officer regarding the potential name match.<sup>25</sup>

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<sup>24</sup>Testimony of Mr. James W. McMahon, Director, Office of Public Security, State of New York, at a hearing before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, and the Subcommittee on Intelligence and Counterterrorism of the Select Committee on Homeland Security, House of Representatives (Mar. 25, 2004).

<sup>25</sup>The response to the state or local law enforcement officer may be provided by the Terrorist Screening Center or by the FBI's Counterterrorism Division (Terrorist Screening Operations Unit), as applicable.

# Homeland Security Presidential Directive-11

## An Updated Strategy for Comprehensive Terrorist-Related Screening Procedures



# Homeland Security

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information that enable them to carryout their homeland security missions. Simultaneously, the Screening Community provides screening results back to the NCTC and the FBI through the TSC in support of terrorist-related investigations and appropriate watchlisting determinations.

(G), (H)

[Redacted]

**3. USG Approach – Screening Opportunities from Beyond our Borders to the Interior**

The frontline for screening opportunities extends far beyond our borders, originating in foreign countries where we employ programs to screen people, cargo, and conveyances destined for the U.S. A key focal point for terrorist-related screening is the U.S. border, at and between our ports of entry. The information-based and physical screening that takes place at our border represents the final stronghold in preventing terrorists and terrorist weapons from entering the U.S. Once inside the U.S., terrorist-related screening opportunities increase, requiring the greatest application of discipline for risk-based screening measures to ensure that resources are focused accordingly, meeting the threats while simultaneously ensuring our civil liberties and privacy.

**3.1. Visa and Passport Application Screening**

The visa application process for foreign nationals provides the U.S. Government with one of the first opportunities to screen people before they arrive at our ports of entry. DOS conduc (G), (H) [Redacted] checks on all visa applicants against the Consular Lookout and Support System (CLASS) database that includes information from other agencies including FBI and DHS. (G), (H) [Redacted]

A Security Advisory Opinion (SAO) is the mechanism used by the DOS to provide consular officers advice and background information to adjudicate visa applications abroad in the event the applicant(s) may be inadmissible under the security-related provisions of the INA, including for certain links to known or suspected terrorists or other security threats.

(G), (H)

[Redacted]

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(G), (H)

DOS has incorporated biometric technology specifically, facial recognition and fingerprint scans into U.S. visa processes as well. The U.S. BioVisa program is completely integrated with the DHS United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program, so that anyone entering the U.S. on a nonimmigrant or immigrant visa can be identified through biometrics and imposters detected.

By October 2004, all DOS overseas posts were collecting two fingerprints, thus meeting the statutory deadline established by the Enhanced Border Security and Visa Entry Reform Act of 2002. DOS currently collects fingerprints from each visa applicant (excluding diplomats and those under the age of 14 or over 79). Prior to visa issuance, the fingerprints are checked against the DHS Automated Biometric Identification System (IDENT), which contains, among other information, fingerprints of known or suspected terrorists and of persons wanted by law enforcement. DOS completed rolling out 10-Print technology to posts during calendar year 2007. The 10-Print collection process allows for more complete checks against fingerprint records and greater ability for latent print processing.

In support of DOS visa screening programs, the Visa Security Program (VSP) within DHS Immigration and Customs Enforcement (ICE) partners law enforcement personnel with DOS consular officials in the visa issuance process in order to better identify threats before they reach the U.S. Visa Security Officers work together with DOS performing proactive law enforcement vetting and investigation of visa applicants, working to uncover threats to homeland security. The VSP is deployed at nine posts in eight countries.<sup>4</sup> Discussions are underway to expand the program to additional posts. ICE has also finalized the VSP Five-Year Expansion Plan, in response to a request from the HSC, to expand VSP to cover approximately 75 percent of the highest risk visa issuance activity globally. Deployment would encompass approximately 6-7 new VSP locations annually between 2009 and 2013.

(G), (H)

### 3.2. Screening Prior to Foreign Departure

Not all travelers to the U.S. need a visa, including U.S. persons and those qualified for visa-free travel under the VWP or other bilateral agreement. In order to ensure comprehensive terrorist

<sup>4</sup> Following its initial deployment to Saudi Arabia in 2003, VSP expanded to four locations in three countries in 2005. Since January 2007, VSP has deployed to four additional locations, with plans to deploy to one additional location in November 2007.

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screening, the U.S. Government screens all passengers departing from foreign countries en route to the U.S. via commercial air carriers.

The recently enacted 9/11 Act includes provisions to enhance security features of the VWP. Most notably, the bill requires counter-terrorism and information sharing by VWP countries, a biometric exit system for all VWP travelers, and an Electronic Travel Authorization (ETA) system.

### **3.2.1. Electronic Travel Authorization**

The ETA will require that prospective VWP travelers electronically provide biographic information before they travel to the U.S. This information will be screened against law enforcement and national security databases. The ETA, in conjunction with new security-related requirements that VWP participating countries must meet, will greatly enhance the overall security of the program while allowing for flexibility in admitting new member countries. Additionally, under the Secretary's new waiver authority, implementation of the ETA will allow DHS additional flexibility to admit member countries, on a pilot basis, that would not otherwise meet the criteria for participation in the program due to visa refusal rates.

Once established, the ETA will be a requirement for all VWP travelers (from new and existing participating countries) prior to travel, though it will not serve in lieu of a U.S. visa, if required, or the admissibility determination made by U.S. Customs and Border Protection (CBP) within DHS. The ETA will require aliens traveling under the VWP to submit biographical information and other data (such as the data currently collected using the Arrival-Departure Record [Form I-94]) necessary to determine the aliens' eligibility to travel to the U.S. DHS will use the data to screen against terrorist watchlist information, lost and stolen passports, and other database criteria to make a determination on each individual's eligibility to travel to the U.S. under the VWP. Passengers who are not given an ETA will be referred to a U.S. consulate to apply for a visa.

### **3.2.2. No Fly and Selectee Matching by Air Carriers**

Since September 11, the U.S. Government has been requiring commercial air carriers flying into, out of, or within the U.S. to prescreen passengers against the DHS Transportation Security Administration (TSA) No Fly and Selectee lists. Implementation Guidance for the No Fly and Selectee lists was revised in July 2006 to update and refine the criteria for including individuals on the lists and to provide the Screening Community with direction on appropriate nominations. Any nominating agency can recommend that a known or suspected terrorist be placed on the No Fly or Selectee list if the individual meets specific criteria for inclusion on either list. TSC is ultimately responsible for placing individuals nominated on either the No Fly or Selectee lists, which are subsets of TSDB that must satisfy certain biographic and derogatory thresholds.

Currently, commercial air carriers receive the No Fly and Selectee lists and are responsible for conducting checks in advance of boarding pass issuance. The carriers must notify TSA where there is a match to the No Fly list. TSA coordinates with TSC to determine if the passenger is a positive match. [REDACTED] (G), (H)

[REDACTED] The air carriers must also ensure that a match to the Selectee

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list is subject to secondary screening prior to boarding an aircraft. As outlined in the passenger screening sections below, the government is preparing to assume the responsibility for No Fly and Selectee screening in both the international and domestic air passenger processing venues.

### 3.2.3. Screening with Advance Passenger Information

As a result of recommendations put forward by the 9/11 Commission, Congress mandated that CBP establish a requirement to receive advance information on international passengers traveling by air and sea, prior to their departure. In August 2007, DHS published the Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels Final Rule requiring commercial air and vessel carriers to provide manifest information for flights to and from the U.S. prior to boarding and for vessels departing from the U.S. prior to departure. CBP will then perform watchlist screening utilizing the Advance Passenger Information System (APIS) and return the results to the carriers. (G), (H)

Prior to September 11, the U.S. Customs Service, now part of CBP, received advance passenger information from air and vessel carriers on a voluntary basis. APIS requirements were first implemented under the Aviation and Transportation Security Act of 2001 and the Enhanced Border Security and Visa Reform Act of 2002, mandating the transmission of APIS data for commercial carriers arriving in or departing from the U.S. Advance screening of APIS and Passenger Name Record (PNR) data has provided CBP the ability to identify potential threats and coordinate with carriers and foreign law enforcement to prevent the transportation of a person of interest.

Additionally, in September 2007, DHS issued a notice of proposed rulemaking, Advanced Information on Private Aircraft Arriving and Departing the U.S., that would expand existing regulations to require pilots of private aircraft to provide electronic manifest data relative to all persons traveling onboard to the U.S. Government one hour prior to departure to and from the U.S. by filing manifest data via CBP. The proposed rule is in concert with the requirements established for commercial air carriers and is designed to better protect non-commercial flights through enhanced screening procedures.

### 3.2.4. International Partnerships

In furtherance of comprehensive screening procedures beyond our borders, CBP has initiated additional layers of international air passenger screening that incorporates the private sector and our foreign partners. The first of these is the Immigration Advisory Program (IAP). Under this program, CBP officers are deployed overseas at high-volume, high-risk airports to work with carriers and law enforcement authorities from host countries to prevent passengers who pose a national security threat or are otherwise inadmissible from traveling to the U.S. IAP officers utilize current targeting information and/or an assessment of the passenger's documentation to focus on high-risk persons. (G), (H)

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*Paragraph redacted, please refer to the Classified Addendum.*

CBP has also established the Fraudulent Document Analysis Unit (FDAU) and the Alien Smuggling Unit (ASI) to specifically look at travel patterns and fraudulent documents in order to identify human trafficking activity as well as those individuals attempting to enter the U.S. with fraudulent documents. Human trafficking and smuggling rings can avoid detection under the lost and stolen passport program by using travel documents that have been altered or illegally obtained. The FDAU/ASI counters this risk directly by creating system look-outs, special operations, and travel advisories to various entities where potential fraud is detected or suspected.

#### **3.4.4. Screening and Facilitation of Trusted Travelers**

In support of enhanced screening and facilitation, CBP continues to expand enrollment in its trusted traveler programs. The trusted traveler framework is supported by a Global Enrollment System that provides for the harmonization of processing applicants across the various programs. Each applicant is subjected to an electronic, automated vetting process (G), (H)

[REDACTED]

Additionally, the Registered Traveler Interoperability Pilot (RTIP) is a voluntary program offered by the private industry and facilitated by TSA. The RTIP is offered to U.S. citizens and legal permanent residents and is a privilege program that, in a fully operational state, would offer a streamlined security experience for applicants who pay a fee and meet both TSA and the service provider's eligibility requirements. TSA conducts name-based checks on RTIP applicants utilizing the TSDB and other law enforcement databases. RTIP participants are subject to perpetual vetting.

#### **3.5. Screening for Immigration and Other Benefits**

U.S. Citizenship and Immigration Services (USCIS) within DHS supports national security by preventing individuals from fraudulently obtaining immigration benefits and by denying applications from individuals who pose national security or public safety threats. USCIS policy requires the completion of a background check on every alien who applies for or may benefit from an application or petition for an immigration benefit. The background checks include biographic queries against TSDB data. Additionally, criminal checks are required for every applicant, petitioner, and beneficiary seeking an immigration benefit; and FBI name checks and fingerprint checks are required to be conducted on all applicants for asylum, legal permanent resident status, and naturalization, as well as small populations of individuals applying for immigrant and nonimmigrant waivers of inadmissibility or legalization benefits. (G), (H)

[REDACTED]

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(G), (H)

USCIS is also embarking on an enterprise-wide “Transformation Program” that will transition the agency from a form-centric and paper-based operational environment to a person-centric, consolidated environment utilizing electronic adjudication. The new operational environment will employ the types of online customer accounts used in the private sector. This “person-centric” model will link information related to an individual in a single account in order to facilitate transactions, track activities, and reduce fraud.

The U.S. Agency for International Development (USAID) employs procedures to mitigate the risks that its partners are connected with terrorist organizations. Steps to ensure USAID funds are not provided to individuals or entities associated with terrorism include: (1) requiring all solicitations, contracts, Annual Program Statements or Requests for Applications, grants or cooperative agreements, or other comparable documents contain language referencing the laws and Executive Orders prohibiting the provision of resources and support to individuals and organizations associated with terrorism; (2) requiring all Non-Government Organization (NGO) applicants to submit terrorist financing certifications; and (3) requiring checks of applicable terrorist listings be conducted to ensure potential contractors, grantees, sub-contractors and sub-grantees are not in these listings. Additionally, USAID’s mission for the organization’s West Bank and Gaza program employs anti-terrorism vetting procedures for all awards it administers.

In July 2007, USAID published notices in the Federal Register of the intent to establish a new Partner Vetting System (PVS) of records. If implemented as envisioned, the PVS will collect basic personal information on NGOs, contractors and other groups and individuals with potential access to USAID funds, and check this data against government databases to identify potential links to terrorist organizations and activities. The PVS has the ability to vet individuals, officers or other officials of NGOs that apply for USAID contracts, grants, cooperative agreements or other funding, or who apply for registration with USAID as Private and Voluntary Organizations. By conducting vetting, USAID will be taking an additional step towards ensuring that neither USAID funds nor USAID-funded activities inadvertently or otherwise provide support to entities or individuals associated with terrorism. Should USAID decide to require vetting worldwide, the PVS can manage the entire vetting process in all locations in which USAID has or will have a program.

DOS uses available screening tools to vet, as appropriate, parties on munitions export license applications, U.S. Government-sponsored training program attendees, and those seeking employment with the Department to ensure that these individuals do not support terrorism or terrorist organizations. DOS also ensures that recipients of DOS funds and other assistance are duly vetted.

### **3.6. Iraqi Refugee Screening**

DHS in collaboration with other U.S. Government agencies has developed enhanced security screening procedures for Iraqi refugees applying for resettlement in the U.S. following the February 14, 2007, DOS announcement to accept more than 7,000 Iraqi refugee referrals from the United Nations High Commissioner for Refugees (UNHCR). After an Iraqi referral is

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**5. Redress**

**5.1. Traveler Redress**

Recognizing the impact of screening on the public, particularly where only name-based checks are conducted, agencies have incorporated redress into their screening programs. DHS TRIP provides a central gateway for travelers to obtain information about screening and redress as well as a central contact to DHS regarding their adverse screening experiences. Travelers can submit inquiries via website, email, fax or postal mail. DHS TRIP ensures that the cases are resolved, to the extent possible, and that travelers receive an official response from the screening agency. DHS TRIP assigns redress requests to the appropriate DHS agencies, ensures coordination of responses, and institutes performance metrics to track progress, giving leadership visibility into the types of complaints DHS receives and the status of response.

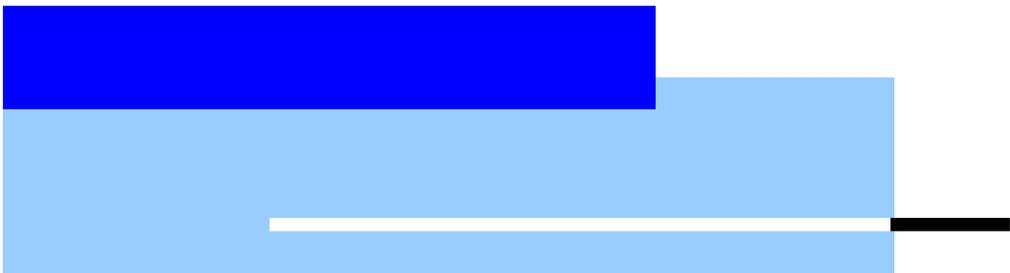
If an individual is cleared as a result of a redress request associated with No Fly and Selectee matching, the cleared individual is added to the TSA Cleared List and provided to air carriers. The Cleared List is currently used by the airlines to distinguish false matches from actual matches as they perform No Fly and Selectee list matching.

(G), (H)

[REDACTED]

When DHS TRIP is unable to determine whether an individual is a positive or false match, the redress request is referred to the TSC pursuant to the formal watchlist redress process established in January 2005. The process allows Screening Community agencies that use TSDB data during a terrorism screening process to refer individuals' complaints to the TSC when it appears those complaints are watchlist related. The goal of TSC's redress process is to provide for timely and fair review of individuals' complaints, and to identify and correct any data errors, including errors in the terrorist watchlist itself.

TSC's redress process consists of a procedure to receive, track, and research watchlist-related complaints and to correct, where appropriate, erroneous watchlist or other data that may have caused an individual difficulty during a screening process. During the redress process, TSC works closely with screening agencies on referral of and response to public redress complaints. TSC also works with the FBI's Redress coordinators from its TREX Unit, as well as the Intelligence Community and other Federal law enforcement agencies that nominate individuals to the watchlist in order to review the redress complaint of any individual on the terrorist watchlist, evaluate whether that person was properly watchlisted and that the associated information was correct, and make any corrections that were appropriate, including removal from the watchlist where warranted.



# **FOLLOW-UP AUDIT OF THE TERRORIST SCREENING CENTER**

U.S. Department of Justice  
Office of the Inspector General  
Audit Division

Audit Report 07-41  
September 2007

**EXHIBIT 4-3**  
**TSC Redress Complaint Disposition**  
*(January 2005 through February 2007)*

<b>Disposition</b>	<b>Number of Complaints</b>	<b>Percentage of Complaints</b>
Misidentification	52	13%
Positive Match (no change)	136	35%
Positive Match (remove record)	76	20%
Positive Match (modify record)	97	25%
Non-related	27	7%
<b>Total</b>	<b>388</b>	<b>100%</b>

Source: The Terrorist Screening Center Redress Office

*Misidentified Complainants*

TSC redress complaint disposition data show that 13 percent of the 388 closed redress inquiries were for complainants who were misidentified to a terrorist identity and were not an actual watchlist subject.

According to the TSC, the most common cause of a misidentification is name similarity. As previously discussed, the watchlist is identity-based and relies on name searches in order to vet persons against the watchlist. This can result in a person with an identical or similar name being identified as a terrorist watchlist identity. In many instances the screening agency can use additional identifying information, such as a date of birth or a passport number, to eliminate the individual as a terrorist watchlist match.<sup>63</sup>

*Positive Watchlist-Match Complainants*

Of the 388 redress complaints reviewed by the TSC between January 2005 and February 2007, 80 percent involved complainants who were on the terrorist watchlist. Through its redress review process, the TSC determined that watchlist records for 35 percent of the closed positive

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<sup>63</sup> Screening agencies have also developed programs to assist persons repeatedly misidentified to terrorist watchlist identities. For instance, an individual can voluntarily submit personal-identifying information to the TSA and request to be placed on the TSA Cleared List. If approved for placement on the Cleared List, the individual's name and personal-identifying information can be used to more quickly determine that the individual is not on the No Fly or Selectee lists. Similarly, the CBP and the State Department have implemented procedures to annotate records of misidentified persons in their databases to help avoid future port-of-entry screening and visa application delays. These actions are particularly helpful for a non-watchlist individual with an exact or a very similar name match to a known or suspected terrorist.

## **MEMORANDUM OF UNDERSTANDING ON TERRORIST WATCHLIST REDRESS PROCEDURES**

The Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), the Terrorist Screening Center (TSC), the Department of Homeland Security (DHS), the Department of State (DOS), the Office of the Director of National Intelligence (ODNI), the National Counterterrorism Center (NCTC), the Central Intelligence Agency (CIA), the Department of Defense (DOD), and the Department of the Treasury (hereinafter referred to as the Parties);

Recognizing that the United States Government has developed a consolidated database of known and suspected terrorists that supports many different screening programs operated under distinct statutory and regulatory authorities;

Recognizing that agencies that contribute to, compile, distribute, and use the consolidated database must use best efforts to maintain current, accurate, and thorough information;

Recognizing that the implementation of the screening programs nonetheless may, at times, still cause inconvenience, delay, or other adverse experiences for individuals during the terrorism screening process;

Recognizing that complaints received regarding the terrorism screening process should be expeditiously reviewed and addressed with dignity and respect;

Recognizing that the experience of travelers and other individuals interacting with government screening personnel is potentially affected by factors outside the terrorism screening scope of this Memorandum of Understanding, including, for example, random screening, screening for involvement with illicit drugs or other illegal conduct, behavioral screening criteria, as well as the basic professionalism and courtesy of government screening personnel, and that attention to these factors must be promoted through other appropriate means within the respective jurisdictions of the Parties;

Recognizing that on January 17, 2006, the Departments of State and Homeland Security announced an initiative on “Secure Borders and Open Doors in the Information Age,” otherwise known as the Rice-Chertoff Initiative, including the establishment of a redress process to address perceived problems in international and domestic traveler screening; and

Having consulted with the Privacy and Civil Liberties Oversight Board and the privacy and civil liberties officials of DHS, DOJ, and ODNI, in developing the procedures contained in this agreement;

Hereby enter into this Memorandum of Understanding (MOU).

- v. Administrative Appeals. Each nominating/originating agency will work with TSC and NCTC, as needed, to assist them in processing an appeal of a redress determination or other determination in which the TSDB was used. The nominating/originating agency will be responsible for advising the screening agency on the releasability of any materials requested by an appellant during an appeal. An updated analysis of all relevant information will be coordinated between NCTC and the nominating/originating agency, and will be forwarded to TSC, which in turn will provide it to the screening agency. The analysis will consider any new information developed since the initial determination, as well as any information provided by the individual on his or her own behalf during the appeals process itself.
  
- F. Responsibilities of the Department of Justice:
  - i. DOJ will coordinate with the relevant Parties during the defense of any judicial challenge to the resolution of a complaint processed under this MOU or a determination by a screening agency that relied in whole or in part on records or information in the TSDB.
  - ii. DOJ will consult with the Parties, as necessary, to provide continuing legal advice and support on matters related to watchlisting redress and this MOU.
  
- G. Visa Application Process; DOS and DHS Responsibilities at the Time of Visa Refusal:
  - i. DOS and DHS will continue to comply with applicable visa procedures, which may include an at-post internal review by a supervisory consular officer or another appropriate official. While a consular officer's denial of a visa application may not be overruled, that determination is informed by an internal management review and, in appropriate cases, by input from an interagency review.
  - ii. If a visa application is refused, applicants are advised that they may re-apply for a visa. A subsequent application is considered as a new case. DOS agrees to continue to review the underlying data and facts in such subsequent applications. Whenever appropriate, DOS consults with TSC, NCTC, and other agencies regarding data that appears incomplete or inaccurate, or otherwise conflicts with information obtained in the visa application process.

## 5. SETTLEMENT OF DISPUTES

Except as set forth in paragraphs 4.C.v and 4.E.iii concerning the deconfliction of watchlist nominations, disagreements between the Parties arising under or related to this MOU will be resolved only by consultation between the Parties.



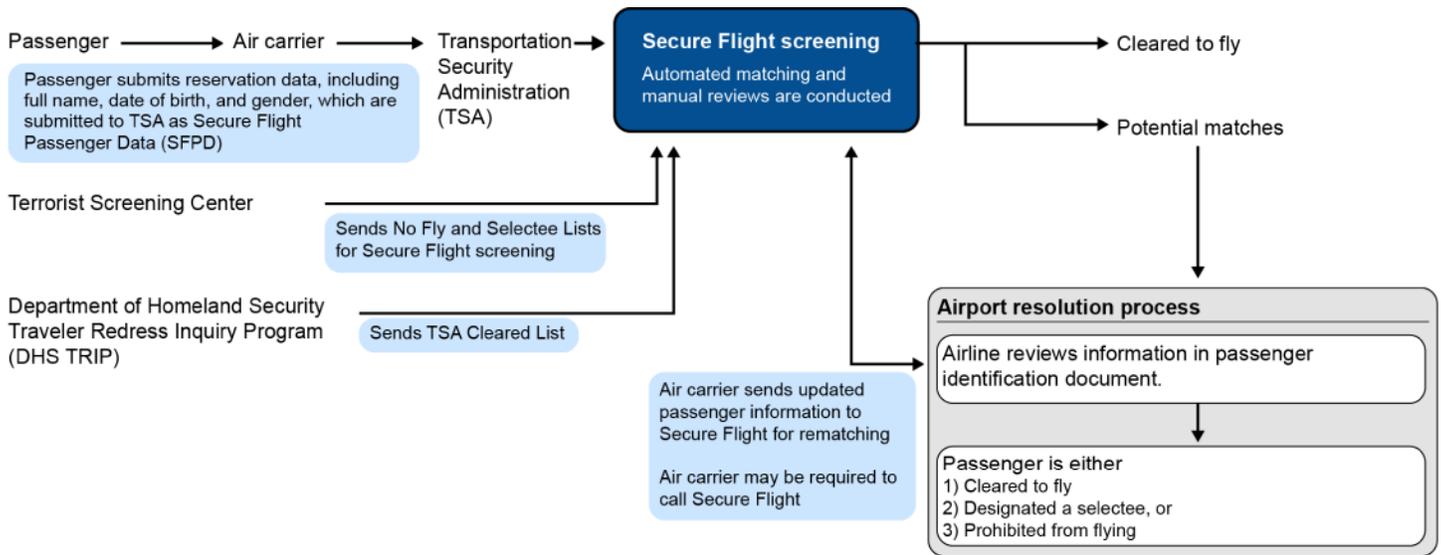
# Report to Congressional Requesters

September 2014

## SECURE FLIGHT

### TSA Should Take Additional Steps to Determine Program Effectiveness

**Figure 1: Secure Flight Screening as Implementation Began**



Source: GAO analysis of TSA information. | GAO-14-531

## Passenger Screening at Airport Security Checkpoints

In general, passengers undergo one of three types of screening, based on the Secure Flight determinations shown on boarding passes—standard screening, enhanced screening for selectees, and expedited screening for low-risk passengers.<sup>20</sup> Standard screening typically includes a walk-through metal detector or Advanced Imaging Technology screening, which is to identify objects or anomalies concealed under clothing, and X-ray screening for the passenger’s accessible property. In the event a walk-through metal detector triggers an alarm, the Advanced Imaging Technology identifies an anomaly, or the X-ray machine identifies a suspicious item, additional security measures, such as pat-downs, explosives trace detection searches (which involve a device certified by TSA to detect explosive particles), or additional physical searches may ensue as part of the resolution process. Enhanced screening includes, in addition to the procedures applied during a typical

<sup>20</sup>This section describes checkpoint screening activities as of May 2014. When Secure Flight implementation began, in 2009, TSA did not have a program in place to identify low-risk passengers eligible for expedited screening. We discuss more recent activities of TSA and the Secure Flight program to identify low-risk passengers for expedited screening later in this report.

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standard screening experience, a pat-down and an explosives trace detection search or physical search of the interior of the passenger's accessible property, electronics, and footwear. Expedited screening typically includes walk-through metal detector screening and X-ray screening of the passenger's accessible property, but unlike in standard screening, travelers do not have to, among other things, remove their belts, shoes, or light outerwear. Passengers not designated for enhanced or expedited screening generally receive standard screening unless, for example, identified by TSA for a different type of screening through the application of random and unpredictable security measures at the screening checkpoint.<sup>21</sup>

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## Secure Flight Initially Identified Passengers on Terrorist Watchlists and Now Also Differentiates Passengers Based on Risk

Since January 2009, the Secure Flight program has changed from one that identifies high-risk passengers by matching them against the No Fly and Selectee Lists to one that assigns passengers a risk category: high risk, low risk, or unknown risk.<sup>22</sup> Specifically, Secure Flight now identifies passengers as high risk if they are matched to watchlists of known or suspected terrorists or other lists developed using certain high-risk criteria, as low risk if they are deemed eligible for expedited screening through TSA Pre✓™—a 2011 initiative to preapprove passengers for expedited screening—or through the application of low-risk rules, and as unknown risk if they do not fall within the other two risk categories. To separate passengers into these risk categories, TSA utilizes lists in addition to the No Fly and Selectee Lists, and TSA has adapted the Secure Flight system to perform risk assessments, a new system functionality that is distinct from both watchlist matching and matching against lists of known travelers. At airport checkpoints, those passengers identified as high risk receive enhanced screening, passengers identified

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<sup>21</sup>Passengers who are to receive standard screening could receive expedited screening as part of Managed Inclusion at the screening checkpoint. Under Managed Inclusion, TSA randomly directs a certain percentage of passengers not otherwise designated that day as eligible for expedited screening to the expedited screening lane. Additionally, passengers designated for expedited screening may receive standard screening as part of random and unpredictable security measures. We expect to issue a report on expedited screening, including managed inclusion, later this year.

<sup>22</sup>The level of screening for a passenger may change from flight to flight based on the particulars of a flight or the individual.

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as low risk are eligible for expedited screening, and passengers identified as unknown risk generally receive standard screening.<sup>23</sup>

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### Secure Flight Is Using New High-Risk Lists for Screening, Including Two Lists of Individuals Who Meet Various Threat Criteria, but Who May Not Be Known or Suspected Terrorists

Since January 2009, TSA has been using new high-risk lists for screening, including two lists to identify passengers who may not be known or suspected terrorists, but who—based on TSA’s application of threat criteria—should receive enhanced screening, and an expanded list of known or suspected terrorists in the TSDB. As initially implemented under the October 2008 Secure Flight Final Rule, the program matched the names of passengers against the No Fly and Selectee List components of the TSDB. According to the rule, comparing passenger information against the No Fly and Selectee components of the TSDB (versus the entire TSDB) would be generally satisfactory during normal security circumstances to counter the security threat. The rule also provides that TSA may use the larger set of watchlists maintained by the federal government as warranted by security considerations, for example, if TSA learns that flights on a particular route may be subject to an increased security risk.<sup>24</sup> In such circumstances, TSA may decide to compare passenger information on some or all flights on that route against the full TSDB or other government databases, such as intelligence or law enforcement databases.

### Rules-Based Watchlists

After the December 25, 2009, attempt to detonate a concealed explosive on board a U.S.-bound flight by an individual who was not a known or suspected terrorist in the TSDB, TSA sought to identify ways to mitigate unknown threats—individuals not in the TSDB for whom TSA has determined enhanced screening would be prudent. To that end, TSA worked with CBP to develop new lists for Secure Flight screening, and in April 2010, began using the lists to identify and designate for enhanced

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<sup>23</sup>Passengers matched to the No Fly and CDC Do Not Board Lists are considered highest risk, and thus are not to receive boarding passes, and should not be allowed entry at airport checkpoints.

<sup>24</sup>Pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004, TSA was to assume performance of the passenger prescreening function of comparing passenger information against the No Fly and Selectee Lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the federal government in performing that function. See 49 U.S.C. § 44903(j)(2)(C).

screening passengers who may represent unknown threats.<sup>25</sup> To create these lists, TSA leveraged CBP's access to additional data submitted by passengers traveling internationally and the capabilities of CBP's Automated Targeting System-Passenger (ATS-P)—a tool originally created and used by CBP that targets passengers arriving at or departing the United States by comparing their information against law enforcement, intelligence, and other enforcement data using risk-based targeting scenarios and assessments.<sup>26</sup> Specifically, analysts within the Intelligence and Analysis Division of TSA's Office of Intelligence and Analysis review current intelligence to identify factors that may indicate an elevated risk for a passenger. TSA creates rules based on these factors and provides them to CBP.<sup>27</sup> CBP then uses ATS-P to identify passengers who correspond with the rules and provides TSA information on them in the form of a list.<sup>28</sup> Upon receiving the list, TSA creates another rules-based list—a subset of the larger rules-based list—based on additional criteria. Through Secure Flight screening, TSA designates passengers matching either rules-based list as selectees for enhanced screening.<sup>29</sup>

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<sup>25</sup>TSA uses two separate lists to address vulnerabilities exposed by the 2009 attempted attack. Further detail about these lists has been designated sensitive information, and thus cannot be included in a public report.

<sup>26</sup>CBP collects additional passenger information in order to fulfill its mission of securing the U.S. border while facilitating lawful travel and trade. See 19 C.F.R. § 122.49a(b)(3).

<sup>27</sup>These rules are criteria used by ATS-P to create the rules-based watchlists. The Department of Homeland Security's Office for Civil Rights and Civil Liberties, Privacy Office, and Office of the General Counsel are responsible for conducting quarterly reviews of these rules. The reviews are intended to ensure the rules are based on current intelligence identifying specific potential threats; are deactivated when no longer necessary to address those threats; are appropriately tailored to minimize the impact upon bona fide travelers' civil rights, civil liberties, and privacy; and are in compliance with relevant legal authorities, regulations, and DHS policies.

<sup>28</sup>According to TSA officials, individuals remain on the list for the time required to cover the scheduled travel.

<sup>29</sup>According to officials within TSA's Office of Chief Counsel, Secure Flight's use of rules-based watchlists is consistent with conducting watchlist matching under the "larger set of watchlists maintained by the Federal government as warranted by security considerations" as explained in the Secure Flight Final Rule, and nothing in statute or regulation prevents TSA from using non-TSDB-derived watchlists citing, among other provisions, 49 U.S.C. §§ 114 and 44903(j)(2)(C).

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## The Expanded Selectee List

In addition to the two ATS-P-generated lists, Secure Flight incorporated an additional list derived from the TSDB into its screening activities in order to designate more passengers who are known or suspected terrorists as selectees for enhanced screening.<sup>30</sup> Specifically, in April 2011, TSA began conducting watchlist matching against an Expanded Selectee List that includes all records in the TSDB with a full name (first name and surname) and full date of birth that meet the Terrorist Screening Center's reasonable suspicion standard to be considered a known or suspected terrorist, but that are not already included on the No Fly or Selectee List.<sup>31</sup> TSA began using the Expanded Selectee List in response to the December 25, 2009, attempted attack, as another measure to secure civil aviation. Collectively, the No Fly, Selectee, and Expanded Selectee Lists are used by Secure Flight to identify passengers from the government's consolidated database of known or suspected terrorists.<sup>32</sup>

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<sup>30</sup>According to TSA officials, the entire TSDB is not used for Secure Flight screening because records with partial data (i.e., without first name, surname, and date of birth) could result in a significant increase in the number of passengers misidentified as being on the watchlist and cause unwarranted delay or inconvenience to travelers.

<sup>31</sup>All TSDB-based watchlists utilized by the Secure Flight program contain records determined to have met the reasonable suspicion standard. In general, to meet the reasonable suspicion standard, the agency nominating an individual for inclusion in the TSDB must consider the totality of information available that, taken together with rational inferences from that information, reasonably warrants a determination that an individual is known or suspected to be or have been knowingly engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or terrorist activities. As previously discussed, to be included on the No Fly and Selectee Lists, individuals must meet criteria specific to these lists. The TSDB, which is the U.S. government's consolidated watchlist of known or suspected terrorists, also contains records on additional populations of individuals that do not meet the reasonable suspicion standard articulated above that other federal agencies utilize to support their border and immigration screening missions.

<sup>32</sup>Secure Flight also randomly identifies passengers as selectees for enhanced screening.

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Appendix III: Secure Flight Performance Data  
for Fiscal Years 2012 and 2013

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screening, as either high risk or low risk.<sup>3</sup> With respect to matching passengers against lists, the Secure Flight computer system first conducts automated matching of passenger and watchlist data to identify a pool of passengers who are potential matches to various lists. Next, the system compares all potential matches against the TSA Cleared List, a list of individuals who have applied to, and been cleared through, the DHS redress process.<sup>4</sup> Passengers included on the TSA Cleared List submit a redress number when making a reservation, which allows the Secure Flight system to recognize and clear them.<sup>5</sup> After the system performs automated matching, Secure Flight analysts conduct manual reviews of potential matches to further rule out individuals who are not included on the No Fly and Selectee Lists.

After the completion of manual reviews, TSA precludes passengers who remain potential matches to certain lists from receiving their boarding passes. These passengers, for whom air carriers receive a “passenger inhibited” message from Secure Flight, must undergo a resolution process at the airport. This process may involve air carriers sending updated passenger information back to Secure Flight for automated rematching or placing a call to Secure Flight for assistance in resolving

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<sup>3</sup>The lists Secure Flight uses to identify high-risk passengers include the No Fly, Selectee, and Expanded Selectee Lists, which are subsets derived from the Terrorist Screening Database, the U.S. government’s consolidated watchlist of known or suspected terrorists that is maintained by the Terrorist Screening Center, a multiagency organization administered by the Federal Bureau of Investigation. The lists Secure Flight uses to identify low-risk passengers are associated with the TSA Pre✓™ Program, a 2011 initiative that allows TSA to designate preapproved passengers as low risk. In addition, the system uses passenger data to perform TSA Pre✓™ risk assessments to identify travelers as low risk for a specific flight.

<sup>4</sup>The DHS Traveler Redress Inquiry Program (DHS TRIP) administers the TSA Cleared List. DHS established DHS TRIP in February 2007 to provide individuals, including those who believe they have been delayed or inconvenienced during travel because they have been wrongly identified as the subject of a watchlist record, an opportunity to be cleared. We plan to report later this year on Secure Flight-related redress issues.

<sup>5</sup>Because of the application of other TSA security measures, such as random selection, an individual’s presence on the Cleared List will likely diminish, but not preclude, the possibility of being selected for enhanced screening. The technical term for redress number is “redress control number.”

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**Appendix III: Secure Flight Performance Data  
for Fiscal Years 2012 and 2013**

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the match.<sup>6</sup> At the conclusion of automated and manual screening processes, Secure Flight provides air carriers with a final screening determination for each passenger.<sup>7</sup> At airport checkpoints, those passengers identified as high risk receive enhanced screening and those identified as low risk are eligible for expedited screening.<sup>8</sup>

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<sup>6</sup>This process may also involve the Secure Flight analyst contacting the Terrorist Screening Center for assistance in confirming or ruling out the match. The Secure Flight Operations Center (SOC) serves as a centralized point for handling the manual review of potential matches, resolving potential matches at the airport, and answering general air carrier questions.

<sup>7</sup>See 49 C.F.R. § 1560.105(b).

<sup>8</sup>Standard screening typically includes a walk-through metal detector or Advanced Imaging Technology screening, which identifies objects or anomalies concealed under clothing, and X-ray screening for the passenger's accessible property. In the event a walk-through metal detector triggers an alarm or the Advanced Imaging Technology identifies an anomaly or suspicious item, additional security measures—such as pat-downs, explosives trace detection searches (which involve a device certified by TSA to detect explosive particles), or additional physical searches—may ensue as part of the resolution process. Enhanced screening includes, in addition to the procedures applied during a typical standard screening experience, a pat-down and an explosives trace detection search or physical search of the interior of the passenger's accessible property, electronics, and footwear. Expedited screening typically includes walk-through metal detector screening and X-ray screening of the passenger's accessible property, but unlike in standard screening, travelers do not have to, among other things, remove their belts, shoes, or light outerwear. Passengers with boarding passes that are not marked for enhanced or expedited screening receive standard screening, unless otherwise identified by TSA for enhanced or expedited screening through the application of random and unpredictable security measures at the screening checkpoint.

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# TERRORIST SCREENING CENTER REDRESS PROGRAM STANDARD OPERATING PROCEDURES

DECEMBER 08, 2015

Document Version 1.4

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TSCA-ELHADY-FBITSC-PRIV00690

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Document Version 1.4

- 4.2. The Director of the TSC and the TSC Principal Deputy Director may direct the opening of redress cases.
- 4.3. Congressional and directed review cases are handled in the same manner as redress cases submitted through DHS TRIP.

## 5.0 Proactive Redress Reviews

- 5.1. The TSC Redress Office conducts, as resources permit, proactive reviews of TSDB records to ensure that TSDB records are current, accurate and thorough. Proactive redress reviews include, but are not limited to:
  - 5.1.1. The records of individuals (Non-US Persons) denied entry into the United States, denied boarding on a commercial aircraft, or whose Electronic Information for Travel Authorization (ESTA) applications have been denied.
  - 5.1.2. The records of individuals potentially affected by the new intelligence or exculpatory information.

## 6.0 Assigning a Redress Case

- 6.1. The Redress Supervisor, or designee, assigns redress cases and provides electronic copies of the inquiry and any accompanying documentation to the responsible Redress Analyst.
- 6.2. The Redress Analyst must recuse themselves from handling an inquiry, if he or she has knowledge of the complainant's status independent of the inquiry.
- 6.3. For inquiries received via DHS TRIP, the Redress Office will add a note to the DHS TRIP system that states that the referral has been accepted for review and provides the TSC redress case number assigned to the case.
- 6.4. For Congressional Inquiries, directed review cases and other redress referrals not received via DHS TRIP, correspondence will be handled via email.

## 7.0 Administration and Documentation

- 7.1. Upon receipt, the Redress Analyst enters the case into the TSC Redress Application. Unless otherwise instructed by the Redress Supervisor, a (G), (H) [REDACTED]
- 7.2. Redress cases are documented electronically in the Redress Application.
  - 7.2.1. The Redress Analyst (G), (H) [REDACTED]  
[REDACTED] The documents may include:
    - 7.2.1.1. Inquiry received from DHS TRIP.
    - 7.2.1.2. Documents provided by the complainant.
    - 7.2.1.3. (G), (H) [REDACTED].

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UNITED STATES DEPARTMENT OF THE TREASURY



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For more information, please contact FinCEN's Office of Public Affairs at (703) 905-3770

**FOR IMMEDIATE RELEASE**  
May 10, 2016

**CONTACT:** Steve Hudak  
703-905-3770

## **FinCEN Awards Recognize Partnership Between Law Enforcement and Financial Institutions to Fight Financial Crime**

**WASHINGTON**—The Financial Crimes Enforcement Network (FinCEN) today presented its second annual Law Enforcement Awards in a ceremony at the U.S. Department of the Treasury. These awards are presented to law enforcement agencies that use Bank Secrecy Act reporting provided by financial institutions in their criminal investigations. There are two primary goals of the program. First, to recognize law enforcement agencies which made effective use of financial institution reporting to obtain a successful prosecution. And, second, to demonstrate to the financial industry the value of their reporting to law enforcement. The industry's continued commitment to provide prompt and accurate reporting is vital to the successful partnership with law enforcement to fight financial crime.

“Without the valuable information that U.S. financial institutions provide, the significant cases recognized here today would likely never have seen the light of day,” noted FinCEN Director Jennifer Shasky Calvery. “These awards represent a small sample of the work that goes on every day, across our country and with international partners across the world, to fight financial crime and terrorist finance. FinCEN is proud to act as the bridge between law enforcement and the financial industry, and we will continue to recognize and promote this important partnership.”

The program includes six award categories recognizing achievements in combatting significant threats to the integrity of the financial system and the safety of our communities. The program is open to all Federal, state, local, and tribal law enforcement agencies. The award recipients are as follows:

**SAR Review Task Force: Internal Revenue Service-Criminal Investigation (IRS-CI)**

A significant fraud investigation was initiated following a review of financial institution reporting by a SAR review team and related financial task force. Both suspicious activity reports (SARs) and currency transaction reports (CTRs) were essential in uncovering a scheme where a financial advisor depleted all of the financial resources of an impaired adult. Several alert financial institutions filed more than two dozen reports in this case. The reporting described transactions that included excessive cash deposits, alleged misuse of a position of trust, unusual increases in cash withdrawals at multiple financial institutions, and tied the perpetrator and victim together. The information provided by banks and casinos identified specific transactions, locations related to the fraudulent activity, and how portions of fraudulently obtained funds were used.

Multiple financial institution reports identified the perpetrator as a financial advisor and noted an increase in cash transactions in his personal accounts, while others identified unusual cash withdrawals from the victim's accounts.

Investigators used the information provided by the reporting financial institutions to uncover the full magnitude of the scheme and to successfully prosecute the perpetrator. Ultimately, the perpetrator pled guilty to Federal charges of money laundering, and wire and mail fraud, and was sentenced to several years of imprisonment and ordered to pay hundreds of thousands of dollars in restitution.

### **Transnational Organized Crime: Federal Bureau of Investigation (FBI)**

Financial institution reporting played a key role in the investigation of one of the top international proliferators for weapons of mass destruction (WMD), as well as a principal supplier to Iran's ballistic missile program.

The FBI NY Field Office (FBI NY) identified and reviewed dozens of reports provided by financial institutions against the multiple front companies that were utilized by the proliferator's network to determine if he or his companies had illegally gained access to the U.S. financial system. Based on more than 40 reports filed by numerous New York banks, FBI NY determined that the proliferation network had in fact illegally laundered millions of dollars through multiple New York banks. The information in the reports guided FBI NY's investigation and helped identify over 20 front companies and bank accounts.

FBI NY identified 165 transactions that the proliferators used to illegally funnel approximately \$8.5 million dollars through the U.S. financial system. Driven by the vast amount of financial institution reporting collected and examined, multiple U.S. Government agencies, led by FBI NY, were able to take coordinated, simultaneous actions against the proliferation network. In April 2014, the Department of Justice U.S. Attorney's Office for the Southern District of New York unsealed a seven-count Federal indictment against the proliferators and seized and forfeited nearly \$6.5 million from the proliferators bank accounts; Treasury's Office of Foreign Assets Control designated eight associated front companies; the Department of Commerce added nine China-based suppliers to its Entity List; and the State Department instituted a \$5 million reward for information leading to the arrest of the proliferators. Harnessing the financial institution

reporting, FBI NY was able to conduct outreach to U.S. banks through FinCEN, resulting in the use of a USA PATRIOT Act provision to seize millions from the proliferators' foreign bank accounts. The seizure of the proliferators' assets, and the other coordinated enforcement actions taken, severely impacted the proliferators' ability to acquire WMD materials. This whole of government approach was a model of interagency cooperation, which is proving to be increasingly critical to successfully combating the ever-evolving and complex threats to national security posed by international proliferators.

### **Transnational Security Threat: U.S. Customs and Border Protection, National Targeting Center (CBP-NTC)**

CBP-NTC, which identifies potential threats to U.S. security, has become even more critical because of threats posed by foreign terrorist fighters, and financial institution reporting is proving to be very valuable in their efforts.

In one example, CBP officers stationed at the NTC learned that two people were arrested during counterterrorism raids in Berlin, Germany, on charges of recruiting fighters, procuring equipment, and funding ISIL. Through interagency coordination and research of U.S. Government databases, CBP officers were able to fully identify the subjects, both of whom were known to the intelligence community, and were already listed in the FBI terrorist screening database (TSDB).

NTC officers searched reporting provided by financial institutions and identified several reports filed on one of the subjects because of suspicious money transfers in Germany. NTC's analysis showed that the subject was involved with a network of individuals transferring money between Europe and Turkey. The reporting from financial institutions further identified a total of 43 people, seven of whom were positive matches to individuals listed in the TSDB. Three of those seven also were on the TSA no-fly list as being threats to civil aviation.

Through that research, NTC found another financial institution report identifying 73 additional individuals, 23 of whom were listed in the TSDB and six of those were on the no-fly list. After coordinating with the FBI, the NTC identified yet another filing with 32 people, 22 of whom were listed in the TSDB, and two who were on the no-fly list. Further coordination with FinCEN linked one of the initial suspects to 111 people, 22 of whom are listed in the TSDB, and 10 on the no-fly list. In all, NTC submitted 85 previously unknown subjects for nomination to the TSDB and enhanced another 38 records with additional identifying information to ensure they were fully identifiable by U.S. law enforcement agencies.

Information provided by financial institutions not only confirmed a number of subjects that investigators were already looking for, but identified a significant number of new, potential threats. The NTC shares the information gathered in cases like this with its U.S. interagency partners, including the National Joint Terrorism Task Force, the National Counterterrorism Center, Homeland Security Investigations, and FinCEN for further action. Through assistance from the Department of the Treasury, NTC was able to also pass this information to foreign law

enforcement partners, who were then able to enhance their country's investigations into this network.

### **Third Party Money Laundering: IRS-CI**

Financial institution reporting played an important role in a joint investigation by the FBI, IRS-CI, and the United States Attorney's Office for the Northern District of California, which led to the dismantling of an organized criminal enterprise that participated in bank fraud, conspiracy to operate an unlicensed wholesale distribution of drugs, and money laundering.

During the initial stage of the investigation, a confidential informant provided the government with information regarding the primary suspect, a money launderer. With this information, the agents queried a database containing financial institution reporting regarding the suspect. A dozen reports, filed by five different financial institutions, revealed a large-scale criminal enterprise operating an array of criminal activities to include the sale of diverted pharmaceuticals and money laundering. The reporting provided investigators with a detailed list of bank accounts controlled by over 30 suspected individuals who established the accounts to launder their illicit funds.

The perpetrators formed multiple shell companies, some under false identities, for the sole purpose of liquidating their drug proceeds. According to the information provided by the financial institutions, the perpetrators withdrew over \$15 million in currency from one bank account over a two-year period. The financial institution reporting assisted the government's efforts to decipher the complex web of shell companies, false identities, and additional bank accounts utilized by the organization. Armed with the financial institution reporting, the team reviewed records related to more than 500 bank accounts.

During the course of the investigation, the government seized over \$28.6 million in cash from multiple bank accounts used to launder drug proceeds. The financial institution reporting was pivotal in providing near real-time information to identify bank accounts and account information in order to secure the seizure. In addition to the money seizure, the government seized over \$2.5 million of street-diverted pharmaceuticals. A total of 33 individuals were arrested and convicted for various crimes tied to this case.

### **Significant Fraud: Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI)**

More than 100 SARs played a key role in a significant fraud investigation undertaken by ICE. Operation Dirty Sole concerned trade-based money laundering (TBML) and the black market peso exchange involving an El Paso based company and its owner, which engaged in a long running and large scale smuggling and mail and wire fraud scheme. The primary business of the company was to wholesale goods to Mexican and U.S. based customers.

The subjects of the investigation engaged in a scheme whereby millions of dollars' worth of goods were smuggled into Mexico in violation of U.S. laws and regulations governing exportation. The goods were smuggled after Mexican Customs officials and other Mexican government officials were bribed, allowing both the business and the purchasers to avoid paying the very high tariffs otherwise imposed on the import of these products into Mexico. Further, the goods were obtained by fraud and deceit, as the business was only authorized by its suppliers to sell the goods on a retail basis.

Initial queries of financial institution reporting revealed more than 100 SARs filed by numerous financial institutions for possible structuring and/or money laundering. These reports, along with other financial institution reporting, significantly assisted law enforcement in the investigation and prosecution of this case. For example, one notable report informed that the subject was regularly depositing cash which literally smelled laundered, as if had been cleaned with detergent. Another report concerned a key customer of the business under investigation. From this information, HSI agents in El Paso were able to connect this case to a Drug Enforcement Administration investigation in Seattle involving narcotics proceeds being deposited into bank accounts and ultimately wired to the business under investigation.

Ultimately, hundreds of relevant SARs, approximately 1,800 CTRs, 250 8300s and 100 CMIRs added value to this investigation. In all, the primary subject and business were held accountable for over \$100 million in illegal proceeds.

Four individuals were successfully prosecuted and convicted in this case. The primary suspect pled guilty to the most serious offense (conspiracy to commit money laundering), and agreed to forfeit over \$600,000 in U.S. dollars seized and a business building with over \$200,000 in equity. He also agreed to forfeit items seized during the investigation, with an estimated value of over \$1,000,000 U.S. currency. He was sentenced to more than ten years of imprisonment.

### **Cyber Threats: New York State Police**

While reviewing financial institution reporting, a New York State Police SAR Review Team based in Albany discovered that over a six-month period a subject had conducted large, unsourced cash deposits totaling over \$170,000, more than 20 of which were structured below the CTR reporting threshold. A New York State Police Financial Crimes Unit investigation revealed additional financial institution reports indicating that the subject was unemployed and was depositing cash into different bank accounts from which the money was being withdrawn, transferring cash for the purchase of virtual currency via the internet, and exchanging small denomination bills for larger denominations. The subject provided no source of income to institutions and stated he was trading Bitcoins.

An initial investigation revealed the subject was a college student who had moved over \$250,000 in less than six months through two financial institutions via deposits under the CTR reporting threshold, or virtual currency purchases and sales. Additionally, the subject would only keep the bank account open for about a month or so then close the account and re-open a new account, making it appear that the subject was running an unregistered money services business. Through

cooperation with the virtual currency businesses, investigators developed a lead in an illicit Dark Web-based market used for the specific purpose of buying/selling illegal and illicit items. Specific banking transactions conducted by the subject were traced to the purchases of virtual currency and then to the Dark Web market.

The investigation then led to the school where the subject attended, and the local university police advised that the subject was possibly involved in distribution of drugs on campus. Working in cooperation with the local county drug task force, the local district attorney's office, and the county court, information was developed that the subject was running a large scale drug operation on the campus, and a financial history was developed of how the subject was purchasing drugs using Bitcoin. An undercover operation culminated in the arrest of the subject, seizure of large amounts of illegal drugs, and the maximization of forfeiture opportunities. The subject was successfully prosecuted.

###

*FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.*

## Policy 802



Subject

### HANDLING CODES: TERRORIST RESPONSE

Date Published

8 September 2016

Page

1 of 4

*By Order of the Police Commissioner*

### POLICY

**Homeland Security.** The Baltimore Police Department (BPD), in conjunction with federal, state and local law enforcement agencies, is committed to strategic and preventive measures for the protection of homeland security in the State of Maryland.

### DEFINITIONS

**Terrorist Screening Center (TSC)** — Created to consolidate a terrorist watch list that is automatically linked to the National Crime Information Center (NCIC) and is always accessible. The TSC provides operational support, information and expertise so that law enforcement personnel can respond quickly and act accordingly. When law enforcement personnel conduct an NCIC check on an individual and a positive match is detected, the TSC will return to the requesting agency one of four Handling Codes:

1. **Handling Code 1:** The subject is confirmed to associate with terrorism, and there is a valid, outstanding arrest warrant.
2. **Handling Code 2:** The subject is of an “investigative interest” regarding their association with terrorism.
3. **Handling Code 3:** This individual may have possible ties with terrorism.
4. **Handling Code 4:** The identity provided by this individual may have possible ties with terrorism.

### REQUIRED ACTION

#### **Member**

1. Whenever an individual is checked through NCIC, and there is a positive match referred to by the Communications Unit as a “10-80” followed by one of the aforementioned numerical Handling Codes, immediately request back-up units. Use extreme caution when approaching and conversing with the individual.

**NOTE:** Do not alert the individual of the warning. Conduct all matters consistent with the law and BPD policy and procedures.

2. Request a permanent-rank supervisor to respond to all “10-80” incidents.

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3. Radio transmissions are to be kept at a minimum regarding all "10-80" incidents. If more discussion is needed, other than information between the Communications Unit and the member, use an alternate/lateral channel.
4. Be aware of the possible presence of, or materials for constructing, explosives, weapons, and weapons of mass destruction (WMD).
5. Complete an Administrative Report, Form 95, to include details of the NCIC check and subsequent actions.
6. Scan and email the Administrative Report and any related documents to HomelandSecurityDivision1@baltimorepolice.org before the end of your tour of duty.

#### Code 1 Encounters

1. When a 10-80, Code 1 is advised:
  - 1.1. Arrest the subject.
  - 1.2. Isolate the subject from the scene and from other associates.
  - 1.3. Immediately notify the Watch Center, and be guided by their instructions.
  - 1.4. Do not allow the subject to make any telephone calls and do not make any calls on behalf of the subject. Keep portable electronic items such as cellular phones, tablets, and mobile devices away from the subject.
  - 1.5. All other persons associated with the subject will be secured, segregated, and checked through NCIC. Handle all associates as Code 3, unless otherwise directed by the Watch Center or a member of the Homeland Security Division. The disposition of all associates will be determined by the Homeland Security Division.
2. If the subject is in possession of a vehicle:
  - 2.1. Do not move the vehicle.
  - 2.2. Do not retrieve, or allow occupants to retrieve, any property from the vehicle until cleared by the Homeland Security Division.
  - 2.3. Request a bomb detection dog via the K-9 Unit.
    - 2.3.1. If the dog elicits a positive response, immediately notify the Bomb Squad and adhere to Policy 707, *Bomb or Bomb Threat - Call for Service*.
    - 2.3.2. If there is no indication of an explosive device, follow appropriate search/inventory procedures, and hold/release the vehicle according to current policy, unless otherwise directed by the Homeland Security Division.

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Code 2 Encounters

1. When a 10-80, Code 2 is advised:
  - 1.1. Detain and isolate the subject from the scene and from other associates.
  - 1.2. Immediately notify the Watch Center and be guided by their instructions.
  - 1.3. Do not allow the subject to make any telephone calls and do not make any calls on behalf of the subject. Keep portable electronic items such as cellular phones, tablets, and mobile devices away from the subject.
  - 1.4. All other persons associated with the subject will be secured, segregated, and checked through NCIC. Handle all associates as Code 3, unless otherwise directed by the Homeland Security Division. The disposition of all associates will be determined by the Homeland Security Division.
2. If the subject is in possession of a vehicle:
  - 2.1. Do not move the vehicle.
  - 2.2. Do not retrieve, or allow occupants to retrieve, any property from the vehicle until cleared by the Homeland Security Division.
  - 2.3. Request a bomb detection dog via the K-9 Unit.
    - 2.3.1. If the dog elicits a positive response, immediately notify the Bomb Squad and adhere to Policy 707, *Bomb or Bomb Threat - Call for Service*.
    - 2.3.2. If there is no indication of an explosive device, follow appropriate search/inventory procedures, and hold/release the vehicle according to current policy, unless otherwise directed by the Homeland Security Division.

Code 3 and Code 4 Encounters

1. When a 10-80, "Code 3" or "Code 4" is advised:
  - 1.1. Do not arrest the individual, unless there is evidence of a violation of federal, state, or local law.
  - 1.2. Contact the Watch Center and be guided by their directions.
  - 1.3. Conduct an on-scene investigation:
    - 1.3.1. Determine if the individual is of law enforcement interest; and/or,
    - 1.3.2. Gain sufficient information to positively identify the individual.

<b>Policy 802</b>	<b>HANDLING CODES: TERRORIST RESPONSE</b>	<b>Page 4 of 4</b>
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### **Permanent-Rank Supervisor**

Respond to all “10-80” incidents.

### **Chief, Homeland Security Division**

1. Ensure members under your Command provide operational support to members of the BPD.
2. Establish a Unit Standard Operating Procedure (SOP) regarding the “10-80” Handling Code response. Ensure subordinates adhere to the SOP, to include taking command of the scene/investigation when needed and/or when in the best interest of the community, member and BPD.
3. Coordinate cooperative investigations between the Joint Terrorism Task Force (JTTF), the Maryland Coordination and Analysis Center, and any other entities, as needed.

### **Shift Commander, Communications Unit**

1. When a “10-80” response is appropriate, ensure dispatchers communicate the correct information, to include Handling Code, to the field member.
2. Immediately notify the Watch Center on behalf of the field member, and convey all necessary information to the Watch Center and/or Homeland Security Division.

### **ASSOCIATED POLICIES**

Policy 707, *Bomb Or Bomb Threat – Call For Service*  
Policy 706, *Hazardous Material Incidents*

### **RESCISSION**

Remove and destroy/recycle General Order H-2, *Handling Codes: Terrorist Response*, dated 11 July 2006.

### **COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

# **Elhady Plaintiffs MSJ Exhibit 57**



## **What is the Terrorist Screening Center?**

Following the attacks of September 11, 2001, the President and Congress mandated that federal executive departments and agencies share terrorism information with those in the counterterrorism community responsible for protecting the homeland. In 2003, the Terrorist Screening Center (TSC) was created to fulfill that mandate.

The TSC is a multi-agency center administered by the Federal Bureau of Investigation and is the U.S. Government's consolidated counterterrorism watchlisting component responsible for the management and operation of the Terrorist Screening Database, commonly known as "the watchlist."

## **Why was the Terrorist Screening Center created?**

The 9/11 Commission Report found that agencies did not share counterterrorism information in an effective and timely manner. However, through the Terrorist Screening Database, the Terrorist Screening Center ensures the timely dissemination of terrorist identity information to screening partners such as the Department of State, the Department of Homeland Security, and federal, state, and local law enforcement to provide for the appropriate and lawful use of terrorism-related information.

## **What is the Terrorist Screening Database?**

The Terrorist Screening Database, commonly referred to as "the watchlist," is the U.S. Government's consolidated database containing sensitive law enforcement and national security information concerning the identity information of those who are known to be or reasonably suspected of being involved in terrorist activities. The Terrorist Screening Center serves as a bridge between homeland security, law enforcement, the intelligence community, and select international partners for the purpose of sharing, as appropriate, terrorism-related information.

## **What is the difference between the Terrorist Screening Center and the National Counterterrorism Center?**

The Terrorist Screening Center (TSC) is responsible for maintaining and operating the Terrorist Screening Database (TSDB) and is the primary U.S. Government component for the watchlisting, screening, encounter management, and information sharing of known or suspected terrorist information. The TSC is also responsible for sharing information from the TSDB with homeland security, law enforcement, the intelligence community, and select international partners. The National Counterterrorism Center (NCTC) maintains the Terrorist Identities Datamart Environment (TIDE), which is the U.S. Government's classified central and shared repository for all information pertaining to international known or suspected terrorists. The TSC and NCTC work in close coordination to ensure appropriate information from TIDE is provided to the TSC for inclusion in the TSDB.



### **How are individuals added to the Terrorist Screening Database?**

The procedures for submitting terrorist identity information for inclusion in the Terrorist Screening Database (TSDB) are known as the watchlist nomination process. U.S. Government agencies nominate individuals who may qualify for inclusion as a known or suspected terrorist based on credible intelligence developed by homeland security, law enforcement, the intelligence community, as well as U.S. Embassies or Consulates. The nominations are submitted to the National Counterterrorism Center, which determines if the information is credible and if there is sufficient identifying information. If so, the nomination is entered into the Terrorist Identities Datamart Environment and the identity information is passed to the Terrorist Screening Center (TSC). The TSC then conducts another review of the nomination and the relevant intelligence to verify the information before accepting the record into the TSDB.

### **What is done to ensure the accuracy of the Terrorist Screening Database?**

A range of quality control measures are used to ensure that the Terrorist Screening Database (TSDB) contains information that is current, accurate, and thorough. This includes regular reviews and post-encounter quality assurance conducted by the nominating agencies, the National Counterterrorism Center, and the Terrorist Screening Center to ensure the information continues to satisfy the applicable criteria for inclusion in the TSDB. The TSDB is updated daily with additions, modifications, and removals.

### **Which U.S. Government agencies have access to the Terrorist Screening Database?**

Agencies and officials who are authorized to conduct terrorist screening in the course of their official duties have access to the information contained in the Terrorist Screening Database (TSDB) to support diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes. The five major U.S. Government agencies that screen with information from the TSDB are: the Department of State Bureau of Consular Affairs for passport and visa screening, the Transportation Security Administration for aviation security screening, the FBI's National Crime Information Center for domestic law enforcement screening, the U.S. Customs and Border Protection for border and port of entry screening, and the Department of Defense for military base access screening. All screening functions are subject to U.S. laws and regulations regarding privacy and civil liberties protections.

### **What is the No Fly List?**

The No Fly List is a subset of the Terrorist Screening Database. Inclusion on the No Fly List prohibits an individual who may present a threat to civil aviation or national security from boarding a commercial aircraft that traverses U.S. airspace. Before the Terrorist Screening Center places an individual on the No Fly List, there must be credible information demonstrating that the individual presents a threat of committing an act of terrorism with respect to an aircraft, the homeland, U.S. facilities or interests abroad, or is a threat of engaging in or conducting a violent act of terrorism and is operationally capable of doing so.



### **What is a known or suspected terrorist?**

A “known terrorist” is an individual who has been (a) arrested, charged by information, indicted for, or convicted of a crime related to terrorism and/or terrorist activities by U.S. Government or foreign government authorities; or (b) identified as a terrorist or a member of a terrorist organization pursuant to statute, Executive Order, or international legal obligation pursuant to a United Nations Security Council Resolution.

A “suspected terrorist” is an individual who is reasonably suspected to be engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and/or terrorist activities.

### **What is an encounter?**

An encounter is an event where an individual is identified during a screening process as someone who is a potential match to an identity in the Terrorist Screening Database. For example, an encounter may occur when an individual attempts to board an aircraft, apply for a passport or visa, enter an U.S. port of entry, or has an interaction with law enforcement.

### **How are privacy and civil liberties safeguarded?**

Nominations to the Terrorist Screening Database (TSDB) are not accepted if they are based solely on race, ethnicity, national origin, religious affiliation, or First Amendment-protected activities, such as free speech, the exercise of religion, freedom of the press, freedom of peaceful assembly, or petitioning the government for redress of grievances.

The Terrorist Screening Center regularly conducts comprehensive and case-specific quality assurance reviews of data in the TSDB to ensure the U.S. Government’s substantive criteria for watchlisting is met and to ensure the records maintained in the watchlist are current, accurate, and thorough.

### **If an individual has an adverse experience while traveling or wants to contest their possible inclusion in the watchlist, how can they seek resolution?**

The Department of Homeland Security (DHS) has established the Traveler Redress Inquiry Program (DHS TRIP) ([www.dhs.gov/trip](http://www.dhs.gov/trip)) to provide a single point of contact for individuals who have inquiries or seek resolution regarding their alleged U.S. Government watchlist status. DHS TRIP allows travelers to submit a redress inquiry in a single request via a secure website, and is the vehicle through which individuals may seek redress for travel difficulties they perceive to be the result of their inclusion in the Terrorist Screening Database.

## **OVERVIEW OF THE U.S. GOVERNMENT'S WATCHLISTING PROCESS AND PROCEDURES**

**AS OF: January 2018**

The U.S. Government (USG) is committed to protecting the United States from terrorist threats and attacks and seeks to do this in a manner that protects the freedoms, privacy and civil rights and liberties of U.S. persons and other individuals with rights under U.S. law.<sup>1</sup> Following the attacks of September 11, 2001, to further protect the homeland, the President through Homeland Security Presidential Directive-6 (HSPD-6), September 16, 2003, directed the USG to consolidate its approach to terrorism screening and watchlisting, facilitate information sharing, and called for the protection of privacy and civil liberties while managing the process. Thereafter, Congress likewise mandated greater sharing of terrorist information among federal departments and agencies, while still protecting privacy and civil liberties.<sup>2</sup>

As part of this effort, to facilitate information sharing, the USG integrated terrorist identity information from federal departments and agencies into a single database – the Terrorist Screening Database (TSDB) - for use by various government agencies in support of their screening and vetting activities. The Terrorist Screening Center (TSC) was established to manage the TSDB. The TSC was created by the Attorney General, Secretaries of Homeland Security and State, and the Director of Central Intelligence pursuant to Homeland Security Presidential Directive-6 (HSPD-6) of September 16, 2003.

The USG recognizes the importance of transparency and the need for a general understanding of its approach to terrorism screening and watchlisting. This includes the process for nominating someone to the TSDB, ensuring records are accurate and updated, and how agencies use the information for screening and vetting. This process also includes appropriate mechanisms to ensure timely and fair review of redress requests to correct erroneous information.

The overall watchlisting processes and procedures are the subject of continual internal reviews by agency officials charged with ensuring overall fairness and effectiveness, a process that includes review by legal counsel and agency privacy and civil liberties officers. In addition to these internal agency reviews, the overall watchlisting processes and procedures are also evaluated by external authorities on a regular basis, to include the Offices of Inspectors General, the Government Accountability Office, Congress, and independent bodies, such as the Privacy and Civil Liberties Oversight Board.

This paper provides an overview of the terrorist watchlisting process.

<sup>1</sup> Unless noted, a U.S. person is defined in Executive Order 12333.

<sup>2</sup> Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458 § 1016 (2004) (codified at 6 U.S.C. § 485).

## **BACKGROUND**

The TSC is a multi-agency center that consolidates the USG terrorist watchlists into a single database and provides for the appropriate and lawful use of terrorist information in screening and vetting processes. Prior to the creation of the TSC in 2003, nine USG agencies maintained twelve different terrorist watchlists.

The TSC is administered by the Federal Bureau of Investigation (“FBI”) in coordination with:

- The Department of Homeland Security (“DHS”),
- The Department of State (“State”),
- The Department of Justice (“DOJ”), and
- The Office of the Director of National Intelligence (“ODNI”).

## **TSDB Overview**

The TSDB, commonly referred to as the Terrorist Watchlist, contains both biographic and biometric identifying information (e.g., name, date of birth, photographs, iris scans, and/or fingerprints) of known and suspected terrorists. The TSDB does not contain classified national security information. TSDB information is “For Official Use Only//Law Enforcement Sensitive//Sensitive Security Information,” which means the information is protected from disclosure and is accessible only to persons who have a “need to know” such as federal law enforcement officials for their screening and vetting activities.

The TSDB includes subset categories of known or suspected terrorists who may be subject to additional security screening before being permitted to board an aircraft or who are prohibited from boarding flights on U.S. carriers as well as flights into, out of, over or within U.S. airspace. These categories, commonly referred to as the Selectee and No Fly Lists are used by the Transportation Security Administration (TSA) to secure commercial air travel against the threat of terrorism. It is important to note that individuals may be subjected to additional security screening for reasons other than a match against a watchlist record. For example, passengers may be selected for random screening measures during the security screening process.

As a result of the dynamic intelligence environment, regular reviews of the data, and the redress process, the TSDB does change. The TSDB is continuously reviewed and updated. Identities are added, have their status changed or are removed. Therefore, the USG does not regularly release the numbers of identities on the TSDB, or in its subset lists. There are no quotas or numerical goals. The vast majority of the identities in the TSDB are foreign nationals who are not located in the U.S. and have no known nexus to the United States.

## WATCHLIST AND SCREENING

### **Nominations to the TSDB**

The procedure for submitting information about individuals for inclusion into the TSDB is referred to as the nomination process. Inclusion on the watchlist results from an assessment based on analysis of available intelligence and investigative information that the individual meets the applicable criteria for inclusion on the watchlist. The standard for inclusion in the TSDB is generally one of **reasonable suspicion** which is defined later in this document.

Nominations to the TSDB are made by USG agencies and foreign partners based on credible information from:

- law enforcement,
- immigration records,
- homeland security and intelligence communities,
- State through U.S. embassies and consulates abroad, and
- foreign partners with which the USG has arrangements to share terrorist screening information.

Nominating agencies provide identities which meet the standard for inclusion in the TSDB to:

- the National Counterterrorism Center (NCTC), for identities with a nexus to international terrorism; and
- the Federal Bureau of Investigation (FBI), for identities with a nexus to domestic terrorism.

Before an individual is added to the TSDB, the nomination undergoes a multi-step review process at the nominating agency, at the NCTC or FBI (as appropriate), and then again at the TSC to ensure compliance with interagency standards for inclusion. If the nomination has an international nexus to terrorism it is reviewed by NCTC, otherwise it is reviewed by the FBI. The NCTC maintains classified national security information concerning international terrorists within its Terrorist Identities Datamart Environment ("TIDE"). Pursuant to Section 1021 of the Intelligence Reform and Terrorism Prevention Act of 2004, the NCTC serves as the primary organization in the USG for analyzing and integrating all intelligence possessed or acquired by the USG pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.

To include a known or suspected terrorist nomination in the TSDB, the nomination must include enough identifying information to allow screeners to be able to determine whether the individual they are screening is a match to a record in the TSDB, and enough information to establish a reasonable suspicion that the individual is a known or suspected terrorist.

The USG continuously evaluates its standards for inclusion in the TSDB and its subset lists. To meet the reasonable suspicion standard for inclusion in the TSDB as a known or suspected terrorist, the nominator must rely upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.

Mere guesses or “hunches” or the reporting of suspicious activity alone are not sufficient to establish reasonable suspicion.

Nominations must not be based solely on the individual’s race, ethnicity, or religious affiliation, nor solely on beliefs and activities protected by the First Amendment, such as freedom of speech, free exercise of religion, freedom of the press, freedom of peaceful assembly, and the freedom to petition the government for redress of grievances.

#### **Nominations to the No Fly and Selectee Lists**

Nominations to the No Fly or Selectee Lists (which are subsets of the TSDB) must satisfy criteria distinct from that used for mere inclusion in the TSDB. TSC is responsible for determining if the associated information meets criteria for inclusion on both lists.

Any individual, regardless of citizenship, may be included on the No Fly List when the TSC determines the individual meets at least one of the following criteria where the individual poses:

- (1) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) or domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to an aircraft (including a threat of piracy, or a threat to airline, passenger, or civil aviation security);
- (2) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to the homeland;
- (3) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) against any U.S. Government facility abroad and associated or supporting personnel, including U.S. embassies, consulates and missions, military installations (as defined by 10 U.S.C. 2801(c)(4)), U.S. ships, U.S. aircraft, or other auxiliary craft owned or leased by the U.S. Government; *or*,
- (4) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so.

For security reasons, the criteria for inclusion on the Selectee List are not public. This is because disclosure of the Selectee criteria could give known or suspected terrorists information that may assist in developing strategies to circumvent security screening.

The TSC reviews each nomination to ensure compliance with standards for inclusion. At the conclusion of the TSC's review, TSC personnel either accept or reject the nomination for inclusion into the TSDB and, if appropriate, inclusion on either the Selectee or No Fly subsets.

Being subject to additional screening, does not necessarily mean a person is in the TSDB. To ensure the safety and security of the traveling public, TSA may designate individuals for additional security screening before they are permitted to enter the sterile area of an airport or to board an aircraft. For example, an individual may be designated for additional screening in order to resolve a walk-through metal detector alarm, because of random selection, or for other reasons.

### **Use of the TSDB**

Agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective public missions.<sup>3</sup>

The largest end users of the TSDB are<sup>4</sup>:

- State (visa and passport screening);
- DHS
  - a. Customs and Border Protection ("CBP") (vetting and inspection of travelers seeking entry to the United States or between ports of entry, at preclearance facilities abroad, and during the processing of trusted traveler applications.);
  - b. Transportation Security Administration ("TSA") (air passenger screening and transportation security credential vetting);
  - c. U.S. Citizenship and Immigration Services ("USCIS") (immigration screening);
  - d. U.S. Immigration and Customs Enforcement ("ICE") (investigations);
- Department of Defense ("DOD") (base access screening); and
- FBI (investigations and domestic law enforcement screening).

### **Encounters**

An encounter is an event in which an individual is identified during a screening process to be a potential positive or inconclusive match to an individual who is in the TSDB. An encounter can be a face-to-face interaction (e.g. inspection at a U.S. port of entry, visa interview, or traffic stop by local law enforcement), electronic (e.g., Electronic System for Travel Authorization (ESTA) application or a visa application), or paper-based (e.g. review of visa petition). When an encounter occurs, the agency and/or the encountering officer contacts the TSC to confirm whether the individual matches the record in the TSDB. If the individual is confirmed to match

<sup>3</sup> HSPD-6

<sup>4</sup> This is not inclusive of *all* users.

the identity in the TSDB, each encountering agency will take appropriate action according to internal procedures and policies and consistent with the application of its expertise and the regulatory and statutory standards applicable to each screening and vetting activity to serve its agency mission.

## **QUALITY ASSURANCE REVIEWS AND REMOVAL PROCESS**

### **Quality Assurance Reviews**

To maintain thorough, accurate and current terrorism information, the TSDB is subjected to rigorous and ongoing quality control measures to ensure:

- Nominations continue to satisfy the criteria for inclusion; and
- Information offered in support of the nomination is reliable and up-to-date.

Quality control measures include reviews and evaluations by the nominating agency, NCTC, and TSC to verify that each nomination meets the appropriate criteria for inclusion in the TSDB and any appropriate subset list prior to an identity being added to the TSDB. These reviews and evaluations also provide a means to identify any changes to the information over time that could affect inclusion.

For example, nominating agencies conduct annual reviews of all nominations of U.S. persons to the TSDB. Nominations of non-U.S. persons receive reviews, as well. Each nominating agency must have internal procedures to prevent, identify and correct any errors. These procedures include the review of retractions and/or corrections of information that may have been used to support a nomination.

Additionally, the TSC regularly reviews data in the TSDB to ensure that the underlying information supports the nomination and performs audits to confirm the data in the TSDB is thorough, accurate, and current. The TSC also conducts a biannual review for all U.S. person records in the TSDB, to include all U.S. persons on the Selectee List or No Fly List. Additionally, for all persons, there is a review following each screening encounter when there is a potential match to an identity in the TSDB. Available information is reviewed to evaluate that the record still meets the standard for inclusion and to determine an appropriate encounter response, when applicable.

At any time, a USG agency (whether or not it is the nominator) that identifies new or updated information about a watchlist record, may make a request to NCTC/TSC to modify or remove that record.

The multiple reviews described above conducted by the nominating agencies, NCTC, and TSC help ensure that terrorist identity information used to support the law enforcement and screening functions is thorough, accurate, and current.

### **Removal Process**

If it is determined during the quality assurance reviews that a change should be made to a record in the TSDB, the TSC, coordinating with the nominating agency and any other relevant agencies, takes steps to clarify the record. Additions, modifications, and removals are executed to ensure that the watchlisting process and procedures remain compliant with applicable law. Examples of situations where a record may be removed from the TSDB in the normal course of business include:

- When there is a misidentification,
- To promptly adjust or delete erroneous information,
- When new information becomes available to update the record including information that refutes or discredits the original information that supported the individual's watchlist status.

### **Oversight**

Relevant USG departments' and agencies' Inspectors General and the U.S. Government Accountability Office regularly review terrorist watchlist, screening, and redress processes. The Privacy and Civil Liberties Oversight Board (an independent bipartisan agency within the Executive Branch) and the U.S. Congress also provide oversight. The U.S. Congress conducts oversight through its committees including, but not limited to, the House and Senate Intelligence Committees, the House and Senate Homeland Security Committees, the House and Senate Appropriations Committees, and the House and Senate Judiciary Committees. The TSC also has both an embedded legal unit and a dedicated privacy attorney to provide continuous advice and counsel.

### **REDRESS PROCESS**

#### **Overview**

The DHS Traveler Redress Inquiry Program (DHS TRIP) is a resource for individuals who believe they have been unfairly or incorrectly delayed, denied boarding, or identified for additional screening or inspection at airports or U.S. ports of entry.

The DHS TRIP website <http://www.dhs.gov/dhs-trip>, provides a single point of contact for travelers to resolve travel-related screening difficulties. The website provides the user with detailed information about the redress process and what to expect regarding his or her inquiry. DHS TRIP assigns a unique Redress Control Number (RCN) to each inquiry submitted, allowing travelers to check the status of their inquiry on the website at any time.

As part of the redress process, DHS TRIP provides the traveler with a mechanism to submit any information that may be relevant to the travel difficulties experienced. The DHS TRIP process provides additional or detailed information that can assist the USG in making its determination.

Travelers may apply at the DHS website or may choose to apply for redress by submitting copies of their completed DHS TRIP Traveler Inquiry Form and copies of their identification documents by U.S. mail to:

DHS-Traveler Redress Inquiry Program  
601 S. 12<sup>th</sup> St. TSA-901  
Arlington, VA20598-6901

To resolve redress inquires, DHS TRIP works with DHS component agencies and other USG agencies such as:

- CBP,
- TSA,
- USCIS
- National Protection and Programs Directorate's Office of Biometric Identity Management,
- ICE,
- U.S. Coast Guard
- State,
- Department of Justice, including the FBI and TSC

The TSC supports DHS TRIP by helping to resolve inquiries which may appear to be related to data in the TSDB. Through the DHS TRIP process, approximately 98% of DHS TRIP inquiries are found to be cleared of any connection with terrorist watchlisted identities. When a traveler's inquiry may concern data in the TSDB, DHS TRIP works with the TSC's Redress Office, a separate component within the TSC that processes inquiries related to the use of TSDB data by screening agencies.

Upon receipt of a complaint from the DHS TRIP program office, the TSC Redress Office independently reviews the available information about the traveler and documentation provided by the traveler to determine: whether (or not) the traveler is a positive match to an identity in the TSDB. If the traveler is a positive match to an identity in the TSDB, the analyst will review, whether or not the identity in the TSDB continues to satisfy the criteria for inclusion or should be removed or have its status otherwise modified. When a traveler seeking redress through DHS TRIP is a positive match to an identity in the TSDB, the TSC's Redress Office contacts NCTC and the nominating agency to assist in the resolution of the complaint. Part of that process includes the nominator participating to ensure that any new or exculpatory information that they may have is considered as part of the redress review.

After reviewing the available information, to include any information submitted by the traveler, the TSC's Redress Office determines whether the traveler's record should remain in the TSDB, be modified, or be removed, unless the legal authority to make such a determination resides, in

whole or in part, with another government agency.<sup>5</sup> In such cases, the TSC Redress Office prepares a recommendation for the decision-making agency and implements the determination.

When changes to a record's status are warranted, TSC's Redress Office ensures such corrections are made and verifies that such modifications or removals are carried over to the various screening systems that receive TSDB data. DHS TRIP sends a determination letter advising the traveler of the results of the adjudication of the redress inquiry.

Because of security concerns, the USG's general policy is neither to confirm nor deny a person's watchlist status. In certain instances, however, a U.S. person denied boarding because of their presence on the No Fly list may be apprised of their status through the DHS TRIP process.<sup>6</sup> When a U.S. citizen or Lawful Permanent Resident applying for redress is, in fact, on the No Fly List, DHS TRIP may inform the applicant of his or her status on the list. These requesters will be provided an opportunity to request and receive additional information regarding their status. Such additional information will include, where possible when national security and law enforcement interests at stake are taken into account, an unclassified summary of information supporting the individual's No Fly List status. The amount and type of information provided will vary on a case-by-case basis, depending on the facts and circumstances. In some circumstances, an unclassified summary may not be provided when the national security and law enforcement interests at stake are taken into account. Requesters are then provided an opportunity to submit any information that they consider potentially relevant to their status on the No Fly List. TSC then reviews this submission and takes appropriate action, including potentially removing the individual from the No Fly List.

Where TSC determines that an individual seeking redress should remain on the No Fly List, TSC provides a recommendation to the TSA Administrator. The TSA Administrator will review the available information, including the recommendation from TSC, and will either issue a final order maintaining the person on the No Fly List or removing the person from the No Fly list, or remand the case back to TSC with a request for additional information or clarification. If a final order is issued, it will state the basis for the TSA Administrator's decision (to the extent feasible in light of the national security and law enforcement interests at stake) and will notify the person of the ability to seek judicial review.

DHS TRIP encourages all aviation travelers to include their DHS Redress Control Number, provided in DHS TRIP response letters, in all future travel reservations.

<sup>5</sup> The TSA Administrator or his/her designee, in coordination with other relevant agencies, makes final determinations concerning listing on the No Fly List. The Administrator reviews the information the traveler submits to DHS TRIP, as well as other available information that is being relied upon to support the No Fly listing, and will issue a final determination. TSA will provide the individual with a final written determination and will notify the individual of the ability to seek further judicial review under 49 U.S.C. § 46110.

<sup>6</sup> Cite to Notice Re: Revisions to DHS TRIP Procedures, Document 197, *Latif v. Holder* (D. Or. 2014), Civil Case No. CV 10-00750-BR. For purposes of this revised redress process, a U.S. person is defined as a U.S citizen or U.S. Legal Permanent Resident.

It is important to note that the USG cannot ensure future travel will be delay-free. Individuals may also receive additional inspection, screening, or inquiry for a variety of reasons unrelated to the TSDB, including but not limited to:

- The particular circumstances of the individual's travel
- Grounds for possible inadmissibility to the United States
- Enforcement of the Immigration and Nationality Act (INA);
- Random selection; or
- Airline selection

The U.S. Government is committed to ensuring that the redress process is fair and responsive, as part of its commitment to protect the American public from terrorist threats, while at the same time, safeguarding privacy and civil liberties.

### **CONCLUSION**

This document explains the robust processes and procedures by many agencies working in concert to provide for the appropriate and lawful use of terrorism screening information to protect the United States.

The U.S. Government is committed to ensuring that the watchlisting process is implemented consistent with law and is subject to numerous reviews, oversight, and provides the opportunity to seek redress, while also ensuring the information is appropriately used to vigorously protect the American public from terrorist threats, while safeguarding privacy and civil liberties.



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investigation, has been arrested for (without disposition), or has been convicted of an egregious felony including, but not limited to: murder; rape, firearms trafficking, child pornography, and other significant felonies.

Data from USCIS' FDNS Directorate shows that between 2007 and 2017, USCIS referred 45,858 foreign nationals who applied for immigration benefits to ICE for criminal or civil enforcement action, based on information indicating that such foreign nationals had committed egregious public safety-related offenses within the United States.

*iv. Foreign Nationals Denied Boarding on Flights Destined for the United States*

Finally, as published in the United States Customs and Border Protection's (CBP) annual "Border Security Report," the National Targeting Center (NTC), the Immigration Advisory Program (IAP), and the Regional Carrier Liaison Group (RCLG) led CBP efforts between FY 2010 and FY 2016 to identify and prevent the boarding of 73,261 foreign travelers on flights destined for the United States, who may have presented an immigration or security risk.

CBP works with industry partners to ensure the safety of the traveling public. IAP employs CBP officers at foreign airports where they review passenger information and/or assess the passenger documentation prior to their U.S.-bound flights. IAP officers make "no board" recommendations to carriers and host governments regarding passengers bound for the United States. RCLGs located in Honolulu, Miami, and New York, expand the Nation's zone of security beyond the physical U.S. borders by working with commercial carriers to prevent the boarding of passengers who may pose a security threat, have fraudulent travel documents, or are otherwise inadmissible to the United States.

### **III. Conclusion**

DHS and DOJ play a vital role in protecting the national security of the United States, especially against terror threats. DHS actively works to block known or suspected terrorists from entering the United States and is also focused on combating terrorist radicalization and recruitment in U.S. communities. DOJ is committed to the continued investigation and criminal prosecution of terrorists and other malicious actors, as well as criminal and civil denaturalization of U.S. citizens who derive their citizenship through naturalization fraud.

DHS, in consultation with DOJ, will continue to report appropriate information regarding terrorism-related activity, as well as other information as directed under the President's Executive Order, in an effort to highlight the threats facing the United States, trends, and relevant U.S. Government actions. At the same time, DHS and DOJ urge all U.S. states to work closely with the federal government on closing the data collection gaps identified in this report in the interest of full transparency and accountability to the American people.

## U.S. CUSTOMS AND BORDER PROTECTION

**CBP DIRECTIVE NO.** 3340-049A

**DATE:** January 4, 2018

**ORIGINATING OFFICE:** FO:TO

**SUPERSEDES:** Directive 3340-049

**REVIEW DATE:** January 2021

### **SUBJECT: BORDER SEARCH OF ELECTRONIC DEVICES**

**1 PURPOSE.** To provide guidance and standard operating procedures for searching, reviewing, retaining, and sharing information contained in computers, tablets, removable media, disks, drives, tapes, mobile phones, cameras, music and other media players, and any other communication, electronic, or digital devices subject to inbound and outbound border searches by U.S. Customs and Border Protection (CBP). These searches are conducted in furtherance of CBP's customs, immigration, law enforcement, and homeland security responsibilities and to ensure compliance with customs, immigration, and other laws that CBP is authorized to enforce and administer.

These searches are part of CBP's longstanding practice and are essential to enforcing the law at the U.S. border and to protecting border security. They help detect evidence relating to terrorism and other national security matters, human and bulk cash smuggling, contraband, and child pornography. They can also reveal information about financial and commercial crimes, such as those relating to copyright, trademark, and export control violations. They can be vital to risk assessments that otherwise may be predicated on limited or no advance information about a given traveler or item, and they can enhance critical information sharing with, and feedback from, elements of the federal government responsible for analyzing terrorist threat information. Finally, searches at the border are often integral to a determination of an individual's intentions upon entry and provide additional information relevant to admissibility under the immigration laws.

### **2 POLICY**

**2.1** CBP will protect the rights of individuals against unreasonable search and seizure and ensure privacy protections while accomplishing its enforcement mission.

**2.2** All CBP Officers, Border Patrol Agents, Air and Marine Agents, Office of Professional Responsibility Agents, and other officials authorized by CBP to perform border searches shall adhere to the policy described in this Directive and any implementing policy memoranda or musters.

2.3 This Directive governs border searches of electronic devices – including any inbound or outbound search pursuant to longstanding border search authority and conducted at the physical border, the functional equivalent of the border, or the extended border, consistent with law and agency policy. For purposes of this Directive, this excludes actions taken to determine if a device functions (e.g., turning a device on and off); or actions taken to determine if physical contraband is concealed within the device itself; or the review of information voluntarily provided by an individual in an electronic format (e.g., when an individual shows an e-ticket on an electronic device to an Officer, or when an alien proffers information to establish admissibility). This Directive does not limit CBP’s authority to conduct other lawful searches of electronic devices, such as those performed pursuant to a warrant, consent, or abandonment, or in response to exigent circumstances; it does not limit CBP’s ability to record impressions relating to border encounters; it does not restrict the dissemination of information as required by applicable statutes and Executive Orders.

2.4 This Directive does not govern searches of shipments containing commercial quantities of electronic devices (e.g., an importation of hundreds of laptop computers transiting from the factory to the distributor).

2.5 This Directive does not supersede *Restrictions on Importation of Seditious Matter*, Directive 2210-001A. Seditious materials encountered through a border search should continue to be handled pursuant to Directive 2210-001A or any successor thereto.

2.6 This Directive does not supersede *Processing Foreign Diplomatic and Consular Officials*, Directive 3340-032. Diplomatic and consular officials encountered at the border, the functional equivalent of the border (FEB), or extended border should continue to be processed pursuant to Directive 3340-032 or any successor thereto.

2.7 This Directive applies to searches performed by or at the request of CBP. With respect to searches performed by U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) Special Agents exercise concurrently-held border search authority that is covered by ICE’s own policy and procedures. When CBP detains, seizes, or retains electronic devices, or copies of information therefrom, and conveys such to ICE for analysis, investigation, and disposition (with appropriate documentation), the conveyance to ICE is not limited by the terms of this Directive, and ICE policy will apply upon receipt by ICE.

### 3 DEFINITIONS

3.1 **Officer.** A Customs and Border Protection Officer, Border Patrol Agent, Air and Marine Agent, Office of Professional Responsibility Special Agent, or any other official of CBP authorized to conduct border searches.

3.2 **Electronic Device.** Any device that may contain information in an electronic or digital form, such as computers, tablets, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players.

3.3 **Destruction.** For electronic records, destruction is deleting, overwriting, or degaussing in compliance with CBP Information Systems Security Policies and Procedures Handbook, CIS HB 1400-05C.

**4 AUTHORITY/REFERENCES.** 6 U.S.C. §§ 122, 202, 211; 8 U.S.C. §§ 1225, 1357, and other pertinent provisions of the immigration laws and regulations; 19 U.S.C. §§ 482, 507, 1461, 1496, 1581, 1582, 1589a, 1595a(d), and other pertinent provisions of customs laws and regulations; 31 U.S.C. § 5317 and other pertinent provisions relating to monetary instruments; 22 U.S.C. § 401 and other laws relating to exports; Guidelines for Detention and Seizures of Pornographic Materials, Directive 4410-001B; Disclosure of Business Confidential Information to Third Parties, Directive 1450-015; Accountability and Control of Custody Receipt for Detained and Seized Property (CF6051), Directive 5240-005.

The plenary authority of the Federal Government to conduct searches and inspections of persons and merchandise crossing our nation's borders is well-established and extensive; control of the border is a fundamental principle of sovereignty. "[T]he United States, as sovereign, has the inherent authority to protect, and a paramount interest in protecting, its territorial integrity." *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004). "The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border. Time and again, [the Supreme Court has] stated that 'searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.'" *Id.* at 152-53 (quoting *United States v. Ramsey*, 431 U.S. 606, 616 (1977)). "Routine searches of the persons and effects of entrants [into the United States] are not subject to any requirement of reasonable suspicion, probable cause, or warrant." *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985). Additionally, the authority to conduct border searches extends not only to persons and merchandise entering the United States, but applies equally to those departing the country. *See, e.g., United States v. Boumelhem*, 339 F.3d 414, 422-23 (6th Cir. 2003); *United States v. Odutayo*, 406 F.3d 386, 391-92 (5th Cir. 2005); *United States v. Oriakhi*, 57 F.3d 1290, 1296-97 (4th Cir. 1995); *United States v. Ezeiruaku*, 936 F.2d 136, 143 (3d Cir. 1991); *United States v. Cardona*, 769 F.2d 625, 629 (9th Cir. 1985); *United States v. Udofot*, 711 F.2d 831, 839-40 (8th Cir. 1983).

As a constitutional matter, border search authority is premised in part on a reduced expectation of privacy associated with international travel. *See Flores-Montano*, 541 U.S. at 154 (noting that "the expectation of privacy is less at the border than it is in the interior"). Persons and merchandise encountered by CBP at the international border are not only subject to inspection under U.S. law, they also have been or will be abroad and generally subject to the legal authorities of at least one other sovereign. *See Boumelhem*, 339 F.3d at 423.

In addition to longstanding federal court precedent recognizing the constitutional authority of the U.S. government to conduct border searches, numerous federal statutes and regulations also authorize CBP to inspect and examine all individuals and merchandise entering or departing the United States, including all types of personal property, such as electronic devices. *See, e.g.,* 8 U.S.C. §§ 1225, 1357; 19 U.S.C. §§ 482, 507, 1461, 1496, 1581, 1582, 1589a, 1595a; *see also* 19 C.F.R. § 162.6 ("All persons, baggage, and merchandise arriving in the Customs territory of

the United States from places outside thereof are liable to inspection and search by a Customs officer.”). These authorities support CBP’s enforcement and administration of federal law at the border and facilitate the inspection of merchandise and people to fulfill the immigration, customs, agriculture, and counterterrorism missions of the Department. This includes, among other things, the responsibility to “ensure the interdiction of persons and goods illegally entering or exiting the United States”; “detect, respond to, and interdict terrorists, drug smugglers and traffickers, human smugglers and traffickers, and other persons who may undermine the security of the United States”; “safeguard the borders of the United States to protect against the entry of dangerous goods”; “enforce and administer all immigration laws”; “deter and prevent the illegal entry of terrorists, terrorist weapons, persons, and contraband”; and “conduct inspections at [] ports of entry to safeguard the United States from terrorism and illegal entry of persons.” 6 U.S.C. § 211.

CBP must conduct border searches of electronic devices in accordance with statutory and regulatory authorities and applicable judicial precedent. CBP’s broad authority to conduct border searches is well-established, and courts have rejected a categorical exception to the border search doctrine for electronic devices. Nevertheless, as a policy matter, this Directive imposes certain requirements, above and beyond prevailing constitutional and legal requirements, to ensure that the authority for border search of electronic devices is exercised judiciously, responsibly, and consistent with the public trust.

## **5 PROCEDURES**

### **5.1 Border Searches**

5.1.1 Border searches may be performed by an Officer or other individual authorized to perform or assist in such searches (e.g., under 19 U.S.C. § 507).

5.1.2 Border searches of electronic devices may include searches of the information stored on the device when it is presented for inspection or during its detention by CBP for an inbound or outbound border inspection. The border search will include an examination of only the information that is resident upon the device and accessible through the device’s operating system or through other software, tools, or applications. Officers may not intentionally use the device to access information that is solely stored remotely. To avoid retrieving or accessing information stored remotely and not otherwise present on the device, Officers will either request that the traveler disable connectivity to any network (e.g., by placing the device in airplane mode), or, where warranted by national security, law enforcement, officer safety, or other operational considerations, Officers will themselves disable network connectivity. Officers should also take care to ensure, throughout the course of a border search, that they do not take actions that would make any changes to the contents of the device.

5.1.3 Basic Search. Any border search of an electronic device that is not an advanced search, as described below, may be referred to as a basic search. In the course of a basic search, with or without suspicion, an Officer may examine an electronic device and may review and analyze information encountered at the border, subject to the requirements and limitations provided herein and applicable law.

5.1.4 **Advanced Search.** An advanced search is any search in which an Officer connects external equipment, through a wired or wireless connection, to an electronic device not merely to gain access to the device, but to review, copy, and/or analyze its contents. In instances in which there is reasonable suspicion of activity in violation of the laws enforced or administered by CBP, or in which there is a national security concern, and with supervisory approval at the Grade 14 level or higher (or a manager with comparable responsibilities), an Officer may perform an advanced search of an electronic device. Many factors may create reasonable suspicion or constitute a national security concern; examples include the existence of a relevant national security-related lookout in combination with other articulable factors as appropriate, or the presence of an individual on a government-operated and government-vetted terrorist watch list.

5.1.5 Searches of electronic devices will be documented in appropriate CBP systems, and advanced searches should be conducted in the presence of a supervisor. In circumstances where operational considerations prevent a supervisor from remaining present for the entire advanced search, or where supervisory presence is not practicable, the examining Officer shall, as soon as possible, notify the appropriate supervisor about the search and any results thereof.

5.1.6 Searches of electronic devices should be conducted in the presence of the individual whose information is being examined unless there are national security, law enforcement, officer safety, or other operational considerations that make it inappropriate to permit the individual to remain present. Permitting an individual to remain present during a search does not necessarily mean that the individual shall observe the search itself. If permitting an individual to observe the search could reveal law enforcement techniques or potentially compromise other operational considerations, the individual will not be permitted to observe the search itself.

## **5.2 Review and Handling of Privileged or Other Sensitive Material**

5.2.1 Officers encountering information they identify as, or that is asserted to be, protected by the attorney-client privilege or attorney work product doctrine shall adhere to the following procedures.

5.2.1.1 The Officer shall seek clarification, if practicable in writing, from the individual asserting this privilege as to specific files, file types, folders, categories of files, attorney or client names, email addresses, phone numbers, or other particulars that may assist CBP in identifying privileged information.

5.2.1.2 Prior to any border search of files or other materials over which a privilege has been asserted, the Officer will contact the CBP Associate/Assistant Chief Counsel office. In coordination with the CBP Associate/Assistant Chief Counsel office, which will coordinate with the U.S. Attorney's Office as needed, Officers will ensure the segregation of any privileged material from other information examined during a border search to ensure that any privileged material is handled appropriately while also ensuring that CBP accomplishes its critical border security mission. This segregation process will occur through the establishment and employment of a Filter Team composed of legal and operational representatives, or through another appropriate measure with written concurrence of the CBP Associate/Assistant Chief Counsel office.

5.2.1.3 At the completion of the CBP review, unless any materials are identified that indicate an imminent threat to homeland security, copies of materials maintained by CBP and determined to be privileged will be destroyed, except for any copy maintained in coordination with the CBP Associate/Assistant Chief Counsel office solely for purposes of complying with a litigation hold or other requirement of law.

5.2.2 Other possibly sensitive information, such as medical records and work-related information carried by journalists, shall be handled in accordance with any applicable federal law and CBP policy. Questions regarding the review of these materials shall be directed to the CBP Associate/Assistant Chief Counsel office, and this consultation shall be noted in appropriate CBP systems.

5.2.3 Officers encountering business or commercial information in electronic devices shall treat such information as business confidential information and shall protect that information from unauthorized disclosure. Depending on the nature of the information presented, the Trade Secrets Act, the Privacy Act, and other laws, as well as CBP policies, may govern or restrict the handling of the information. Any questions regarding the handling of business or commercial information may be directed to the CBP Associate/Assistant Chief Counsel office or the CBP Privacy Officer, as appropriate.

5.2.4 Information that is determined to be protected by law as privileged or sensitive will only be shared with agencies or entities that have mechanisms in place to protect appropriately such information, and such information will only be shared in accordance with this Directive.

### **5.3 Review and Handling of Passcode-Protected or Encrypted Information**

5.3.1 Travelers are obligated to present electronic devices and the information contained therein in a condition that allows inspection of the device and its contents. If presented with an electronic device containing information that is protected by a passcode or encryption or other security mechanism, an Officer may request the individual's assistance in presenting the electronic device and the information contained therein in a condition that allows inspection of the device and its contents. Passcodes or other means of access may be requested and retained as needed to facilitate the examination of an electronic device or information contained on an electronic device, including information on the device that is accessible through software applications present on the device that is being inspected or has been detained, seized, or retained in accordance with this Directive.

5.3.2 Passcodes and other means of access obtained during the course of a border inspection will only be utilized to facilitate the inspection of devices and information subject to border search, will be deleted or destroyed when no longer needed to facilitate the search of a given device, and may not be utilized to access information that is only stored remotely.

5.3.3 If an Officer is unable to complete an inspection of an electronic device because it is protected by a passcode or encryption, the Officer may, in accordance with section 5.4 below, detain the device pending a determination as to its admissibility, exclusion, or other disposition.

5.3.4 Nothing in this Directive limits CBP's ability, with respect to any device presented in a manner that is not readily accessible for inspection, to seek technical assistance, or to use external equipment or take other reasonable measures, or in consultation with the CBP Associate/Assistant Chief Counsel office to pursue available legal remedies, to render a device in a condition that allows for inspection of the device and its contents.

#### **5.4 Detention and Review in Continuation of Border Search of Information**

##### **5.4.1 Detention and Review by CBP**

An Officer may detain electronic devices, or copies of information contained therein, for a brief, reasonable period of time to perform a thorough border search. The search may take place on-site or at an off-site location, and is to be completed as expeditiously as possible. Unless extenuating circumstances exist, the detention of devices ordinarily should not exceed five (5) days. Devices must be presented in a manner that allows CBP to inspect their contents. Any device not presented in such a manner may be subject to exclusion, detention, seizure, or other appropriate action or disposition.

5.4.1.1 Approval of and Time Frames for Detention. Supervisory approval is required for detaining electronic devices, or copies of information contained therein, for continuation of a border search after an individual's departure from the port or other location of detention. Port Director; Patrol Agent in Charge; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or other equivalent level manager approval is required to extend any such detention beyond five (5) days. Extensions of detentions exceeding fifteen (15) days must be approved by the Director, Field Operations; Chief Patrol Agent; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or other equivalent manager, and may be approved and re-approved in increments of no more than seven (7) days. Approvals for detention and any extension thereof shall be noted in appropriate CBP systems.

5.4.1.2 Destruction. Except as noted in section 5.5 or elsewhere in this Directive, if after reviewing the information pursuant to the time frames discussed in section 5.4, there is no probable cause to seize the device or the information contained therein, any copies of the information held by CBP must be destroyed, and any electronic device must be returned. Upon this determination, the copy of the information will be destroyed as expeditiously as possible, but no later than seven (7) days after such determination unless circumstances require additional time, which must be approved by a supervisor and documented in an appropriate CBP system and which must be no later than twenty-one (21) days after such determination. The destruction shall be noted in appropriate CBP systems.

5.4.1.3 Notification of Border Search. When a border search of information is conducted on an electronic device, the individual subject to search will be notified of the purpose and authority for such search, how the individual may obtain more information on reporting concerns about their search, and how the individual may seek redress from the agency if he or she feels aggrieved by a search. If the Officer or other appropriate CBP official determines that the fact of conducting this search cannot be disclosed to the individual transporting the device without

impairing national security, law enforcement, officer safety, or other operational interests, notification may be withheld.

5.4.1.4 Custody Receipt. If CBP determines it is necessary to detain temporarily an electronic device to continue the search, the Officer detaining the device shall issue a completed Form 6051D to the individual prior to the individual's departure.

#### 5.4.2 Assistance

Officers may request assistance that may be needed to access and search an electronic device and the information stored therein. Except with respect to assistance sought within CBP or from ICE, the following subsections of 5.4.2 govern requests for assistance.

5.4.2.1 Technical Assistance. Officers may sometimes need technical assistance to render a device and its contents in a condition that allows for inspection. For example, Officers may encounter a device or information that is not readily accessible for inspection due to encryption or password protection. Officers may also require translation assistance to inspect information that is in a foreign language. In such situations, Officers may convey electronic devices or copies of information contained therein to seek technical assistance.

5.4.2.2 Subject Matter Assistance – With Reasonable Suspicion or National Security Concern. Officers may encounter information that requires referral to subject matter experts to determine the meaning, context, or value of information contained therein as it relates to the laws enforced or administered by CBP. Therefore, Officers may convey electronic devices or copies of information contained therein for the purpose of obtaining subject matter assistance when there is a national security concern or they have reasonable suspicion of activities in violation of the laws enforced or administered by CBP.

5.4.2.3 Approvals for Seeking Assistance. Requests for assistance require supervisory approval and shall be properly documented and recorded in CBP systems. If an electronic device is to be detained after the individual's departure, the Officer detaining the device shall execute a Form 6051D and provide a copy to the individual prior to the individual's departure. All transfers of the custody of the electronic device will be recorded on the Form 6051D.

5.4.2.4 Electronic devices should be transferred only when necessary to render the requested assistance. Otherwise, a copy of data from the device should be conveyed in lieu of the device in accordance with this Directive.

5.4.2.5 When an electronic device or information contained therein is conveyed for assistance, the individual subject to search will be notified of the conveyance unless the Officer or other appropriate CBP official determines, in consultation with the receiving agency or other entity as appropriate, that notification would impair national security, law enforcement, officer safety, or other operational interests. If CBP seeks assistance for counterterrorism purposes, if a relevant national security-related lookout applies, or if the individual is on a government-operated and government-vetted terrorist watch list, the individual will not be notified of the conveyance, the existence of a relevant national security-related lookout, or his or her presence on a watch list.

When notification is made to the individual, the Officer will annotate the notification in CBP systems and on the Form 6051D.

#### 5.4.3 Responses and Time for Assistance

5.4.3.1 Responses Required. Agencies or entities receiving a request for assistance in conducting a border search are expected to provide such assistance as expeditiously as possible. Where subject matter assistance is requested, responses should include all appropriate findings, observations, and conclusions relating to the laws enforced or administered by CBP.

5.4.3.2 Time for Assistance. Responses from assisting agencies or entities are expected in an expeditious manner so that CBP may complete the border search in a reasonable period of time. Unless otherwise approved by the Director Field Operations; Chief Patrol Agent; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or equivalent level manager, responses should be received within fifteen (15) days. If the assisting agency or entity is unable to respond in that period of time, the Director Field Operations; Chief Patrol Agent; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or equivalent level manager may permit extensions in increments of seven (7) days.

5.4.3.3 Revocation of a Request for Assistance. If at any time a CBP supervisor involved in a request for assistance is not satisfied with the assistance provided, the timeliness of assistance, or any other articulable reason, the request for assistance may be revoked, and the CBP supervisor may require the assisting agency or entity to return to CBP all electronic devices provided, and any copies thereof, as expeditiously as possible, except as noted in 5.5.2.3. Any such revocation shall be documented in appropriate CBP systems. When CBP has revoked a request for assistance because of the lack of a timely response, CBP may initiate the request with another agency or entity pursuant to the procedures outlined in this Directive.

5.4.3.4 Destruction. Except as noted in section 5.5.1 below or elsewhere in this Directive, if after reviewing information, probable cause to seize the device or the information from the device does not exist, CBP will retain no copies of the information.

### 5.5 Retention and Sharing of Information Found in Border Searches

#### 5.5.1 Retention and Sharing of Information Found in Border Searches

5.5.1.1 Retention with Probable Cause. Officers may seize and retain an electronic device, or copies of information from the device, when, based on a review of the electronic device encountered or on other facts and circumstances, they determine there is probable cause to believe that the device, or copy of the contents from the device, contains evidence of a violation of law that CBP is authorized to enforce or administer.

5.5.1.2 Retention of Information in CBP Privacy Act-Compliant Systems. Without probable cause to seize an electronic device or a copy of information contained therein, CBP may retain only information relating to immigration, customs, and other enforcement matters if such retention is consistent with the applicable system of records notice. For example, information

collected in the course of immigration processing for the purposes of present and future admissibility of an alien may be retained in the A-file, Central Index System, TECS, and/or E3 or other systems as may be appropriate and consistent with the policies governing such systems.

5.5.1.3 Sharing Generally. Nothing in this Directive limits the authority of CBP to share copies of information contained in electronic devices (or portions thereof), which are retained in accordance with this Directive, with federal, state, local, and foreign law enforcement agencies to the extent consistent with applicable law and policy.

5.5.1.4 Sharing of Terrorism Information. Nothing in this Directive is intended to limit the sharing of terrorism-related information to the extent the sharing of such information is authorized by statute, Presidential Directive, or DHS policy. Consistent with 6 U.S.C. § 122(d)(2) and other applicable law and policy, CBP, as a component of DHS, will promptly share any terrorism information encountered in the course of a border search with entities of the federal government responsible for analyzing terrorist threat information. In the case of such terrorism information sharing, the entity receiving the information will be responsible for providing CBP with all appropriate findings, observations, and conclusions relating to the laws enforced by CBP. The receiving entity will be responsible for managing retention and disposition of information it receives in accordance with its own legal authorities and responsibilities.

5.5.1.5 Safeguarding Data During Storage and Conveyance. CBP will appropriately safeguard information retained, copied, or seized under this Directive and during conveyance. Appropriate safeguards include keeping materials in locked cabinets or rooms, documenting and tracking copies to ensure appropriate disposition, and other safeguards during conveyance such as password protection or physical protections. Any suspected loss or compromise of information that contains personal data retained, copied, or seized under this Directive must be immediately reported to the CBP Office of Professional Responsibility and to the Port Director; Patrol Agent in Charge; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or equivalent level manager.

5.5.1.6 Destruction. Except as noted in this section or elsewhere in this Directive, if after reviewing information, there exists no probable cause to seize the information, CBP will retain no copies of the information.

## 5.5.2 Retention by Agencies or Entities Providing Technical or Subject Matter Assistance

5.5.2.1 During Assistance. All electronic devices, or copies of information contained therein, provided to an assisting agency or entity may be retained for the period of time needed to provide the requested assistance to CBP or in accordance with section 5.5.2.3 below.

5.5.2.2 Return or Destruction. CBP will request that at the conclusion of the requested assistance, all information be returned to CBP as expeditiously as possible, and that the assisting agency or entity advise CBP in accordance with section 5.4.3 above. In addition, the assisting agency or entity should destroy all copies of the information conveyed unless section 5.5.2.3 below applies. In the event that any electronic devices are conveyed, they must not be destroyed;

they are to be returned to CBP unless seized by an assisting agency based on probable cause or retained per 5.5.2.3.

**5.5.2.3 Retention with Independent Authority.** If an assisting federal agency elects to continue to retain or seize an electronic device or information contained therein, that agency assumes responsibility for processing the retention or seizure. Copies may be retained by an assisting federal agency only if and to the extent that it has the independent legal authority to do so – for example, when the information relates to terrorism or national security and the assisting agency is authorized by law to receive and analyze such information. In such cases, the retaining agency should advise CBP of its decision to retain information under its own authority.

## **5.6 Reporting Requirements**

**5.6.1** The Officer performing the border search of information shall be responsible for completing all after-action reporting requirements. This responsibility includes ensuring the completion of all applicable documentation such as the Form 6051D when appropriate, and creation and/or updating records in CBP systems. Reports are to be created and updated in an accurate, thorough, and timely manner. Reports must include all information related to the search through the final disposition including supervisory approvals and extensions when appropriate.

**5.6.2** In instances where an electronic device or copy of information contained therein is forwarded within CBP as noted in section 5.4.1, the receiving Officer is responsible for recording all information related to the search from the point of receipt forward through the final disposition.

**5.6.3** Reporting requirements for this Directive are in addition to, and do not replace, any other applicable reporting requirements.

## **5.7 Management Requirements**

**5.7.1** The duty supervisor shall ensure that the Officer completes a thorough inspection and that all notification, documentation, and reporting requirements are accomplished.

**5.7.2** The appropriate CBP second-line supervisor shall approve and monitor the status of the detention of all electronic devices or copies of information contained therein.

**5.7.3** The appropriate CBP second-line supervisor shall approve and monitor the status of the transfer of any electronic device or copies of information contained therein for translation, decryption, or subject matter assistance from another agency or entity.

**5.7.4** The Director, Field Operations; Chief Patrol Agent; Director, Air Operations; Director, Marine Operations; Special Agent in Charge; or equivalent level manager shall establish protocols to monitor the proper documentation and recording of searches conducted pursuant to this Directive and the detention, transfer, and final disposition of electronic devices or copies of

information contained therein in order to ensure compliance with the procedures outlined in this Directive.

5.7.5 Officers will ensure, in coordination with field management as appropriate, that upon receipt of any subpoena or other request for testimony or information regarding the border search of an electronic device in any litigation or proceeding, notification is made to the appropriate CBP Associate/Assistant Chief Counsel office.

**6 MEASUREMENT.** CBP Headquarters will continue to develop and maintain appropriate mechanisms to ensure that statistics regarding border searches of electronic devices, and the results thereof, can be generated from CBP systems using data elements entered by Officers pursuant to this Directive.

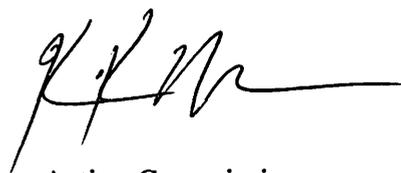
**7 AUDIT.** CBP Management Inspection will develop and periodically administer an auditing mechanism to review whether border searches of electronic devices are being conducted in conformity with this Directive.

**8 NO PRIVATE RIGHT CREATED.** This Directive is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

**9 REVIEW.** This Directive shall be reviewed and updated, as necessary, at least every three years.

**10 DISCLOSURE.** This Directive may be shared with the public.

**11 SUPERSEDES.** Procedures for Border Search/Examination of Documents, Paper, and Electronic Information (July 5, 2007) and Policy Regarding Border Search of Information (July 16, 2008), to the extent they pertain to electronic devices; CBP Directive No. 3340-049, Border Searches of Electronic Devices Containing Information (August 20, 2009).



Acting Commissioner

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANAS ELHADY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	<b>Case No. 16-cv-00375</b>
	)	<b>Hon. Anthony J. Trenga</b>
v.	)	
	)	
<b>CHARLES H. KABLE</b> , Director of the	)	
Terrorist Screening Center; in his official	)	
capacity, <i>et al.</i> ;	)	
	)	
Defendants.	)	
_____	/	

**DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’ FIRST  
SET OF INTERROGATORIES TO TSC**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Charles H. Kable, Director of the Terrorist Screening Center (“TSC”); Kelli Ann Burriesci, Principal Deputy Director of TSC; Timothy P. Groh, Deputy Director for Operations at TSC; Deborah Moore, Director of Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”); Nicholas J. Rasmussen, Director of the National Counterterrorism Center (“NCTC”); David Pecoske, Administrator of the Transportation Security Administration (“TSA”); Christopher Wray, Director of the Federal Bureau of Investigation (“FBI”); and Kevin K. McAleenan, Acting Commissioner of U.S. Customs and Border Protection (“CBP”); hereby submit objections to the discovery requests titled, “Plaintiffs’ First Set of Interrogatories to Defendant Piehota,” served January 22, 2018. Defendant Charles Kable, the current Director of TSC, pursuant to Federal Rule of Civil Procedure 25(d), has been substituted for Christopher Piehota. Defendants will refer to these hereafter as the First Set of Interrogatories to TSC.

from TSC are protected by the law enforcement privilege, and in some instances the state secrets privilege, except as otherwise officially acknowledged.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: TSC exports a subset of TSDB data to the National Crime Information Center (NCIC), which makes that information available to single points of contact in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, which then make the information available to federal, state, and local law enforcement organizations in their respective areas. TSC does not directly export information to state and local law enforcement organizations. TSC exports TSDB data to the Department of Homeland Security (DHS). DHS and its component agencies may share this information with non-federal government entities, such as airlines and/or port authorities, in individual cases to facilitate their mission. TSC exports subsets of TSDB data to foreign partners (including all Visa Waiver Program countries) with which TSC has entered into foreign partner arrangements. Information pertaining to most of these partnerships is classified, sensitive, or otherwise not releasable. However, publically releasable information pertaining to some foreign partnerships is available on the Department of State Treaty Office website, specifically:

Albania (<https://www.state.gov/documents/organization/264334.pdf>)

Bulgaria (<https://www.state.gov/documents/organization/264667.pdf>)

Slovenia (<https://www.state.gov/documents/organization/197956.pdf>)

specific uses to which it is put and under what circumstances, including specific security operations.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: TSC exports subsets of TSDB data to partner agencies and foreign partners for use by those partners in a variety of lawful terrorist screening functions (see Responses 2 and 3). Agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective missions. TSC is not responsible for, nor does it oversee, the screening functions performed by partner agencies or foreign partners. Otherwise, TSC stands on its objections.

*Int. 7. For the last ten years, identify the following: (i) the yearly average number of persons nominated to the TSDB as well as how many of those nominations were accepted, (ii) the yearly average number of persons nominated to the Selectee List as well as how many of those nominations were accepted, (iii) the yearly average number of persons nominated to the No Fly List as well as the yearly average number of those nominations TSC accepted, (iv) the number of persons placed on the watch list who were arrested, charged, or indicted for committing or attempting to commit a terrorism offense, (v) the number of the persons identified in (iv) who were acquitted or had the charges or indictments dismissed, (vi) the*

(ix) Defendants object to this request for the same reasons it objected to the previous interrogatory, which is a prerequisite for this one. Defendants further object that the term “terrorism offense” is vague and undefined. The interrogatory’s reference to encounters “which led to an arrest” is vague, burdensome, and ultimately meaningless and likely impossible. Defendants do not know what it means for something to “lead to” an arrest and it could potentially include any terrorism-linked investigation which both includes at least one encounter with someone in the TSDB and at least one ultimate arrest. Or it could include only an encounter which itself ends in an arrest of the listed individual. The requested data is not relevant to the Plaintiffs’ procedural due process claims or to any evaluation of the adequacy of the process.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: TSC does not possess the data requested by subparts (iv) – (vii) and (ix) of this interrogatory. TSC further responds: The term “nomination” may refer to any proposed change to a TSDB record, including, without limitation, additions, deletions, downgrades, or supplemental information to an existing record. Different types of nominations require different levels of review, which may result in actions taken by multiple individuals on a single nomination. A nomination for the inclusion of a new individual into the TSDB is commonly referred to as an “add.” For calendar years 2008 through 2017, the following table identifies the approximate total number of nominations processed by TSC (subject to reasonable parameters regarding what constitutes an individual nomination), the approximate total number of “add” nominations accepted into TSDB (only a very small percentage of which are U.S. persons), and the approximate number of rejections of nominations (as that term is clarified above, and without counting additional rejections of the same nomination resulting from multiple levels of review).

Calendar Year	Total Nominations	Total Adds	Rejections
2008	248,234	66,862	916
2009	229,369	54,999	424
2010	262,411	64,197	1,346
2011	285,681	77,925	1,203
2012	344,258	106,468	1,153
2013	482,114	159,829	1,820
2014	431,086	115,627	1,218
2015	454,173	148,730	1,021
2016	518,352	176,014	2,671
2017	480,984	166,603	5,215

As to all other information requested in this interrogatory, TSC stands on its objections.

*Int. 8. For each of the last ten years, identify how many times TSDB information was distributed to: (i) a state or local authority, (ii) a foreign government, (iii) a financial institution, (iv) an airline, (iv) a car dealership, (v) a private corporation, (vi) a private individual, (vii) a fusion center, and (viii) federal/state/municipal joint law enforcement bodies or taskforces.*

**Objections:** Defendants object to the interrogatory as vague, burdensome, irrelevant and disproportionate to the needs of the case. It is framed in the passive tense and may or may not encompass information about actions of other agencies. That is not information within TSC’s custody or control and TSC is not authorized to speak on behalf of other agencies. None of the

access to TSDB data in ways that have not impacted the Plaintiffs is not relevant to their claims. Moreover, the request goes beyond the uses of data that Plaintiffs allege have impacted them. None of the Plaintiffs claims to have subjected to any restriction by a foreign government as result of their alleged TSDB status. Additionally, searching for information about entities with which TSC has no direct relationship would be unduly burdensome or impossible, and disproportionate to the needs of the case.

Defendants object to the interrogatory to the extent it seeks information that is subject to the law enforcement and investigatory files privilege. Generally, the number and identities of the foreign countries with whom TSC shares information are subject to the law enforcement privilege, and in some instances the state secrets privilege, except as otherwise officially acknowledged. A comprehensive response to the broadest interpretation of the request could include, for example, a review of all underlying information about individuals on the TSDB to determine whether such information might have been shared or the disclosure of specific confidential communications with foreign governments.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: TSC exports subsets of TSDB data to more than 60 foreign partners (including all Visa Waiver Program countries) with which TSC has entered into foreign partner arrangements. Information pertaining to most of these partnerships is classified, sensitive, or otherwise not releasable. Publically releasable information pertaining to foreign partnerships is available on the Department of State

Treaty Office website (see Response to Interrogatory 2). As to all other information requested in this interrogatory, TSC stands on its objections.

*Int. 32. Explain what TSC believes foreign governments do with TSDB information they receive.*

**Objections:** Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the needs of the case. The terms “explain” “believes” “do with” and “receive” are undefined, vague and capable of multiple interpretations. The interrogatory could include, for example, only specifically known uses of regular, institutionalized external exports of TSDB data, or it could also include broader intelligence sharing which incidentally sometimes includes TSDB information, further use or sharing of TSDB data by an end user of which TSC may not be aware (such as informal or ad hoc conversations with foreign authorities), or other possibilities. The phrase “do with” could be limited to adverse actions against the listed individuals, specific types of analyses in which data might appear, conversations they may have about the data, or even technical information about how the data is securely stored. The phrase “TSDB information” could mean only information contained in the TSDB or it could include any information about the TSDB. The broader or more detailed interpretations of the request are unduly burdensome and disproportionate to the needs of the case.

Defendants object to the request as overbroad and seeking information not relevant to any claim or defense in this case and disproportionate to the needs of the case. Incidental or indirect access to TSDB data in ways that have not impacted the Plaintiffs is not relevant to their claims. Moreover, the request goes beyond the uses of data that Plaintiffs allege have impacted them. None of the Plaintiffs claims to have subjected to any restriction by a foreign government as result

of their alleged TSDB status. Additionally, searching for information about entities with which TSC has no direct relationship would be burdensome or impossible, and disproportionate to the needs of the case.

Defendants object to the interrogatory to the extent it seeks information that is subject to the law enforcement and investigatory files privilege, or the state secrets privilege. Generally, the identities of foreign partners who receive information from TSC are protected by the law enforcement privilege, and in some instances the state secrets privilege, except as otherwise officially acknowledged. A comprehensive response to the broadest interpretation of the request could include, for example, a review of all underlying information about individuals on the TSDB to determine whether such information might have been shared or the disclosure of specific confidential communications with foreign governments about specific individuals.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: TSC expects foreign partners to use TSDB information for lawful terrorist screening purposes, subject to their domestic laws and authorities. Information pertaining to most of these partnerships is classified, sensitive, or otherwise not releasable. Publicly releasable information pertaining to foreign partnerships is available on the Department of State Treaty Office website. As to all other information requested in this interrogatory, TSC stands on its objections.

description of the highly sensitive information on which agency employees are trained, including specific factual scenarios.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

**Response:** Subject to and without waiving the foregoing objections, TSC responds: Before starting work in the Nominations and Data Integrity Unit (NDIU), NDIU analysts are required to complete the NDIU Basic Analyst Course, a two-week, classroom-based course on NDIU policies and procedures taught by experienced NDIU trainers. TSC reviews and updates the training materials to reflect the most current policies and procedures. In addition, NDIU analysts are required to perform on-the-job training conducted by an experienced NDIU analyst. Among other topics, NDIU analysts are trained on operating procedures, handling of foreign government information, and the use of intelligence and law enforcement databases. When an NDIU analyst successfully completes the Basic Analyst Course and on the job training, the analyst is given Basic Analyst rights within the TSDB. Basic Analysts have the ability to review nominations and recommend them for acceptance or rejection, but all such nominations must be reviewed and approved by a Senior Analyst. In order to advance, Basic Analysts must correctly process nominations that meet a variety of different criteria to ensure they understand the intricacies of watchlisting policies, which usually takes about two months. Basic Analysts who perform well (based on personal statistics, Senior Analyst feedback, and quality control audits) transition to Advanced Analysts, who have the authority to accept nominations into the TSDB without a Senior Analyst reviewing the nomination; however, Senior Analysts will still review Advanced Analyst

nominations if the Advanced Analyst has conducted an edit during the course of his or her review. Advanced Analysts who perform well may eventually progress to become Senior Analysts, although this is dependent on a variety of factors, such as unit need and the analyst's personal statistics and performance. Senior Analysts who are also Team Leads (responsible for reviewing the Basic and Advanced nominations processed by their teams) have the authority to reject nominations. The Quality Control Team (QC) also has the authority to accept and reject nominations, and is populated with analysts who have shown the greatest proficiency at processing records and understanding watchlisting policies and procedures. NDIU Management also maintains the authority to accept and reject nominations. Although these managers may not always have started in the unit as Basic Analysts, they receive similar training. All TSC personnel also receive comprehensive training in privacy and civil liberties. Otherwise, TSC stands on its objections.

*Int. 35. For the last ten years, identify the number of watchlist nominations that were rejected because the nomination lacked minimum derogatory information.*

**Objections:** Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the needs of the case. The interrogatory uses the term "nomination" vaguely and seeks irrelevant data. Generally, TSC uses to the term "nomination" to refer to any proposed change to TSDB information, including for example: adding a new individual, upgrading or downgrading the status of individuals already in the TSDB, adding additional identifiers, changing or correcting identifiers, and removals from the TSDB. The data sought therefore bears little or no relationship to the procedural due process claim remaining in the case. There is no "minimum derogatory information" required, for example, to add an identifier to the TSDB for an individual



**Response:** Subject to and without waiving the foregoing objections, FBI responds: The FBI provides a host computer and telecommunication lines to a single point of contact in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as federal criminal justice agencies, through which the National Criminal Information Center (NCIC) may be accessed. Those jurisdictions, in turn, operate their own computer systems, providing access to nearly all local criminal justice agencies and authorized non-criminal justice agencies nationwide. Currently, there exist more than 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies which are eligible to access NCIC.

***Int. 13. Identify all information the FBI possesses about handling codes assigned to persons on the TSDB, Selectee List, or No Fly List.***

**Objections:** Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the discovery needed for the sole remaining claim in the case concerning procedural due process. The demand to “identify all information . . . about” a subject matter does not adequately identify the information sought. The interrogatory could be seeking the handling codes themselves as well their meaning, or it could simply be seeking a definition of what “handling code” means in a particular context and what types of handling codes exist. The phrase “handling codes assigned to persons on the TSDB” does not specify whether those codes are related to TSDB status or just codes that incidentally are assigned to some such persons. Compiling and defining different types of codes would be unduly burdensome and disproportionate to the needs of the case.

The requested information is not relevant to Plaintiffs’ procedural due process claims. FBI’s internal codes are not remotely relevant to the remaining claims. To the extent Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANAS ELHADY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	<b>Case No. 16-cv-00375</b>
	)	<b>Hon. Anthony J. Trenga</b>
v.	)	
	)	
<b>CHARLES H. KABLE</b> , Director of the	)	
Terrorist Screening Center; in his official	)	
capacity, <i>et al.</i> ;	)	
	)	
Defendants.	)	
	/	

**DEFENDANTS’ SUPPLEMENTAL RESPONSES TO PLAINTIFFS’ FIRST SET OF INTERROGATORIES TO FBI**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Charles H. Kable, Director of the Terrorist Screening Center (“TSC”); Kelli Ann Burriesci, Principal Deputy Director of TSC; Timothy P. Groh, Deputy Director for Operations at TSC; Deborah Moore, Director of Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”); Russell Travers, Director of the National Counterterrorism Center (“NCTC”); David Pecoske, Administrator of the Transportation Security Administration (“TSA”); Christopher Wray, Director of the Federal Bureau of Investigation (“FBI”); and Kevin K. McAleenan, Acting Commissioner of U.S. Customs and Border Protection (“CBP”); previously made objections and responses to the discovery requests titled, “Plaintiffs’ First Set of Interrogatories to Defendant Wray,” served January 24, 2018. The previous responses were served February 23, 2018.

The Defendants’ responses are provided in accordance with Federal Rule 26(b)(1), which permits the discovery of any information, not privileged, that is both (1) relevant to any party’s claim or defense, and (2) proportional to the needs of the case. The Defendants do not, by

providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or other appropriate ground. The inadvertent production by the Defendants of information protected by any privilege or protection shall not constitute a waiver of the applicable privilege or protection as to any information disclosed. The Defendants reserve the right to supplement or amend their responses should additional or different information become available.

This response is a supplement to the objections and responses previously served on February 23, 2018 and are not intended to waive or replace the previous objections and responses.

***Int. 12. Identify each entity that has access to the National Crime Information Center.***

**Supplemental Response:** Subject to and without waiving any of the objections Defendants have previously interposed to this interrogatory (see FBI's Objections and Responses to Plaintiffs' First Set of Interrogatories to FBI, served February 23, 2018), FBI supplements its prior response to this interrogatory as follows:

The "criminal justice agencies" with access to NCIC are defined by regulation at 28 CFR 20.3(g), and include criminal courts. Recipients of TSDB information in NCIC are notified that it is provided only for intelligence and lead purposes.

For the Supplemental Response:

I declare under penalty of perjury that the foregoing supplemental response to Interrogatory 12 directed to the FBI is true and correct to the best of my information and belief.



Christopher A. Nicholas  
Section Chief  
Law Enforcement Support Section

Federal Bureau of Investigation  
Clarksburg, West Virginia

May 17, 2018

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

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ANAS ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375
	)	
CHARLES H. KABLE, et al.	)	
	)	
Defendants.	)	
	)	
	)	

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**DECLARATION OF TIMOTHY P. GROH**

I, Timothy P. Groh, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Director for Operations of the Terrorist Screening Center (“TSC”) and have been in this position since May 2016. I have been a Special Agent with the Federal Bureau of Investigation (FBI) since February 1996 and have served in a variety of criminal investigative, counterterrorism, and senior management positions. In my capacity as the Deputy Director for Operations of the TSC, I supervise nine units and approximately three hundred individuals (including both government employees and contractors). I am responsible for the overall operations of the TSC, including maintaining the Terrorist Screening Database (TSDB), managing encounters, and sharing intelligence with domestic and foreign partners.

2. I submit this declaration in connection with the government’s response to plaintiffs’ motion to compel production of certain statistical information over which the government has asserted the law enforcement privilege, in *Elhady v. Kable*, 16-cv-375 (E.D.V.A.). The purpose of this declaration is to provide certain statistics sought by plaintiffs that can be publicly disclosed without compromising the government’s claim of law enforcement privilege.

3. The matters stated herein are based on my personal knowledge, background, training, and experience relating to terrorist watchlisting and counterterrorism investigations, and my review and consideration of information available to me in my official capacity, including information furnished by FBI and TSC personnel in the course of their official duties; my conclusions have been reached in accordance therewith.

**I. TSDB POPULATION AND US PERSON PERCENTAGE**

4. The following table provides the approximate total population of the Terrorist Screening Database (TSDB), rounded to the nearest ten thousand, and the approximate percentage of that population that are US persons (i.e., US citizens or lawful permanent residents), rounded to the nearest tenth of a percent. To provide annual numbers, the table below presents the populations in June of each year, from 2013 through 2017. In my opinion, providing more than these annual numbers would allow adversaries to track changes to the TSDB in sufficient detail to deduce changes in policy and investigative focus, and could thereby reasonably be expected to risk circumvention of the law and harm to national security.

TSDB POPULATION (Approximate)

Date	Population	USPER %
June 2017	~1,160,000	~0.4%
June 2016	~1,030,000	~0.5%
June 2015	~890,000	~0.6%
June 2014	~790,000	~0.7%
June 2013	~680,000	~0.9%

**II. ANNUAL “ARREST” NUMBERS**

5. For calendar years 2013 through 2017, the table below reflects positive domestic encounters (law enforcement, CBP, etc.) with individuals listed in the TSDB, where “Arrest” was selected (from a drop-down menu) as the “Final Resolution” of the encounter in the TSC’s encounter management system. There is some margin of error in these numbers, in that an

analyst might choose another applicable “Final Resolution” option, and thus an arrest in that instance may not be included in the numbers below. Similarly, while duplicate encounters should be merged, there remains some possibility of duplication (e.g. a traffic stop is closed as an arrest and a subsequent booking encounter is also closed as an arrest). Finally, the numbers for Calendar Year (“CY”) 2017 might have an additional margin of error, due to the change in the encounter management system used within TSC from the Encounter Management Application (EMA) to the Terrorist Screening System (TSS). In my opinion, providing more than these annual numbers or further breaking down these numbers into categories would allow adversaries to determine the TSDB status of particular individuals and could thereby reasonably be expected to risk circumvention of the law and harm to national security.

ARRESTS\*

CY	Arrests
2017	263
2016	270
2015	288
2014	305
2013	329

I declare under penalty of perjury that the foregoing is true and correct.

Executed 5th of July 2018.

  
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Timothy P. Groh  
Deputy Director for Operations  
Terrorist Screening Center

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

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ANAS ELHADY, et al. )  
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 Plaintiffs, )  
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 v. ) Case No. 1:16-cv-375  
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 CHARLES H. KABLE, et al. )  
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 Defendants. )  
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**ADDENDUM TO SUPPLEMENTAL RESPONSE**

In response to Plaintiffs' further inquiries regarding screening by governmental agencies of personnel connected to private entities against the Terrorist Screening Database (TSDB), the Terrorist Screening Center (TSC) provides the following addendum to its supplemental response to Interrogatory 30 directed to the TSC and related questions at the March 1, 2018 deposition of Timothy P. Groh:

In addition to the screening described in the supplemental response, the following memoranda of understanding (MOUs) (all of which were either provided to Plaintiffs or identified on privilege logs) envision some screening by government agencies of personnel connected to private entities against the TSDB:

- **Nuclear Regulatory Commission (NRC) (TSCD0061):** Screening in connection with NRC's mission to regulate licensed materials and activities and screening of individuals attempting to access facilities regulated by the NRC.

- **Overseas Private Investment Corporation (OPIC) (TSCD0060):**  
Screening of individuals associated with OPIC's loan, loan guarantee, and insurance transactions.
- **U.S. Agency for International Development (USAID) (TSCD0045 and TSCD0048):** Screening in connection with USAID benefits.
- **Special Investigator General for Afghanistan Reconstruction (SIGAR) (TSCD0047):** Screening in connection with SIGAR's oversight of Afghanistan reconstruction projects and activities.
- **National Institute for Occupational Safety and Health (TSCC0009):**  
Screening of enrollees in the World Trade Center Health Program.

Such screening may result in ineligibility for certain access or certain positions or denial of benefits, consistent with the duties and authorities of the screening agencies. These MOUs do not contemplate any TSDB export to private entities or access by those private entities to the TSDB.

For the Response:



Timothy P. Groh  
Deputy Director for Operations  
Terrorist Screening Center

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

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ANAS ELHADY, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375
	)	
CHARLES H. KABLE, et al.	)	
	)	
Defendants.	)	
	)	
_____	)	

**CJIS SUPPLEMENTAL RESPONSE**

***Interrogatory 30: Identify all information TSC possesses that indicates for-profit companies received TSDB information.***

**Supplemental Response:**

At the February 22, 2019 hearing in the above-captioned matter, the Court ordered the Defendants to commemorate certain information that defense counsel had relayed to Plaintiffs’ counsel on behalf of the staff of the Operational Programs Branch (OPB) of the Criminal Justice Information Services (CJIS) Division of the FBI, in connection with the list of Originating Agency Identifiers (ORIs)<sup>1</sup> that plaintiffs’ counsel viewed in accordance with the Court’s February 22, 2019 order (“the List”), in a supplemental response. To that end:

No private entity can receive an ORI unless it can demonstrate that it is either (a) an authorized railroad or college/university police department, pursuant to 28 U.S.C. § 534(e), or (b) is providing services on behalf of or in support of (i) a criminal justice agency (CJA), as set forth in 28 C.F.R. § 20.3(b)(7), or (ii) a noncriminal justice agency performing criminal justice

<sup>1</sup> An ORI is a multi-character alphanumeric identifier assigned by NCIC to an agency or entity in order to identify it in transactions on the NCIC System.

dispatching functions or data processing/information services for CJAs, as set forth in 28 C.F.R. § 20.3(b)(6), and submits the required documentation demonstrating its eligibility.<sup>2</sup> Each private entity on the List satisfies the requirements set forth in the February 20, 2019 Rago declaration, although a few listed entities have been subsequently determined to be governmental entities.<sup>3</sup> As explained in the first Supplemental Response to Interrogatory 30 and in my declaration, the number of qualified private entities is less than 1441, because in many instances, multiple ORIs have been issued to the same entity. Since the first Supplemental Response, after accounting for duplicate entries on the list of ORIs that plaintiffs' counsel viewed in accordance with the Court's February 22, 2019 order ("the List"), the FBI now approximates the number of qualified private entities to which ORIs have been issued to be approximately 533.<sup>4</sup>

Decisions to grant or deny an ORI, which is needed to gain National Crime Information Center (NCIC) access, are made by staff in the FBI CJIS OPB. The FBI does not seek out private entities to apply for NCIC access; rather, those private entities apply for access. Typically, the law enforcement or criminal justice agency with which the private entity has an

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<sup>2</sup> Henceforth, this statement refers to these entities collectively as "qualified private entities," or "the private entities."

<sup>3</sup> City Attorney's offices sometimes contract with private attorneys; accordingly, where a private attorney is in a qualified agreement with a CJA (i.e. a City Attorney's office), it is properly included on the List. However, in the course of further conferrals with Plaintiffs regarding the List, it became apparent that a certain limited number of City Attorney entities, 145 to be exact, were mistakenly included on the List, when in fact those City Attorney entities are government agencies. Likewise, upon further review, three other entities that were on the List were determined to in fact be governmental entities.

<sup>4</sup> In identifying duplicates, the FBI consolidated entities that had the exact entity name and the same state of operation, as well as slight variations on the entity name (e.g. ABC Railroad Police Department and ABC Railroad PD) but the same state of operation. The same entity, such as ABC Railroad, operating in multiple states, was still counted multiple times, in other words, once for each state of operation. If such entities operating in multiple states were not counted separately for each state, the number of qualified private entities would be lower, approximately 453.

agreement contacts the state CJIS Systems Officer (CSO) on behalf of the private entity, to request an ORI. The state CSO passes the ORI request along to the FBI CJIS Division only if the state CSO finds that the application meets all of the criteria for ORI eligibility. In other words, the state CSO can decline the application before it is ever sent on to the FBI.

The employees at qualified private entities that have access to the NCIC use any information they obtain from an NCIC query the same way a law enforcement entity would—for law enforcement purposes. For example, if an authorized university police officer apprehends someone for assault, she might also run the suspect’s name against NCIC for operational awareness of outstanding warrants, KST status, missing person status, etc. The qualified private entities need access to NCIC to perform those functions, and do not use the information any differently than a governmental law enforcement agency. Moreover, the instructions for responding to KST hits are consistent among all criminal justice, law enforcement, and private entities with access to NCIC, regardless of the size of the entity. Someone receiving a hit on a KST record must adhere to the instructions within the returned record.<sup>5</sup>

Plaintiffs have requested additional information regarding why certain private entities are considered to be performing criminal justice duties as defined at 28 C.F.R. § 20.3(b), and therefore, may be eligible to apply for an ORI provided that they submit all of the required information described in the February 20, 2019 Declaration of Scott A. Rago. Specifically, Plaintiffs have asked for additional information regarding ORI eligibility by university police, hospital security, and Societies for the Prevention of Animal Cruelty (SPCAs). As stated in the Terrorist Screening Center’s (TSC) Supplemental Response to Interrogatory 30, university police

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<sup>5</sup> Further information regarding responding to a KST hit is protected by the law enforcement privilege.

departments that meet the criteria in 28 USC § 534(e)(2)<sup>6</sup> are authorized access to NCIC pursuant to that statute and CJIS policy. Hospital security and hospital police departments are not considered criminal justice agencies and are not issued an ORI unless they provide CJIS with the qualifying agreement they have with a governmental criminal justice agency, along with the other documentation that a private entity must submit as described in the February 20, 2019 Rago declaration. Some animal welfare organizations, such as SPCAs, have law enforcement divisions that have agreements to assist law enforcement by conducting animal cruelty investigations. Their police powers are derived from state law. Like hospital security and hospital police departments—and indeed, all entities that receive NCIC access pursuant to 28 C.F.R. § 20.33(b)—an SPCA would not be issued an ORI unless it provided CJIS, through its state CSO, with the qualifying agreement it has with a governmental criminal justice agency, along with the other required documentation showing that it is performing criminal justice services. Not all SPCA personnel would have NCIC access, but only those in the law enforcement division. This is true for any type of private entity receiving an ORI; only those individuals working in the division or subunit that performs work for a CJA will have NCIC access. Whether an SPCA, or for that matter any private entity, is for-profit or not-for-profit does not factor into whether it is eligible for an ORI, so long as the requirements for receiving an ORI are met.

During further meet and confers between counsel, Plaintiffs have requested additional information regarding how NCIC terminals operate. Historically, an NCIC terminal was a

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<sup>6</sup> For both railroad police departments the police departments of private colleges and universities, these criteria are: that they (1) “perform the administration of criminal justice and have arrest powers pursuant to a State statute,” (2) “allocate a substantial part of their annual budget to the administration of criminal justice,” and (3) “meet training requirements established by law or ordinance for law enforcement officers.”

physical piece of computer equipment used by an authorized user to access the NCIC, and each terminal was assigned a unique ORI. Terminals are in effect computers. The FBI does not provide terminals or hardware. Terminals or other hardware devices access NCIC through a regional and/or state/federal computer system. The FBI provides a host computer and telecommunication lines to a single point of contact in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as federal criminal justice agencies. That single point of contact is the state CJIS Systems Agency (“CSA”), which is typically the state’s lead criminal justice agency, which is responsible for establishing and administering an information technology security program throughout the CSA’s user community, to include all local levels. Within that CSA is an individual CJIS Systems Officer (“CSO”) who is responsible for the administration of the CJIS network for the CSA. Those jurisdictions, in turn, operate their own telecommunications systems, providing access to nearly all local criminal justice agencies and authorized non-criminal justice agencies nationwide. The CJIS Security Policy has strict security protocols for these systems. NCIC is not web-based and is not available or accessible on the internet. It is a machine-to-machine interface. A user, whether at a law enforcement or criminal justice agency or an authorized private entity, accesses NCIC through the CSA’s network, using the ORI and other identifiers.

With respect to a question from Plaintiffs’ counsel regarding “employment decisions,” NCIC can only be searched for criminal justice purposes or pursuant to a federal statute, and thus cannot generally be searched by a private entity as part of a civil background check. For example, a police department at a college or a hospital cannot use NCIC to screen school applicants, students, patients, or visitors, as that is not a criminal justice purpose. As explained in the first Supplemental Response, all qualified private entities accessing NCIC are bound by

the CJIS Security Policy and CJIS Security Addendum, and are also subject to training and certification criteria, as well as audit review. Under 28 C.F.R. § 20.38, the FBI CJIS Division can cancel an ORI, effectively revoking NCIC access, if misuse is identified. A state CSA can do the same if it finds wrongdoing. Typically, however, when the CJIS Division finds a misuse or a concern, the state CSO cooperates with efforts to identify the misuse, correct it, and report back to CJIS regarding corrective measures. Individual users within an entity have been disciplined and can also face federal criminal charges for misuse or unauthorized use of a government computer system/government property.

Plaintiffs have also asked why a single private entity may receive multiple ORIs. An entity may have numerous ORIs assigned when the entity or the state/federal agency has a need to identify internal divisions, units, substations, or multiple terminals for the same agency within the same city. In addition, if an entity resides in and uses NCIC in multiple cities or states, ORIs may be assigned for each location. A qualifying private entity is not granted multiple ORIs unless it demonstrates a need to distinguish NCIC transactions by separate internal divisions, units, or substations, or that it conducts its criminal justice services in multiple locations and requests multiple ORIs.

Plaintiffs have also asked what happens when an entity that has been granted an ORI merges, is acquired, or otherwise changes corporate structure. On a biennial basis, the state/federal CSA is responsible for validating the criminal justice and law enforcement status or other valid basis for access, and all information contained within each field of the ORI File for every agency accessing the CJIS Division systems. If an entity merged or changed names, the state/federal CSA is required to gather the appropriate documentation from the entity. The state/federal CSA then forwards it to the CJIS Division for review. Depending on the

documentation, the ORI information could be modified or retired if the documentation no longer supported the qualifications under 28 USC 534 or 28 CFR Part 20. Depending on the circumstance, an existing ORI may need to be retired and a new ORI issued. With any circumstance, the state/federal CSA should be made aware and have updated agreements for a merger.

Likewise, if, for example, a college or university has a private security service but then changes the company providing that service, then the college or security service notifies the state CSA of the change, and the state CSA contacts CJIS to retire the ORI and provide the new request for a new ORI to CJIS. The purpose behind a designated state CSO within the CSA is to consolidate responsibility for ensuring compliance by all ORI users with established procedures and policies within each signatory state agency. A new ORI would be issued to the new private security service, so long as a new agreement is in place and all other requirements are met for ORI eligibility. The same process would take place if an agreement expires or is not renewed according to the specific terms of a particular agreement.<sup>7</sup>

Plaintiffs have also requested additional information regarding certain entities on the List. Some of the entity names on the List appeared in an abbreviated format, created by FBI CJIS OPB (or predecessor) staff, when each ORI was initially created, or subsequently updated. These names must be entered into a field in the ORI File that receives only up to a certain

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<sup>7</sup> In the unlikely event that the state CSA is not properly notified, the state CSA would discover the change during its biennial ORI validation. In the meantime, the former security service would no longer have access to the college campus security office where the NCIC terminal is located, and therefore would no longer be able to search NCIC. The CJIS Security Addendum identifies the duties and responsibilities with respect to installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program includes consideration of personnel security, site security, system security, data security, and technical security. Moreover, an ORI alone will not grant NCIC access and other agency identifiers are also needed.

number of characters. Notwithstanding that in a few instances the abbreviated name did not indicate a police department or other explicit connection to a criminal justice function, each entity on the List is a qualified private entity, as defined above and in the February 20, 2019 Rago Declaration.

Finally, Plaintiffs requested an exhaustive list of the types of private entities that have been issued an ORI and therefore have NCIC access. As previously stated, these include: private correctional facilities; private security services for governmental facilities and hospitals; companies providing criminal justice dispatching services or data processing/information services to governmental criminal justice agencies; private probation and pretrial services companies; private city attorneys; and other entities similarly performing criminal justice services. The following is a more specific description of “other entities similarly performing criminal justice services”: a private police department for an airport; a private police department for a transportation authority; private police departments for two private incorporated communities; law enforcement divisions of certain SPCAs; an inmate transport service; an entity that provides forensic services to detect and identify criminals; and court constable services.

For the Response, dated March 1, 2019:

  
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Scott A. Rago  
Acting Deputy Assistant Director  
Operational Programs Branch  
Criminal Justice Information Services Division  
Federal Bureau of Investigation

UNCLASSIFIED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

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ANAS ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375
	)	
CHARLES H. KABLE, et al.	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF SCOTT A. RAGO  
FEDERAL BUREAU OF INVESTIGATION**

I, Scott A. Rago, hereby declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Acting Deputy Assistant Director (“DAD”) of the Operational Programs Branch (“OPB”), Criminal Justice Information Services Division (“CJIS”), Federal Bureau of Investigation (“FBI”), United States Department of Justice. Aside from my role as Acting DAD, I am the Section Chief of the Global Law Enforcement Support Section (“GLESS”), which is within OPB. I was designated as the Section Chief of GLESS in January 2019. Prior to that time, I had served as Section Chief of the Global Operations Section beginning in 2016. I began my career as a Special Agent with the FBI in 2000. As the Acting DAD of OPB, I oversee a number of the CJIS Division’s programs and initiatives, including the National Crime Information Center (“NCIC”), a nationwide, computerized information system and the CJIS Audit Unit.

2. I submit this declaration in support of the motion for summary judgment being filed by Defendants. I understand that, within the FBI, separate declarations from the Terrorist

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Screening Center, the Counterterrorism Division, and the CJIS Division's National Instant Criminal Background Check System ("NICS") Section, are being submitted concurrently. This declaration addresses the ability to search the NCIC, a nationwide, computerized information system, which contains, among other files, the Known or Suspected Terrorist ("KST") File, which is populated with a subset of TSDB information. The FBI, through the CJIS Division, functions as the national manager for the NCIC.

3. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

4. Title 28, United States Code ("U.S.C."), Section 534, authorizes the United States Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime, and other records. The authority and power vested in the United States Attorney General to perform these functions has been delegated to the FBI by Title 28, Code of Federal Regulations ("C.F.R."), Section 0.85(b). Regulations governing the NCIC are found at 28 C.F.R., Part 20.

5. Consistent with these authorities, the NCIC links criminal justice and law enforcement agencies in the fifty states, the District of Columbia, U.S. Territories, and Canada. Generally speaking, the function of the NCIC is to assist the criminal justice community by providing information to apprehend fugitives, locate missing persons, locate and return stolen property, or other similar criminal justice objectives.

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6. The NCIC consists of 21 files. As stated above, among these is the KST File.<sup>1</sup> This file, which is a subset of the TSDB, is exported by the TSC to the NCIC. Inclusion of the KST File in the NCIC allows for federal, state, and local law enforcement and criminal justice agencies to share relevant information necessary to carry out their respective missions in a concerted effort to prevent terrorist attacks. Users access information in the NCIC Files by entering name, date of birth, or social security number. A user cannot perform a search if only a name is entered.

7. NCIC terminals are in effect computers. The FBI does not provide terminals or hardware. Terminals or other hardware devices access NCIC through a regional and/or state/federal computer system. The FBI provides a host computer and telecommunication lines to a single point of contact in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as federal criminal justice agencies. That single point of contact is the state CJIS Systems Agency (“CSA”), which is typically the state’s lead criminal justice agency, which is responsible for establishing and administering an information technology security program throughout the CSA’s user community, to include all local levels. Those CSA jurisdictions, in turn, operate their own telecommunications systems, providing access to nearly all local criminal justice agencies and authorized non-criminal justice agencies nationwide.

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1. In addition to the KST File, the NCIC includes 13 other person files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; Protective Interest; Gang; Wanted Person; Identity Theft; Violent Person; and NICS Denied Transaction. The NCIC also includes 7 property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. The system also contains a limited capability to associate images with NCIC records to help agencies identify people and property items.

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8. Within the CSA is an individual CJIS Systems Officer (“CSO”) who is responsible for the administration of the CJIS network for the CSA. The purpose behind a designated state CSO within the CSA is to consolidate responsibility for ensuring compliance by all ORI users with established procedures and policies within each signatory state agency.

9. In order for an entity to search information in the NCIC, the entity must apply for and obtain an Originating Agency Identifier (“ORI”)<sup>2</sup> from the CJIS Division. A governmental law enforcement or criminal justice agency’s request to the CJIS Division for an ORI assignment must be accompanied by, among other things: documentation demonstrating that the agency was established pursuant to executive order, statute, or ordinance; documentation of its arrest powers or criminal justice functions, as also outlined via executive order, statute, or ordinance; and documentation that more than fifty percent of its budget is allocated to the administration of criminal justice functions, as defined in 28 C.F.R. § 20.3(b).

10. Because some law enforcement or criminal justice agencies may enter into agreements with private entities to assist in carrying out their criminal justice mission, federal regulations allow NCIC information to be made available to certain private entities, subject to strict oversight and control. In order for a private entity to obtain an ORI that provides NCIC access, that entity must be providing services for the administration of criminal justice in accordance with 28 C.F.R. § 20.33(a)(7).<sup>3</sup> Likewise, Congress has recognized that qualified

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2. An ORI is a multi-character alphanumeric identifier assigned by NCIC to an agency or entity in order to identify it in transactions on the NCIC System.

3. The federal regulations, at 28 C.F.R. § 20.20, indicate that information from NCIC is subject to the limitations contained in 28 C.F.R. § 20.33(a)(7), which fall under subpart C of 28 C.F.R. Part 20. Section 20.20(a) states, in part: “Use of information obtained from the FBI Identification Division [the precursor to the CJIS Division] or the FBI/NCIC system shall also be subject to limitations contained in subpart C.”)

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police departments of railroads or private colleges or universities can gain NCIC access pursuant to 28 U.S.C. § 534(e).

11. The types of non-governmental entities with NCIC access under 28 C.F.R. § 20.33(a)(7) include: private correctional facilities; private security services for governmental facilities and hospitals; entities providing criminal justice dispatching services or data processing/information services to governmental criminal justice agencies; private probation and pretrial services entities; private city attorneys; and other entities similarly performing criminal justice services. These other entities are: a private police department for an airport; a private police department for a transportation authority; private police departments for two private incorporated communities; law enforcement divisions of certain Societies for the Prevention of Cruelty to Animals (“SPCAs”); an inmate transport service; an entity that provides forensic services to detect and identify criminals; and court constable services.

12. Those entities that are authorized to access NCIC pursuant to 28 C.F.R. § 20.33(a)(7) may only access NCIC pursuant to an agreement with a governmental law enforcement or criminal justice agency (CJA), or with a noncriminal justice governmental agency performing criminal justice dispatching services or data processing/information services for a governmental criminal justice agency. The private entity is, thus, providing services on behalf of or in support of a CJA. NCIC can only be searched for criminal justice purposes or pursuant to a federal statute, and thus cannot generally be searched by a private entity (or, any entity with NCIC access, for that matter) as part of a civil background check. For example, a police department at a college or a hospital cannot use NCIC to screen school applicants, students, hospital patients or visitors, as that is not a criminal justice purpose.

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13. A private entity's request to the CJIS Division for an ORI must be submitted by the governmental agency with whom the private entity has an agreement. And before that request even reaches the CJIS Division, the state CSO must first review it and determine whether the private entity is eligible for an ORI. The CSO also makes a determination regarding whether the assignment of an ORI is appropriate and warranted under the specific circumstances. If the state CSO agrees with the request for an ORI, only then does the state CSO pass that request along to the CJIS Division. The CJIS Division does not accept requests directly from private entities; they must apply through the CJA they are working with, and via the state CSO.

14. A private entity's request for an ORI must be accompanied by a description of the criminal justice duties (as defined at 28 CFR, § 20.3(b)) that the private entity will be performing on behalf of the governmental entity as well as a copy of the required agreement between a governmental CJA and the private entity, including the contract's executed signature page(s). The agreement must incorporate the FBI CJIS Security Addendum. The agreement must also specify a representative from the CJA that will assume NCIC operational responsibility and agree to act as the Agency Coordinator ("AC"). The AC manages the agreement between the private entity and the governmental agency. The tasks of the AC include responsibility for supervision and ensuring the integrity of the NCIC system by requiring training, continuing education, and certification testing of all personnel who have or will have access to the NCIC system.

15. Pursuant to 28 C.F.R. § 20.33(a)(7), the agreement between the private contractor and the governmental agency must incorporate a security addendum approved by the Attorney General of the United States, which limits the use of the NCIC information, ensures the security and confidentiality of the information consistent with regulations and CJIS security policies,

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provides for sanctions, and contains such other provisions as the Attorney General may require. The power and authority of the Attorney General under this provision is exercised by the FBI Director (or the Director's designee). The CJIS Security Addendum, found at Appendix H to the CJIS Security Policy<sup>4</sup>, is the uniform addendum to an agreement between the governmental agency and a private contractor, approved by the Attorney General, which contains the provisions required under 28 C.F.R. § 20.33(a)(7).

16. Private entities who perform criminal justice functions must meet the same training and certification criteria required by governmental agencies performing a similar function, and are subject to the same audit review as are law enforcement user agencies. All personnel at the private entity who perform criminal justice functions are required to acknowledge, by signing the CJIS Security Addendum Certification page, and abide by all aspects of the CJIS Security Addendum. Police departments of railroads and private colleges or universities that obtain NCIC access pursuant to 28 U.S.C. § 534(a) must also comply with the CJIS Security Policy. In order to qualify for an ORI, railroad police departments and the police departments of private colleges and universities must (1) "perform the administration of criminal justice and have arrest powers pursuant to a State statute," (2) "allocate a substantial part of their annual budget to the administration of criminal justice," and (3) "meet training requirements established by law or ordinance for law enforcement officers."

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4. The CJIS Security Policy, found at [https://www.fbi.gov/file-repository/cjis-security-policy\\_v5-7\\_20180816.pdf/view](https://www.fbi.gov/file-repository/cjis-security-policy_v5-7_20180816.pdf/view), provides guidance for the creation, viewing, modification, transmission, dissemination, storage, and destruction of criminal justice information. The CJIS Security Policy provides that data contained in CJIS systems, including data in the NCIC, is sensitive information and security must be afforded to prevent any unauthorized access, use, or dissemination of the information. Improper access, use, or dissemination of NCIC information is serious and may result in the imposition of administrative sanctions including, but not limited to, termination of services and state and federal criminal penalties.

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17. The CJIS Security Policy has strict security protocols for accessing the NCIC. NCIC is not web-based and is not available or accessible on the internet. It is a machine-to-machine interface. A user, whether at a law enforcement or criminal justice agency or an authorized private entity, accesses NCIC through the CSA's network, using the ORI and other identifiers. Every NCIC user must undergo an FBI fingerprint background check prior to being authorized to access NCIC.

18. On a biennial basis, the state/federal CSA is responsible for validating the criminal justice, law enforcement, or other valid basis for access, and all information contained within each field of the ORI File for every agency accessing the CJIS Division systems. If an entity merged or changed names, the state/federal CSA is required to gather the appropriate documentation from the entity. The state/federal CSA then forwards it to the CJIS Division for review. Depending on the documentation, the ORI information could be modified or retired if the documentation no longer supported the qualifications under 28 U.S.C. § 534 or 28 C.F.R., Part 20. Depending on the circumstance, an existing ORI may need to be retired and a new ORI issued.

19. If, for example, a college or university has a private security service but then changes the company providing that service, then the college or security service notifies the state CSA of the change, and the state CSA contacts CJIS to retire the ORI and provide the new request for a new ORI to CJIS. A new ORI would be issued to the new private security service, so long as a new agreement is in place and all other requirements are met for ORI eligibility. The same process would take place if an agreement expires or is not renewed according to the specific terms of a particular agreement.

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20. Governmental agencies and private entities with an ORI are subject to auditing. The state CSA is required to audit every agency and entity with an ORI within the state on a triennial basis. In addition, the state CSA must have the technical means to log every transaction that comes through the state CSA. The CJIS Security Policy requires the CSA to have a protocol in place to regularly review those logs, in order to detect unusual or suspicious behavior. The FBI's CJIS Audit Unit also audits every CSA, as well as a selection of agencies and/or entities, on a triennial basis.

21. During a CJIS audit of a CSA, CJIS physically visits the CSA. Ahead of the visit, CJIS collects information and requires the CSA to complete a lengthy questionnaire that covers the security requirements set forth in the CJIS Security Policy. CJIS auditors review the answers with the CSO during the visit, to determine whether and how the CSA is complying with the security requirements. The areas of focus during the CJIS Audit include: where the information is kept, who has access, and how the CSA is preventing both unauthorized access as well as improper use by authorized users. The CJIS audit covers many aspects of security, even delving into things such as how NCIC print outs are shredded, the type of virus detection software being used, any firewalls being used, the user system itself, user names and passwords, and intrusion detection. It also reviews whether every user in the state has been fingerprinted and undergone a FBI fingerprint background check, whether they've been trained, the policies in place, how those policies are shared, and how users are made aware of them. In addition to auditing the CSA, CJIS also picks a random sampling of several governmental agencies within the state to audit. These agencies are also required to complete a lengthy questionnaire and are subject to detailed review by CJIS. CJIS also asks these agencies whether and how the CSA is complying with security requirements. If CJIS suspects any misuse, it informs the CSA, so the CSA can further

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investigate and take any necessary and appropriate action. During the state CSA's audit, similar reviews are conducted of user agencies and entities.

22. Each user agency is required to have its own policy regarding misuse and discipline for such misuse. For those private entities in an agreement with a CJA, that CJA is responsible for the private users' searches of NCIC and use of any information returned.

23. Under 28 C.F.R. § 20.38, the FBI CJIS Division can cancel an ORI, effectively revoking NCIC access, if misuse is identified. A state CSA can do the same if it finds wrongdoing. Typically, however, when the CJIS Division finds a misuse or a concern, the state CSO cooperates with efforts to identify the misuse, correct it, and report back to CJIS regarding corrective measures. Individual users within an agency or entity have been disciplined, including termination from employment, and can also face federal criminal charges for misuse or unauthorized use of a government computer system or government property.

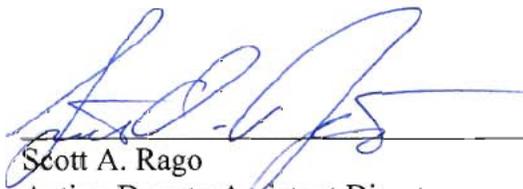
24. The FBI previously identified 1441 ORIs issued to private entities pursuant to either 28 C.F.R. § 20.33 or 28 U.S.C. § 534. Subsequently, after accounting for duplicate entries and eliminating a number of city attorneys that, upon further review, were determined to be governmental entities, the FBI approximated that the number of qualified private entities to which ORIs have been issued was approximately 533. As explained, the number of private entities issued ORIs under these provisions required de-duplication because in many cases multiple ORIs have been issued to the same entity. An entity may have numerous ORIs assigned when the entity or agency has a need to identify internal divisions, units, substations, or multiple terminals for the same agency within the same city. In addition, if an entity resides in and uses NCIC in multiple cities or states, ORIs may be assigned for each location. A qualifying private entity is not granted multiple ORIs unless it demonstrates a need to distinguish NCIC

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transactions by separate internal divisions, units, or substations, or that it conducts its criminal justice services in multiple locations and requests multiple ORIs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of March 2019.



Scott A. Rago  
Acting Deputy Assistant Director  
Operational Programs Branch  
Criminal Justice Information Services Division  
Federal Bureau of Investigation

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS'**  
**MOTION FOR SUMMARY JUDGMENT**

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United States Attorney

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3-day waiting period.” The 3-day waiting period is a statutory maximum and where any issue is resolved prior to the expiration of this period, the firearms dealer will receive authorization to proceed with the sale. DEX53 (“Stark-Nutter MSJ Decl.”) ¶¶ 10-13.

**119.** The cited evidence states only that the Department of Defense—which is not a party to this suit—uses the TSDB for base access screening. PEX57, 62.

**120.** The assertions in this paragraph relate to the Financial Crimes Enforcement Network, a division of the U.S. Department of the Treasury (“Treasury”). Treasury is not a party to this suit, and any statements in the unauthenticated exhibit cited in this paragraph do not bind Defendants. Regardless, the assertions in this paragraph are not supported by the cited evidence, and none of the Plaintiffs have alleged any injury connected to any action by Treasury.

**121.** Defendants clarify that pursuant to TSC’s HSPD-6 mandate to exchange terrorism screening information with select foreign partners, the U.S. Government shares TSDB information with foreign partners pursuant to written arrangements, all of which include representations to the effect that the foreign partner will use TSDB information only for terrorist screening, will safeguard TSDB information from unauthorized disclosure, and will not, without express permission, disclose TSDB information publicly or to any private entity, private individual, other government or international organization. Groh Decl. I ¶ 52. None of the Plaintiffs have alleged that they have ever been subjected to any restriction by a foreign government as a result of their alleged TSDB status.

**122.** Defendants clarify that not all Plaintiffs have fully availed themselves of the DHS TRIP redress process. Moore MSJ Decl. ¶ 22-24. Those Plaintiffs who have done had the ability to provide any comments or additional information that they deemed relevant to their redress inquiries. *See id.* ¶ 7.

**123.** Defendants clarify that Plaintiffs have the opportunity to provide comments, including exculpatory information, in the DHS TRIP form. *See id.*; *see also* Groh MSJ Decl. ¶ 52-59. *See* Moore MSJ Decl. ¶ 17 for a complete list of requirements to learn of No Fly List status.

**124.** The cited evidence does not support the factual assertions in this paragraph. *See id.* (describing the process applicable to U.S. Persons who make redress inquiries after a denial of boarding).

would transform the stigma-plus doctrine into the “font of tort law” that that the *Paul* Court was seeking to avoid. *Paul*, 424 U.S. at 701.<sup>20</sup> This court should decline to adopt such a test.

Plaintiffs contend that this Court, as an alternative, may simply ignore the Supreme Court in *Paul* altogether. Compare Pls’ MSJ at 49 (“the plus need not even alter or extinguish a right,”), with *Paul* 424 U.S. 693, 710-11 (plus rights are those “distinctly altered or extinguished”). They suggest that a “legal requirement that entities consult the TSDB” before conferring rights or benefits is sufficient, citing to the Ninth Circuit in *Humphries*. See Pls’ MSJ at 49. In that case, the Court found that California’s Child Abuse Central Index (“CACI”) did not satisfy due process where there were no procedures *whatsoever* to remedy incorrect placement on the list. See *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1179 (9th Cir. 2009), reversed in part on other grounds, 562 U.S. 29 (2010). The Court noted that Plaintiffs’ legal rights had been distinctly altered by the fact that California agencies conducted searches of the CACI prior to granting rights and benefits including obtaining child care licenses, volunteering in a crisis nursery, and receiving custody of a relative’s child, among other benefits. See *id.* at 1187-88. To the extent this is even a correct conclusion of law, these “plus” factors had a direct nexus with Plaintiffs claims: the *Humphries* plaintiffs had alleged that they desired to volunteer and teach at a child care center, renew teaching credentials, and enroll in a California child care program, each of which would entail a CACI check. See *id.* at 1183.

Plaintiffs here contend that the TSDB “works in the exact same way” because 20,000 entities “reflexively” search the TSDB for plaintiffs’ status. See Pls’ MSJ at 50. But they offer no facts to suggest that they have been, or will imminently be, denied any benefits based on such searches, if

<sup>20</sup> Plaintiffs further interpret *Siegert* to have “identified the single key inquiry” to determine when a “plus” factor is involved: whether consequences flow from the injury to reputation, “or from other government conduct.” See Pls’ MSJ at 49. This latter quoted phrase, not found in *Siegert*, twists the holding of that case. See *Siegert v. Gilley*, 500 U.S. 226 (1991). Nowhere does the case suggest that any governmental actions with consequences beyond those that flow from the injury to reputation itself constitute a “plus” factor. Instead, the Court held only that “special damage and out-of-pocket loss which flows from . . . injury . . . to a plaintiff’s reputation” was not recoverable in a *Bivens* action, reaffirming *Paul*. *Id.* at 234-5. Plaintiff’s interest in future employment with the Government, not enshrined in law, unsurprisingly did not constitute a plus factor. *Id.* at 233 (citing the *Paul* Court’s discussion of *Roth*).

weight of case law rejects the proposition “that ... more [than reasonable suspicion] would be necessary—for a forensic search of a phone at the border or, indeed, for any border search, no matter how nonroutine or invasive.” *Kolsuz*, 890 F.3d at 147, and “there are no cases requiring more than reasonable suspicion for forensic cell phone searches at the border.” *See id.*<sup>26</sup> And at least one other circuit has held that information within the TECS database, even if unsubstantiated by other information, can establish reasonable suspicion. *See Bryan v. U.S.*, 913 F.3d 356, 361-62 (3d Cir. 2019) (citing *U.S. v. Whitted*, 541 F.3d 480, 490 (3d Cir. 2008)).<sup>27</sup>

Ultimately, Plaintiffs can neither show that they have been stigmatized, nor that there was a plus factor sufficient to constitute a deprivation of some reputational liberty interest.

**d. The Risk of Erroneous Deprivation is Low.**

As the evidence shows, the current procedures surrounding the TSDB—including the abundant safeguards built into the nomination and review process, quality assurances, and DHS TRIP redress procedures—provide ample assurance that U.S. Persons will not be erroneously placed or maintained on TSDB. Because Plaintiffs cannot meet their burden of demonstrating otherwise, this factor of the *Mathews* analysis weighs strongly in Defendants’ favor.

Current procedures minimize the risk of erroneous placement. Before an individual is added to the TSDB, the nomination undergoes a careful and precise multi-step review process. Groh MSJ Decl. ¶ 20. At all levels of this review process, the watchlisting system relies on informed judgments

<sup>26</sup> Moreover, the same analysis that applies to searching devices also applies to the detention of electronic devices, as is necessary in some circumstances “to perform a thorough border search.” PEX64 § 5.4.1. *Kolsuz* cited with clear approval the district court’s holding that “an off-site forensic search of an electronic device over a long period of time is nonetheless a border search.” 890 F.3d at 142. Thus, “the border exception is not rendered inapplicable because a search initiated at a border ultimately is conducted at some physical or temporal remove.” *Id.* (collecting cases).

<sup>27</sup> The Fourth Circuit has already noted with approval that CBP’s 2018 Directive requires that advanced searches “may be conducted only with reasonable suspicion of activity that violates the customs laws or in cases raising national security concerns.” *Kolsuz*, 890 F.3d at 146; *see also* Howe Tr. at 311-13; PEX64 § 5.1.4; Pls’ SMF ¶ 32, *supra*. Inclusion in the TSDB is reasonable suspicion sufficient for Fourth Amendment purposes. Particularly where there is no Fourth Amendment claim in this case, border searches of electronic devices cannot constitute a plus factor sufficient to constitute a deprivation of their reputational liberty.

by experienced analysts and agents who evaluate watchlist nominations based on individual circumstances, taking into account the particular intelligence that distinguishes the individual under review.<sup>28</sup> Agents and analysts are also guided in their decision-making by detailed analytical standards that structure their discretion and promote scrutiny and professionalism in their work—as well as subject matter experts throughout the Intelligence Community. Such intelligence expertise can fill knowledge gaps and identify certain patterns of behaviors or overarching trends that can help analysts and agents gauge the credibility and seriousness of a threat. Orlando MSJ Decl. ¶¶ 11, 14.

After placement, all of the entities involved in the original placement of an individual list—*i.e.*, (1) nominating agency, (2) NCTC or FBI, as appropriate, and (3) TSC—conduct regular reviews and audits, including at each encounter. Groh MSJ Decl. ¶¶ 42-44 (describing all post-placement quality control measures). Available, relevant information, including any exculpatory information, is carefully reviewed to evaluate whether the record still meets the standard for inclusion. *Id.* Further, any time that a U.S. government agency participating in the watchlisting enterprise (whether or not it was the nominator for the individual in question) identifies new or updated information about a watchlist record, it is expected to make a request to NCTC or TSC, as appropriate, to modify or remove that record. *Id.* ¶ 45. And any time it is determined during the quality assurance reviews that a change should be made to a record in the TSDB, the TSC, coordinating with the nominating agency and any other relevant agencies, takes steps to clarify the record. *Id.* ¶ 48 (listing examples of situations where TSDB record may be removed).

<sup>28</sup> Citing a case involving a state assuming emergency custody of a child from a parent, Plaintiffs assert that any governmental determination that is “fact specific” “presents a grave risk of erroneous deprivation.” Pls’ MSJ at 52 (quoting *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 395 (4th Cir. 1990)). Setting aside the obvious distinctions between determinations involving parental fitness and the instant case, this assertion does not withstand scrutiny, and indeed defies logic. That the watchlisting system relies on highly individualized assessments, as opposed to some type of mechanistic sorting, necessarily *reduces* the risk of error by ensuring that each nomination receives careful, particularized consideration of the “totality of the circumstances” it presents. Groh MSJ Decl. ¶ 22; *cf. U.S. v. Smedley*, 611 F. Supp. 2d 971, 975 (E.D. Mo. 2009) (“Absent any individualized determination, there is simply no way of knowing whether the deprivation of liberty is warranted or wholly erroneous.”).

limited intelligence. *See, e.g., Al Haramain Islamic Found. Inc. v. Dep't of Treasury*, 686 F.3d 965, 979 (9th Cir. 2012) (acknowledging “extremely deferential” review in the national security and intelligence area). As the Supreme Court recognized, “national security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess.” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010). The Court concluded that although such concerns “do not warrant abdication of the judicial role,” when “it comes to collecting evidence and drawing factual inferences in this area, the lack of competence on the part of the courts is marked, and respect for the Government’s conclusions is appropriate.” *Id.* (internal quotation marks and citation omitted).

Finally, the reasonable suspicion standard is not only consistent with these congressional mandates and the Executive Branch’s expertise, but also appropriate given the purpose to be achieved—the prevention of terrorist attacks. *See* Orlando MSJ Decl. ¶¶ 6-8; Groh MSJ Decl. ¶ 6; *see* *Rahman v. Chertoff*, 530 F.3d 622, 627 (7th Cir. 2008); *see also* *Terry v. Ohio*, 392 U.S. 1, 22, 24 (1968) (recognizing the public’s interest in “effective crime prevention” and explaining that “we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest”). Plaintiffs appear to try to impose a judicial standard of review, borrowed from other non-analogous contexts, on an administrative determination. There is no basis for doing so. *See* *Cubaexport v. Treasury*, 606 F. Supp. 2d 59, 72 (D.D.C. 2009), *aff’d on other grounds*, 638 F.3d 794, 803 (D.C. Cir. 2011) (observing that an agency determination “does not have to meet the same rigorous requirements as proceedings in court. If it did, the administrative decision making process would come to a grinding halt.” Thus, the agency must instead “consider[] the relevant factors and articulate[] a rational connection between the facts found and the choice made.” *Id.* at 68.) (citing *Jifry v. FAA*, 370 F.3d 1174, 1180 (D.C. Cir. 2004)).<sup>30</sup> There is no basis for requiring a higher

<sup>30</sup> None of the cases relied on by Plaintiffs here involve national security, but do involve deprivations far beyond those alleged to occur in the watchlisting context. *See* *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 284 (1966) (deciding what degree of proof is required in

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS EIGHTEENTH AIR FORCE (AMC)  
SCOTT AIR FORCE BASE, ILLINOIS 62225**

General Court-Martial Order  
No. 36

10 April 2005

SENIOR AIRMAN AHMAD I. AL HALABI, [REDACTED] United States Air Force,  
60<sup>th</sup> Logistics Readiness Squadron, was arraigned at Travis Air Force Base, California on the  
following offenses at a court-martial convened by this headquarters.

**CHARGE I: ARTICLE 92. PLEA: G. FINDING: G.**

Specification 1: Did, on divers occasions, at Camp Delta, Guantanamo Bay, Cuba, between on  
or about 20 December 2002 and on or about 23 July 2003, violate a lawful general order to wit:  
section 6(e), page 2, General Order No. 2, dated 20 December 2002, issued by Major General  
Geoffrey D. Miller, Commander, Joint Task Force, Guantanamo Bay, by wrongfully taking  
photographs of camp facilities in and around Camp Delta, Guantanamo Bay, Cuba. Plea: G.  
Finding: G.



Specification 3: Did, at Camp Delta, Guantanamo Bay, Cuba, between on or about 20 December  
2002, and on or about 23 July 2003, violate a lawful general order to wit: section 6(j), page 2,  
General Order No. 2, dated 20 December 2002, issued by Major General Geoffrey D. Miller,  
Commander, Joint Task Force, Guantanamo Bay, by wrongfully transporting classified  
information without the proper locking containers or covers. Plea: G. Finding: G.



36272

GCMO No. 36

**Personal Data – Privacy Act of 1974 (5 U.S.C. 552a)**

JA 776

39515

[REDACTED]

[REDACTED]

[REDACTED]

**-CHARGE III: ARTICLE 107. PLEA: G. FINDING: G.**

[REDACTED]

GCMO No. 36, HQ 18<sup>th</sup> Air Force, 10 April 2005

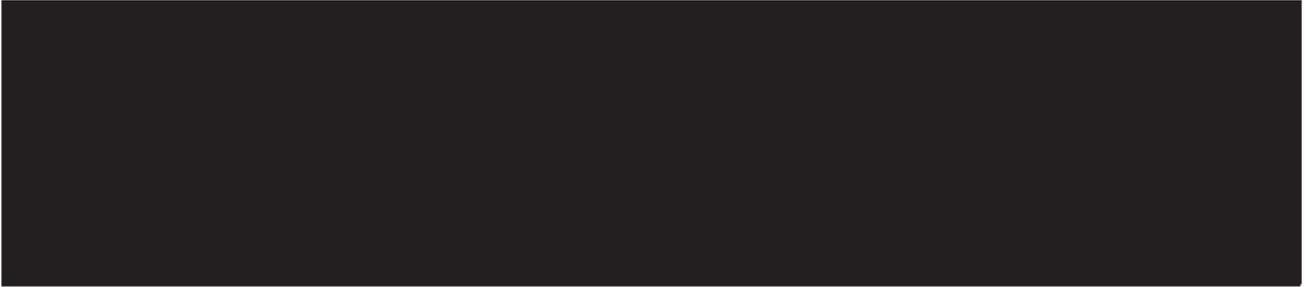
[REDACTED]

[REDACTED]

[REDACTED]

Specification 4: Did, at Jacksonville Naval Air Station, Jacksonville, Florida on or about 23 July 2003, with intent to deceive, make to Air Force Office of Special Investigations (AFOSI) Special Agent [REDACTED] an official statement, to wit: "I did not take any prohibited pictures of Camp Delta, Guantanamo Bay, Cuba," or words to that effect, which statement was totally false, and was then known by the said Senior Airman Ahmad I. Al Halabi to be so false. Plea: G. Finding: G.

[REDACTED]



GCMO No. 36, HQ 18<sup>th</sup> Air Force, 10 April 2005



**ADDITIONAL CHARGE III: ARTICLE 134. PLEA: NG, but G of LIO in violation of Clause 1, prejudicial to good order and discipline. FINDING: NG, but G of LIO in violation of Clause 1, prejudicial to good order and discipline.**

Specification: Did, at Camp Delta, Guantanamo Bay, Cuba, between on or about 15 November 2002 and on or about 23 July 2003, violate 18 U.S.C. § 793, The Federal Espionage Act, by having unauthorized possession and willfully retaining secret documents, to wit: (1) a copy of air-bridge mission information for military movement to and from Guantanamo Bay, Cuba; (2) a copy of the Commander USSOUTHCOM Execution Order for Detainee Transfer for detainees held at Guantanamo Bay, Cuba; (3) a copy of Operations Order 02-01(a) (Preparation for Detainee Leeward Transfer Operation) to JTF-GTMO Operation Enduring Freedom (U); (4) a copy of classified cell block information, to wit: cell numbers, Internment Serial Numbers (ISN), and names of detainees held at Guantanamo Bay, Cuba; (5) a copy of the Department of Defense, JTF-GTMO, JDOG, S-2, Initial Memorandum for Record, Command Inquiry, dated 20 October 2002; (6) a copy of an existing or proposed military installation map at Guantanamo Bay, Cuba, which information SENIOR AIRMAN AHMAD I. AL HALABI had reason to believe could be used to the injury of the United States or to the advantage of Syria, a foreign nation. Plea: : NG, but G of the lesser included offense in violation of Clause 1, prejudicial to good order and discipline; excepting the words "violate 18 U.S.C. 793, the Federal Espionage Act, by having unauthorized possession and willfully retaining secret documents," substituting therefore the words "wrongfully and willfully retain the possession of unauthorized documents," excepting the word "classified," excepting the words "which information SENIOR AIRMAN

AHMAD I. AL HALABI had reason to believe could be used to the injury of the United States or to the advantage of Syria, a foreign nation;" substituting therefore the words "such conduct being prejudicial to the good order and discipline in the armed forces;" of the excepted words, NG, of the substituted words, G; of the specification of the lesser included offense in violation of Article 134, Clause 1: G. Finding: NG, but G of the lesser included offense in violation of Clause 1, prejudicial to good order and discipline; excepting the words "violate 18 U.S.C. 793, the Federal Espionage Act, by having unauthorized possession and willfully retaining secret documents," substituting therefore the words "wrongfully and willfully retain in the possession of unauthorized documents;" excepting the word "classified," excepting the words "which information SENIOR AIRMAN AHMAD I. AL HALABI had reason to believe could be used to the injury of the United States or to the advantage of Syria, a foreign nation;" substituting therefore the words "such conduct being prejudicial to the good order and discipline in the armed forces;" of the excepted words, NG, of the substituted words, G; of the specification of the lesser included offense in violation of Article 134, Clause 1: G.

#### SENTENCE

Sentence adjudged by military judge on 23 September 2004: Bad Conduct Discharge, confinement for 295 days, and reduction to the grade of E-1.

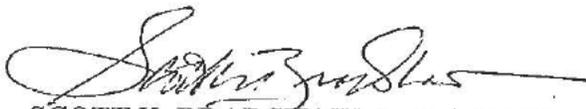
#### ACTION

In the case of SENIOR AIRMAN AHMAD I. AL HALABI, [REDACTED] United States Air Force, 60th Logistics Readiness Squadron, the sentence is approved and, except for the bad conduct discharge, will be executed. The term of confinement having been served, no place of confinement is designated. AB Al Halabi will be required under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction.

/s/ William Welser  
WILLIAM WELSER III  
Lieutenant General, USAF  
Commander

GCMO No. 36, HQ 18<sup>th</sup> Air Force, 10 April 2005

FOR THE COMMANDER



SCOTT K. BRADSHAW, Lt Col, USAF  
Chief, Military Justice

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- 1 - Capt Dennis Kaw, (separated) (ATC3)
- 1 - Capt Gloria A. Downey, 60 AMW/JA, 510 Mulheron Street, Travis AFB CA 94535-2406  
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**CIV DC: secret documents;” substituting therefore the words, “wrongfully and willfully retain the possession of unauthorized documents;” further excepting the word “classified,” further excepting the words, “which information Senior Airman Ahmad I. Al Halabi had reason to believe could be used to the injury of the United States or to the advantage of Syria, a foreign nation,” substituting therefore the words, “such conduct being prejudicial to the good order and discipline in the armed forces;”  
To the excepted words: Not Guilty;  
To the substituted words: Guilty;  
To the Specification which by exceptions and substitutions and, if the court wants, I can read the specification, as it would read.**

MJ: No. But you’re pleading not guilty to the greater offense –

CIV DC: Correct.

MJ: -- offense under Clause 3, but guilty to the lesser included offense under Clause 1, with the exceptions and substitutions that you’ve set.

CIV DC: That is correct.

**To the Specification as a lesser included by exceptions and substitutions, a Guilty plea;  
then to Additional Charge III: Guilty.**

MJ: Thank you. Airman Al Halabi, your counsel has entered a plea of guilty for you to some of the charges and specifications. Your plea of guilty will not be accepted unless you understand its meaning and effect. I am going to discuss your plea of guilty with you. You may wish to consult with your defense counsel prior to answering any of my questions. If at any time you have questions, feel free to take a minute and talk with your counsel. Do you understand that?

ACC: Yes, Your Honor.

MJ: A plea of guilty is equivalent to a conviction and it is the strongest form of proof known to the law. On your plea alone and without receiving any evidence, this court can find you guilty of the offenses to which you have pled guilty. Your plea will not be accepted unless you realize that by your plea you admit every act or omission and element of the offenses to which you have pled guilty and that you are pleading guilty because you actually are, in fact, guilty. If you do not believe you are guilty, then you should not, for any reason, plead guilty. Do you understand what I've said?

ACC: Yes, Your Honor.

MJ: By your plea of guilty, you give up three important rights, but you give up these rights solely with respect to the offense to which you've pled guilty. First, the right against self-incrimination; that is, the right to say nothing at all. Second, the right to a trial of the facts by this court; that is, your right to have this court-martial decide whether or not you are guilty based upon the evidence the prosecution would present and on any evidence you may introduce. Third, the right to be confronted by and to cross-examine any witnesses called against you. Do you have any questions about these rights?

ACC: No, Your Honor.

MJ: Do you understand that by pleading guilty you no longer have these rights?

ACC: Yes, Your Honor.

MJ: If you continue with your guilty plea, you will be placed under oath, and I will question you to determine whether you are, in fact, guilty. Anything you tell me may be used against you in the sentencing portion of the trial. Do you understand that?

ACC: Yes, Your Honor.

MJ: If you tell me anything that is untrue, your statements may be used against you later for charges of perjury or making false statements. Do you understand that?

ACC: Yes, Your Honor.

MJ: Your plea of guilty to a lesser included offense may also be used to establish certain elements of the charged offense, if the government decides to proceed on the charged offense. Do you understand that?

ACC: Yes, Your Honor.

MJ: Trial counsel, please place the accused under oath.

[The accused was duly sworn by the trial counsel.]

MJ: Airman Al Halabi, will you state your full name for the record, please?

ACC: Senior Airman Ahmad Al Halabi.

MJ: And you are a member of the United States Air Force?

ACC: Yes, Your Honor.

MJ: And you're a senior airman?

ACC: Yes, Your Honor.

MJ: When did you join the Air Force?

ACC: January 25<sup>th</sup>, 2000.

MJ: Could it have been the 26<sup>th</sup>?

ACC: The 26<sup>th</sup>, yes, Your Honor. I'm sorry.

MJ: That's all right. And you're presently on active duty in the United States Air Force?

ACC: Yes, Your Honor.

MJ: And you've been on continuous active duty since 26 January 2000?

ACC: Yes, Your Honor.

MJ: There have been no breaks in service?

ACC: No, Your Honor.

MJ: You have not been released or discharged?

ACC: No, Your Honor.

MJ: What is your present unit?

ACC: 60<sup>th</sup> LRS.

MJ: Is that the Logistics Readiness Squadron?

ACC: Yes, Your Honor.

MJ: And that's here at Travis Air Force Base, California?

ACC: Yes, Your Honor.

MJ: Was that your unit back on the 20<sup>th</sup> of December of 2002?

ACC: Yes, Your Honor.

MJ: And it's been your unit since that time?

ACC: Yes, Your Honor.

MJ: Is there a stipulation of fact?

TC: Yes, Your Honor.

CIV DC: Yes, Your Honor.

MJ: Let's mark that as Prosecution Exhibit 1 for identification.

TC: Actually, Your Honor, if the court has no objection, we'd like to mark it as

Prosecution Exhibit 7.

MJ: Seven?

TC: Yes, ma'am.

MJ: Okay.

CIV DC: Your Honor, there is a Stipulation of Fact and there's a document that's attached to the stipulation that is incorporated by reference.

MJ: But it's an attachment.

CIV DC: It is an attachment, but it's incorporated by reference as part of the stipulation and you'll see that in about the second or third paragraph.

TC: I've handed the Stipulation of Fact to the military judge.

MJ: What I have in front of me is Prosecution Exhibit 7 for identification, which consists of four pages, with something that's not really marked as an attachment. It doesn't say that. I don't know if it's attachment 1 or if we've got a number for it or not. Maybe when I take time to read the stipulation I'll find out if it's in there; but attached to that, paper-clipped to that right now, is a four-page document entitled, "General Order Number 2," dated 20 December 2002. Is that your understanding of what Prosecution Exhibit 7 for identification is, trial counsel?

TC: Yes, Your Honor.

MJ: Is that also your understanding, defense counsel?

CIV DC: Yes, Your Honor.

MJ: And it's your understanding that the General Order is incorporated in the Stipulation of Fact.

CIV DC: Correct.

MJ: And to be considered along with the Stipulation of Fact.

CIV DC: Yes.

MJ: Thank you. Airman Al Halabi, I have before me Prosecution Exhibit 7 for identification, the Stipulation of Fact. Did you sign that stipulation?

ACC: Yes, Your Honor.

MJ: Did you read this document thoroughly before you signed it?

ACC: Yes, Your Honor.

MJ: Did you also review the attachment, those four pages of the General Order?

ACC: I did, Your Honor.

MJ: Do counsel agree to the stipulation and that your signatures appear on this document?

TC: Yes, Your Honor.

CIV DC: Yes, Your Honor.

MJ: Airman Al Halabi, a Stipulation of Fact is an agreement among the trial counsel, the defense counsel and you that the contents of the stipulation are true, and if entered into evidence, are uncontradicted facts in this case. No one can be forced to enter into a stipulation, so you should enter into it only if you truly want to do so. Do you understand this?

ACC: Yes, Your Honor.

MJ: Are you voluntarily entering into the stipulation because you believe it is in your best interest to do so?

ACC: Yes, Your Honor.

MJ: If I admit this stipulation into evidence, it will be used in two ways. First, I will use it to determine if you are, in fact, guilty of the offenses to which you've pled guilty. Second, I will use it to determine an appropriate sentence for you. Do you understand and agree to these uses of the stipulation?

ACC: Yes, Your Honor.

MJ: Do counsel also agree to these uses?

TC: Yes, Your Honor.

CIV DC: Yes, Your Honor.

MJ: Airman Al Halabi, a Stipulation of Fact ordinarily cannot be contradicted. If it should be contradicted after I've accepted your plea, I will reopen this inquiry. You should therefore let me know if there's anything whatsoever you disagree with or feel is untrue. Do you understand that?

ACC: Yes, Your Honor.

MJ: At this time, I want you to take time and read this silently to yourself while I read it, and then I'm going to ask you a few more questions.

TC: Your Honor, would it benefit the court if the court had a working copy?

MJ: A working copy would be great.

TC: Providing the military judge with a working copy of the Stipulation of Fact.

[The military judge and the accused read over the stipulation of fact silently.]

MJ: All right, counsel, before I continue talking with Airman Al Halabi, paragraph 8 indicates the dates being from between on or about 1 June 2003 and on or about 23 July 2003. I believe the specification says on or about 15 November 2002.

CIV DC: The specification does say that, Your Honor. Pursuant to the stipulation –

MJ: We're narrowing the time.

CIV DC: -- we're narrowing it down, and I believe that –

MJ: It doesn't alter the specification.

CIV DC: No.

MJ: I just want to make sure that there wasn't a different pen and ink change sometime that I wasn't aware of and to make sure that the specification stills says 15 November 2002. However, there is a mistake in the specification, at least unless my English is really not up to speed, because it says "between on or about 15 November 2002 and between on or about." I think there's too many between's there. Does everybody agree there's too many between's?

TC: Yes, Your Honor. We will correct that.

MJ: Yes. Let's pen and ink the second between. Any objection to that?

CIV DC: No, Your Honor.

MJ: Thank you, Mr. Rehkopf.

I also understand that the Stipulation of Fact refers to Prosecution Exhibits 1 through 6, but they are not for my consideration at this time. Is that everybody's understanding?

CIV DC: Yes.

TC: Yes, Your Honor.

MJ: Airman Al Halabi, is that also your understanding?

ACC: Yes, Your Honor.

MJ: So the only thing that you and I are talking about right now are the four pages of the stipulation and the four pages of the General Order.

ACC: Yes, Your Honor.

MJ: And have you had time to re-read this?

ACC: Yes, Your Honor.

MJ: Is everything in this stipulation true?

ACC: Yes, Your Honor.

MJ: Is there any thing in the stipulation that you do not wish to admit is true?

ACC: No, Your Honor.

MJ: Do you agree under oath that the matters contained in the stipulation, along with the attachment of the General Order, are true and correct to the best of your knowledge and belief?

ACC: Yes, Your Honor.

MJ: Defense counsel, do you have any objections to Prosecution Exhibit 7 for identification?

CIV DC: No, Your Honor.

MJ: Prosecution Exhibit 7 for identification is admitted, subject to my acceptance of the accused's guilty plea.

Airman Al Halabi, I am going to explain the elements of the offenses to which you have pled guilty. By elements, I mean those facts which the prosecution would have to prove beyond a reasonable doubt before you could be found guilty, if you had pled not guilty. When I state each element, ask yourself two things. First, is the element true, and second, whether you wish

to admit that it's true. After I list the elements for you, be prepared to talk to me about the facts regarding the offenses.

Do you have a copy of the charge sheet in front of you?

ACC: Yes, Your Honor.

MJ: I want you to look at Specification 1 of Charge I, in violation of Article 92 of the Uniform Code of Military Justice. The elements of that offense, which is violating a general order, are:

One, that there was in existence, a certain, lawful, general order in the following terms: General Order Number 2, section 6(e), page 2, dated 20 December 2002, issued by Major General Geoffrey D. Miller, Commander, Joint Task Force, Guantanamo Bay;

Second, that you had a duty to obey such order; and

Third, that on divers occasions, between on or about 20 December 2002 and on or about 23 July 2003, at Camp Delta, Guantanamo Bay, Cuba, you violated this general order by wrongfully taking photographs of camp facilities in and around Camp Delta, Gauntanamo Bay, Cuba.

Let me give you a couple of definitions. As a matter of law, the order in this case, as described in the specification, if, in fact, there was such an order was lawful and general. A general order to be lawful must relate to specific military duty and be one which is authorized under the circumstances. A general order is lawful if it is reasonably necessary to safeguard and protect the morale, discipline and usefulness of its members of a command and is directly connected with the maintenance of good order in the services. It is illegal if it is unrelated to military duty; its sole purpose is to accomplish some private end; it is arbitrary and unreasonable;

or it is given for the sole purpose of increasing the penalty for an offense which is expected that you may commit.

MJ: General orders are those orders which are generally applicable to armed forces and which are properly published by the President, the Secretary of Defense or a military department. General orders also include those orders which are generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof, and which are issued by an officer having general court-martial jurisdiction or a general or flag officer in command or a commander superior to one of these.

“Divers occasions” means more than one occasion.

Do you understand the elements and the definitions as I’ve read them to you?

ACC: Yes, Your Honor.

MJ: Do you have any questions about any of them?

ACC: No, Your Honor.

MJ: Do you understand that your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Your Honor.

MJ: Do you believe and admit that the elements and definitions taken together correctly describe what you did?

ACC: Yes, Your Honor.

MJ: At this time, I want you to tell me why you're guilty of the offense listed in Specification 1 of Charge I.

ACC: Your Honor, I took two pictures around my work center within the Camp Delta facilities, and I did not have authorization to take those two photographs. Divers occasions means two photographs.

MJ: So you took two different photographs?

ACC: Yes, Your Honor.

MJ: Are you aware of General Order Number 2?

ACC: I am now, yes, Your Honor.

MJ: Do you admit that that was a general order; that it was given by a general officer?

ACC: Yes, Your Honor.

MJ: And that it was a lawful order?

ACC: Yes, Your Honor.

MJ: And do you admit that you had a duty to obey General Order Number 2 that was dated 20 December 2002?

ACC: Yes, Your Honor.

MJ: Specifically in this specification, I'm concerned about paragraph 6(e), which states "taking visual or audio recordings or drawings of the detainees' camp facilities, detainee operations," that there's a prohibition against that. Do you understand that?

ACC: Yes, Your Honor.

MJ: Paragraph 6 is entitled "Prohibited Activities."

ACC: Yes, Your Honor.

MJ: And this was an order you had a duty to obey?

ACC: Yes, Your Honor.

MJ: And you're telling me somewhere between 20 December 2002 and 23 July 2003, at least two times – or two times – you failed to obey this order?

ACC: Yes, Your Honor.

MJ: Do you know when that was?

ACC: I cannot recall exactly, ma'am. It could have been around the middle of my deployment.

MJ: Okay. So that would have fallen in this timeframe, 20 December 2002 to 23 July 2003, somewhere in there?

ACC: Yes, Your Honor. It was on the same time – the same day.

MJ: The same day, but you took two separate photographs.

ACC: Yes, Your Honor.

MJ: So that means divers occasions.

ACC: Right.

MJ: You did it two times.

ACC: Yes, ma'am.

MJ: And you did this by taking pictures, you said near your workplace at Camp Delta?

ACC: Yes, Your Honor.

MJ: Did anyone authorize you to violate this general order?

ACC: No, Your Honor.

MJ: Did anyone or anything force you to do that?

ACC: No, Your Honor.

MJ: Do you believe you had any legal justification or excuse for what you did?

ACC: No, Your Honor.

MJ: Could you have avoided violating this general order, if you had wanted to?

ACC: Yes, Your Honor.

MJ: Do you believe and admit that between on or about 20 December 2002 and on or about 23 July 2003, on divers occasions, at Camp Delta, Guantanamo Bay, Cuba, you violated a general order, to wit: the general order we were just talking about, General Order Number 2, section 6(e), page 2, dated 20 December 2002, issued by Major General Geoffrey D. Miller, Commander, Joint Task Force, Guantanamo Bay, by taking two separate pictures?

ACC: Yes, Your Honor.

MJ: Any doubt in your mind about that?

ACC: No, Your Honor.

MJ: Anybody wish that I inquire any further into Specification 1 of Charge I?

ADC: No, Your Honor.

ATC5: No, Your Honor.

MJ: Airman Al Halabi, I want you to look at Specification 3 of Charge I, which is in violation of Article 92 of the Uniform Code of Military Justice. The elements of that offense, which is violating a lawful general order, are:

One, that there was in existence, a certain, lawful, general order in the following terms: General Order Number 2, section 6(j), page 2, dated 20 December 2002, issued by Major General Geoffrey D. Miller, Commander, Joint Task Force, Guantanamo Bay;

Two, that you had a duty to obey such order; and

Three, that between on or about 20 December 2002 and on or about July 23<sup>rd</sup>, 2003, at Camp Delta, Guantanamo Bay, Cuba, you violated this lawful general order by wrongfully transporting classified information without proper locking containers or covers.

MJ: The definitions I gave you for specification 1 apply to specification 3. Do you need me to give you those again?

ACC: No, Your Honor.

MJ: The one that does not apply is divers occasions. Do you understand that?

ACC: Yes, Your Honor.

MJ: Do you understand the elements and definitions as I've read them to you?

ACC: Yes, Your Honor.

MJ: Do you have any questions about them?

ACC: No, Your Honor.

MJ: Do you understand that your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Your Honor.

MJ: Do you believe and admit that the elements and definitions taken together correctly describe what you did?

ACC: Yes, Your Honor.

MJ: At this time, I want you to tell me why you're guilty of the offense listed in Specification 3 of Charge I.

ACC: Your Honor, I took an execution order for the mission I was supposed to participate in to my residence and I did not have a proper cover or locking containers on it. It was classified secret.

MJ: And that executive order also had an air bridge mission and an email with it?

ACC: Yes, Your Honor.

MJ: That's what we're talking about here?

ACC: Yes.

CIV DC: Your Honor, you may have misspoken. It wasn't an executive order. It was, I believe, an execution order.

MJ: I'm sorry. I probably did. I think Airman Al Halabi said it correctly. I said it incorrectly. An execution order, I'm sorry. Thank you.

This happened sometime between 20 December 2002 and 23 July 2003?

ACC: I believe it was in January, Your Honor.

MJ: Of 2003?

ACC: 2003, yes, Your Honor.

MJ: So you admit that that's in the time frame that's charged?

ACC: Yes, Your Honor.

MJ: And do you admit at that time there was a general order in place, General Order Number 2?

ACC: Yes, Your Honor.

MJ: It was dated 20 December 2002?

ACC: Yes, Your Honor.

MJ: And do you admit that that was a general order?

ACC: Yes, Your Honor.

MJ: And a lawful order?

ACC: Yes, Your Honor.

MJ: Do you admit that you had a duty to obey that general order?

ACC: Yes, Your Honor.

MJ: Now when we talked about this – this is the same general order that we talked about before, correct?

ACC: Yes, Your Honor.

MJ: But we're talking about a different paragraph. I think we're talking about "j" now instead of "e."

ADC: Your Honor, may I have one moment to confer?

MJ: Absolutely.

[The accused conferred with his defense counsel.]

ACC: Your Honor, we are talking about element "j" of the general order.

MJ: But it's the same order that includes that, that we talked about a few minutes ago?

ACC: Yes, Your Honor.

MJ: And do you understand that you had a duty to obey that?

ACC: Yes, Your Honor.

MJ: I think you indicated you may not have known this order existed, is that correct?

ACC: Yes, Your Honor, I did not know.

MJ: Do you understand that's not a defense in this case?

ACC: Yes, Your Honor.

MJ: Have you discussed that with your counsel?

ACC: Yes, Your Honor.

MJ: Because general orders, we're required to obey them.

ACC: Yes, Your Honor.

MJ: There are other kinds of orders where you have to have knowledge, but that's not an issue here. Do you understand that?

ACC: Yes, Your Honor.

MJ: So you agree that you had a duty to obey this General Order Number 2 – now I'm switching gears on you here. We're going back to specification 3 – in January '03, when you violated it,

ACC: Yes, Your Honor.

MJ: And this took place where? Where did this violation take place?

ACC: Camp Delta in Guantanamo Bay.

MJ: And you violated this by taking the execution order –

ACC: From Camp Delta to my residence.

MJ: And at the time, it was marked secret?

ACC: Yes, Your Honor.

MJ: So you knew it was a classified document.

ACC: Yes, Your Honor.

MJ: Did you have a cover on it?

ACC: No, Your Honor.

MJ: When you took it to your residence, where did you put it?

ACC: I put it in my closet.

MJ: And was that a proper locking container?

ACC: No, Your Honor.

MJ: So the way you violated this order was by transporting it without a cover and then storing it somewhere that was not a proper locking container. Is that correct?

ACC: Yes, Your Honor.

MJ: Did anyone authorize you to violate this general order?

ACC: No, Your Honor.

MJ: Did anyone or anything force you to violate this order?

ACC: No, Your Honor.

MJ: Do you believe you had any legal justification or excuse for what you did?

ACC: No, Your Honor.

MJ: Could you have avoided violating the general order, if you had wanted to?

ACC: Yes, Your Honor.

MJ: You could have gotten a cover and put them in a proper locking container.

ACC: Yes, Your Honor.

MJ: Do you believe and admit that between on or about 20 December 2002 and on or about 23 July 2003, at Camp Delta, Guantanamo Bay, Cuba, you violated the general order that we've been talking about, General Order Number 2, here specifically, paragraph 6(j), which is attached to your stipulation and clearly indicates that you're not supposed to transport classified information without proper locking containers or covers by transporting this exec order and some attachments, which were marked secret, and did not have proper cover and you did not put it in a proper locking container? Do you admit all of that is true?

ACC: Yes, Your Honor.

MJ: Does anybody wish that I inquire any further into Specification 3 of Charge I?

TC: No, Your Honor.

ADC: No, Your Honor.

MJ: Counsel, we've been going for an hour, but I intend to continue through the elements, unless anybody needs a break.

ADC: We'll proceed, Your Honor.

TC: Your Honor, could we have a comfort break?

MJ: Fine. We'll take a 10-minute recess.

[The court was recessed at 0930 hours, 22 September 2004.]

**[END OF PAGE]**

[The court was called back to order at 0945 hours, 22 September 2004, with all parties present who were present when the court recessed.]

MJ: Please be seated. Court will come to order.

ATC5: All parties are present.

MJ: Airman Al Halabi, please look at Specification 4 of Charge III, which is in violation of Article 107 of the Uniform Code of Military Justice. That offense, which is false official statement, has the following elements:

One, on or about 23 July 2003, at Jacksonville Naval Air Station, Jacksonville, Florida, you made to the Air Force Office of Special Investigations, Special Agent [REDACTED] a certain official statement, that is, "I did not take any prohibited pictures of Camp Delta, Guantanamo Bay, Cuba," or words to that effect;

Two, that the statement was totally false;

Three, you knew it was false at the time you made it; and

Four, that the false statement was made with the intent to deceive.

"The intent to deceive" means to purposely mislead, to cheat, to trick another or to cause another to believe is true that which is false.

Do you understand the elements and definitions as I've read them to you?

ACC: Yes, Your Honor.

MJ: Do you have any questions about them?

ACC: No, Your Honor.

MJ: Do you understand that your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Your Honor.

MJ: Do you believe and admit that the elements and definitions taken together correctly describe what you did?

ACC: Yes, Your Honor.

MJ: At this time, I want you to tell me why you're guilty of the offense in Specification 4 of Charge III.

ACC: Your Honor, Special Agent [REDACTED] asked me whether I took photographs within the Camp Delta perimeters and I said no, and I did not want him to know.

MJ: So on or about the 23<sup>rd</sup> of July 2003, did you make a statement to Special Agent [REDACTED]?

ACC: Yes, Your Honor.

MJ: And was that statement, "I did not take any prohibited pictures of Camp Delta, Guantanamo Bay, Cuba," or words to that effect?

ACC: Yes, Your Honor.

MJ: Do you recall exactly what you said?

ACC: Your Honor, I was scared that day, so I just told him no, I did not take any pictures.

MJ: Who is Special Agent [REDACTED]?

ACC: He's an OSI agent.

MJ: Did you know that when you made that statement?

ACC: I knew it wasn't true.

MJ: And this statement was made at Jacksonville, Florida, Naval Air Station?

ACC: Yes, Your Honor.

MJ: Was this an official statement?

ACC: I believe so; yes, Your Honor.

MJ: Because it was related to official duties? I mean, he was questioning you, is that correct?

ACC: Yes, Your Honor.

MJ: And he had a right to do that?

ACC: Yes.

MJ: And you had a duty to answer him correctly or to say nothing at all, is that correct?

ACC: Yes, Your Honor.

MJ: And he was discharging his functions as a special agent?

ACC: Yes, Your Honor.

MJ: Was anything about your statement false?

ACC: Yes, it was false.

MJ: So everything in that statement was false?

ACC: Yes.

MJ: And when you made that statement on the 23<sup>rd</sup> of July 2003, did you know you were lying?

ACC: Yes.

MJ: What was your intent when you made it? Was it to deceive, to purposely mislead or to have him believe something was true that wasn't true?

ACC: I did not want him to know. Yes, Your Honor.

MJ: So basically, you were trying to deceive him.

ACC: Yes, Your Honor.

MJ: You knew you had taken the pictures, but you said you hadn't.

ACC: Yes, Your Honor.

MJ: And that's what you wanted him to believe.

ACC: Yes.

MJ: At the time you made the statement, were you a suspect? Were you read your Article 31 rights?

ACC: Yes, Your Honor.

MJ: And did you understand that you would have had the right to remain silent?

ACC: Yes.

MJ: But do you also understand that when you waive that right to remain silent and agree to talk, you don't have the right to lie?

ACC: Yes, Your Honor.

MJ: Did you know what you were doing was wrong at the time?

ACC: Yes.

[The accused conferred with his counsel.]

ACC: Your Honor, at the time when I told him I did not take the pictures, it was a general rule in Camp Delta that you don't take pictures, even though I wasn't aware of General Order Number 2.

MJ: So you were aware you shouldn't have taken those pictures.

ACC: Yes.

MJ: Not specifically General Order Number 2, although we've already talked about that and you know you had a duty to obey that –

ACC: Right.

MJ: -- but you did know you shouldn't be taking pictures, regardless.

ACC: Yes.

MJ: Okay. So my question to you know is, did anybody force you to make a false official statement to Special Agent [REDACTED]?

ACC: No, Your Honor.

MJ: Did anything – not just anybody, but anything – force you to do that?

ACC: I was scared, ma'am.

MJ: But you could have either remained silent or told the truth, correct?

ACC: Yes, Your Honor.

MJ: Okay. So there was nothing forcing you to make this statement.

ACC: No, Your Honor.

MJ: You could have avoided making this statement, if you had wanted to.

ACC: Yes, Your Honor.

MJ: And at the time you knew it was wrong.

ACC: Yes.

MJ: You knew it was false.

ACC: Yes.

MJ: And you did it with the intent to deceive.

ACC: Yes.

MJ: And this was on or about July 23<sup>rd</sup> 2003, at or near Jacksonville Naval Air Station, Jacksonville, Florida.

ACC: Yes.

MJ: And the false statement was that you hadn't taken any pictures when, in fact, you knew that was not true.

ACC: Yes, Your Honor.

MJ: Anybody wish that I inquire any further into Specification 4 of Charge III?

TC: No, Your Honor.

ADC: No, Your Honor.

MJ: I want you to look at the Specification under Additional Charge III, which is a violation of the Uniform Code of Military Justice, Article 134. What you've done, Airman Al Halabi, is you've pled not guilty to the greater offense, which would be a Clause 3 offense, violating the Federal Espionage Act, but you've pled guilty to the lesser included offense of conduct prejudicial to good order and discipline. Your counsel has excepted out some words. He's taken some words that we're saying don't apply and he's put in some words – substituted some words – that he says do apply. Do you understand that plea?

ACC: Yes, Your Honor.

MJ: Now the elements of the offense to which you are pleading guilty are the following:

That between on or about 15 November 2002, and on or about 23 July 2003, at Camp Delta, Guantanamo Bay, Cuba, you did wrongfully and willfully retain possession of unauthorized documents, to wit: one, a copy of the air bridge mission information of military movement to and from Guantanamo Bay, Cuba; two, a copy of the Commander USSOUTHCOM Execution Order for Detainee Transfer for detainees held at Guantanamo Bay, Cuba; three, a copy of Operations Order 02-01(a), Preparation for Detainee Leeward Transfer Operation to JTF-GTMO Operation Enduring Freedom; four, a copy of cell block information, to wit: cell numbers, Internment Serial Numbers, and names of detainees held at Guantanamo Bay, Cuba; five, a copy of the Department of Defense JTF-GTMO, JDOG, S-2, Initial Memorandum for Record, Command Inquiry, dated 20 October 2002; and six, a copy of an existing or proposed military installation map at Guantanamo Bay, Cuba;

And the second element is:

That under the circumstances, the conduct of you was to the prejudice of good order and discipline in the armed forces.

I'm going to give you some definitions. An act or failure to act is willful, if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose to either disobey or disregard the law. To be wrongful, the acts or act must be done without legal justification or authorization.

MJ: "Possession" means to exercise control of something. Possession may be direct physical custody, like holding an item in one's hand, or it may be constructive, as in the case of a person who hides an item in a locker or in a car to which that person may return and retrieve it. Possession inherently includes the power or authority to preclude control by others. It is possible, however, for more than one person to possess an item simultaneously, as when several people share control of an item.

"Conduct prejudicial to good order and discipline" is conduct which causes a reasonably direct and obvious injury to good order and discipline. Do you understand the elements and definitions as I've read them to you?

ACC: Yes, Your Honor.

MJ: Do you have any questions about them?

ACC: No, Your Honor.

MJ: Do you understand that your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Your Honor.

MJ: Do you believe and admit that the elements and definitions taken together correctly describe what you did?

ACC: Yes, Your Honor.

MJ: I want you to tell my why you're guilty of the lesser included offense in the Specification of Additional Charge III.

ACC: Your Honor, because I retained the documents one through six willfully, and I did not have authorization to do so.

MJ: Looking at the specification that's on the charge sheet, documents one through six, eliminating the word classified in document four, do you admit that you had those in your possession between 15 November 2002 and 23 July 2003? Were they in your possession?

ACC: It was up until June, ma'am. Yes, Your Honor.

MJ: Are you sure it wasn't like in June and maybe into July?

ACC: It was towards the end of June, yes, Your Honor.

MJ: Okay. So between November 2002 and 23 July 2003, specifically, we're thinking the end of June 2003?

ACC: Yes, Your Honor.

MJ: Did you possess these six documents? Did you possess them?

ACC: Yes, Your Honor.

MJ: Was your possession unauthorized?

ACC: Yes, it was.

MJ: Why?

ACC: Because I did not have authorization. No one told me to keep it. I kept it willfully.

MJ: You say you kept it willfully. Do you remember the definition I gave you on willfully? You did that voluntarily and intentionally?

ACC: Yes, Your Honor.

MJ: And you knew you were not authorized to have these.

ACC: Yes.

MJ: So you willfully possessed these unauthorized documents.

ACC: Yes, Your Honor.

MJ: And you possessed them up until when? Do you remember when?

ACC: Around the 23<sup>rd</sup> or 24<sup>th</sup> of June 2003.

MJ: So it was the end of June sometime.

ACC: Yes, Your Honor.

MJ: Could you have avoided possessing these six items, if you wanted to?

ACC: Yes, Your Honor.

MJ: Did anyone force you to possess them?

ACC: No, Your Honor.

MJ: Was your conduct prejudicial to good order and discipline in the armed forces?

ACC: Yes, Your Honor.

MJ: Why?

ACC: Because good order and discipline requires that you obey the rules and you do not keep official documents for your personal satisfaction.

MJ: And, in fact, that's what you did?

ACC: Yes, Your Honor.

MJ: And so this is not good for good order and discipline in the armed forces?

ACC: No, Your Honor.

MJ: So furthering that definition, do you agree that your conduct caused a reasonably direct and obvious injury to good order and discipline?

ACC: Yes, Your Honor.

MJ: Do you admit that between on or about 15 November 2002 and 23 July 2003, you wrongfully and willfully retained possession of unauthorized documents – actually before I ask you that question, let me back up. Do you agree that your possession of these was wrongful?

ACC: Yes.

MJ: You had no legal justification or excuse for possessing these?

ACC: No, Your Honor.

MJ: Now let me ask you the final question, I think, unless somebody has more that they want me to ask. Do you admit that between on or about 15 November 2002 and 23 July 2003, at or near Guantanamo Bay, Cuba, Camp Delta, you wrongfully and willfully retained possession of unauthorized documents – those listed; those six documents we just talked about – and that your conduct was to the prejudice of good order and discipline in the armed forces?

ACC: Yes, Your Honor.

MJ: Does anybody wish that I inquire any further into the Specification of Additional Charge III?

TC: No, Your Honor.

ADC: No, Your Honor.

MJ: Trial counsel, what do you calculate the maximum punishment authorized in this case, based solely on the accused's guilty plea?

ATC1: Could we have one moment, Your Honor?

MJ: You may.

ATC1: Your Honor, the maximum punishment would be 19 years confinement, reduction in pay grade to E-1, full forfeitures of all pay and allowances, a fine and a discharge from the Air Force with a dishonorable discharge.

MJ: Defense counsel, do you agree?

CIV DC: No, Your Honor.

MJ: What do you think the maximum punishment is?

CIV DC: We believe, and setting aside any multiplicity issues, the maximum punishment would be nine and one-half years.

MJ: And you agree with the rest?

CIV DC: A dishonorable discharge, being the greater, total forfeitures, and reduction to E-1, yes.

MJ: We apparently have a controversy on what the maximum punishment is for the Specification of the Additional Charge III. Trial counsel, would you like to inform me why you think it's 10 years?

ATC1: Your Honor, even though the accused pled guilty to the lesser included offense, the nature of the charge or the nature of the crime is still substantially similar. Therefore, the most analogous offense to what he pled guilty to is still a violation of 18 USC Section 793, which carries a 10-year penalty.

MJ: Defense counsel, what's your theory?

CIV DC: Well, Your Honor, I'd first refer the court to RCM 1003, subparagraph c, as in Charlie, 1(b), as in Bravo, small i, which I think is the controlling provision that basically says if there's an offense that the accused pleads to that's either not listed in the Manual or in the table

of maximum punishments, the court has to ascertain whether the offense is “closely related” or “equally related” to two or more listed offenses. Then that the maximum punishment shall be the same as the least severe of the listed offenses. Our position is if you look at the specification as the accused pled, the closest analogous offense in the UCMJ would be a willful dereliction of duty. I think that’s consistent both with how the accused pled to you and the stipulation of fact, because it’s the unauthorized retention. That, under Article 92, would have a maximum punishment of a BCD and six months.

CIV DC: The other aspect, Your Honor, is that by excepting out the words “injury to the United States,” that totally eliminates it from the purview of Section 793. That’s a specific element that would have had to have been proved under either a straight 793 charge or as alleged under 134. We do not agree with the government’s assessment that it remains essentially the same.

MJ: Well, counsel, I have had the opportunity to look into this issue, and I agree with the defense counsel. I do not agree that this is analogous to what he was originally charged with. Although a lot of the language is the same, the critical language is now missing and it now has become prejudicial to good order and discipline. And having looked at that and Article 92, which is a willful dereliction, I agree with the defense counsel’s summary of what the maximum punishment for that would be. So in total, what I find to be the maximum would be a dishonorable discharge, confinement for nine years, six months, reduction to the grade of E-1, total forfeitures and the possibility of a fine. With my ruling, does anybody object to that as the maximum punishment or have anything further on that issue?

ATC1: No, Your Honor.

CIV DC: No, Your Honor.

MJ: Airman Al Halabi, the maximum punishment authorized in this case, based solely on your guilty plea is a dishonorable discharge, confinement for nine years, six months, reduction to the lowest enlisted grade and total forfeiture of all pay and allowances. The possibility of a fine also exists. On your plea of guilty alone this court could sentence you to the maximum punishment which I just stated. Do you understand that?

ACC: Yes, Your Honor.

MJ: Do you have any questions as to the sentence that could be imposed as a result of your guilty plea?

ACC: No, Your Honor.

MJ: Airman Al Halabi, something else I want to make sure you're aware of is that by your guilty plea, which is an unconditional guilty plea, you are waiving most of all the motions that have been decided in this court. Do you understand that?

ACC: Yes.

MJ: The only ones that aren't being waived would be lack of jurisdiction, which was not raised so there is no motion, and the failure to state an offense. And I believe we may have had one or two of those early on, but other than that, everything else is waived by your unconditional guilty plea which includes the speedy trial motion. Now counsel had indicated that there's a case on appeal that may change the state of the law, but right now as you sit here today, you are waiving all those issues by your guilty plea. Do you understand that?

ACC: Yes, Your Honor.

MJ: And you've talked with your counsel about that.

ACC: Yes, Your Honor.

MJ: And you still wish to go forward with your guilty plea.

ACC: Yes, Your Honor.

MJ: Trial counsel, is there a Pretrial Agreement in this case?

TC: Yes, Your Honor.

MJ: All right, let's see where we are. Let's mark the offer as Appellate Exhibit CLXXXII. The Appendix is CLXXXIII. Make sure the accused has a copy of both in front of him. Make sure I only get the offer portion, and you hold on to the original Appendix.

CIV DC: Your Honor. It's four pages. I've examined it, and it only contains the offer portion.

TC: Handing Appellate Exhibit CLXXXII to the military judge.

MJ: Thank you.

TC: Your Honor, we also have a working copy which I'll provide.

MJ: Great. Airman Al Halabi, I have before me what's been marked Appellate Exhibit CLXXXII. You should have in front of you the offer and the appendix. We're going to talk about the offer portion first, but I want to make sure you've got both parts.

MJ: Did you read this document thoroughly before you signed it?

ACC: I did, Your Honor.

MJ: And, in fact, is that your signature on page three of the offer?

ACC: Yes, Your Honor.

MJ: Do you understand the contents of your Pretrial Agreement?

ACC: Yes, ma'am.

MJ: Did anyone force you in any way to enter into this Pretrial Agreement?

ACC: No, Your Honor.

MJ: Does this agreement contain all the understandings or agreements that you have in this case?

ACC: Yes, Your Honor.

MJ: Has anyone made any promises to you that are not written into this agreement in an attempt to get you to plead guilty?

ACC: No, Your Honor.

MJ: Counsel, are Appellate Exhibits CLXXXII and CLXXXIII the full and complete agreement in this case and are you satisfied that there are no other agreements?

TC: Yes, Your Honor.

CIV DC: CLXXXIII being the appendix?

MJ: Yes.

CIV DC: Yes, Your Honor.

MJ: Between the offer and appendix, that's a full and complete agreement in this case?

CIV DC: Yes.

MJ: Basically, a pretrial agreement means you agree to plead guilty. In return, the convening authority agrees to take some favorable action in your case usually in the form of limiting the sentence he will approve. Do you understand that?

ACC: Yes, Your Honor.

MJ: The law requires that I discuss the conditions of your agreement with you, so I want you to look at Appellate Exhibit CLXXXII, the offer portion of your agreement.

MJ: The first paragraph basically says that you're aware of the charges that were dated 27 August 2003 and 12 September 2003; you've discussed them with your counsel; they've been explained to you; you're aware of your legal and moral right to plead not guilty and to make the government prove its case, if it can; and understanding all of that, and under the conditions set forth below and in Appendix A, you agree to go trial by judge alone, and to plead, as in fact, you entered pleas previously. Do you understand paragraph one?

ACC: I do.

MJ: We talked about trial by judge alone. Do we need to talk about that any more?

ACC: No, Your Honor.

MJ: Any questions about paragraph one of your Pretrial Agreement?

ACC: No, Your Honor.

MJ: Paragraph two says that all remaining charges and specifications will be withdrawn with prejudice by the government upon acceptance of the accused's pleas of guilty as described above. Do you understand paragraph two?

ACC: Yes, Your Honor.

MJ: Any questions about paragraph two?

ACC: No, Your Honor.

MJ: Paragraph<sup>AB</sup> 3 says that basically, you have a binding agreement with the convening authority; you are, in fact, guilty of the offenses to which you've pled guilty; this agreement allows the government to avoid presenting any evidence on those issues; and you offer to plead guilty because it's in your best interest to do so; and you understand that you're giving up those three important rights that we talked about. Do you have any questions about paragraph three?

ACC: No, Your Honor.

MJ: Now paragraph four says in making this offer, first, you're satisfied that all defense counsel have advised me and you consider them competent to represent them in this court-martial. Any questions about that?

ACC: No, Your Honor.

MJ: "B" says nobody forced you into making this offer or to plead guilty. Any questions about that?

ACC: No.

MJ: Four<sup>C</sup> says that you've been advised of the nature of the charges; the possibility of defending; defenses that might apply; the effect of your guilty plea; and you understand the meaning and advice and your consequences. We've specifically talked about some of those consequences being the waiver of the motions. Do you understand all of paragraph 4(c)?

ACC: Yes, Your Honor.

MJ: Any questions?

ACC: No.

MJ: Basically, “d” says that you’ve got an agreement between you and the government. Any questions?

ACC: No, Your Honor.

MJ: And “e” says that you may withdraw your plea of guilty at any time before sentence, but not after sentence is announced, and if you do, this agreement will be cancelled and of no effect. The agreement will also be cancelled and of no effect if one of the following happened: One, the court doesn’t accept your plea of guilty or tries to modify it; two, either party withdraws before we get to trial, which we’re in trial now and everybody says they’ve agreed to it; and three, you don’t agree on a reasonable stipulation, which you and I have already talked about your stipulation. But those three things could effect the agreement. Do you understand paragraph 4(e)?

ACC: Yes, Your Honor.

MJ: Paragraph five says that it’s your understanding that it’s the convening authority’s obligation to approve a sentence no greater than the one in Appendix A to this agreement and may be cancelled after a hearing following the guidelines of RCM 1109, if you commit any offense chargeable under the Uniform Code of Military Justice between the time sentence is announced and the time the convening authority approves your sentence. Do you understand paragraph five?

ACC: Yes, Your Honor.

MJ: Any questions about that?

ACC: No, Your Honor.

MJ: Six basically says if this agreement is cancelled, it can't be used against you in any way to establish your guilt and it basically has no effect. Any questions about six?

ACC: No, Your Honor.

MJ: And seven says that this document and Appendix A include all the terms of the Pretrial Agreement and no other inducements have been made to affect your offer or to plead guilty. Any questions about that?

ACC: No, Your Honor.

MJ: Any questions at all about the offer portion of your Pretrial Agreement?

ACC: No, Your Honor.

MJ: Now I'm not going to look at Appellate Exhibit CLXXXIII, the quantum portion, until after I announce the sentence in your case. But I want you to look at that and I want you to read it to yourself.

Counsel, how long is Appendix A? How many pages?

TC: It's four pages, ma'am.

MJ: Airman Al Halabi, I want you to go ahead and read those four pages over again to yourself.

ACC: Yes, Your Honor.

[The accused silently read over Appellate Exhibit CLXXXIII.]

ADC: Yes, ma'am, he has read it, if it didn't seem to take that long. Almost two of the pages are signature blocks, but he did read the whole thing.

MJ: Thank you, counsel.

MJ: Does that document correctly state what you and the convening authority agreed to?

ACC: Yes, Your Honor.

MJ: Counsel, are there any conditions or terms in the quantum portion other than a limitation on sentence?

TC: Yes, Your Honor.

MJ: Defense counsel, that's also your understanding?

CIV DC: Yes, Your Honor.

MJ: Normally, I would like to discuss those conditions at this point in the trial. However, defense has indicated that they would rather that I not do that. We did this in an 802 conference. When they indicated that to me, and the government had no objection, I told the defense counsel that they had to make sure that their client understood every one of the conditions, whatever they may be, but none of them are against public policy and to remind Airman Al Halabi that after I announce sentence, he cannot withdraw his guilty plea, so there better not be any misunderstanding to any conditions contained in the appendix. Is that an accurate description, Mr. Rehkopf?

CIV DC: Yes, it is, Your Honor.

MJ: Airman Al Halabi, do you understand what I've just said?

ACC: Yes, Your Honor.

MJ: And do you understand everything that's contained in Appendix A?

ACC: Yes, Your Honor.

MJ: Are there any questions about Appendix A that you need to have answered?

ACC: No, Your Honor.

MJ: If there are, I'm going to give you a recess to talk with your counsel, because normally, this is something you and I would be talking about right now, but I don't know what it says, so I can't talk to you about it. But I'm going to talk to you about it later, but I want to make sure that you understand each and every condition that happens to be listed in Appendix A, including the sentence limitation, and you're telling me that you do?

ACC: Yes, Your Honor.

MJ: Airman Al Halabi, you get the benefit of whichever is less, each element of the sentence of the court or that contained in your pretrial agreement. If the sentence adjudged by this court is greater than the one provided in your Pretrial Agreement, the convening authority must reduce the sentence to one no more severe than the one in your Pretrial Agreement. On the other hand, if the sentence of this court is less than the one in your agreement, the convening authority cannot increase the sentence adjudged. Do you understand that?

ACC: Yes, Your Honor.

MJ: Now from looking at the charge sheet, your ETS date has passed while you've been under charges, is that correct?

ACC: Yes, Your Honor.

MJ: You do understand that if your ETS date arrives while you're serving confinement as part of your sentence, then all of your military pay and allowances will stop on that date. Do you understand that?

ACC: Yes, Your Honor.

MJ: Airman Al Halabi, have you had enough time to discuss this agreement with your defense counsel?

ACC: Yes, Your Honor.

MJ: Are you satisfied with your defense counsel's advice concerning this Pretrial Agreement?

ACC: I am.

MJ: Did you enter the agreement of your own free will?

ACC: Yes, Your Honor.

MJ: Has anyone tried to force you to make this Pretrial Agreement?

ACC: No, Your Honor.

MJ: Do you have any questions at all about your Pretrial Agreement? If you have them about the offer, you can ask me. If you have them about the Appendix, I will give you a recess to talk with your counsel. Do you have any questions at all?

ACC: No questions, Your Honor.

MJ: Do you fully understand all the terms of your Pretrial Agreement, and that includes Appendix A, and how they affect your case?

ACC: Yes, Your Honor.

MJ: Airman Al Halabi, are you pleading guilty not only because you hope to receive a lighter sentence, but also because you are convinced that you are, in fact, guilty?

ACC: Yes, Your Honor.

MJ: Do counsel for both sides agree to the court's interpretation of the Pretrial Agreement?

TC: Yes, Your Honor.

CIV DC: Yes, ma'am.

MJ: Defense counsel, have you had enough time and opportunity to discuss this case with your client?

CIV DC: We have, Your Honor.

MJ: Airman Al Halabi, have you had enough time and opportunity to discuss this case with your defense counsel?

ACC: Yes, Your Honor.

MJ: Have you, in fact, consulted fully with your defense counsel and received the full benefit of their advice?

ACC: I have.

MJ: Are you satisfied that your defense counsel's advice is in your best interest?

ACC: Yes, Your Honor.

MJ: Are you satisfied with your defense counsel?

ACC: Yes, Your Honor.

MJ: Are you pleading guilty voluntarily and of your own free will?

ACC: I am.

MJ: Has anyone made any threat or tried in any way to force you to plead guilty?

ACC: No, Your Honor.

MJ: Do you have any questions at all as to the meaning and effect of a guilty plea?

ACC: No, Your Honor.

MJ: Do you fully understand the meaning and effect of your plea of guilty?

ACC: Yes, Your Honor.

MJ: Do you understand that even though you believe you are guilty, you have the legal and moral right to plead not guilty and to place upon the government the burden of proving your guilt beyond a reasonable doubt?

ACC: Yes, Your Honor.

MJ: I want you to take a minute, consult with your counsel, and then I'm going to ask you if you still want to continue with your guilty plea?

[The accused conferred with his counsel.]

MJ: Airman Al Halabi, do you still want to plead guilty?

ACC: Yes, Your Honor.

MJ: Senior Airman Al Halabi, I find that your plea of guilty is made voluntarily and with full knowledge of its meaning and effect. I further find that you have knowingly, intelligently and consciously waived your right against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, your plea of guilty is provident and is accepted. However, I advise you that you may request to withdraw your guilty plea at any time before sentence is announced, and if you have good reason for your request, I will grant it.

MJ: Trial counsel, what are your intentions on the remaining specifications and the greater offense?

TC: Your Honor, pursuant to the Pretrial Agreement, they will be withdrawn.

MJ: With prejudice?

TC: Yes, Your Honor.

MJ: I mean, that's what the agreement says, correct?

TC: Yes, ma'am.

MJ: And then later dismissed by the convening authority?

TC: Yes, ma'am.

MJ: Counsel, are they being withdrawn now?

TC: Upon an acceptance of his pleas, yes, Your Honor.

MJ: Well, I just told you I accepted his plea. So you've got the authority to withdraw them?

TC: I do have, and they are withdrawn.

MJ: All right. So we only have four specifications and three charges remaining, is that correct?

TC: Yes, Your Honor.

MJ: I'm going to announce findings with the same numbers that they were pled to, since there's been no changing to those numbers, and I do not need to enter findings as to anything else, because it doesn't exist in front of me. Any objection to that?

CIV DC: No, Your Honor.

TC: No, Your Honor.

MJ: Accused and counsel, please rise.

[They did so.]

### FINDINGS

Senior Airman Ahmad I. Al Halabi, in accordance with your plea of guilty, this court finds you:  
Of Specification 1 of Charge I: Guilty;  
Of Specification 3 of Charge I: Guilty; and  
Of Charge I: Guilty;  
Of Specification 4 of Charge III: Guilty; and  
Of Charge III: Guilty;  
Of the Specification of the Additional Charge III, alleging the greater offense in violation of Clause 3: Not Guilty;  
But Guilty of the lesser included offense in violation of Clause 1, prejudicial to good order and discipline; Guilty, with the following exceptions and substitutions: excepting the words "violate 18 USC 793, the Federal Espionage Act, by having unauthorized possession and willfully retaining secret documents," substituting therefor the words "wrongfully and willfully retain in the possession of unauthorized documents;" excepting the word "classified," excepting the words "which information Senior Airman Ahmad I Al Halabi had reason to believe could be used to the injury of the United States or to the advantage of Syria, a foreign nation;" substituting therefore the words "such conduct being prejudicial to good order and discipline in the armed forces;"  
Of the excepted words: Not Guilty;  
Of the substituted words: Guilty;  
Of the Specification of the lesser included Offense in violation of Article 134, Clause 1: Guilty; and  
Of Additional Charge III: Guilty.

Please be seated.

[The accused and his counsel resumed their seats.]

Case: 3:07-cr-00176-WHR Doc #: 16 Filed: 08/29/08 Page: 1 of 6 PAGEID #: 161

AO 245B (Rev. 06/05) Sheet 1 - Judgment in a Criminal Case

## United States District Court Southern District of Ohio at Dayton

UNITED STATES OF AMERICA  
v.  
ZUHAIR HAMED EL-SHWEHDI

### JUDGMENT IN A CRIMINAL CASE

Case Number: 3:07CR0176

USM Number: Not Assigned

Lawrence Greger  
Defendant's Attorney

#### THE DEFENDANT:

- pleaded guilty to Counts: One (1) and Two (2) of the Information.
- pleaded nolo contendere to counts(s) \_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

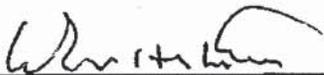
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
26 U.S.C. § 7206(1)	Making a Fraudulent and False Statement on a Tax Return	4-4-02	One (1)
26 U.S.C. § 7212(a)	Corrupt Endeavor to Obstruct or Impede the Due Administration of Internal Revenue Laws	2-22-04	Two (2)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) \_\_\_.
- Count(s) \_\_\_ (~~is~~)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in the defendant's economic circumstances.

8-29-08  
Date of Imposition of Judgment

  
Signature of Judicial Officer

**WALTER HERBERT RICE**, United States District Judge  
Name & Title of Judicial Officer

8-29-08  
Date



AO 245B (Rev. 06/05) Sheet 3 - Probation

CASE NUMBER: 3:07CR0176  
DEFENDANT: ZUHAIR HAMED EL-SHWEHDI

Judgment - Page 2 of 5

## PROBATION

Probation - three (3) years on each count to run concurrently.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF PROBATION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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AO 245B (Rev. 06/05) Sheet 3 - Probation

CASE NUMBER: 3:07CR0176

Judgment - Page 3 of 5

DEFENDANT: ZUHAIR HAMED EL-SHWEHDI

### **SPECIAL CONDITIONS OF PROBATION**

The defendant shall allow the Probation Officer full financial disclosure to both his personal and business finances.

The defendant shall cooperate fully with the IRS in the ascertainment and payment of any taxes, interest, and penalties due.

The defendant shall serve a period of 100 hours of community service with an agency and on a schedule agreed upon by the defendant and the probation officer over the first two years of supervision.

The defendnat to file amended tax returns for the years of 1998-2003 within 30 days of Judgment.

AO 245B (Rev. 06/05) Sheet 5 - Criminal Monetary Penalties

CASE NUMBER: 3:07CR0176  
 DEFENDANT: ZUHAIR HAMED EL-SHWEHDI

Judgment - Page 4 of 5

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

Totals:	<u>Assessment</u> \$ 200.00	<u>Fine</u> \$	<u>Restitution</u> \$138,098.12	Provisional, subject To review by IRS, with penalties and interest
---------	--------------------------------	-------------------	------------------------------------	---

- The determination of restitution is deferred until \_\_. An amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
IRS	\$138,098.12	\$138,098.12	
<b>TOTALS:</b>	<b>\$ 138,098.12</b>	<b>\$ 138,098.12</b>	

- Restitution amount ordered pursuant to plea agreement \$\_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - The interest requirement is waived for the  fine  restitution.
  - The interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

AO 245B (Rev. 06/05) Sheet 6 - Criminal Monetary Penalties

CASE NUMBER: 3:07CR0176

Judgment - Page 5 of 5

DEFENDANT: ZUHAIR HAMED EL-SHWEHDI

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ 200 due immediately, balance due
  - not later than or
  - in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C  D, or  F below); or
- C  Payment in equal installments of \$ over a period of , to commence days after the date of this judgment; or
- D  Payment in equal installments of \$ over a period of , to commence days after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:
  - If the defendant, while incarcerated, is working in a non-UNICOR or grade 5 UNICOR job, the defendant shall pay \$25.00 per quarter toward defendant's monetary obligation. If working in a grade 1-4 UNICOR job, defendant shall pay 50% of defendant's monthly pay toward defendant's monetary obligation. Any change in this schedule shall be made only by order of this Court.
  - After the defendant is released from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the monetary penalty. The Court will enter an order establishing a schedule of payments.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several (Defendant and Co-Defendant names and Case Numbers, Total Amount, Joint and Several Amount and corresponding payee, if appropriate.);
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest; (4) fine principal; (5) fine interest; (6) community restitution; (7) penalties; and (8) costs, including cost of prosecution and court costs.

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AO 245B (Rev. 06/05) Sheet 7 - Denial of Federal Benefits

CASE NUMBER 3:07CR176(3)  
DEFENDANT: ZUHAIR HAMED EL-SHWEHDI

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**DENIAL OF FEDERAL BENEFITS**  
(For Offenses Committed on or After November 18, 1988)

**FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862**

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of \_\_.
- ineligible for the following federal benefits for a period of \_\_.  
(specify benefit(s))

OR

- Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

**FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)**

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of \_\_.
- ineligible for the following federal benefits for a period of \_\_.  
(specify benefit(s))
- successfully completed a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.
- Having determined that this is the defendant's second or subsequent conviction for possession of a controlled substance, IT IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefit

Pursuant to 21 U.S.C. §862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : CASE NO. 3:07CR176  
v. : JUDGE WALTER HERBERT RICE  
**ZUHAIR HAMED EL-SHWEHDI,** : PLEA AGREEMENT

Defendant.

-----  
It is hereby agreed by and between defendant **ZUHAIR HAMED EL-SHWEHDI**, individually and through his attorney, Lawrence J. Greger, Esq., and the United States, by counsel as follows:

1. The defendant, **ZUHAIR HAMED EL-SHWEHDI**, will enter a plea of guilty to a Bill of Information to be filed with this Court. Count 1 of said Bill of Information charges him with Making Fraudulent and False Statements on a Tax Return, in violation of 26 U.S.C. § 7206(1). Count 2 of said Bill of Information charges him with Corrupt Endeavor to Obstruct or Impede the Due Administration of Internal Revenue Laws in violation of 26 U.S.C. § 7212(a). In return for the defendant's agreement to enter the above guilty pleas, the United States Attorney for the Southern District of Ohio agrees not to file any additional criminal charges that he is presently aware of against the defendant **ZUHAIR HAMED EL-SHWEHDI**, which have been, or may have been committed by said defendant in the Southern District of Ohio that relate to Counts 1 & 2 of the said Bill of Information, during the time frame set forth in said Bill of Information.



2. The maximum statutory penalty that defendant **ZUHAIR HAMED EL-SHWEHDI** is subject to pursuant to his plea of guilty to Count 1 of said Bill of Information is: imprisonment for up to 3 years, payment of a fine in the amount of \$100,000, payment of the cost of prosecution, 1 year of supervised release, and payment of a \$100 special assessment. The maximum statutory penalty the defendant faces for Count 2 of said Bill of Information is: imprisonment for up to 3 years, payment of a fine in the amount of \$5,000, 1 year of supervised release, and payment of a \$100 special assessment.

3. The defendant understands that this Agreement permits a guilty plea to Counts 1 & 2 of said Bill of Information. The defendant also understands that he is required to abide by each and every term of this Agreement. The defendant further understands that if he makes any statement that is determined to be materially false in whole or in part, or otherwise fails to comply with any term of this Agreement, the United States has the right to declare this Agreement null and void and to prosecute the defendant to the full extent of the law.

4. The United States Attorney recommends to the Court that as of the time of the execution of this Plea Agreement the defendant has demonstrated acceptance of responsibility for the offenses to which he has agreed to plead guilty. If the defendant continues to accept responsibility through the time of sentencing, the United States will file a motion pursuant to the United States Sentencing Guidelines (U.S.S.G.) §3E1.1(a) stating to the District Court that the defendant has demonstrated acceptance of responsibility and is therefore entitled to a two point offense level reduction. The defendant understands that the Court is not bound to accept the United States' recommendations contained in this paragraph. If the Court does not accept such recommendations, the defendant understands that he will not be allowed to withdraw his guilty pleas.

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5. The defendant is aware that the U.S.S.G. and its Policy Statements are no longer mandatory in determining his sentence. However, the defendant also understands that said guidelines and policy statements will be given due consideration by the Court, in conjunction with all other sentencing factors set forth in 18 U.S.C. §3553(a), to determine the appropriate sentence, pursuant to United States v. Booker, 125 S.Ct 738 (2005). The defendant is further aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set forth for the offense to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the U.S.S.G. that the defendant may have received from his counsel, the United States, or the U.S. Probation Office, is merely a prediction, not a promise, and is not binding on either the United States, the U.S. Probation Office, or the Court. The United States makes no promises or representations concerning what sentence the defendant will receive, and the defendant cannot withdraw his guilty plea based upon the actual sentence imposed.

6. The defendant understands that this Agreement does not protect him from any later prosecution for perjury, making a false statement, obstruction of justice, or any other such criminal charges based on any conduct that may occur after the date of this Agreement.

7. No promises have been made to the defendant that he will receive probation or that he will receive a lighter sentence on account of his pleas of guilty. The sentence in this case will be determined and imposed exclusively by the Court. There is no agreement as to what that sentence will be. The defendant understands that the Court may or may not choose to impose a sentence based on the applicable sentencing range under the U.S.S.G. for the offenses charged in the Bill of Information. The defendant has thoroughly reviewed with his attorney how the U.S.S.G. might apply

to this case. The defendant understands that he does not have the right to withdraw his guilty plea if the Court chooses to apply the U.S.S.G. including upward departures or otherwise imposes a sentence that is higher than expected. The defendant further understands that the matter of sentencing is reserved solely to the discretion of the Court and the Court could lawfully impose the maximum statutory penalty.

8. If in the opinion of the United States Attorney for the Southern District of Ohio, the defendant **ZUHAIR HAMED EL-SHWEHDI** continues to render “substantial assistance” to federal law enforcement authorities in both the Southern District of Ohio and the Western District of Missouri, within the meaning of U.S.S.G. § 5K1.1, the United States will file a motion on the defendant’s behalf pursuant to this provision. The defendant acknowledges that, under the law and the terms of this plea agreement, the United States retains sole and complete discretion in determining whether a departure motion based on “substantial assistance” will be filed. If such a motion is filed, the defendant understands that the Court is not obligated to grant said motion and thereby reduce the defendant’s sentence. If the defendant refuses to testify or otherwise provide complete, truthful cooperation, the Government may seek to set aside the defendant’s plea and seek an Indictment in this case. The defendant understands that the duty to continue to provide complete, truthful cooperation may be imposed by the Court as a condition of probation or supervised release. If the Court elects to impose such a condition, the defendant understands that his probation or supervised release could be revoked if he fails to continue to provide truthful, complete cooperation to the United States. Nothing that the defendant communicates to the Government in the course of providing “substantial assistance” shall be used to enhance his sentence. The defendant understands that he will not be allowed to withdraw his guilty pleas if the United States does not file, or the Court

does not grant a “substantial assistance” motion. The defendant understands that Federal Rule of Criminal Procedure 35(b) allows the Government to file a “substantial assistance” motion within one year after the date sentence is imposed. The Government will consider the filing of a Rule 35(b) “substantial assistance” motion if the defendant fails to provide substantial assistance, but later satisfies the requirements of § 5K1.1. The United States retains sole and complete discretion to determine whether a Rule 35(b) “substantial assistance” motion should be filed.

9. The parties hereby state that the charges to which the defendant is pleading guilty adequately reflect the seriousness of the readily provable actual offense behavior, and that the acceptance of this Agreement by the Court will not undermine the statutory purposes of sentencing.

10. The defendant agrees to pay a \$200.00 special assessment to the Clerk of the United States District Court no later than the date of his sentencing.

11. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts.

12. The defendant further acknowledges and agrees to file on or before the date of his sentencing, true, accurate and complete tax returns on behalf of Hope International Relief and Development Agency on appropriate Internal Revenue Forms 1120, for tax years 1998 thru 2003, in his capacity as its Executive Director which correctly report all previously unreported income. In addition, the defendant will, if requested, provide the Internal Revenue Service all necessary information regarding the years covered by said returns. Nothing in this agreement should be construed to foreclose the Internal Revenue Service from examining and making appropriate adjustments to these returns after they are filed. The defendant further agrees not to file any claims for refund of taxes, penalties, or interest for amounts attributable to the tax returns filed on behalf

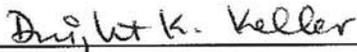
of Hope International Relief and Development Agency incident to this plea.

13. The defendant further agrees, acknowledges and stipulates that the \$16,440.00 which was seized by federal authorities from his 52 South Glen Oak Drive, Springboro, Ohio residence on or about February 7, 2007 pursuant to federal search warrant will be retained by the United States and directly applied towards the federal tax deficiencies incurred by the Hope International Relief and Development Agency for tax years 1998 thru 2003. Nothing in this Plea Agreement in any fashion relieves defendant, **ZUHAIR HAMED EL-SHWEHDI**, or the Hope International Relief and Development Agency the obligation to pay all taxes, penalties and interest owing to the United States for the years involved in the crimes described in the Bill of Information and said payments must be made within a reasonable time period after the entering of the guilty pleas. The defendant will be required to resolve to the best of his abilities the tax liabilities of the Hope International Relief and Development Agency with the Internal Revenue Service (IRS). In furtherance of said efforts, the defendant **ZUHAIR HAMED EL-SHWEHDI** agrees to make available to civil agents of the IRS all of his personal books, records and other documents, and those of the Hope International Relief and Development Agency needed by said agents to properly determine the tax, penalties and interest owing to the United States of America. The defendant and agents of the IRS will determine a time schedule for which he will be required to make the payments discussed in this paragraph.

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14. This written Agreement embodies all of the agreements and understandings reached between the United States Attorney and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement. By signing this Plea Agreement, defendant **ZUHAIR HAMED EL-SHWEHDI** acknowledges that he has discussed its terms with his attorney and understands and accepts those terms. This agreement binds only the United States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authority.

GREGORY G. LOCKHART  
United States Attorney

  
\_\_\_\_\_  
DWIGHT K. KELLER  
Assistant United States Attorney

19 NOV 07  
Date

  
\_\_\_\_\_  
LAWRENCE J. GREGER, ESQ.  
Attorney for ZUHAIR HAMED EL-SHWEHDI

11/19/07  
Date

  
\_\_\_\_\_  
ZUHAIR HAMED EL-SHWEHDI  
Defendant

19/11/07  
Date

Case: 3:07-cr-00176-WHR Doc #: 3 Filed: 11/19/07 Page: 8 of 9 PAGEID #: 21

STATEMENT OF FACTS

*UNITED STATES vs. ZUHAIR HAMED EL-SHWEHDI*

FACTS RELEVANT TO COUNT 1 OF THE BILL OF INFORMATION

On or about April 4, 2002 and April 13, 2003, while a resident of Kettering, Ohio, which lies within the Southern District of Ohio, the defendant **ZUHAIR HAMED EL-SHWEHDI** made and subscribed certain tax returns, namely an IRS Forms 990 (Return of Organization Exempt from Income Tax) on behalf of the Hope International Relief and Development Agency (hereinafter referred to as "Hope"), in his capacity as Hope's Executive Director. These returns were false as to material matters, namely they specifically and intentionally failed to declare and set forth the fact in Part III, Statement of Program Service(s) that Hope was then illegally providing money and assistance to certain individuals then located in the nation of Iraq in violation of 50 U.S.C. §§ 1701 - 1706, Presidential Executive Orders 12722 and 12724 and the Secretary of the Treasury's Iraqi Sanctions Regulations, 31 C.F.R., Part 575. These tax returns were made under the penalties of perjury. At the time the defendant signed and filed these tax returns with the Internal Revenue Service Center, Ogden, Utah, the defendant did not then believe the written declarations contained in Part III, Statement of Program Service(s) were true, accurate, complete and correct as to every material matter. The defendant falsely and willfully subscribed and filed said tax returns with the specific intent to violate the law.

FACTS RELEVANT TO COUNT 2 OF THE BILL OF INFORMATION

Beginning on or before June 1, 1999 and continuing until on or about February 22, 2004, while in the Southern District of Ohio and elsewhere, the defendant **ZUHAIR HAMED EL-SHWEHDI** corruptly endeavored to obstruct and impede the Internal Revenue Service in its due administration of the Internal Revenue Code, specifically Title 26, U.S.C. § 501(c)(3) as it applied to the oversight and monitoring of the annual tax exempt status the organization known as Hope International Relief and Development Agency (hereinafter referred to as “Hope”) and its receipt and solicitation of funds represented to be legitimate charitable contributions. The defendant, **ZUHAIR HAMED EL-SHWEHDI** in his capacity as Hope’s Executive Director completed, subscribed and filed certain IRS Forms 990 (Return of Organization Exempt from Income Tax) on behalf of Hope for tax years spanning 1998 through 2003. As a result, the defendant knowingly and intentionally failed to reveal the material fact to Internal Revenue Service authorities in Part III, Statement of Program Service(s) of said tax returns, that Hope had been providing substantial funds to an organization known as the Islamic African Relief Agency (IARA), a/k/a the Islamic Relief Agency (ISRA) which provided funds to projects and persons in Iraq in violation of U.S. laws. As a result of the actions of the defendant, a certain portion of Hope’s charitable funds were wire transferred overseas and subsequently transferred indirectly to Iraq for purposes not legally authorized and inconsistent with Hope’s declared and otherwise authorized purported charitable mission, all contrary to the provisions of Title 26, U.S.C. § 501(c)(3) as set forth in the IRS Forms 990.

# Case Summary

<b>Case Number:</b>	18NF0880	
<b>OC Pay Number:</b>		
<b>Originating Court:</b>	North	
<b>Defendant:</b>	Elhuzayel, Ausama Salem	
<b>Demographics:</b>		
	Sex:	Male
	Eyes:	Green
	Hair:	Brown
	Height(ft/in) :	5'11"
	Weight (lbs):	185
	Race:	All Others
	Address:	
<b>Identifiers:</b>		
	<b>Type</b>	<b>ID#</b>
	CII	
	Driver's License	
	FBI	
	Social Security Number	

<b>Names:</b>				
Last Name	First Name	Middle Name	Type	Date of Birth
Elhuzayel	Ausama	Salem	Alias	
Elehuzayer	Ausama	Salem	Alias	
ELHUZAYEL	ASAMA	SALEM	Alias	
Elhuzayel	Ausama	Salem	Alias	
Huzayel	Ausama	S El	Alias	
Elhuzayel	Ausma	Salem	Alias	
Elhuzayel	Ausamp		Alias	
El Huzayel	Ausama	Salem	Corrected Record	
Elhuzayel	Ausama	Salem	Alias	
El Huzayel	Ausama	Salem	Alias	
El Huzayel	Ausama	S	Corrected Record	
Huzayel	Ausama	El	Alias	
Elhuzayel	Ausma	Salem	Alias	
Elehuzayer	Ausama	Salem	Alias	
Elhuzayel	Ausama	Salem	Alias	
ElHuzayel	Ausama	S	Alias	
Salemelhuzayel	Ausama		Court True Name	
Elhuzayel	Ausama	Salem	Corrected Record	
Elhuzayel	Ausama	Salem	Alias	
Elhuzavel	Ausama	Salem	Court True Name	
El Huzayel	Ausama	S	Alias	
Elehuzayer	Ausama	Salem	Real Name	

<b>Case Status:</b>		
	Status:	Convicted
	Case Stage:	

Release Status:	Remanded
Warrant:	N
DMV Hold :	N
Charging Document:	Information
Mandatory Appearance:	Y
Owner's Resp:	N
Amendment #:	0
DA Case #:	18F00584
DR #:	18-044933

**Counts:**

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date
1	0	03/25/2018	245(a)(1) PC	F	Assault with deadly weapon other than firearm	NOT GUILTY	09/19/2018	Dismissed	12/06/2018
2	0	03/25/2018	240 PC	M	Assault	NOT GUILTY	09/19/2018	Guilty of lesser included offense by Jury	11/28/2018
3	0	03/25/2018	417(a)(1) PC	M	Brandishing a weapon	NOT GUILTY	09/19/2018	Found Guilty by Jury	11/28/2018
4	0	03/25/2018	148(a)(1) PC	M	Resisting public or peace officer	NOT GUILTY	09/19/2018	Found Guilty by Jury	11/28/2018

**Professionals:**

Role	Badge	Agency	Name	Vacation Start	Vacation End
District Attorney		OCDA	Chambers, Nikki		
District Attorney		OCDA	Flory, Mike		
District Attorney		OCDA	Trudell, K.		
Public Defender		OCPD	Bianchi, Terri Lynn		
Public Defender		OCPD	Le, Rosalynn		
Public Defender		OCPD	Doddridge, Joshua		
District Attorney		OCDA	Kirk, Jeffrey R		
Public Defender		OCPD	Avila, Michelle Denise		
Psychologist - Court-appointed		PSYCH	Bosch, Jennifer A		
Psychologist - Court-appointed		PSYCH	Brodie, Laura		
District Attorney		OCDA	Schlehner, Anthony		
District Attorney		OCDA	Jondle, Jake		
Public Defender		OCPD	Stephenson, Jared		
District Attorney		OCDA	Said, Mina		
District Attorney		OCDA	Zamora, Adam		
District Attorney		OCDA	Spires, Patrick		
District Attorney		OCDA	Wah, Kim A		

**Other Cases:**

Case	Case Status	Violation Date

FL718346	Closed	06/04/2004
06NF3499	Closed	08/30/2006
AN1476980	Closed	05/19/2011
AN1485844	Closed	12/27/2011
SH859370	Closed	02/13/2012
GG068288PE	Closed	08/06/2012
99143QC	Closed	07/05/2013
04501RJ	Closed	08/03/2013
02102RJ	Closed	08/26/2013
SH953678	Closed	05/08/2014
AN1581730	Closed	06/27/2014
BPE00032070	Closed	01/24/2018
	Missing Complaint	02/21/2019

**Heard Hearings:**

Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
03/27/2018	Arrestment -	CJ1	Heard	
03/28/2018	Arrestment In Custody	CJ1	Heard	
03/29/2018	Arrestment In Custody	CJ1	Heard	
04/02/2018	Arrestment In Custody	CJ1	Heard	
04/10/2018	Pre Trial -	N12	Heard	
04/10/2018	Hearing Bail Review	N12	Heard	
04/12/2018	Preliminary Hearing -	N12	Heard	
04/12/2018	Preliminary Hearing -	N5	Heard	
04/16/2018	Pre Trial Failure to Appear	CJ1	Heard	
04/17/2018	Pre Trial Failure to Appear	N12	Heard	
05/01/2018	Mental Health Competency [Penal Code 1368]	C60	Cancel	
05/01/2018	Mental Health Competency [Penal Code 1368]	C58	Heard	
06/13/2018	Mental Health Competency [Penal Code 1368]	C58	Heard	
07/13/2018	Mental Health Competency [Penal Code 1368]	C58	Heard	
07/23/2018	Pre Trial -	N12	Heard	
07/25/2018	Preliminary Hearing -	N12	Heard	10 court days
08/10/2018	Preliminary Hearing -	N12	Heard	
08/15/2018	Pre Trial Failure to Appear	CJ1	Heard	
08/23/2018	Pre Trial -	N12	Heard	
08/27/2018	Preliminary Hearing -	N12	Heard	
09/04/2018	Hearing -	C5	Heard	
09/05/2018	Preliminary Hearing -	N12	Heard	
09/06/2018	Preliminary Hearing -	N12	Heard	
09/07/2018	Preliminary Hearing -	N12	Heard	
09/07/2018	Preliminary Hearing -	N7	Heard	
09/19/2018	Arrestment -	C5	Heard	Time not waived
10/03/2018	Pre Trial -	C49	Heard	
11/05/2018	Jury Trial -	C5	Heard	

11/13/2018	Jury Trial -	C5	Heard
11/14/2018	Jury Trial -	C5	Heard
11/14/2018	Jury Trial -	C48	Heard
11/14/2018	Pre Trial -	C48	Heard
11/19/2018	Jury Trial -	C48	Heard
11/20/2018	Jury Trial -	C48	Heard
11/21/2018	Jury Trial -	C48	Heard
11/26/2018	Jury Trial -	C48	Heard
11/27/2018	Jury Trial -	C48	Heard
11/28/2018	Jury Trial -	C48	Heard
12/06/2018	Motion -	C48	Heard
12/06/2018	Sentencing -	C48	Heard
12/21/2018	Hearing Firearms Relinquishment	C48	Heard

**Bond:**

Bail Date	Post Amount	Bondsman	Bondsman Address	Surety	Surety Address	Details		
						Action	Action Date	Amount
04/05/2018	25000.0	Bail Hotline Bail Bonds	null	Financial Casualty & Surety Inc	null	Active	04/05/2018	25000
						FORFEITED	04/12/2018	25000
						Reopened	04/16/2018	25000
						Exonerated	04/16/2018	25000
07/26/2018	100000.0	Power Bail Bonds	null	Lexington National Insurance Corporation	null	Active	07/26/2018	100000
						FORFEITED	08/10/2018	100000
						Reopened	08/15/2018	100000
						Exonerated	08/15/2018	100000

**Warrants:**

Status	Status Date	Judge	Warrant #	Issuing Court	Reason	Release Condition	Amount
Recalled	04/16/2018	Klar, Ronald	3949022	N	Bench	Mandatory Appearance	100000.0
Recalled	08/15/2018	Steiner, Scott A.	3971937	N	Bench	Mandatory Appearance	1000000.0

**Sentences:**

Seq #	Sentence Date	Sentence	Disposition
1	12/06/2018	3 years Probation	Active 12/06/2018
2	12/06/2018	364 days Jail	Committed 12/06/2018
3	12/06/2018	100 days Jail	Committed 12/06/2018

**Jail:**

Credit Type	Credit
Actual time	232 Day(s)
Conduct time	232 Day(s)
Total time	464 Day(s)

**Probation:**

Sent Seq #	Type	Term	End Date
1	INFORMAL	3 years	12/05/2021

**History:**

Status	Status Date	End Date
Active	12/06/2018	12/05/2021

**Conditions:**

Cond #	Ordered Date	Condition
1	12/06/2018	Violate no law.
2	12/06/2018	Obeys all orders, rules, and regulations, and directives of the Court, Jail, and Probation.
3	12/06/2018	Submit your person and property including any residence, premises, container, or vehicle under your control, not including electronic devices, to search and seizure at any time of the day or night by any law enforcement officer, probation officer, or mandatory supervision officer with or without a warrant, probable cause or reasonable suspicion.
4	12/06/2018	Do not own, purchase, receive, possess, or have under your custody or control any type of dangerous or deadly weapon, firearm, ammunition, and ammunition feeding devices, including but not limited to magazines for 10 years.
7	12/06/2018	Stay 100 yards away from Linbrook Bowl at 201 S. Brookhurst, Anaheim, CA.
8	12/06/2018	Pay \$150.00 Probation Revocation Restitution Fine pursuant to Penal Code 1202.44. Restitution fine stayed, to become effective only upon revocation of probation.
9	12/06/2018	Pay mandatory state restitution fine of \$150.00 pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).
5	12/06/2018	Serve 364 Day(s) Orange County Jail as to count(s) 4.
6	12/06/2018	Serve 100 Day(s) Orange County Jail as to count(s) 2.

**Register of Actions:**

Date Action	Seq Nbr	Docket Code	Text	
03/27/2018	1	FLDOC	Original Complaint filed on 03/27/2018 by Orange County District Attorney.	
	2	FLNAM	Name filed: Elehuzayer, Ausama Salem	
	3	FLCNT	FELONY charge of 245(a)(1) PC filed as count 1. Date of violation: 03/25/2018.	
	4	FLCNT	MISDEMEANOR charge of 417(a)(1) PC filed as count 2. Date of violation: 03/25/2018.	
	5	FLCNT	MISDEMEANOR charge of 148(a)(1) PC filed as count 3. Date of violation: 03/25/2018.	
	6	CLADD	At the request of People, case calendared on 03/27/2018 at 10:00 AM in CJ1 for ARGN.	
	7	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.	
	8	TXBKF	Request for Booking Fees Received from City of Anaheim in the amount of \$265.00, date of arrest 03/25/18.	
	11	FIFCI2	Probable Cause Declaration filed.	
	12	HHELD	Hearing held on 03/27/2018 at 10:00:00 AM in Department CJ1 for Arraignment.	
	13	OFJUD	Judicial Officer: Craig E. Robison, Judge	
	14	OFJA	Clerk: S. Gratrix	
	15	OFBAL	Bailiff: J. Harvey	
	16	OFREP	Court Reporter: Bobette Webb	
	17	APDDA	People represented by Adam Zamora, Deputy District Attorney, present.	
	18	APDNC	Defendant not present in court.	
	19	APDPD	Court appoints Public Defender to represent Defendant.	
	20	APNDC	Defendant not present in Court represented by Michelle Denise Avila, Public Defender.	
				Pursuant to the information provided by the Orange County Jail, the defendant was

	21	PRJLT	not transported to Court because he/she has refused to leave his/her cell. Court finds good cause to trail this case.
	22	CLSET2	Arraignment re: In Custody trailed to 03/28/2018 at 10:00 AM in Department CJ1.
	23	BLSET	Court orders bail set in the amount of \$25, 000.00.
	24	DFREM	Defendant remanded to the custody of the Sheriff.
	25	NTJAL	Notice to Sheriff issued.
	26	OFMCD	Minutes entered by C. Arechiga on 03/27/2018.
03/28/2018	1	HHELD	Hearing held on 03/28/2018 at 10:00:00 AM in Department CJ1 for Arraignment In Custody.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: A. Garcia
	4	OFBAL	Bailiff: J. Harvey
	5	OFREP	Court Reporter: None
	6	APDDA	People represented by Mike Flory, Deputy District Attorney, present.
	7	APNDC	Defendant not present in Court represented by Michelle Denise Avila, Public Defender.
	8	PRJLT	Pursuant to the information provided by the Orange County Jail, the defendant was not transported to Court because he/she has refused to leave his/her cell. Court finds good cause to trail this case.
	9	CLSET2	Arraignment re: In Custody trailed to 03/29/2018 at 10:00 AM in Department CJ1.
	10	BLSTR	Current bail set for Defendant to remain at \$25, 000.00.
	11	DFREM	Defendant remanded to the custody of the Sheriff.
	12	NTJAL	Notice to Sheriff issued.
	13	OFMCD	Minutes entered by C. Arechiga on 03/28/2018.
03/29/2018	1	HHELD	Hearing held on 03/29/2018 at 10:00:00 AM in Department CJ1 for Arraignment In Custody.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: A. Garcia
	4	OFBAL	Bailiff: J. Harvey
	5	OFREP	Court Reporter: Bobette Webb
	6	APDDA	People represented by Mike Flory, Deputy District Attorney, present.
	7	APNDC	Defendant not present in Court represented by Rosalynn Le, Public Defender.
	8	PRJLT	Pursuant to the information provided by the Orange County Jail, the defendant was not transported to Court because he/she has refused to leave his/her cell. Court finds good cause to trail this case.
	9	CLSET2	Arraignment re: In Custody trailed to 04/02/2018 at 10:00 AM in Department CJ1.
	10	BLSTR	Current bail set for Defendant to remain at \$25, 000.00.
	11	DFREM	Defendant remanded to the custody of the Sheriff.
	12	NTJAL	Notice to Sheriff issued.
	13	TXKPW	Keep with companion cases(s) BPE00032070.
	14	OFMCD	Minutes entered by E. DeGuzman on 03/29/2018.
04/02/2018	1	HHELD	Hearing held on 04/02/2018 at 10:00:00 AM in Department CJ1 for Arraignment In Custody.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: E. DeGuzman
	4	OFBAL	Bailiff: J. Harvey
	5	OFREP	Court Reporter: Bobette Webb
	6	APDDA	People represented by Patrick Spires, Deputy District Attorney, present.
	7	APDWPD	Defendant present in court with counsel Michelle Denise Avila, Public Defender.

	8	CPACK	Counsel acknowledges receipt of the charging document.
	9	WVRAA	Defendant waives reading and advisement of the Original Complaint.
	10	PLNGA	To the Original Complaint defendant pleads NOT GUILTY to all counts.
	11	MORES	Defense reserves all motions.
	12	DFSFC	Defendant invokes his/her state, federal and constitutional rights.
	13	DFIRD	Informal request for discovery made by Defense.
	14	CLSET	Pre Trial set on 04/10/2018 at 08:30 AM in Department N12.
	15	CLSET2	Hearing re: Bail Review set on 04/10/2018 at 08:30 AM in Department N12.
	16	CLSET	Preliminary Hearing set on 04/12/2018 at 08:30 AM in Department N12.
	17	DFOTR	Defendant ordered to appear.
	18	FITXT	Motion for order releasing defendant on his own recognizance or for reduced bail amount filed.
	19	BLSTR	Current provisional bail set for Defendant to remain at \$25, 000.00.
	20	DFREM	Defendant remanded to the custody of the Sheriff.
	21	NTJAL	Notice to Sheriff issued.
	22	OFMCD	Minutes entered by C. Arechiga on 04/02/2018.
04/05/2018	1	BBPST	Bail Bond Number FCS25-1854138 posted in the amount of \$25000.00 by BHLBB of FCIC.
	2	BBPOS	Bail Bond posted per Sheriff Bail Bond report. Bond to be filed when received.
	3	BLBDAT	Appearance date on Bond/Cash Bail receipt is 04/10/2018.
04/06/2018	1	FIBND	Surety Bond # FCS25-1854138 filed.
	2	FITXT	OCJ R# S4084252 filed.
04/10/2018	1	HHELD	Hearing held on 04/10/2018 at 08:30:00 AM in Department N12 for Pre Trial.
	2	HHELD	Hearing held on 04/10/2018 at 08:30:00 AM in Department N12 for Hearing Bail Review.
	3	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	4	OFJA	Clerk: L. J. Tamayo
	5	OFBAL	Bailiff: F. Tomeo
	6	OFREP	Court Reporter: Alicia Dubois
	7	APDDA	People represented by Anthony Schlehner, Deputy District Attorney, present.
	8	APDWPD	Defendant present in court with counsel Jared Stephenson, Public Defender.
	9	TEXT	Hearing re Bail Review is off calendar.
	10	CLPTP	Pretrial off calendar, Preliminary Hearing set on 04/12/2018 at 08:30 AM in N12 to remain.
	11	DFOTR	Defendant ordered to return.
	12	BLPBS	Present bail deemed sufficient and continued.
	13	TXKPW	Keep with companion cases(s) 18NF0880, BPE00032070.
04/12/2018	1	HHELD	Hearing held on 04/12/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Shari Patton
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDWPD	Defendant present in court with counsel Jared Stephenson, Public Defender.
	8	TRPDR	Case called. People answer ready. Defense answers ready.
	9	CLRSN	Preliminary Hearing reassigned for 04/12/2018 at 01:30 PM in Department N5, Commissioner Ronald Klar, forthwith.
	10	BLPBS	Present bail deemed sufficient and continued.

	11	HHELD	Hearing held on 04/12/2018 at 01:30:00 PM in Department N5 for Preliminary Hearing.
	12	OFJUD	Judicial Officer: Ronald Klar, Commissioner
	13	OFJA	Clerk: L. Nalepka
	14	OFBAL	Bailiff: P. Moetului
	15	OFREP	Court Reporter: Debra Cadiz
	16	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	17	APDWPD	Defendant present in court with counsel Jared Stephenson, Public Defender.
	18	DFSTC	All Parties being advised of their right to have this matter heard by a Judge of the court have stipulated that the matter be heard by Commissioner Ronald Klar.
	19	FIDOC	Stipulation for Court Commissioner filed.
	20	FITXT	Notice of Removal to a Federal Judge due to Lack of Jurisdiction of this Court. filed.
	21	TRTXT	Defendant left the Courtroom.
	22	TRTXT	Court takes a brief recess.
	23	TRIOC	In open court at 02:09 PM
	24	TRTXT	Per Defense Counsel, the defendant left the building.
	25	BLBFN	Court orders bail bond # FCS25-1854138 FORFEITED in open Court.
	26	WAISD	Bench warrant ordered issued for defendant. Bail set at \$100, 000.00, Mandatory Appearance.
	27	WAWSD	Bench warrant signed by Ronald Klar and issued for defendant. Night Service: No. Expedite: No. PC 853.6: No. Bail set at \$100, 000.00, Mandatory Appearance.
	28	TXKPW	Keep with companion cases(s) bpe00032070.
	29	WFNBR	Warrant File Number 03949022 sent from AWSS for Warrant # 3204430.
04/13/2018	1	BLBNS	Bail Bond Notice BBFNTC Sent for Bond # FCS25-1854138
	2	FSFBF	Request for Felony Bond Forfeiture warrant to be entered into the National Crime Information Center pursuant to Penal Code Section 980(b) faxed to the Extradition Officer in the District Attorney's office.
04/14/2018	1	WASVD	Warrant 03949022 for Ausama S. Elhuzayel DEFENDANT served by Anaheim Police Department on 04/14/2018.
04/16/2018	1	CLADD	At the request of Court, case calendared on 04/16/18 at 10:00 AM in CJ1 for PT FTA.
	2	TXRNF	Request for Booking Fees Received from Anaheim Police Department in the amount of \$265.00, date of arrest 04/14/18. received, not filed.
	3	HHELD	Hearing held on 04/16/2018 at 10:00:00 AM in Department CJ1 for Pre Trial Failure to Appear.
	4	OFJUD	Judicial Officer: Craig E. Robison, Judge
	5	OFJA	Clerk: A. Garcia
	6	OFBAL	Bailiff: J. Harvey
	7	OFREP	Court Reporter: Bobette Webb
	8	APDDA	People represented by Mina Said, Deputy District Attorney, present.
	9	APDNC	Defendant not present in court.
	10	WAREC	Warrant issued on 04/12/2018 ordered recalled for defendant.
	11	PRJLT	Pursuant to the information provided by the Orange County Jail, the defendant was not transported to Court because he/she has refused to leave his/her cell. Court finds good cause to trail this case.
	12	APDPD	Court appoints Public Defender to represent Defendant.
	13	APNDC	Defendant not present in Court represented by Michelle Denise Avila, Public Defender.
	14	CLSET2	Pre Trial re: Failed to Appear trailed to 04/17/2018 at 08:30 AM in Department N12.
	15	SVBBFF	Court orders bail bond forfeiture for bond # FCS25-1854138 vacated. Bond ordered

		reinstated.
	16	BLBXN Court orders bail bond # FCS25-1854138 exonerated.
	17	BLSET Court orders bail set in the amount of \$100, 000.00.
	18	DFREM Defendant remanded to the custody of the Sheriff.
	19	NTJAL Notice to Sheriff issued.
	20	TXKPW Keep with companion cases(s) BPE00032070.
	21	OFMCD Minutes entered by E. DeGuzman on 04/16/2018.
04/17/2018	1	HHELD Hearing held on 04/17/2018 at 08:30:00 AM in Department N12 for Pre Trial Failure to Appear.
	2	OFJUD Judicial Officer: Scott A. Steiner, Judge
	3	OFJA Clerk: L. J. Tamayo
	4	OFBAL Bailiff: F. Tomeo
	5	OFREP Court Reporter: Debra Cadiz
	6	APDDA People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDWPD Defendant present in court with counsel Jared Stephenson, Public Defender.
	8	FIAMD First Amended Complaint filed by Orange County District Attorney.
	9	CTAMC To the First Amended Complaint count 2 now reads 245(a)(1) PC, FELONY. Date of violation: 03/25/2018.
	10	CTAMC To the First Amended Complaint count 3 now reads 417(a)(1) PC, MISDEMEANOR. Date of violation: 03/25/2018.
	11	CTADD First Amended Complaint now charges COUNT 4, 148(a)(1) PC, MISDEMEANOR, date of violation 03/25/2018.
	12	TEXT The Court reads the Faretta Waiver to the defendant in open court.
	13	MH368 A doubt has arisen in the mind of the Court as to the mental competence of the defendant. Court now orders criminal proceedings suspended. Proceedings pursuant to Penal Code 1368, et seq. are instituted.
	14	CLSET2 Mental Health re: Competency [Penal Code 1368] set on 05/01/2018 at 08:30 AM in Department C60.
	15	DFOTR Defendant ordered to appear.
	16	BLNOB Court orders bail set at NO BAIL.
	17	DFREM Defendant remanded to the custody of the Sheriff.
	18	NTJAL Notice to Sheriff issued.
04/30/2018	1	CLTRAN Calendar Line for MH PC1368 transferred from C60 on 05/01/2018 at 08:30 AM to C58 on 05/01/2018 at 08:30 AM.
05/01/2018	1	HHELD Hearing held on 05/01/2018 at 08:30:00 AM in Department C58 for Mental Health Competency [Penal Code 1368].
	2	OFJUD Judicial Officer: Michael Murray, Judge
	3	OFJA Clerk: K. Barnstein
	4	OFBAL Bailiff: F. Gutierrez
	5	OFREP Court Reporter: Caryl Axton
	6	NTMOT All parties orally notified of the Court's disqualification disclosure pursuant to Canon 3E(2) of the California Code of Judicial Ethics.
	7	AD170C The judge's election campaign contributions have been disclosed to parties pursuant to the Code of Civil Procedure section 170.1(a)(9)(C).
	8	APSDA Michael Pevney made a special appearance for District Attorney Jeffrey R Kirk.
	9	APSPC Stacy Kelly makes a special appearance for Michael Becker, Public Defender. Defendant present.
	10	MHDRA Court appoints Doctor Jennifer A Bosch, Psychologist - Court-appointed, at request of Defense to examine defendant pursuant to Penal Code 1368.
	11	MHDRA Court appoints Doctor Laura Brodie, Psychologist - Court-appointed, at request of People to examine defendant pursuant to Penal Code 1368.

	12	FIORD	Order Appointing Doctors and Fixing Time and Date of Hearing signed and filed.
	13	CLCON2	Mental Health re: Competency [Penal Code 1368] continued to 06/13/2018 at 08:30 AM in Department C58 at request of Defense.
	14	DFOTR	Defendant ordered to appear.
	15	BLNOB	Court orders bail set at NO BAIL.
	16	DFREM	Defendant remanded to the custody of the Sheriff.
	17	NTJAL	Notice to Sheriff issued.
	18	OFMCD	Minutes entered by L. Manrique on 05/01/2018.
05/03/2018	1	FITXT	Certificate of Service by Mail or Hand Delivery filed.
	2	CPGTO	Certified Copy of Order Appointing Doctors and Fixing Time and Date of Hearing mailed to Dr. Laura Brodie and Dr. Jennifer A. Bosch.
05/23/2018	1	FITXT	Report from Jennifer A Bosch, Psy.D. dated 5/9/2018 filed.
06/13/2018	1	FITXT	Correspondence from Laura Brodie Ph.D. Dated 6/11/2018 filed.
	2	HHELD	Hearing held on 06/13/2018 at 08:30:00 AM in Department C58 for Mental Health Competency [Penal Code 1368].
	3	OFJUD	Judicial Officer: Michael Murray, Judge
	4	OFJA	Clerk: K. Barnstein
	5	OFBAL	Bailiff: F. Gutierrez
	6	OFREP	Court Reporter: Caryl Axton
	7	NTMOT	All parties orally notified of the Court's disqualification disclosure pursuant to Canon 3E(2) of the California Code of Judicial Ethics.
	8	AD170C	The judge's election campaign contributions have been disclosed to parties pursuant to the Code of Civil Procedure section 170.1(a)(9)(C).
	9	APSDA	Susan Lee made a special appearance for District Attorney Jeffrey R Kirk.
	10	APDWPD	Defendant present in court with counsel Michael Becker, Public Defender.
	11	CLCON2	Mental Health re: Competency [Penal Code 1368] continued to 07/13/2018 at 08:30 AM in Department C58 at request of Defense.
	12	DFOTR	Defendant ordered to appear.
	13	BLNOB	Court orders bail set at NO BAIL.
	14	DFREM	Defendant remanded to the custody of the Sheriff.
	15	NTJAL	Notice to Sheriff issued.
	16	OFMCD	Minutes entered by L. Manrique on 06/13/2018.
06/18/2018	1	FICOR	Correspondence from Laura Brodie, PhD dated 6/11/18 filed.
07/09/2018	1	FITXT	Report from Laura A. Brodie, Ph.D. dated 7-7-2018 filed.
07/13/2018	1	HHELD	Hearing held on 07/13/2018 at 08:30:00 AM in Department C58 for Mental Health Competency [Penal Code 1368].
	2	OFJUD	Judicial Officer: Michael Murray, Judge
	3	OFJA	Clerk: K. Barnstein
	4	OFBAL	Bailiff: F. Gutierrez
	5	OFREP	Court Reporter: Glenn R. Miller
	6	APSDA	Michael Pevney made a special appearance for District Attorney Jeffrey R Kirk.
	7	APDWPD	Defendant present in court with counsel Michael Becker, Public Defender.
	8	MHWDP	People and Defense waives right to a hearing, waives presence of doctor(s), and submits on the report(s).
	9	MHPRS	Criminal proceedings reinstated.
	10	MHFNM	The Court finds that the defendant is not a mentally incompetent person under Penal Code section 1368. Proceedings pursuant to Penal Code section 1368 terminated; CRIMINAL PROCEEDINGS REINSTATED.
	11	MHPTM	Proceedings pursuant to Penal Code 1368 terminated. CRIMINAL PROCEEDINGS REINSTATED.

	12	CLSET	Pre Trial set on 07/23/2018 at 08:30 AM in Department N12.
	13	CLSET	Preliminary Hearing set on 07/25/2018 at 08:30 AM in Department N12.
	14	DFOTR	Defendant ordered to appear.
	15	BLSET	Court orders provisional bail set in the amount of \$100, 000.00.
	16	DFREM	Defendant remanded to the custody of the Sheriff.
	17	NTJAL	Notice to Sheriff issued.
	18	OFMCD	Minutes entered by L. Manrique on 07/13/2018.
07/23/2018	1	HHELD	Hearing held on 07/23/2018 at 08:30:00 AM in Department N12 for Pre Trial.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Shari Patton
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDWPD	Defendant present in court with counsel Michael Becker, Public Defender.
	8	MOTBY	Oral motion by Defense to represent himself in pro per.
	9	TEXT	The Court cannot find a knowing, voluntary, and intelligent waiver to counsel at this time.
	10	MOTION	Motion denied.
	11	CPACK	Counsel acknowledges receipt of the charging document.
	12	WVRAA	Defendant waives reading and advisement of the First Amended Complaint.
	13	PLNGA	To the First Amended Complaint defendant pleads NOT GUILTY to all counts.
	14	CLPTP	Pretrial off calendar, Preliminary Hearing set on 07/25/2018 at 08:30 AM in N12 to remain.
	15	DFOTR	Defendant ordered to return.
	16	BLSTR	Current bail set for Defendant to remain at \$100, 000.00.
	17	DFREM	Defendant remanded to the custody of the Sheriff.
	18	NTJAL	Notice to Sheriff issued.
07/25/2018	1	HHELD	Hearing held on 07/25/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Debra Cadiz
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDWPD	Defendant present in court with counsel Michael Becker, Public Defender.
	8	ADDRS	Defendant requests that he be allowed to represent himself.
	9	ADVISE	Defendant advised of the following:
	10	ADCAP	- The right to court appointed counsel if financially unable to retain counsel.
	11	ADRRS	- The right to represent himself.
	12	ADPPP	- The perils, pitfalls, dangers, and disadvantages of self-representation.
	13	FDDUN	The Court finds that the defendant understands rights as explained.
	14	FDTXT	Court finds defendant knowingly, voluntarily, and intelligently, waives his right to counsel.
	15	MOPPR	The defendant's motion for propria persona (pro per) status has been granted in his/her criminal case now pending before this court.
	16	APDPP	Defendant present in Court in propria persona.
	17	APATR	Michael Becker relieved as Counsel of Record.
	18	FIDOC	Order Granting Propria Persona Privileges filed.
	19	CPGTO	Certified Copy of Order Granting Propria Persona Privileges given to defendant.

	20	CPGTO	Certified Copy of Order Granting Propria Persona Privileges faxed to Orange County Jail.
	21	CPGTO	Certified Copy of Order Granting Propria Persona Privileges forwarded to Orange County Jail.
	22	DFPPP	Defendant provided a Pro Per packet.
	23	CLCON	Preliminary Hearing continued to 08/10/2018 at 08:30 AM in Department N12 at request of Defense.
	24	DFOTR	Defendant ordered to return.
	25	WVTPH	Court finds the defendant understandingly, knowingly, and voluntarily waives the right to a Preliminary Hearing within 10 court days of arraignment.
	26	BLSTR	Current bail set for Defendant to remain at \$100, 000.00.
	27	DFREM	Defendant remanded to the custody of the Sheriff.
	28	NTJAL	Notice to Sheriff issued.
	29	NTJAL	Notice to Sheriff issued.
07/26/2018	1	BBPST	Bail Bond Number 2018-EE-006011 posted in the amount of \$100000.00 by PO111288 of LNIC.
	2	BBPOS	Bail Bond posted per Sheriff Bail Bond report. Bond to be filed when received.
	3	BLBDAT	Appearance date on Bond/Cash Bail receipt is 08/10/2018.
07/27/2018	1	FIBND	Surety Bond # 2018-EE-006011 filed.
	2	FITXT	OCJ R #S4088350 filed.
08/07/2018	1	FITXT	Notice of Removal of Action Grounds for Removal filed.
08/10/2018	1	HHELD	Hearing held on 08/10/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Wendy A Torres
	6	APDDA	People represented by Kim A Wah, Deputy District Attorney, present.
	7	APDNA	Defendant did not answer in court at 09:31 AM.
	8	BLBFN	Court orders bail bond # 2018-EE-006011 FORFEITED in open Court.
	9	WAISD	Bench warrant ordered issued for defendant. Bail set at \$1, 000, 000.00, Mandatory Appearance.
	10	WAWSD	Bench warrant signed by Scott A. Steiner and issued for defendant. Night Service: No. Expedite: No. PC 853.6: No. Bail set at \$1, 000, 000.00, Mandatory Appearance.
	12	WFNBR	Warrant File Number 03971937 sent from AWSS for Warrant # 3228428.
08/13/2018	1	BLBBNS	Bail Bond Notice BBFNTC Sent for Bond # 2018-EE-006011
	2	FSFBF	Request for Felony Bond Forfeiture warrant to be entered into the National Crime Information Center pursuant to Penal Code Section 980(b) faxed to the Extradition Officer in the District Attorney's office.
	3	WASVD	Warrant 03971937 for Ausama S. Elhuzayel DEFENDANT served by Orange County Sheriff Department on 08/13/2018.
08/14/2018	1	CLADD	At the request of Court, case calendared on 08/15/18 at 10:00 AM in CJ1 for PT FTA.
08/15/2018	1	HHELD	Hearing held on 08/15/2018 at 10:00:00 AM in Department CJ1 for Pre Trial Failure to Appear.
	2	OFJUD	Judicial Officer: Craig E. Robison, Judge
	3	OFJA	Clerk: L. Mejia
	4	OFBAL	Bailiff: J. Harvey
	5	OFREP	Court Reporter: Bobette Webb

	6	APDDA	People represented by Mike Flory, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	WAREC	Warrant issued on 08/10/2018 ordered recalled for defendant.
	9	DFNAM	Court orders the First Amended Complaint amended to show defendant's true name: Ausama Salem Elhuzayel.
	10	DFTNC	Defendant states true date of birth is correct as charged.
	11	DFFTC	Defendant failed to appear for Preliminary Hearing 08/10/18.
	12	PRJLT	Defendant requests to maintain Pro Per status. Court grants Pro Per status to remain.
	13	TEXT	Pro Per packet is given to defendant.
	14	CPACK	Counsel acknowledges receipt of the charging document.
	15	CLSET	Pre Trial set on 08/23/2018 at 08:30 AM in Department N12.
	16	CLSET	Preliminary Hearing set on 08/27/2018 at 08:30 AM in Department N12.
	17	DFOTR	Defendant ordered to appear.
	18	SVBBFF	Court orders bail bond forfeiture for bond # 2018-EE-006011 vacated. Bond ordered reinstated.
	19	BLBXN	Court orders bail bond # 2018-EE-006011 exonerated.
	22	BLSET	Court orders bail set in the amount of \$1, 000, 000.00.
	26	DFREM	Defendant remanded to the custody of the Sheriff.
	27	NTJAL	Notice to Sheriff issued.
	28	TXRNF	Request for Booking Fees from the Orange County Sheriff's Department in the amount of \$235.00, Date of Arrest 08/13/2018 received.
	29	FLNAM	Name filed: Elhuzayel, Ausama Salem
08/23/2018	1	HHELD	Hearing held on 08/23/2018 at 08:30:00 AM in Department N12 for Pre Trial.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Debra Cadiz
	6	APDDA	People represented by Nikki Chambers, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	CLPTP	Pretrial off calendar, Preliminary Hearing set on 08/27/2018 at 08:30 AM in N12 to remain.
	9	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	10	DFREM	Defendant remanded to the custody of the Sheriff.
	11	NTJAL	Notice to Sheriff issued.
08/27/2018	1	HHELD	Hearing held on 08/27/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Alicia Dubois
	6	APDDA	People represented by Nikki Chambers, Deputy District Attorney, present.
	7	APDHC	Defendant remains in holding cell, not brought into courtroom.
	8	FIMTN	People Motion to Continue (PC 1050) filed.
	9	CORAC	Court read and considered Motion to Continue (PC 1050).
	10	MOTION	Motion granted.
	11	CLCON	Preliminary Hearing continued to 09/05/2018 at 08:30 AM in Department N12 at request of People.
	12	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.

	13	DFREM	Defendant remanded to the custody of the Sheriff.
	14	NTJAL	Notice to Sheriff issued.
08/29/2018	1	CLROR	Removal order requested by Defense. Hearing set on 09/04/2018 at 09:00 AM in Department C5. Removal order issued.
	2	TXKPW	Keep with companion cases(s) 17NF2556, 15NF0644.
09/04/2018	1	HHELD	Hearing held on 09/04/2018 at 09:00:00 AM in Department C5 for Hearing.
	2	OFJUD	Judicial Officer: Kimberly Menninger, Judge
	3	OFJA	Clerk: M. Rahn
	4	OFBAL	Bailiff: J. Smith
	5	OFREP	Court Reporter: Andrea Gaunt
	6	APDDA	People represented by K. Trudell, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	CLTRM	Preliminary Hearing for 09/05/2018 08:30 AM in N12 to remain.
	9	DFOTR	Defendant ordered to appear.
	10	DFREM	Defendant remanded to the custody of the Sheriff.
	11	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	12	NTJAL	Notice to Sheriff issued.
	13	PRJLT	Court finds that this defendant is NOT the same defendant as 17NF2556 and 15NF0644.
09/05/2018	1	HHELD	Hearing held on 09/05/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Lori Parness
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	JLNBY	Defendant was not transported for today's hearing.
	8	PRJLT	Defendant refused to be transported to court today.
	9	CLSET	Preliminary Hearing trailed to 09/06/2018 at 08:30 AM in Department N12.
	10	PRJLT	The Court directs the Orange County Sheriff's Department to inform defendant that his willful failure to appear for court may result in the preliminary examination taking place in his absence.
	11	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	12	NTJAL	Notice to Sheriff issued.
09/06/2018	1	HHELD	Hearing held on 09/06/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.
	2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
	3	OFJA	Clerk: L. J. Tamayo
	4	OFBAL	Bailiff: F. Tomeo
	5	OFREP	Court Reporter: Susan Rowe
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDHC	Defendant remains in holding cell, not brought into courtroom.
	8	TEXT	No judges are available to hear the preliminary hearing today.
	9	CLSET	Preliminary Hearing trailed to 09/07/2018 at 08:30 AM in Department N12.
	10	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	11	DFREM	Defendant remanded to the custody of the Sheriff.
	12	NTJAL	Notice to Sheriff issued.
09/07/2018	1	HHELD	Hearing held on 09/07/2018 at 08:30:00 AM in Department N12 for Preliminary Hearing.

2	OFJUD	Judicial Officer: Scott A. Steiner, Judge
3	OFJA	Clerk: L. J. Tamayo
4	OFBAL	Bailiff: F. Tomeo
6	TEXT	Off the record, matter not called in open court:
7	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
8	APDHC	Defendant remains in holding cell, not brought into courtroom.
9	CLRSN	Preliminary Hearing reassigned for 09/07/2018 at 09:30 AM in Department N7, Judge Andre Manssourian, forthwith.
10	HHELD	Hearing held on 09/07/2018 at 09:30:00 AM in Department N7 for Preliminary Hearing.
11	OFJUD	Judicial Officer: Andre Manssourian, Judge
12	OFJA	Clerk: F. Ortega
13	OFBAL	Bailiff: J. Petropulos
14	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
15	APTXT	Under supervision of the Deputy District Attorney: Certified Law Clerk, Rebecca Garcia, present.
16	APDPP	Defendant present in Court in propria persona.
17	TRWST	Witness, Officer Sage, sworn and testified.
18	TRWID	Witness identified the defendant.
19	TRTXT	Cross examination by Defense.
20	TRTXT	People redirect.
21	TRTXT	Re-cross by Defense.
22	TRWEX	Witness excused.
23	TRWST	Witness, Officer Guo, sworn and testified.
24	TRWID	Witness identified the defendant.
25	TRTXT	Cross examination by Defense
26	TRWEX	Witness excused.
27	TRWST	Witness, Officer Warren, sworn and testified.
28	STRHRG	Start of Exhibit List: for exhibit management purposes.
29	TREXI	People's Exhibit # 1 ( Photograph )- colored photograh from surveillance video of man in doorway marked for identification.
30	TREXI	People's Exhibit # 2 ( Photograph )- colored photograph from surveillance video of man in doorway marked for identification.
31	TRWID	Witness identified the defendant.
32	TREXA	People's Exhibits # 1 through 2 received into evidence.
33	TRTXT	Cross examination by Defense.
34	TRWEX	Witness excused.
35	TRPRS	People rest(s).
36	TRTXT	Defense summarizes what he will be entering into evidence as exhibits.
37	TRTXT	The Court finds that the exhibits presented by Defense are not relavent to the case and will not be allowed to be entered into evidence.
38	ENDHRG	End of Exhibit List: for exhibit management purposes.
39	MOHTA	Motion by People that defendant be Held To Answer as charged in the complaint as to count(s) 1, 2, 3, 4.
40	FDHTA	It appearing to the Court that a felony has been committed and there being sufficient and probable cause to believe that the Defendant committed said felony, Defendant is hereby ordered HELD TO ANSWER on 09/19/2018 at 08:30 AM in Department C5 as to count(s) 1, 2, 3, 4. Defendant ordered to appear.
41	DFOTR	Defendant ordered to appear.
42	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.

	43	DFREM	Defendant remanded to the custody of the Sheriff.
	44	NTJAL	Notice to Sheriff issued.
	45	FIDOC	Exhibit List of People filed.
	46	FLDOC	Original Information filed on 09/07/2018 by Orange County District Attorney.
	47	FLNAM	Name filed: Elhuzayel, Ausama Salem
	48	FLCNT	FELONY charge of 245(a)(1) PC filed as count 1. Date of violation: 03/25/2018.
	49	FLCNT	FELONY charge of 245(a)(1) PC filed as count 2. Date of violation: 03/25/2018.
	50	FLCNT	MISDEMEANOR charge of 417(a)(1) PC filed as count 3. Date of violation: 03/25/2018.
	51	FLCNT	MISDEMEANOR charge of 148(a)(1) PC filed as count 4. Date of violation: 03/25/2018.
	52	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.
09/17/2018	1	FIRTF	Reporter's transcripts dated 09/07/18 received and filed.
	2	FITXT	Notice of Transcript filed.
09/18/2018	1	CPGTO	Copy of Transcripts given to District Attorney's Office.
09/19/2018	1	HHELD	Hearing held on 09/19/2018 at 08:30:00 AM in Department C5 for Arraignment.
	2	OFJUD	Judicial Officer: Kimberly Menninger, Judge
	3	OFJA	Clerk: G. Dipietro
	4	OFBAL	Bailiff: J. Smith
	5	OFREP	Court Reporter: Andrea Gaunt
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	TEXT	The Court inquires of the defendant as to how he would like to plead today.
	9	TEXT	The defendant responds, as stated on the record.
	10	ADAIC	Defendant is formally arraigned and informed of the charges.
	12	FDTXT	Court finds the defendant is not competent to represent himself under the Edwards case and based on the entirety of the transcripts and last proceedings.
	13	TEXT	Court makes further findings, as stated on the record.
	14	APDPD	Court appoints Public Defender to represent Defendant.
	15	TEXT	Over the defendant's objection.
	16	DFPPT	The defendant's propria persona (pro per) status has been terminated.
	17	TEXT	Counsel accepts the appointment.
	18	TEXT	Case placed on second call.
	19	TEXT	Back on the record.
	20	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	21	APDWPD	Defendant present in court with counsel Terri Lynn Bianchi, Public Defender.
	22	CPCDD	Copy of Original Information given to defense counsel.
	23	WVRAA	Defendant waives reading and advisement of the Original Information.
	24	PLNGA	To the Original Information defendant pleads NOT GUILTY to all counts.
	25	MORES	Defense reserves all motions.
	26	DFSFC	Defendant invokes his/her state, federal and constitutional rights.
	27	DFIRD	Informal request for discovery made by Defense.
	28	CLSET	Pre Trial set on 10/03/2018 at 08:30 AM in Department C49.
	29	WVNWT	Defendant does not waive statutory time for trial.
	30	CLTXT	Noted - The 60th day is 11/19/2018.
	31	DFOTR	Defendant ordered to appear.
	32	DFREM	Defendant remanded to the custody of the Sheriff.
	33	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.

	34	NTJAL	Notice to Sheriff issued.
10/03/2018	1	HHELD	Hearing held on 10/03/2018 at 08:30:00 AM in Department C49 for Pre Trial.
	2	OFJUD	Judicial Officer: Robert R. Fitzgerald, Judge
	3	OFJA	Clerk: L. Bestenlehner
	4	OFBAL	Bailiff: M. Cruz
	5	OFREP	Court Reporter: Robert Sullivan
	6	APDDA	People represented by Jeffrey R Kirk, Deputy District Attorney, present.
	7	APDWPD	Defendant present in court with counsel Joshua Doddridge, Public Defender.
	8	ADDRS	Defendant requests that he be allowed to represent himself.
	9	FIFWV	Faretta Waiver filed.
	10	DFSYS	Defendant states that the initials and signature on the Waiver of Rights form are his.
	11	ADVISE	Defendant advised of the following:
	12	ADPPP	- The perils, pitfalls, dangers, and disadvantages of self-representation.
	13	FIORD	Order Granting Propria Personal Privileges signed and filed.
	14	MOPPR	The defendant's motion for propria persona (pro per) status has been granted in his/her criminal case now pending before this court. (Entered NUNC_PRO_TUNC on 11/02/18)
	15	APATR	Deputy Public Defender relieved as Counsel of Record. (Entered NUNC_PRO_TUNC on 11/02/18)
	16	APDPP	Defendant present in Court in propria persona. (Entered NUNC_PRO_TUNC on 11/02/18)
	17	DFPPP	Defendant provided a Pro Per packet.
	18	CLSET	Jury Trial set on 11/05/2018 at 08:30 AM in Department C5.
	19	DFOTR	Defendant ordered to appear.
	20	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	21	DFREM	Defendant remanded to the custody of the Sheriff.
	22	NTJAL	Notice to Sheriff issued.
	23	CPGTO	Certified Copy of Order Granting Propria Personal Privileges given to Defendant.
	24	CPGTO	Certified Copy of Order Granting Propria Personal Privileges forwarded to Orange County Sheriff's Department.
11/02/2018	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 10/03/2018.
	25	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 10/03/2018 12:00:00 AM.
11/05/2018	1	HHELD	Hearing held on 11/05/2018 at 08:30:00 AM in Department C5 for Jury Trial.
	2	OFJUD	Judicial Officer: Lance Jensen, Judge
	3	OFJA	Clerk: L. Manrique
	4	OFBAL	Bailiff: J. Smith
	5	OFREP	Court Reporter: Andrea Gaunt
	6	APSDA	Angela Hong made a special appearance for District Attorney Jake Jondle.
	7	APDPP	Defendant present in Court in propria persona.
	8	CLSET	Jury Trial trailed to 11/13/2018 at 08:30 AM in Department C5.
	9	CLTXT	Day 55 of 60.
	10	DFOTR	Defendant ordered to appear.
	11	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	12	DFREM	Defendant remanded to the custody of the Sheriff.
	13	NTJAL	Notice to Sheriff issued.
11/06/2018	1	TXRNF	Correspondence from Defendant received.
	2	TXRFR	Case referred to Department C-5 for review.
11/13/2018	1	HHELD	Hearing held on 11/13/2018 at 08:30:00 AM in Department C5 for Jury Trial.
	2	OFJUD	Judicial Officer: Kimberly Menninger, Judge

	3	OFJA	Clerk: L. Manrique
	4	OFBAL	Bailiff: J. Smith
	5	OFREP	Court Reporter: Andrea Gaunt
	6	APSDA	Angela Hong made a special appearance for District Attorney Jake Jondle.
	7	APDPP	Defendant present in Court in propria persona.
	8	TEXT	At the request of the People:
	9	CLSET	Jury Trial trailed to 11/14/2018 at 08:30 AM in Department C5.
	10	CLTXT	Day 56 of 60.
	11	DFOTR	Defendant ordered to return.
	12	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	13	DFREM	Defendant remanded to the custody of the Sheriff.
	14	NTJAL	Notice to Sheriff issued.
	15	OFMCD	Minutes entered by G. Cooper on 11/13/2018.
11/14/2018	1	HHELD	Hearing held on 11/14/2018 at 08:30:00 AM in Department C5 for Jury Trial.
	2	OFJUD	Judicial Officer: Kimberly Menninger, Judge
	3	OFJA	Clerk: M. Diaz
	4	OFBAL	Bailiff: S. Bushhousen
	5	OFREP	Court Reporter: Andrea Gaunt
	6	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	TRPDR	Case called. People answer ready. Defense answers ready.
	9	CLASN	Case assigned for all purposes to Department C48, Judge Larry Yellin. Time estimate 6 days. Jury Trial set on 11/14/2018 at 09:30 AM.
	10	TEXT	All Parties are ordered to appear forthwith.
	11	OFMCD	Minutes entered by L. Manrique on 11/14/2018.
	12	HHELD	Hearing held on 11/14/2018 at 09:30:00 AM in Department C48 for Jury Trial.
	14	OFJUD	Judicial Officer: Larry Yellin, Judge
	15	OFJA	Clerk: E. Flores
	16	OFBAL	Bailiff: R. Bradshaw
	17	OFREP	Court Reporter: Amber N. Hogate
	18	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	19	APDPP	Defendant present in Court in propria persona.
	20	TRSTR	This case came on regularly for trial.
	21	TRPDR	Case called. People answer ready. Defense answers ready.
	22	FITXT	People's Trial Brief filed.
	23	STRHRG	Start of Exhibit List: for exhibit management purposes.
	24	TREXI	Defense Exhibit # 1 ( Document(s) )- Multipage document with "Constructive Notice By Affidavit" as first page marked for identification.
	25	TREXE	Defense Exhibit # 1 received into evidence.
	26	ENDHRG	End of Exhibit List: for exhibit management purposes.
	27	TRREC	At 10:15 AM, court declared a recess.
	28	TRALP2	Again in open court at 10:16 AM. Defendant present in Propria Persona. People duly represented.
	29	AD170C	The judge's election campaign contributions have been disclosed to parties pursuant to the Code of Civil Procedure section 170.1(a)(9)(C).
	30	NTMOT	All parties orally notified of the Court's disqualification disclosure pursuant to Canon 3E(2) of the California Code of Judicial Ethics.
	31	MOTBY	Motion by People to Designate Investigator Robert Warren as the People's Investigating Officer Pursuant to Evidence Code 777(b), (c).

	32	MOTION	Motion argued.
	33	MOTION	Motion granted.
	34	TRTXT	Court grants Defendant's request to obtain copies of filed documents in this case
	35	TRTXT	Court grants Defendant's request to obtain a copy of the Preliminary Hearing transcripts
	37	CLCON	Jury Trial continued to 11/19/2018 at 09:00 AM in Department C48 by stipulation of all parties.
	38	DFOTR	Defendant ordered to appear.
	39	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	40	DFREM	Defendant remanded to the custody of the Sheriff.
	42	NTJAL	Notice to Sheriff issued.
11/19/2018	1	HHELD	Hearing held on 11/19/2018 at 09:00:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	5	OFBAL	Bailiff: S. Luevano
	6	OFREP	Court Reporter: Amber N. Hogate
	7	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	8	APDPP	Defendant present in Court in propria persona.
	9	MOTBY	Oral motion by Defense for Jurors to have access to Preliminary Hearing transcripts.
	10	MOPEO	Objection by the People.
	11	MOTION	Motion argued.
	12	TRTXT	Denied at this time
	13	MOTBY	Oral motion by Defense for Jurors to have access to Police Reports.
	14	MOTION	Motion argued.
	15	TRTXT	Denied at this time
	16	MOTBY	Oral motion by Defense to allow proceedings to be video taped.
	17	MOTION	Motion argued.
	18	MOTION	Motion denied.
	19	MOTBY	Oral motion by Defense to obtain copies of the surveillance and body camera videos to be used by the People.
	20	MOTION	Motion argued.
	21	MOTION	Motion granted.
	22	TRREC	At 10:14 AM, court declared a recess.
	23	TRALP2	Again in open court at 10:16 AM. Defendant present in Propria Persona. People duly represented.
	24	TRTXT	The Court orders the People to provide discovery to Defendant
	25	MOTBY	Oral motion by Defense to exclude Witness, Officer Montalvan.
	26	MOTION	Motion argued.
	27	MOTION	Motion denied.
	28	TRTXT	Recess taken to allow Defendant to review discovery
	29	TRREC	At 10:36 AM, court declared a recess.
	31	TRALP2	Again in open court at 01:42 PM. Defendant present in Propria Persona. People duly represented.
	32	TRTXT	People provide discovery to Defendant to view in Court
	33	MOTBY	Oral motion by People for Protective Order for Body Worn Camera.
	34	MOTION	Motion argued.
	35	TRTXT	Court defers ruling to allow the People to submit a Protective Order for Body Worn Camera

	36	TRTXT	The Court orders District Attorney, Jake Jondle, to leave the courtroom while Defendant reviews discovery
	37	TRREC	At 01:57 PM, court admonished jurors and declared a recess.
	38	OFJA	Clerk: M. Johnson
	40	TRALP2	Again in open court at 04:23 PM. Defendant present in Propria Persona. People duly represented.
	41	CLCON	Jury Trial continued to 11/20/2018 at 08:30 AM in Department C48 by stipulation of all parties.
	42	DFOTR	Defendant ordered to appear.
	43	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	44	DFREM	Defendant remanded to the custody of the Sheriff.
	45	NTJAL	Notice to Sheriff issued.
11/20/2018	1	HHELD	Hearing held on 11/20/2018 at 08:30:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: S. Luevano
	5	OFREP	Court Reporter: Amber N. Hogate
	7	APDPP	Defendant present in Court in propria persona.
	8	TRTXT	Around 9:30 AM Defendant was brought into the courtroom to continue reviewing discovery
	9	TRALP2	Again in open court at 11:39 AM. Defendant present in Propria Persona. People duly represented.
	10	TRTXT	Progress of Defendant's review of discovery is discussed and put on the record
	11	TRTXT	Defendant to continuing reviewing discovery outside of the presence of District Attorney, Jake Jondle
	12	TRREC	At 11:15 AM, court declared a recess.
	13	TRALP2	Again in open court at 02:48 PM. Defendant present in Propria Persona. People duly represented.
	14	TRTXT	Defendant confirms completion of discovery review
	15	TRTXT	Court, Counsel, and Defendant discuss witnesses and scheduling
	16	CLCON	Jury Trial continued to 11/21/2018 at 09:00 AM in Department C48 by stipulation of all parties.
	17	DFOTR	Defendant ordered to appear.
	18	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	19	DFREM	Defendant remanded to the custody of the Sheriff.
	20	NTJAL	Notice to Sheriff issued.
11/21/2018	1	HHELD	Hearing held on 11/21/2018 at 09:00:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: S. Luevano
	5	OFREP	Court Reporter: Amber N. Hogate
	6	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	TRALP2	Again in open court at 09:16 AM. Defendant present in Propria Persona. People duly represented.
	9	TRTXT	Court, Counsel, and Defendant discuss Voir Dire
	10	TRREC	At 09:27 AM, court declared a recess.
	11	TRTXT	Clerk and bailiff step into public hallway to take roll and assign numbers
	12	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.

13	TRJSE	Roll call having been taken, prospective jurors were sworn for examination.
14	TRIOC	In open court at 09:41 AM
15	TRTXT	Trial schedule discussed with Prospective Jurors
16	TRTXT	Parties introduced
17	TRTXT	Witness List read to the Prospective Jurors
18	TRJAD	Court admonished prospective jurors as to their basic duties, function, and conduct.
19	TRJAP	Court read Original Information to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
20	TRTXT	Court read jury instruction CALCRIM 103 to Prospective Jurors
21	TRVDE	Voir Dire examination commenced.
22	TRAPJ	At 10:38 AM, Court admonishes prospective jurors and declares a recess.
23	TROPJ	Proceedings held outside the presence and hearing of the jurors.
24	TRTXT	Juror 117 remains in the courtroom for Voir Dire
25	TRREC	At 10:45 AM, court declared a recess.
26	TRALP2	Again in open court at 10:57 AM. Defendant present in Propria Persona. People duly represented. Jury is not present.
27	TRTXT	Juror 136 entered courtroom for confidential voir dire
28	TRTXT	Parties stipulate to excuse Juror 136
29	TRALP	Again in open court at 11:06 AM, Defendant present in Propria Persona. People duly represented. Prospective jurors present in their proper places.
30	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
31	TRVDE	Voir Dire examination resumed.
32	TRTXT	No motions for cause
33	TRPEC	Peremptory challenge exercised by People Juror #111.
34	TRPEC	Peremptory challenge exercised by Defense Juror #107.
35	TRJYA	People accepted the jury as presently constituted.
36	TRPEC	Peremptory challenge exercised by Defense Juror #106.
37	TRJYA	People accepted the jury as presently constituted.
38	TRPEC	Peremptory challenge exercised by Defense Juror #115.
39	TRJYA	People accepted the jury as presently constituted.
40	TRPEC	Peremptory challenge exercised by Defense Juror #146.
41	TRJYA	People accepted the jury as presently constituted.
42	TRPEC	Peremptory challenge exercised by Defense Juror #124.
43	TRJYA	People accepted the jury as presently constituted.
44	TRPEC	Peremptory challenge exercised by People Juror #113.
45	TRAPJ	At 11:56 AM, Court admonishes prospective jurors and declares a recess.
47	TRALP	Again in open court at 01:40 PM, Defendant present in Propria Persona. People duly represented. Prospective jurors present in their proper places.
48	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
49	TRVDE	Voir Dire examination resumed.
50	TRPEC	Peremptory challenge exercised by People Juror #128.
51	TRPEC	Peremptory challenge exercised by Defense Juror #112.
52	TRJYA	People accepted the jury as presently constituted.
53	TRPEC	Peremptory challenge exercised by Defense Juror #125.
54	TRJYA	People accepted the jury as presently constituted.
55	TRPEC	Peremptory challenge exercised by Defense Juror #119.
56	TRJYA	People accepted the jury as presently constituted.
57	TRPEC	Peremptory challenge exercised by Defense Juror #148.

	58	TRJYA	People accepted the jury as presently constituted.
	59	TRJXF	Pursuant to stipulation of counsel, the Court excused 110 prospective juror(s) for financial hardship.
	60	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
	61	TRVDE	Voir Dire examination resumed.
	63	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
	64	TRVDE	Voir Dire examination resumed.
	66	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
	67	TRVDE	Voir Dire examination resumed.
	68	TRAJA	People accepts the alternate jurors.
	69	TRPEC	Peremptory challenge exercised by Defense Prospective Alternate Juror #144.
	70	TRPEC	Peremptory challenge exercised by People Prospective Alternate Juror #142.
	71	TRAJA	People accepts the alternate jurors.
	72	TRAJA	Defense accepts the alternate jurors.
	73	TRJGB	Court thanked and excused remaining prospective jurors to Jury Assembly Room.
	74	TRJ12	Twelve jurors accepted and sworn.
	75	TRJCS	12 Jurors and 2 Alternates were sworn by the clerk to hear this matter. Disposition of panel jurors is reported on the random list and included by reference.
	76	TRRTD	At 02:44 PM, Court admonished sworn jurors and declared a recess to reconvene on 11/26/2018 at 09:30 AM in Department C48 for Jury Trial.
	77	TROPJ	Court remained in session. Proceedings held outside the presence and hearing of the jurors.
	78	TRTXT	Court and Parties discuss jury procedures
	79	DFOTR	Defendant ordered to appear.
	80	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	81	DFREM	Defendant remanded to the custody of the Sheriff.
	82	NTJAL	Notice to Sheriff issued.
11/26/2018	1	HHELD	Hearing held on 11/26/2018 at 09:30:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: S. Luevano
	5	OFREP	Court Reporter: Amber N. Hogate
	6	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	TRALP2	Again in open court at 09:58 AM. Defendant present in Propria Persona. People duly represented. Jury is not present.
	9	MOTBY	Oral motion by Defense to change out of jail jumpsuit and have a clothing order issued for Jury Trial.
	10	MOTION	Motion granted.
	11	TRTXT	Court, Counsel, and Defendant discuss opening statements
	12	TRTXT	Court, Counsel, and Defendant discuss procedural aspects of trial
	13	TRTXT	Court informs Counsel and Defendant that Juror 135 in seat #5 was dismissed due to illness
	14	TRREC	At 10:07 AM, court declared a recess.
	15	TRALP	Again in open court at 10:08 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	16	TRTXT	Alternate Juror 121 moved to seat #5 to replace Juror 135
	17	TRTXT	Court read the following jury instructions to the jurors: CALCRIM 101, 102, 103, 104, 105

18	TROSB	Opening statement by People given.
19	TROSB	Opening statement by Defense given.
20	TRAPJ	At 10:55 AM, Court admonishes prospective jurors and declares a recess.
21	TRALP	Again in open court at 11:10 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
22	TRWST	Witness, Kevin Jung, sworn and testified.
23	STRHRG	Start of Exhibit List: for exhibit management purposes.
25	TREXI	People's Exhibit # 1 ( Document(s) )- Google map image of "Linbrook Bowling Center Incorporated" in the center marked for identification.
26	TREXI	People's Exhibit # 2 ( Media )- Disc with "Elhuzayel 18NF0880" written on top marked for identification.
27	TRWER	Kevin Jung excused subject to recall.
28	TRWST	Witness, Officer David Montalvan, sworn and testified.
29	TRWID	Witness identified the defendant.
30	TRAPJ	At 11:56 AM, Court admonishes prospective jurors and declares a recess.
31	TROPJ	Proceedings held outside the presence and hearing of the jurors.
32	TRTXT	Court, Counsel, and Defendant discuss Juror 132
33	TRREC	At 11:59 AM, court declared a recess.
34	TRALP2	Again in open court at 01:40 PM. Defendant present in Propria Persona. People duly represented. Jury is not present.
35	TRTXT	Court, Counsel, and Defendant discuss evidence
36	TRREC	At 01:42 PM, court declared a recess.
37	TRALP	Again in open court at 01:46 PM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
38	TREXI	Defense Exhibit # A ( Media )- Disc with "Denfense #A" written in black on the top marked for identification.
39	FXEXD	Defense Exhibit # A description updated to reflect Disc with "Defense #A" written in black on top.
40	TRAPJ	At 02:37 PM, Court admonishes prospective jurors and declares a recess.
41	TROPJ	Proceedings held outside the presence and hearing of the jurors.
42	TRTXT	Court, Counsel, and Defendant discuss objections on the record
43	TRTXT	Court, Counsel, and Defendant discuss trial schedule
44	TRREC	At 02:47 PM, court declared a recess.
45	TRALP2	Again in open court at 02:55 PM. Defendant present in Propria Persona. People duly represented. Jury is not present.
46	TRTXT	Court, Counsel, and Defendant discuss witness
47	TRALP	Again in open court at 03:01 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
48	TRWEX	Witness excused.
49	TREXA	People's Exhibits # 1 through 2 received into evidence.
50	TREXE	Defense Exhibit # A received into evidence.
51	TRPRS	People rest(s).
52	TRWST	Witness, Defendant, Ausama Salem Elhuzayel, sworn and testified.
53	TREXI	People's Exhibit # 3 ( Photograph )- Photograph of man in door entrance marked for identification.
54	TREXI	People's Exhibit # 4 ( Photograph )- Photograph of lobby with a table in the bottom left corner marked for identification.
55	CLCON	Jury Trial continued to 11/27/2018 at 09:30 AM in Department C48 by stipulation of all parties.
56	DFOTR	Defendant ordered to appear.

	57	TRAPJ	At 04:22 PM, Court admonishes prospective jurors and declares a recess.
	58	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	59	TRTXT	Court, Counsel, and Defendant discuss the trial schedule
	60	TRTXT	Court, Counsel, and Defendant discuss jury instructions
	61	PRJLT	Court orders defendant to be brought to court in civilian clothing only if Defendant has provided clothing
	62	FIORD	Order Clothing Order signed and filed.
	63	CPGTO	Copy of Clothing Order given to Orange County Jail.
	64	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	65	DFREM	Defendant remanded to the custody of the Sheriff.
	66	NTJAL	Notice to Sheriff issued.
11/27/2018	1	HHELD	Hearing held on 11/27/2018 at 09:30:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: S. Luevano
	5	OFREP	Court Reporter: Amber N. Hogate
	6	APDDA	People represented by Jake Jondle, Deputy District Attorney, present.
	7	APDPP	Defendant present in Court in propria persona.
	8	TRALP2	Again in open court at 09:07 AM. Defendant present in Propria Persona. People duly represented. Jury is not present.
	9	TRTXT	Court, Counsel, and Defendant discuss jury instructions on the record
	10	TRALP	Again in open court at 09:51 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	11	TRDRS	Defense rests.
	12	TREXA	People's Exhibits # 3 through 4 received into evidence.
	13	TRCLA	Closing argument presented on behalf of the People.
	14	TRAPJ	At 10:24 AM, Court admonishes prospective jurors and declares a recess.
	15	TRALP	Again in open court at 10:38 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	16	TRCLA	Closing argument presented on behalf of the Defense.
	17	TRRBA	Rebuttal argument presented on behalf of the People.
	18	TRTXT	Court reads final instructions to sworn jurors
	19	TRAPJ	At 11:57 AM, Court admonishes prospective jurors and declares a recess.
	20	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	21	TRALP	Again in open court at 01:38 PM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	22	TRJRT	At 01:57 PM, the Jury retired to the jury room to deliberate in charge of Deputy S. Luevano duly sworn for that purpose.
	23	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	24	TRAOC	Court admonishes alternate juror(s) and pursuant to stipulation of counsel releases the alternate(s) on one hour call.
	25	TRTXT	Court, Counsel and Defendant discuss jury instructions
	26	TRREC	At 02:08 PM, court declared a recess.
	27	TRALP2	Again in open court at 02:11 PM. Defendant present in Propria Persona. People duly represented. Jury is not present.
	28	TRTXT	Court, Counsel and Defendant discuss jury instruction 875
	29	TRREC	At 02:11 PM, court declared a recess.
	30	TRWRJ	At 02:57 PM, the jury submitted the following written request: "We, the jury in the above entitled action request the following: Can we get read back of the officers testimony regarding hammer & recovery, /s/Juror # 123, Foreperson." Counsel were

		notified. Request filed and incorporated herein by reference.	
	32	APTXT	At 03:00 PM, Clerk L. Hoyle replaced Clerk E. Flores.
	33	TRALP2	Again in open court at 03:13 PM. Defendant present in Propria Persona. People duly represented. Jury is not present.
	34	TRTXT	The Court advises Counsel for the People and the defendant that the jurors have submitted a written request for read back and reads the request into the record. The Court advises the parties that its response is "Yes" to the juror's request. The Court and parties held discussions on how to proceed. The Court states that the Court Reporter will enter the jury room for the read back and advises as to what areas she will read. Counsel for the People is agreeable to this procedure.
	35	TRREC	At 03:16 PM, court declared a recess.
	36	TRRRT	At 03:27 PM, the Court Reporter entered the jury room and read back requested testimony and completed read back at 03:44 PM.
	37	TRTXT	At 03:57 PM, the jurors notified the Bailiff that they have reached verdicts on three counts and are hung on one count. The Clerk notifies Counsel for the People telephonically.
	38	TRALP	Again in open court at 04:10 PM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	39	TRTXT	The Court addresses the Foreperson regarding the information it received that they had reached verdicts on three counts and are hung on one count. The Foreperson states that this is correct. The Court addresses the jurors and advises them that it would like them to recess for the day and return on 11/28/2018 to resume deliberations. Juror Number 114 states that she cannot come back. The Court addresses this juror and the other jurors asking that they come back and resume on 11/28/2018 to deliberate for at least the morning session to attempt to reach a verdict on the one hung count.
	40	TRJER	At 04:14 PM, the jurors left the jury room for the evening recess, to return 11/28/2018 at 09:00 AM in Department C48 to resume deliberations.
	41	DFREM	Defendant remanded to the custody of the Sheriff.
	42	BLSTR	Current bail set for Defendant to remain at \$1, 000, 000.00.
	43	NTJAL	Notice to Sheriff issued.
11/28/2018	1	HHELD	Hearing held on 11/28/2018 at 09:00:00 AM in Department C48 for Jury Trial.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: S. Luevano
	5	TRJRD	At 09:11 AM, jurors returned to the jury room to resume deliberations.
	6	TRWRJ	At 09:41 AM, the jury submitted the following written request: "We, the jury in the above entitled action request the following: Can we get clarification around the lesser charge for count 2 does it include a weapon as well, /s/Juror # 123, Foreperson." Counsel were notified. Request filed and incorporated herein by reference.
	7	TRALP2	Again in open court at 09:11 AM. Defendant present in Propria Persona. People duly represented. Jury is not present.
	8	TRTXT	Court, Counsel and Defendant discuss jury question
	9	TRWRS	At 10:09 AM the following written response was sent to the jury: The best way I can answer this is to invite you to compare Inst 875 and 915.
	10	FITXT	Written response to the Jury for question filed filed.
	11	TRREC	At 10:10 AM, court declared a recess.
	12	TRTXT	At 10:28 AM, the Jury notified the bailiff that it had reached verdicts. Parties notified.
	13	TRALP	Again in open court at 11:07 AM, Defendant present in Propria Persona. People duly represented. Sworn jurors present in their proper places.
	14	FDJGC	VERDICT: We the jury in the above entitled action find the defendant GUILTY as to count 1 as charged in the Original Information. Juror # 123, Foreperson. Verdict

		read, filed, and incorporated herein by reference.	
15	FDJGL	VERDICT: We the jury in the above entitled action find the defendant GUILTY of 240 PC, A LESSER OFFENSE necessarily included within the offense charged in count 2 of the Original Information. Juror # 123, Foreperson. Verdict read, filed, and incorporated herein by reference.	
16	TRFJN	VERDICT: We the jury in the above entitled action find the defendant NOT GUILTY as to count 2 as charged in the Original Information. Juror # 123, Foreperson. Verdict read, filed, and incorporated herein by reference.	
17	FDJGC	VERDICT: We the jury in the above entitled action find the defendant GUILTY as to count 3 as charged in the Original Information. Juror # 123, Foreperson. Verdict read, filed, and incorporated herein by reference.	
18	FDJGC	VERDICT: We the jury in the above entitled action find the defendant GUILTY as to count 4 as charged in the Original Information. Juror # 123, Foreperson. Verdict read, filed, and incorporated herein by reference.	
19	TRJTE	Court thanked and excused the Jury.	
20	TRACD	Actual days of trial: 7 days.	
21	TRTXT	Court has discussions with parties regarding potential Court motions as to Count 1	
22	CLSET	Motion set on 12/06/2018 at 09:00 AM in Department C48.	
23	CLSET	Sentencing set on 12/06/2018 at 09:00 AM in Department C48.	
24	DFOTR	Defendant ordered to appear.	
25	PBRPO	Probation Department ordered to prepare a Probation & Sentencing report to be made available to court and counsel 5 days prior to Sentencing. Fees to be determined at sentencing.	
26	TEXT	Court orders Probation and Sentencing Report to be filed with Court on or before 12/5/18	
27	BLNOB	Court orders bail reset at NO BAIL.	
28	DFREM	Defendant remanded to the custody of the Sheriff.	
29	NTJAL	Notice to Sheriff issued.	
30	FIJIS	Packet of unfiled documents containing confidential juror information is filed and sealed pursuant to Code of Civil Procedure 237(a)(2).	
31	FITXT	Unsigned Verdict Forms filed.	
32	FIGJI	Jury Instructions Given filed.	
33	FIGJI	Jury Instructions Submitted for Deliberations filed.	
34	FIGJI	Jury Instructions Withdrawn filed.	
35	ENDHRG	End of Exhibit List: for exhibit management purposes.	
12/06/2018	1	HHELD	Hearing held on 12/06/2018 at 09:00:00 AM in Department C48 for Sentencing.
	2	HHELD	Hearing held on 12/06/2018 at 09:00:00 AM in Department C48 for Motion.
	3	OFJUD	Judicial Officer: Larry Yellin, Judge
	4	OFJA	Clerk: M. Johnson
	5	OFBAL	Bailiff: R. Bradshaw
	6	OFREP	Court Reporter: Naren Jansen
	7	FIDOC	Probation & Sentencing report filed.
	8	FITXT	People's Sentencing Brief and Opposition to Court's Motion to Dismiss Pursuant to PC 1385(a) filed.
	9	TEXT	Court's own motion to Dismiss pursuant to PC 1385(a), argued
	10	TEXT	Court made factual findings on the record
	12	TEXT	As a result of 1181(6) PC, Court finds that the verdict of guilty on Count 1 for Penal Code 245, with a sword, is contrary to the evidence and that there is not sufficient evidence to sustain the verdict. Court sets aside the Finding of Guilty as to Count 1 and dismisses the count pursuant to PC 1385
	14	CDCDM	Count(s) 1 DISMISSED - pursuant to Penal Code 1385 - Furtherance of justice.

15	PRISS	No legal cause why judgment should not be pronounced and defendant having Found Guilty by Jury to count(s) 2, 3, 4, Imposition of sentence is suspended and defendant is placed on 3 Year(s) INFORMAL PROBATION on the following terms and conditions:	
16	PRVNL	Violate no law.	
17	PROBY	Obey all orders, rules, and regulations, and directives of the Court, Jail, and Probation.	
18	PRSAS	Submit your person and property including any residence, premises, container, or vehicle under your control, not including electronic devices, to search and seizure at any time of the day or night by any law enforcement officer, probation officer, or mandatory supervision officer with or without a warrant, probable cause or reasonable suspicion.	
19	PRNWP	Do not own, purchase, receive, possess, or have under your custody or control any type of dangerous or deadly weapon, firearm, ammunition, and ammunition feeding devices, including but not limited to magazines for 10 years.	
20	PRJAL	Serve 364 Day(s) Orange County Jail as to count(s) 4.	
21	PRJAL	Serve 100 Day(s) Orange County Jail as to count(s) 2.	
22	PRJCC	100 days Jail on count 2 to run consecutive with sentence on count 4.	
23	JLTOT	TOTAL JAIL to be served: 464 Day(s).	
24	JLCTS	Credit for time served: 232 actual, 232 conduct, totaling 464 days pursuant to Day-for-day.	
25	NTRCO	Defendant released on this case only. Release issued.	
26	NTJAL	Notice to Sheriff issued.	
27	PRSAF	Stay 100 yards away from Linbrook Bowl at 201 S. Brookhurst, Anaheim, CA.	
28	PRRFS	Pay \$150.00 Probation Revocation Restitution Fine pursuant to Penal Code 1202.44. Restitution fine stayed, to become effective only upon revocation of probation.	
29	PRSRF	Pay mandatory state restitution fine of \$150.00 pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).	
30	SESEC	Pay \$40.00 Court Operations Fee per convicted count pursuant to Penal Code 1465.8.	
31	SECCA	Pay Criminal Conviction Assessment Fee per convicted count of \$30.00 per misdemeanor/felony and \$35.00 per infraction pursuant to Government Code 70373(a)(1).	
32	STFEE	Payment of fee(s) stayed to 12/14/2018.	
33	ADFRP	Defendant advised that defendant is prohibited from owning, purchasing, receiving, possessing, or having under their custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines. Any firearms currently in possession are ordered to be relinquished pursuant to Penal Code 29810. The "Prohibited Persons Relinquishment Form" and supplemental documents provided to defendant.	
34	PBRPT3	Case assigned to Probation Department for preparation of Firearms Relinquishment Probation Report. Defendant ordered to comply with Firearms Relinquishment pursuant to Penal Code 29810, by submitting a completed Prohibited Persons Relinquishment Form to the Probation Department.	
35	CLSET2	Hearing re: Firearms Relinquishment set on 12/21/2018 at 08:30 AM in Department C48.	
36	WVDFP	Defendant's presence is waived for the 12-21-18 hearing.	
37	CPFTO	The clerk this date has forwarded a copy of Prohibited Persons Relinquishment Form to Probation Department.	
12/07/2018	1	TXFWD	Correspondence forwarded to Central Justice Center from North Justice Center.
12/10/2018	1	DOJABS	DOJ Initial Abstract sent.
	2	TXRNF	Correspondence from Defedant received.

	3	TXRFR	Case referred to Department C-5 for review.
12/12/2018	1	CUFDF	Financial Declaration form completed and filed with the Collection Department.
	2	ADFEE	Defendant advised of additional \$35.00 Stay fee pursuant to Penal Code 1205d.
	3	STPYS	Payments to be paid at the rate of \$20.00 per month beginning 12/12/2018 and on the 12 of each month thereafter until paid in full. \$35.00 installment payment due.
	4	CUCAD	Defendant advised by Clerk that failure to make payments by the due date may result in additional costs and legal actions which may include but not limited to: \$300 Civil Assessment added pursuant to Penal Code 1214.1. You may also be subjected to wage garnishment and bank levies, including referral to the Franchise Tax Board for collection and/or interception of your income tax refund.
	5	CUFTH	Forthwith case assigned to Collections.
	6	NTDEF	Notice to defendant issued.
	7	REMRC	Remittance from receipt # 16640424 received in the amount of \$ 20.00.
	8	PMTSYS	Installment payment received. Next payment of \$20.00 due on 01/14/19. Remaining balance \$375.00.
12/19/2018	1	FIFRNC	Prohibited Persons Relinquishment Form Probation Officers Non-Compliance Report, received and filed.
	2	FIFRPRS	Prohibited Persons Relinquishment Form Probation Officers Report - Supporting Documents, received and filed.
12/21/2018	1	HHELD	Hearing held on 12/21/2018 at 08:30:00 AM in Department C48 for Hearing Firearms Relinquishment.
	2	OFJUD	Judicial Officer: Larry Yellin, Judge
	3	OFJA	Clerk: M. Johnson
	4	OFBAL	Bailiff: R. Bradshaw
	5	APNAP	No appearance by parties.
	6	CORPR	The court has reviewed the Prohibited Persons Relinquishment Form Probation Officers Report and rules as follows:
	7	COJFC	Defendant has completed a Prohibited Persons Relinquishment Form and Defendant has no reportable firearms.
	8	FICFF	Prohibited Persons Relinquishment Form Findings, signed and filed.
12/31/2018	1	TXRNF	Correspondence from Defendant received.
	2	TXRFR	Case referred to Department C-5 for review.
01/03/2019	1	REMRC	Remittance from receipt # 16677704 received in the amount of \$ 20.00.
	2	PMTSYS	Installment payment received. Next payment of \$20.00 due on 02/13/19. Remaining balance \$355.00.
01/04/2019	1	FICOR	Correspondence from defendant filed.
	2	CONAT	No action taken.
02/07/2019	1	REMRC	Remittance from receipt # 16750655 received in the amount of \$ 20.00.
	2	PMTSYS	Installment payment received. Next payment of \$20.00 due on 03/12/19. Remaining balance \$335.00.



## INTRODUCTION

“[T]hey handcuffed me in front of my four-year-old kid. He was crying so much. That was the hardest part.”

Plaintiffs’ MSJ Ex. 11, Frljuckic Dep at 47.

Any fair-minded reading of Plaintiffs’ testimony establishes that the Watchlisting System terrorizes people. It stigmatizes them. It stops them from traveling across borders or by plane. It inflicts all of these harms and more.

This case is not about Plaintiffs’ mere convenience. It is about the ability of the Government to place innocent Americans—people who have never been arrested, charged, let alone convicted of a terrorism-related offense—on a secret list, administered with no notice. There is no notice of the deprivation, of the evidence, nor even of the inclusion standard. It is all secret. Just last week fact, Defendants adopted a new secretive governing document for its list – the 2018 Watchlisting Guidance. No one but Defendants knows anything about the contents.

Given the startling extent of Plaintiffs’ deprivations, on one hand, and the sham redress process on the other, this Court should issue an injunction prohibiting Defendants from placing innocent Americans—those who have not been arrested, charged, or convicted of a terrorism-related offense—on Defendants’ lists.

## STATEMENT OF DISPUTED FACTS

### A. Disputed Facts Regarding Government Operation of the TSDB

1. Plaintiffs dispute Government Facts ¶¶ 1-3 insofar as the Government has invoked privileges to block Plaintiffs’ inquiries into the global terrorism threat environment pursuant to the law enforcement privilege. *See, e.g.*, Plaintiffs MSJ Ex. 25, TSC Dep. at 283:19-284:4; Plaintiffs MSJ Ex. 28, FBI Dep. at 84:17-85:1, 90:13-20, 91:16-22, 104:16-105:1, 124:15-20, 126:11-17, 164:5-11; Plaintiffs MSJ Ex. 26 TSA Dep. at 211:22-212:16, Plaintiffs MSJ Ex. 29, TSA Supp. Dep. at 72:16-21; Plaintiffs’ MSJ Opp. Ex. 84, Gov’t Privilege Logs.

2. Plaintiffs further dispute Government Facts ¶¶ 1-3 because use of the TSDB has not been shown to identify any perpetrator of terrorism or prevent any act of terrorism. *See* Plaintiffs’ MSJ Facts ¶¶ 139-141.

3. Plaintiffs further dispute Government Facts ¶¶ 1-3 because robust statistical analysis of watchlist records could demonstrate that placement on the TSDB operates no better than random selection in identifying perpetrators of terrorism or preventing acts of terrorism. *See* Declaration of Fairley and Huber Re: Statistical Documents, Dkt. 253-1 ¶¶ 5, 7, 11.

4. Plaintiffs dispute Government Fact ¶ 11 to the extent it implies that CBP secondary inspection of TSDB Listees is not mandatory. *See* Plaintiffs' MSJ Fact ¶ 29; Plaintiffs' MSJ Opp. Ex. 85, 2013 Watchlisting Guidance at 59-60, 65, 79 (describing CBP encounter processes, including preparing Secondary Exam Reports as terrorism information).

5. Plaintiffs dispute Government Fact ¶ 12 in part. Plaintiffs do not deny that "the TSDB is constantly changing as it is continuously reviewed and updated." However, as presented by the Government, this fact omits the detail that since 2006 the TSDB has retained copies of all prior versions of a person's watchlist record, and that CBP's TECS system includes all prior encounter information with TSDB Listees. *See* Plaintiffs' MSJ Facts, ¶¶ 5, 34.

6. Plaintiffs dispute Government Fact ¶ 17 to the extent it implies that the "informed judgments by experienced analysts and agents" regarding watchlisting are reliable or error-free. *See* Plaintiffs' Facts ¶¶ 136-139; *Ibrahim v. Dep't of Homeland Security*, 912 F.3d 1147 (9th Cir. 2019) (en banc) (detailing history of erroneous inclusion of Stanford graduate student on the watchlist). Plaintiffs note that for the last decade, TSC has accepted 99% or more of the hundreds of thousands of watchlist nominations it receives each year. *See* Plaintiffs' MSJ Ex. 66 at 22. Plaintiffs further note that only 35 people within TSC are tasked with reviewing and accepting nominations. Plaintiffs' MSJ Ex. 25, TSC Dep. at 374:5-21. This means each individual TSC employee is tasked with reviewing approximately 13,750 nominations per year, or 50 per workday.

7. Plaintiffs further dispute Government Fact ¶ 12 to the extent the Government has utilized privileges to block Plaintiffs' inquiry into specific "policy-based criteria," "intelligence-gathering tools," and "detailed analytical standards" such that they have not been subjected to cross-examination or adversarial testing. *See generally* Plaintiffs' MSJ Opp. Ex. 84, Gov't Privilege Logs. *See also, e.g.*, Plaintiffs MSJ Ex. 25, TSC Dep. at 283:19-284:4; Plaintiffs MSJ Ex. 28, FBI Dep. at 84:17-

85:1, 90:13-20, 91:16-22, 104:16-105:1, 124:15-20, 126:11-17, 164:5-11; Plaintiffs' MSJ Ex. 27, CBP Dep. at 131:22-132:6; Plaintiffs MSJ Ex. 26 TSA Dep. at 211:22-212:16; Plaintiffs MSJ Ex. 29, TSA Supp. Dep. at 72:16-21.

8. Plaintiffs dispute Government Facts ¶¶ 28-29 to the extent that internal Government assessments regarding terrorism threats and DHS TRIP processes have not been made available to the Plaintiffs for adversarial testing. *See generally* Plaintiffs' MSJ Opp. Ex. 84, Gov't Privilege Logs.

9. Plaintiffs further dispute Government Facts ¶¶ 28-29 to the extent the Government made identical arguments regarding the dangers of providing notice to U.S. Persons of their No Fly List status prior to 2015, but the Government has since identified no actual harm has resulted from the implementation of revised redress procedures. *See* Plaintiffs' MSJ Ex. 40, FBI North *Ibrahim* Decl. ¶¶ 13-21; Plaintiffs' MSJ Ex. 42, FBI Giuliano *Latif* Decl. ¶¶ 13-20.

10. Plaintiffs dispute Government Fact ¶ 31 to the extent it omits that HSPD-6 expressly contemplates the sharing of TSDB information to assist in private-sector screenings. *See* Plaintiffs' MSJ Facts ¶ 4.

11. Plaintiffs dispute Government Fact ¶¶ 35-36 to the extent that any administrative redress process regarding the denial of federal employment or credentials still does not entail notice of TSDB status, its factual basis, or the opportunity to contest that TSDB status.

12. Plaintiffs dispute Government Fact ¶ 35 that "An individual's inclusion in one or more government databases is not determinative of TSA's eligibility determinations" for credentials. Rather, at least six employment credentials related to access to critical infrastructure screen against the TSDB. Plaintiffs' MSJ Opp. Ex. 88, Critical Infrastructure Protection at 8. Presence on the TSDB is a basis for denial of the credential. *See id.* at 9. *See also* Plaintiffs' Facts ¶¶ 99-106.

13. Plaintiffs dispute Government Facts ¶¶ 37 to the extent it omits that during the brief period of time Plaintiffs' counsel reviewed the NCIC private entity list, Plaintiffs identified one private high school which did not meet the Government's own criteria to possess an ORI. Last week CJIS revoked that high school's access to the NCIC. *See* Plaintiffs' MSJ Opp. Ex. 86, March 25, 2019 FBI Declaration.

14. Plaintiffs generally dispute that Government Facts ¶¶ 1-37 regarding operation of the TSDB are sufficient to adjudicate whether the TSDB comports with procedural due process. Plaintiffs contend the Government’s presentation includes material omissions about the TSDB, and therefore incorporate and cross-reference the entirety of Plaintiffs’ Statement of Facts in support of Plaintiffs’ MSJ. (Dkt. 304). Plaintiffs further dispute that the Government’s descriptions of the TSDB and watchlisting policy is complete to the extent the Government does not reference binding watchlisting policy documents and information which the Government has withheld as privileged. *See generally* Plaintiffs’ MSJ Opp. Ex. 84, Gov’t Privilege Logs.

15. Plaintiffs specifically dispute Government Facts ¶¶ 1-37 to the extent they entirely omit the fact that the Government labels individuals as “high-risk,” labels individuals as known, suspected, or potential terrorists, and singles them out for heightened scrutiny and the denial of benefits, based on TSDB Listee associational information. *See* Plaintiffs’ Facts ¶ 19, 33, 64, 66, 120; Plaintiffs’ MSJ Opp. Ex. 85, 2013 Watchlisting Guidance at 5, 22-23, 32, 38-39, 42-43, 66-69, 75; Plaintiffs’ MSJ Opp. Ex. 87, Quiet Skies Bulletin.

**B. Disputed Facts Regarding Plaintiffs’ Experiences**

**1. Dispute of Government’s Summary Paragraph**

16. Plaintiffs dispute Government Fact ¶ 38 as an accurate summary of Plaintiffs’ adverse experiences. Plaintiffs generally refer the Court to Plaintiffs’ MSJ Ex. 3 at 190-193, 202-204, 240-245, 3B; Ex. 4 at 27, 65-70; Ex. 8 at 77-78, 287-288; Ex. 5 at 80-81; Ex. 9 at 125-131, 281-282, 9C; Ex. 10 at 46-59, 66-67, 93-94, 138-143; Ex. 10H; Ex. 13 at 40-45, 47-49; Ex. 19 at 95-104; Ex. 23 at 30-32, 176-178; Gov’t MSJ Ex. 4, Moore Decl. ¶ 27, ¶ 35, ¶ 37, ¶ 42, ¶ 46; *Kadura v. Lynch*, No. 4:14-cv-13128, Dkt. No. 28 (E.D. Mich. Nov. 13, 2015); Plaintiffs’ Opp. Ex. 91.

17. Plaintiffs deny that only four Plaintiffs were denied boarding, that none were prohibited from travel, and that none believe they are currently on the No Fly List. Five Plaintiffs – Elhuzayel, Thomas, Amri, Kadura and John Doe 4 – were denied boarding and therefore prohibited from travel. Moreover, subsequent to being denied boarding, John Doe 4 was told by an FBI agent that he was given a one-time pass to fly on one international trip so that he can get married.

Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 125-131, 136-137, 160; Plaintiffs' MSJ Ex. 10 Thomas Dep. at 44-59, 93, 106; Plaintiffs' MSJ Ex. 3, Kadura Dep. at 190-193; Plaintiffs' MSJ Ex. 23, JD4 Dep. at 30-33; Plaintiffs' MSJ Ex. 23, JD4 Dep. at 71-73, 85-86, and 176-178.

18. Shortly after joining lawsuits challenging their No Fly List status, Elhuzayel and Kadura received letters from DHS TRIP stating “[t]he U.S. Government knows of no reason” why they “should be unable to fly.” Further, after being added to the No Fly List, Thomas was also permitted to board his flight he took shortly after joining this lawsuit – although he never submitted a DHS TRIP inquiry after being denied boarding. Plaintiffs' MSJ Ex. 3B, Kadura Redress; Gov't MSJ Ex. 4, Moore Decl. ¶¶ 37, 42, 46; Plaintiffs' MSJ Ex. 10 at 164, 171.

19. Plaintiffs further deny that none have been informed by government officials whether they are on a watchlist that would require enhanced screening. Elhuzayel was informed that he could not board his flight by an armed agent who escorted him out of an airport as other agents “[h]ad their guns ready to go.” Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 125-131, 136-137, 160. Thomas and his friend were both contacted by an FBI agent who informed them separately that Thomas would not be allowed to fly unless he returned the agent's call. Plaintiffs' MSJ Ex. 10 at 142, 159-160. Kadura was contacted by an HSI Special Agent and asked to meet at a hotel room to discuss how he can “help America” to achieve “democracy in Libya,” in exchange for his phone and to “fix [his] travel issues.” Ahmed was informed by the FBI that he was on the No Fly List and would be removed if he acted as an informant. Plaintiffs' MSJ Ex. 3, Kadura Dep. at 138-141, 148-149, 169, 202-204. Dr. Fares was told by TSA agents that he was required to undergo additional screening and questioning due to a designation given to him before they removed him from a plane after boarding, causing him to miss his flight. Plaintiffs' MSJ Ex. 19, Fares Dep. at 95-105. Al Halabi was informed by an FBI agent at his brother's home that being handcuffed and detained at the border until clearance is obtained is “a process that needs to take place.” Plaintiffs' MSJ Ex. 5 Halabi Dep. at 80-81. Frljuckic was told by a CBP officer during one of five border crossings where he was handcuffed at gunpoint, detained and interrogated for more than 4.5 hours each time that if he were to do a U-turn and cross the border again, he would have to be subjected to the same treatment.

Plaintiffs' MSJ Ex. 11, Frljuckic Dep. at 46-51, 66-69, 81-85, 93-94, 101-103. Shibly was told by a Customs officer at a border crossing that he would be stopped by armed officers and handcuffed again the next time he reenters the U.S. He was also told by a Customs officer at an airport that he was being subjected to heightened scrutiny because "[w]e have to protect against bombs and terrorism." Plaintiffs' MSJ Ex. 8 at 73-75, 77-78, 95, 107, 110-111, 218-220, 310, 312-313.

20. Plaintiffs admit that none have been denied the ability to purchase a gun; however, Defendants neglect to mention that Shibly's application for a concealed weapon permit was subjected to a delay. Plaintiffs' MSJ Ex. 8 at 288. Plaintiffs further state that Defendants' assertion that no Plaintiffs have been denied a job at an airport is misleading. Defendants neglect to mention that Ahmed was employed as a supervisor at Detroit Metro Airport prior to being added to the No Fly List. After being added to the No Fly List, FBI agents told him that his job at the airport could be impacted by his status on the watchlist and that if he acted as their informant, they could remove him from the list. His Customs seal was ultimately revoked without notice or explanation, which interfered with his ability to perform his job. Plaintiffs' MSJ Ex. 4 at 27, 65-70.

21. Plaintiffs admit that they are all U.S. citizens and that none have been denied the ability to board a ship or a boat.

## 2. **Osama Ahmed's Watchlist Experiences**

22. Plaintiffs dispute Government Facts ¶¶ 39-40 in part. Plaintiffs generally refer to Plaintiffs' MSJ Ex. 4, Ahmed Dep. at 17-32, 36-39, 42-45, 72-73 for clarification. Ahmed admits that he traveled approximately twice a month from 2003 to 2009 across the border to visit family, and that 90% of those trips resulted in secondary inspections. More than twenty of those inspections lasted more than five hours. He stopped crossing the border in 2009 to visit his family in Canada. Ahmed further admits that he has thrice traveled by air to Yemen since 2010 and that he was subjected to enhanced screening during his last two international trips. Plaintiffs' MSJ Ex. 4, Ahmed Dep. at 17-46.

23. However, Defendants neglect to mention that Ahmed was also subjected to enhanced screening during his 2010 international trip. In 2010, he was screened three times before

he was permitted to board his outbound flight, including once at the gate, causing him to almost miss his flight. After returning from his trip, he was pulled aside for secondary screening and interrogated about “what sect of Islam I followed, what imams I followed, what mosques I went to...They asked if I was affiliated to different organizations.” Ahmed admits that his USB drive was confiscated; however, he adds that it was returned approximately two months later during a visit by FBI agents who pressured him at his home and at a restaurant to become an informant. Ahmed refused to work with them, so the FBI agents did not remove him from the list. Plaintiffs’ MSJ Ex. 4, Ahmed Dep. at 20-32.

24. Defendants neglect to mention that in 2014 and 2016, he was screened by multiple officers before being permitted to board his outgoing flights, including connections. After returning from his 2014 trip, he was again pulled aside for screening and interrogated for approximately an hour about “where I pray and who I follow.” Plaintiffs’ MSJ Ex. 4, Ahmed Dep. at 32-41.

25. In 2016, Ahmed was not permitted to board his outgoing flight with his laptop, so he was forced to arrange for a friend to pick it up. For his return trip in 2016, he admits that he missed his flight in Qatar due to enhanced screening; however, Defendants omit that he almost missed his rebooked flight due to enhanced screening as well. Ahmed admits that afterwards, upon arriving at his connection, he missed his connecting flight due to secondary screening and boarded a rebooked flight one or two hours later. Defendants omit that during this secondary screening, he was interrogated about his religious views, among other things, for three hours. Plaintiffs’ MSJ Ex. 4, Ahmed Dep. at 38, 42-46.

26. Ahmed admits that he had no issues traveling to his deposition in February 2018; however, he adds that absence “was very weird.” Ahmed also admits that he completed a DHS TRIP traveler inquiry form on April 20, 2011 and that DHS TRIP issued a final determination letter in response to that inquiry on or about October 4, 2011. Plaintiffs’ MSJ Ex. 4, Ahmed Dep. at 72-73; Gov’t MSJ Ex. 4, Moore Decl. ¶ 24.

### 3. **Ahmad Al Halabi’s Watchlist Experiences**

27. Plaintiffs dispute Government Facts ¶¶ 41-42 in part. Plaintiffs generally refer for

clarification to Plaintiffs' MSJ Ex. 5, Al Halabi Dep. at 9, 27-29, 32, 34, 37-51, 57, 63-67, 72-80, 82-83, 88, 92, 94, 103, 107-108, 135-137, 150-152. Al Halabi admits that in 2005, he entered the U.S. by land near San Diego, and was questioned, searched and detained for approximately four and a half hours. However, Defendants omit that he was detained in a cold, concrete cell. Plaintiffs' MSJ Ex. 5, Al Halabi Dep. at 26-29.

28. Al Halabi also admits that from 2005-2016, he lived in Dubai. However, Defendants ignore the reason he lived in Dubai. He was forced to uproot his life, sell everything he owned and move to Dubai so that he could live with his wife because the immigration petition he filed for her was delayed by Defendants for more than 10 years because of his status on the watchlist. Plaintiffs' MSJ Ex. 5, Al Halabi Dep. at 9, 31-32, 34.

29. Al Halabi further admits that he took approximately seven international trips and three domestic trips between 2012 and 2017, that he was routinely interrogated by someone from the U.S. Embassy and subjected to enhanced screening during those trips, and that he missed two connecting flights as a result of enhanced screening. Defendants omit, however, that after each international trip by air upon arriving in the U.S., government agents check the passports of all passengers until he is identified and escorted for secondary inspection and interrogation. After an international trip in 2012, both he and his daughter were interrogated and left in a room for four and a half hours before clearance to board his connecting flight was given from "Washington," and all their belongings were taken out of their luggage and searched, causing them to miss their connecting flight and spend the night. In 2014, after his wife's visa was finally processed, Al Halabi took his wife and children on an international flight to the U.S. The entire family was detained in a holding cell for an hour, then they were taken to a secondary inspection area where all their luggage and carry-ons were opened and searched, and afterwards he was taken to a back room to be interrogated, causing them to miss their connecting flight. Plaintiffs' MSJ Ex. 5, Al Halabi Dep. at 36-52, 63-67.

30. Al Halabi admits that in 2014, he and his entire family were detained at the border for approximately five hours after entering the U.S. by land from Canada. However, Defendants omit that his entire family was detained although they drove in three separate cars, including his

brother who drove to the border to check on his family. Moreover, he was handcuffed in front of his family, detained (without ever being interrogated) in a freezing cold holding cell with bright lights without his shoes – his feet were frozen. This experience caused him to have “flashbacks of the time [he worked] in Guantanamo... that’s how prisoners were in that holding cell.” Plaintiffs’ MSJ Ex. 5, Al Halabi Dep. at 71-80.

31. Al Halabi admits that since 2016, “with the complaint, I started seeing less and less interrogation and, you know, invasive searching,” including one international flight, two land border crossings and his flight for his deposition. However, Defendants fail to mention that, as he noted during his deposition, all of these trips occurred after Al Halabi joined this lawsuit. “It was quite a scene to me. It was amazing.” Plaintiffs’ MSJ Ex. 5, Al Halabi Dep. at 103, 107.

32. Al Halabi admits that as part of his employment with a contractor, he acquired a security badge giving him full access to the Detroit airport’s facilities. However, Defendants omit that whereas obtaining security clearance would normally take three to four days, his was delayed three weeks. Moreover, he applied for the job and security badge after filing this lawsuit. Plaintiffs’ MSJ Ex. 5, Al Halabi Dep. at 150-52.

33. Al Halabi further admits that he submitted three DHS TRIP inquiries and was issued a final determination letter each time. Gov’t MSJ Ex. 4, Moore Decl. ¶ 25.

#### 4. **Saleem Ali’s Watchlist Experiences**

34. Plaintiffs dispute Government Facts ¶¶ 43-46 in part. Plaintiffs generally refer for clarification to Plaintiffs’ MSJ Ex. 15, Ali Dep. at 36, 40-42, 45, 49-53, 69-72, 83-88, 90-92. Ali admits traveling by air on more than 15 flights between 2011 and 2017.<sup>1</sup> Ali admits being interrogated upon reentry in 2011 for approximately three hours; however, Defendants omit that he was interrogated about “who was my Imam, they asked what masses I prayed at,” and about the

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<sup>1</sup> Defendants’ interrogatories only asked for international travel to and from the United States. Ali took two international trips from Canada to Indonesia during this time period, both of which were not responsive to Defendants’ interrogatories. Ali did disclose driving across the border to make those flights. Plaintiffs’ MSJ Ex. 15, Ali Dep. at 43, 45; Plaintiffs’ Opp. Ex. 89 at Rog 43.

religious books he was carrying. Plaintiffs' MSJ Ex. 15, Ali Dep. at 29-45.

35. Ali also admits that on an outgoing flight in 2014, he experienced enhanced screening at the TSA checkpoint, and that he was told it was a random selection. However, Defendants ignore that he was the only one in his entire family – a group of eight – that was unable to obtain his boarding pass until an airline representative received clearance to print it. In fact, he has been unable to obtain his boarding pass until an airline representative received clearance for every single flight since 2011. Ali also admits that upon reentry from a March 2017 trip from Indonesia, he was interrogated by CBP for approximately 45 minutes and that he was again told he was randomly selected. However, Defendants fail to mention that when he was taken to secondary inspection to be interrogated, the only other people there that were selected for secondary inspection were three other Muslims. Plaintiffs' MSJ Ex. 15, Ali Dep. at 40-41, 68-72, 83-88.

36. Ali admits that between 2014 to 2016, he frequently exited and reentered the U.S. by land.<sup>2</sup> In fact, he recalled at least four incidents returning to the U.S. across the border during that time period and being selected for secondary inspection and detained each time. Ali admits that in November (not October) 2015, he was detained for approximately six hours, had his phone confiscated and was told to return the next day to retrieve his phone. However, Defendants omit that because he was traveling with a friend, they were both detained and interrogated for six hours, and they both had their phones confiscated. Plaintiffs' MSJ Ex. 15, Ali Dep. at 47-56.

37. Ali admits that between September and December 2017, he made 11 (not 12) trips into Canada as part of his employment as a truck driver, and that after each trip, he returned to the U.S. by air. He also admits that he was unable to obtain a boarding pass for any of these flights unless an airline representative obtained clearance and printed them for him. Ali admits that he did not encounter additional screening on these flights; however, he notes that all of these flights were taken after joining this lawsuit. Plaintiffs' MSJ Ex. 15, Ali Dep. at 74-92.

38. Ali admits that he submitted a DHS TRIP inquiry on March 15, 2011 and that DHS

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<sup>2</sup> Ali has had problems crossing the border since well before 2011. Plaintiffs' MSJ Ex. 15, Ali Dep. at 31-32.

TRIP issued a final determination letter in response to that inquiry on or about March 30, 2011. Gov't MSJ Ex. 4, Moore Decl. ¶ 26.

**5. Mark Amri's Watchlist Experiences**

39. Plaintiffs dispute Government Facts ¶¶ 47-48 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 13, Amri Dep. at 39-40, 42-45, 64-83, 86. Amri admits he never had travel issues by land or by air prior to January 2016. Plaintiffs' MSJ Ex. 13, Amri Dep. at 39-41.

40. Amri admits that he was unable to obtain a boarding pass when he attempted to fly to Las Vegas for business purposes in January 2016. However, Defendants neglect to mention that he was delayed an hour and a half to two hours before he was informed by an airline representative that the government will not allow him to fly. Plaintiffs' MSJ Ex. 13, Amri Dep. at 41-45.

41. Amri further admits that he has flown domestically twice since, in August 2016 and March 2018, and that he was subjected to enhanced screening both times. However, he denies the remainder of ¶ 48 as false and misleading. In March 2018, Amri was subjected to six searches and chemically tested four times before he was finally cleared to board his rebooked connecting flight (after missing the first one due to enhanced screening) from Dallas to Washington, DC, to testify for his deposition in this case. Plaintiffs' MSJ Ex. 13, Amri Dep. at 57-83.

42. Amri admits that he filed a DHS TRIP inquiry on March 4, 2016. Amri further admits that DHS TRIP issued a final determination letter in response to that inquiry on or about September 1, 2016, that stated, "At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly." Gov't MSJ Ex. 4, Moore Decl. ¶ 27.

**6. Samir Anwar's Watchlist Experiences**

43. Plaintiffs dispute Government Facts ¶¶ 49-51 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 17, Samir Dep. at 31-35, 60-61, 64-72, 82-90, 92-93. Samir Anwar admits that prior to 2014, he has crossed the border for approximately 15 trips without incident. Anwar further admits that he crossed the border into the U.S. in May 2014 and February 2015 and he was detained and interrogated both times for approximately three and a half hours. However, Defendants fail to mention that in May 2014, his wife was detained with him, and in February 2015,

his father was detained with him. Additionally, Defendants also do not mention that in May 2014, Anwar was pressured to provide the password to his phone because a CBP officer threatened to confiscate it and never return it. Plaintiffs' MSJ Ex. 17, Samir Dep. at 64-73, 82-91.

44. Anwar further admits that in June 2014, he was subjected to enhanced screening in connection with a domestic flight, however denies that he was only delayed 15 minutes. In fact, in both legs of the trip he was unable to print his boarding pass until the airline representative obtained clearance. Moreover, he – in addition to his wife and daughter – were all subjected to enhanced screening, and then subsequently detained while eating at a restaurant despite having cleared security before TSA agents obtained clearance a second time before they could board their return flight. Plaintiffs' MSJ Ex. 17, Samir Dep. at 30-36.

45. Anwar admits that he did not travel to Canada – to a family engagement party – due to the enhanced screening he is subjected to when he crosses the border. However, Defendants omit that he also did not cross the border to attend multiple family events for the same reason. Plaintiffs' MSJ Ex. 17, Samir Dep. at 92-93.

46. Anwar admits that he has had no travel issues in connection with a border crossing in September 2017, two domestic flights he took in August 2017, and a domestic flight he took in January 2018 for his deposition in this case, but states that all those flights occurred after joining this lawsuit. Defendants fail to mention that he testified that travel has been smoother since he joined this lawsuit. Plaintiffs' MSJ Ex. 17, Samir Dep. at 60-61.

47. Anwar admits that he completed a DHS TRIP inquiry form on July 9, 2014 and DHS TRIP issued a final determination letter in response to that inquiry on or about August 7, 2014. Plaintiffs' MSJ Ex. 17, Samir Dep. at 113-118; Gov't MSJ Ex. 4, Moore Decl. ¶ 28.

#### 7. **Shahir Anwar's Watchlist Experiences**

48. Plaintiffs dispute Government Facts ¶¶ 52-54 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 16, Shahir Dep. at 47-56, 58-60, 65-66. Shahir Anwar admits that he estimated that he traveled by land to Canada and back once or twice per year. Shahir Anwar specifically recollected six to seven trips by land since 2005. Anwar admits that in 2006, he was

detained at the border for two to three hours, along with his family, and all their luggage was searched. Plaintiffs' MSJ Ex. 16, Shahir Dep. at 43, 46-48 (just last sentence).

49. Anwar admits that he was not subjected to enhanced screening for an international trip he took in 2010; however, Defendants omit that his itinerary was booked by a travel agency as part of a larger group trip. Plaintiffs' MSJ Ex. 16, Shahir Dep. at 48-50.

50. Anwar further admits that in 2013 and 2014 he was unable to print his boarding pass and security searched through all his items in connection with two domestic flights he took in those years. However, Defendants do not mention that for each leg of each of those flights, he was delayed a half hour before an airline representative boarding pass obtained clearance to print his boarding pass, and another hour and half for enhanced screening. Moreover, all his boarding passes were stamped "SSSS" during those trips. Defendants also fail to mention that in 2014, he was traveling with 10-15 coworkers that witnessed the same delays and enhanced screening he was being subjected to. Plaintiffs' MSJ Ex. 16, Shahir Dep. at 51-56, 58-60.

51. Defendants neglect to mention that due to his own experiences traveling in addition to knowledge of the treatment his brother, Samir Anwar, has been subjected to at the border, Shahir Anwar stopped crossing the border entirely. Plaintiffs' MSJ Ex. 16, Shahir Dep. at 66.

52. Anwar further admits he did not encounter any difficulties flying in connection with the last three domestic trips he took or his last border crossing. However, Defendants fail to mention he testified "when the lawsuit was filed, it seemed like everything just kind of went away." Each of these trips were taken after joining this lawsuit. MSJ Ex. 16, Shahir Dep. at 65-66.

53. Anwar admits that he completed a DHS TRIP inquiry form on November 3, 2014 and that DHS TRIP issued a final determination letter in response to that inquiry on or about March 23, 2015. Gov't MSJ Ex. 4, Moore Decl. ¶ 29.

#### **8. Ibrahim Awad's Watchlist Experiences**

54. Plaintiffs dispute Government Facts ¶¶ 55-58 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 12, Awad Dep. at 38, 57-60, 73-82, 89, 93-96, 97-99, 102-103, 106-108, 111-116. Awad admits that since becoming an adult, he has not been subjected to

enhanced screening in connection with domestic flights. However, Defendants neglect to mention that he was subjected to enhanced screening in connection with the two domestic flights he recalls taking as a minor. He was subjected to enhanced screening as a nine or ten year old, while his mother waited for him. He was again subjected to enhanced screening while traveling with his father as a 13 year old, which ultimately caused them both to miss their flight. Plaintiffs' MSJ Ex. 12, Awad Dep. at 101-108.

55. Awad admits that in 2013, on a connecting flight from the U.S. to Turkey, he was subjected to pat downs and interrogations by Netherlands security. However, Defendants neglect to mention that he was delayed approximately 45 minutes before an airline representative obtained clearance to print his boarding passes in the U.S. Plaintiffs' MSJ Ex. 12, Awad Dep. at 36-38.

56. Awad also admits that in 2014, he was interrogated by NYPD officers upon returning to the U.S. from an international trip for approximately 15 minutes. However, Defendants neglect to mention that a man in a suit identified Awad before he reached passport control and escorted him to secondary inspection for interrogation. Plaintiffs' MSJ Ex. 12, Awad Dep. at 57-60.

57. Awad also admits that in 2017, he flew from Saudi Arabia to the U.S. However, Defendants neglect to mention that at the gate at his connection in Jordan, Jordanian officials created two lines – one for those passengers that had “SSSS” on their boarding pass and one for those passengers that did not – and directed both Awad and his friend to the line designated for “SSSS” passengers, even though his friend's boarding pass did not contain the “SSSS” designation. An officer wrote both their names down under an “SSSS” column in his notebook. When the friend asked why, the officer explained that his name was added because he was traveling with Awad. Awad denies that they experienced no delay at this time. In fact, both were subjected to enhanced screening and managed to make their flight only because it was held for them. These three international trips are the only international trips Awad has taken since 2001. Plaintiffs' MSJ Ex. 12, Awad Dep. at 73-84.

58. Awad admits that the last three times he crossed the border prior to joining this lawsuit, he was subjected to enhanced screening. In December 2013, he was interrogated for 40

minutes. In April 2014, he and six coworkers were told to leave their cell phones in the car with their SIM cards out, and all were taken to secondary inspection for 45 minutes to an hour. After joining this lawsuit, he crossed the border once without incident. Plaintiffs' MSJ Ex. 12, Awad Dep. at 85-89 and 95.

59. Awad admits that subpoenaed records reflect that in 2016, Awad was subjected to a delay before he could test drive or lease a truck, and that subpoenaed records reflect that a reason for the delay was that his name was a near match to a name on the Specifically Designated National ("SDN") list maintained by the Office of Foreign Asset Control ("OFAC"). *See* Gov't Fact ¶ 57. Awad denies that this listing excludes the possibility that his TSDB watch list status may also have been a reason for the delay.

60. Awad can neither admit nor deny whether or not he filed a DHS TRIP, as he does not recall whether he submitted one. Plaintiffs' MSJ Ex. 12, Awad Dep. at 180.

#### 9. Michael Coleman's Watchlist Experiences

61. Plaintiffs dispute Government Facts ¶¶ 59-62 in part. Plaintiffs refer for clarification to Plaintiffs' MSJ Ex. 6, Coleman Dep. at 50-57, 63-92, 96-97, 101, 103-104, 110-115, 117-119.

62. Coleman admits that he was detained during his last border crossing in March 2015 for approximately two hours. However, Defendants neglect to mention that his wife and children who were traveling with him were detained with him. Moreover, Defendants omit that he was interrogated about the details of a religious talk he gave in Windsor, "about theological disagreements among Muslim groups and that leading to radicalization of some young people," and about his missionary activities. Coleman also admits that prior to this incident, he crossed the border multiple times without incident. However, Defendants neglect to mention that as a result of this experience, Coleman stopped crossing the border, despite having family and colleagues that he would have visited frequently. Plaintiffs' MSJ Ex. 6, Coleman Dep. at 50-54, 56.

63. Coleman admits that he has taken between seven and twelve domestic trips and

seven international trips since 2015<sup>3</sup>, and that he was required to undergo enhanced screening. However, Defendants neglect to mention that he was required go through the clearance process to print his boarding pass at every leg of his trips, which causes him significant delays. Moreover, Defendants do not mention that in May 2015, after having been invited as a guest by the Office of the Prime Minister of Malaysia, Malay authorities witnessed him having to obtain clearance from the U.S. to board the first leg of his flight, which could cause the government of Malaysia to reconsider inviting him again in the future. Additionally, Defendants do not mention that his missed flight due to enhanced screening was despite a three and a half hour connection. Plaintiffs' MSJ Ex. 6, Coleman Dep. at 63-115, 117-119.

64. Coleman denies that he was twice referred to secondary inspection by CBP upon returning to the U.S. In fact, he was referred to secondary inspection after returning from five international trips. Additionally, Defendants omit that he was interrogated about his religious activities during one of those inspections. They also omit that his name was called on a loudspeaker before he was escorted off a plane and taken to one of those secondary inspections. They also omit that two students traveling with him on a field trip were also subjected to secondary inspections because they were traveling with him. Plaintiffs' MSJ Ex. 6, Coleman Dep. at 63-115.

65. Coleman admits that he did not experience travel difficulties in connection with his last two international trips and five domestic trips, all of which he took after joining this lawsuit.

66. Coleman denies that he did not submit the requisite documentation in connection with his DHS TRIP inquiry; and in fact, states that he never received a response to his inquiry that was properly submitted on September 15, 2015. Plaintiffs' MSJ Opp. Ex. 92, Coleman Redress.

#### 10. **Baby Doe's Watchlist Experiences**

67. Plaintiffs dispute Government Fact ¶ 63 in part. Baby Doe admits he was not even a year old when his boarding pass was first stamped "SSSS," and he was subjected to a four-hour secondary inspection upon arrival in the U.S. after an international trip although he was burning up

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<sup>3</sup> Defendants incorrectly state that Coleman has taken at least five domestic trips and four international trips since 2015. Gov't MSJ, Dkt. 299 at 23.

and had a fever. He was traveling with both of his parents; however, only he and his father received the designation. All their bags were opened, searched and swabbed for explosives. Baby Doe admits he traveled on one trip afterwards and did not experience any issues; however, he also notes that he took that trip after joining this lawsuit. Baby Doe admits he did not submit a DHS TRIP inquiry. Plaintiffs' MSJ Ex. 2, Baby Dep. at 37-60; Plaintiffs' MSJ Ex. 2A, Baby Boarding Pass.

#### 11. **John Doe 2's Watchlist Experiences**

68. Plaintiffs dispute Government Fact ¶ 64 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 21, JD2 Dep. at 65-74, 76-77, 81-83, 90-93, 103-106, 143-145. JD2 admits that he was not subjected to enhanced screening for his domestic flights; however, he was subjected to enhanced screening after every international flight he took since 2005. He was detained for up to three hours each time, where he was pressured to provide his password to his electronic devices to be searched, including his camera, laptop, phone and iPad, and CBP officers searched his checked-in luggage, sometimes in public view. Defendants omit that he was interrogated in detail at three of the inspections about the mosque he attends and whether he knows if anyone is affiliated with terrorist organizations. Moreover, during a secondary inspection in 2010, he was pressured to become an informant inside his mosque. Defendants also omit that he missed a connecting flight as a result of secondary inspection in 2015. JD2 admits that he intends to travel internationally in 2019, and he is concerned about the enhanced screening that he, and potentially his wife, would be subjected to. Plaintiffs' MSJ Ex. 21, JD2 Dep. at 65-74, 76-77, 81-83, 90-93, 103-106, 143-145.

69. JD2 further admits that he submitted a DHS TRIP inquiry on December 21, 2015 and that DHS TRIP issued a final determination letter in response to that inquiry on or about January 21, 2016. Gov't MSJ Ex. 4, Moore Decl. ¶ 33.

#### 12. **John Doe 3's Watchlist Experiences**

70. Plaintiffs dispute Government Facts ¶¶ 65-68 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 22, JD3 Dep. at 26, 34-37, 44-79, 100-119, 125-129, 137-138, 146-153, 160, 187, 193-194, 210.

71. JD3 admits that he is subjected to enhanced screening before every flight, whether

domestic, international or connecting. He was twice removed from the secure area of the airport to be searched again after having already cleared security. Whenever he returns from an international flight, he's taken to secondary inspection – where he is detained for hours and interrogated, his electronics are searched, his luggage is searched, and he is treated like a criminal and a terrorist. Defendants omit that in one instance, he saw a government agent following him around the airport everywhere he went. Plaintiffs' MSJ Ex. 22, JD3 Dep. at 44-79, 100-119, 125-129, 137-138, 146-153, 160, 187, 193-194, 210.

72. Defendants omit the reason why JD3 moved to Germany. In 2016, upon crossing the border back into the U.S., JD3, his wife and his 14-year old son were all handcuffed at gun point, before they were all detained for five and a half hours and all their electronics searched. JD3 said the officers – whom he described as nervous and acting as if they were losing control – aimed their guns at them and frantically gave conflicting orders. He overheard them describe him as “armed and dangerous.” JD3 and his family knew they could have been killed, so the family collectively decided JD3 should separate from the family and move out of the country. “It was devastating to me and my family because I've been married for 31 years, we never have marital problem, we have beautiful family, and this incident was the cause for this forced separation.” Plaintiffs' MSJ Ex. 22, JD3 Dep. at 26, 34-37, 45.

73. JD3 admits he took trips to Morocco, Saudi Arabia, Turkey and Canada; however, none of these trips were over U.S. airspace. He flew to Canada for the purposes of his deposition in this case, because he did not want return to the U.S. Plaintiffs' MSJ Ex. 22, JD3 Dep. at 30-32.

74. JD3 denies that DHS TRIP has no record of receiving an inquiry from him. In fact, he submitted an inquiry on August 5, 2014 and followed up twice after having received no response. On January 27, 2015, DHS TRIP responded to the same email thread that he submitted his inquiry and claimed they “do not have a record of you applying for redress.” Plaintiffs MSJ Opp. Ex. 93.

### 13. **John Doe 4's Watchlist Experiences**

75. Plaintiffs dispute Government Facts ¶¶ 69-70 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 23, JD4 Dep. at 30-33, 44-45, 71-73, 85-86. JD4 admits that prior

to being denied boarding on August 1, 2016, he never encountered any problems traveling. That day, he was planning on flying to Morocco to get engaged to his then-fiancée and meet her family for the first time. It was not until he arrived at the airport when he was first informed that he was on the No Fly List by the ticketing agent. Plaintiffs' MSJ Ex. 23, JD4 Dep. at 30-33.

76. Defendants omit that JD4 was later told by an FBI agent that he was given a one-time pass to fly on one international trip so that he can get married – which he took on September 1, 2016. That day, he was subjected to a second screening at the gate after having cleared security. JD4 admits that he has flown domestically twice after joining this lawsuit and did not encounter any difficulties. Plaintiffs' MSJ Ex. 23, JD4 Dep. at 71-73, 85-86, and 176-178.

77. JD4 further admits that on or about September 21, 2016, he received a letter in response to his DHS TRIP inquiry stating, “At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly.” Gov't MSJ Ex. 4, Moore Decl. ¶ 70.

#### 14. **Anas Elhady's Watchlist Experiences**

78. Plaintiffs dispute Government Facts ¶¶ 71-74 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 1, Elhady Dep. at 56, 70-72, 76, 84-85, 89, 91, 94-95, 99-105, 123-124, 133-135, 139-143, 147-149, 156-161, 164-169, 176-177, 180, 185. Elhady admits that between 2012 and 2018, he took approximately seven one-way international flights with a departure or arrival point in the U.S. However, he denies that his departures on these trips were without incident. Every international flight that arrived in the U.S. resulted in enhanced screening, secondary inspection, a search of his electronics and aggressive interrogations, one of which was video recorded. He admits that he was detained once for more than two hours, once for four hours, once for six hours and once for thirty minutes to an hour. Defendants omit that during a trip in 2013 that he took with his brother, both subjected to secondary inspection, searched and interrogated. Plaintiffs' MSJ Ex. 1, Elhady Dep. at 54-56, 66-72, 76, 84-89, 93-95, 123-124.

79. Elhady admits that he traveled by land from the U.S. to Canada between 2014-2015 at least eight times. Elhady further admits that he was taken to secondary inspection every time he returned to the U.S., where he was searched and interrogated. However, contrary to the times

Defendants provided, he was detained once for four hours, three times for five to seven hours, once for more than six hours, once for seven hours and twice for eight hours. Defendants omit that he was handcuffed three times and detained in a holding cell three times. Plaintiffs' MSJ Ex. 1, Elhady Dep. at 132-136, 139-161, 163-170, 175-177, 180-185.

80. Elhady admits that his phone was seized during two secondary inspections at the border. However, Defendants omit that his phone was also seized a third time at an airport. After his phone was seized upon returning from an international flight in 2013, FBI agents went to the home where he was staying in addition to the homes of two his uncles looking for him. An FBI agent later showed up at his school to return his phone. During a call with that FBI agent, he was informed that his phone was being tapped. Similarly, after his phone was seized during his August 2014 border crossing, FBI agents refused to ship his phone to him and showed up at his work instead. His phone was seized a third time in September 2014 at a border crossing. Plaintiffs' MSJ Ex. 1, Elhady Dep. at 98-105.

81. Defendants also omit that in August 2014, the taxi driver that was driving him across the border was also detained for 30 minutes. Additionally, Defendants omit that his closest friend (a Canadian citizen) was detained, searched and interrogated for over six hours because he was crossing the border with Elhady. The following week, when his friend attempted to enter the U.S., Customs officers informed him that he was no longer permitted to enter the U.S. because of his association with Elhady. Elhady lost him as a friend as a result. Plaintiffs' MSJ Ex. 1, Elhady Dep. at 133-136, 156-159.

82. Defendants omit that Elhady was also detained by Canadian authorities twice for approximately three hours – both times, he was asked to provide an exact time that he anticipated returning to the U.S. and given an instruction to call if his plans changed. Defendants do not mention that his April 2015<sup>4</sup> border crossing where he was detained in a freezing cold cell with bright lights, without his jacket and shoes, occurred after he gave the exact time to Canadian

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<sup>4</sup> Defendants' TECS records indicate that the April 2015 inspection was approximately 8 hours. *See* Plaintiffs' MSJ Opp. Ex. 90, Elhady TECS Record.

authorities that he would be crossing back into the U.S. Defendants also omit that Elhady received emergency medical care during his April 2015 secondary due to his confinement conditions. Plaintiffs' MSJ Ex. 1, Elhady Dep. at 94, 163-168.

83. Elhady admits that he had no issues related to domestic flights.

84. Elhady admits that he submitted a DHS TRIP inquiry on January 27, 2015 and DHS TRIP issued a letter in response to that inquiry on May 11, 2015. Plaintiffs' MSJ Ex. 1B, Elhady Redress; Gov't MSJ Ex. 4, Moore Decl. ¶ 36.

15. **Ausama Elhuzayel's Watchlist Experiences**

85. Plaintiffs dispute Government Facts ¶¶ 75-76 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 56-73, 75-84, 86-94, 96-98, 100, 125, 128-131, 136-137, 160. Elhuzayel admits that prior to 2016, he never encountered issues traveling by air. He also admits that on April 23, 2016 he was denied boarding on a flight to San Juan. Defendants omit that he was told by a government agent at the airport that he was not going anywhere. He was escorted by an agent out of the airport as armed agents were "ready to go." Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 125-131, 136-137, 160.

86. He further admits that he submitted a DHS TRIP inquiry on April 24, 2016 and that DHS TRIP issued a letter in response to that inquiry on December 6, 2016, which stated, "At this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly." Elhuzayel notes that he received this letter after he joined this lawsuit. Gov't MSJ Ex. 4, Moore Decl. ¶ 37.

87. Elhuzayel further admits that he was subjected to enhanced screening on both trips that he took after he was denied boarding in 2016. Defendants omit that he was subjected to a very invasive pat-down at every leg of every flight both at the TSA checkpoint and at the gate – including a pat-down "all over [his] body parts." He was subjected to enhanced screening twice at connections as well – first he is escorted back to the TSA checkpoint where he undergoes enhanced screening, then he is screened again at the gate. Elhuzayel admits that multiple flights had to be re-booked due to enhanced screening. Elhuzayel further admits that one of these missed flights was

the result of a three-hour interrogation after returning from an international flight. Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 56-80, 96-98, 100.

88. Defendants omit that he was interrogated by Dominican authorities when he arrived there on an international flight. Defendants also omit that flight attendants removed two passengers who were assigned seats next to him and replaced them with two men who later followed him all over the airport where he landed. Defendants also omit that one of the DHS agents that searched him at a gate for one of his flights went to his gym for a year prior and tried to entice him to say something about ISIS that would get him into trouble. Elhuzayel never saw that DHS agent at the gym again after that gate search. Plaintiffs' MSJ Ex. 9, Elhuzayel Dep. at 64-65, 81-94, 122-125.

16. **Zuhair El-Shwehdi's Watchlist Experiences**

89. Plaintiffs dispute Government Facts ¶¶ 77-78 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 20, El-Shwehdi Dep. at 33, 43-44, 53, 57-58, 66-67, 75, 95, 102-110, 113, 116, 120, 124, 126-129, 133-134, 137, 141-143, 157-159, 162, 176-177, 179, 180-182, 190-191, 193-196, 204. El-Shwehdi admits that he has flown more than 20 times since 2011, including 17 domestic flights. He further admits that he is subjected to enhanced screening before every flight, including connections; however, the clearance process at check-in for domestic flights frequently takes forty minutes to an hour, and the enhanced screening process at the checkpoint typically takes 20-30 minutes. On other hand, Defendants do not mention that the clearance process for international flights takes longer. Defendants also neglect to mention that he is frequently subjected to additional enhanced screening again at the gate before being permitted to board a flight, adding further delay. Plaintiffs' MSJ Ex. 20, Elhuzayel Dep. at 38-44, 53, 57-58, 66-67, 75, 102-110, 113-116, 119-121, 123-129, 133-34, 137, 141-143, 162, 176-177.

90. El-Shwehdi also admits that upon returning from every international flight, he was taken to secondary inspection, interrogated and searched – a process that can take up to six hours. However, Defendants omit that upon deplaning, he is escorted by two to four officers to secondary inspection. Plaintiffs' MSJ Ex. 20, Elhuzayel Dep. at 157-159.

91. He further admits that he has missed at least three flights due to enhanced screening,

which resulted in him staying overnight before continuing to his final destination. Defendants omit that one of the missed flights was because he was escorted off a plane prior to takeoff by CBP officers and Turkish personnel only to be searched and interrogated again, resulting in a missed flight. Defendants also omit he has missed flights due to his phone being searched. Plaintiffs' MSJ Ex. 20, Elhuzayel Dep. at 157-159, 180-182, 189-191, 193-196.

92. Defendants do not mention that he has been followed by CBP officers in airports, on at least two trips, to the point that they waited outside the bathroom when he used it. Plaintiffs' MSJ Ex. 20, Elhuzayel Dep. at 91-95.

93. He admits he avoids travel due to the enhanced screening he is subjected to – in fact, he did not travel to Libya for the funerals of his brother and his sister's husband. He also drives 500-miles two to three times a year, although he is disabled and experiences problems in his hips as a result of two hip replacements. Plaintiffs' MSJ Ex. 20, Elhuzayel Dep. at 33, 43, 67, 203-204.

94. El-Shwehdi admits that he submitted a DHS TRIP inquiry on August 18, 2016 and that he received a letter in response to that inquiry on or about November 21, 2016. Gov't MSJ Ex. 4, Moore Decl. ¶ 38.

#### 17. **Hassan Fares's Watchlist Experiences**

95. Plaintiffs dispute Government Facts ¶¶ 79-82 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 19, Fares Dep. at 29-32, 43-45, 55, 78-81, 95-106, 123, 134-135. Dr. Fares admits that between 2005 and some point between 2010 and 2014, the only problems he had traveling were that he could not print his boarding pass at a kiosk and that an airline representative needed to print it for him. Defendants omit that he was told by an airline representative during this time that the reason he could not print his boarding pass at a kiosk was because he was on a list. Dr. Fares admits that since some time between 2010 and 2014, he has been able to print his boarding pass at kiosks. Plaintiffs' MSJ Ex. 19, Fares Dep. at 29-32, 43-45, 55, 106.

96. Dr. Fares further admits that in May 2015, he and his wife were interrogated by a Customs officer at the gate for approximately ten minutes prior to boarding a flight to Jordan. Plaintiffs' MSJ Ex. 19, Fares Dep. at 76-81.

97. Dr. Fares also admits that on August 2, 2016, TSA officers removed him from a plane after boarding to undergo additional security, causing him to miss his flight to Jordan. However, Defendants neglect to mention that he was told by the TSA agents that he was required to undergo additional screening and questioning due to a designation given to him. Dr. Fares admits that he was rebooked on another flight; however, Defendants omit that his rebooked flight arrived after his flight to Jordan had already departed. Moreover, Defendants ignore the reason that Dr. Fares decided to forego his trip to Jordan, which was for business purposes. Dr. Fares was traumatized after what he had just experienced and scared that he would not be allowed to reenter the country if he left on an international flight. Plaintiffs' MSJ Ex. 19, Fares Dep. at 95-105.

98. Dr. Fares also admits that he made "numerous" land border crossings from Detroit to Canada and back between 2005 and 2014. While it is true that the actual questioning he was subjected to was typically 10-15 minutes, Defendants neglect to mention that he was taken to secondary inspection and detained during most of these border crossings for a minimum of a half hour to approximately 1.5 to 2 hours. Plaintiffs' MSJ Ex. 19, Fares Dep. at 63-71.

99. Dr. Fares denies that in 2017, he flew from the U.S. to Jordan three times without incident, with the sole exception being one interrogation upon his return by CBP. Dr. Fares admits that he was interrogated for approximately an hour and fifteen minutes by CBP after arriving from one of these three trips. However, for all three trips, his boarding pass for his return flight from Jordan was stamped "SSSS," and he was subjected to enhanced screening at the gate along with several other passengers who also had their boarding passes stamped "SSSS." Plaintiffs' MSJ Ex. 19, Fares Dep. at 123, 134-35.

100. Dr. Fares admits that he did not file a DHS TRIP inquiry.

#### 18. **Murat Frljuckic's Watchlist Experiences**

101. Plaintiffs dispute Government Facts ¶¶ 83-86 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 11, Frljuckic Dep. at 46-51, 60, 63-64, 66-69, 74-75, 81-85, 93-94, 101-103. Frljuckic admits that the last five times he crossed the border to return to the U.S. from Canada (between October 2012 and May 2016), he was handcuffed at gunpoint before he was taken

to secondary inspection for 3.5 to four hours, and in one instance six hours. However, Defendants neglect to mention that his car was surrounded each time with four to five officers aiming their guns in his direction. In one of those instances, his 70-year-old mother and 4-year-old son were in the car. In another instance, his wife and eight children were in the car. In another instance, a CBP officer told him that if he did a U-turn and crossed the border again, he would be subjected to the same treatment. The last instance, the officers “were shouting, screaming” and “got so nervous, upset, and they started screaming more” as they were pointing their guns at him. He thought they were “going to shoot this time.” Frljuckic admits that as a result of these crossings, Frljuckic no longer crosses the border or travels by air. Plaintiffs’ MSJ Ex. 11, Frljuckic Dep. at 44, 46-51, 66-69, 81-85, 93-94, 101-103.

102. Defendants also fail to mention that in multiple secondary inspections, Frljuckic was interrogated about his religious beliefs – “so much” actually – including questions about what mosque he attends, where he prays, what scholars he listens to, and who he associates with. Plaintiffs’ MSJ Ex. 11, Frljuckic Dep. at 81-85.

103. Frljuckic admits that in June 2014, he missed his international flight to Vienna because he was unable to print his boarding pass. However, Defendants neglect to mention that it took the airline representative four to 4.5 hours to obtain clearance to print his boarding pass, and by then his flight had already departed. As a result, his wife and eight children also missed their flight and they were forced to spend the night in the airport. Frljuckic also admits that between December 2012 and April 2013, he traveled by air between Detroit and New York monthly, and that for all of these trips he was subjected to enhanced screening – including having to go through the clearance process and being subjected to invasive searches by TSA at the checkpoint and again at the gate. Frljuckic admits that prior to December 2012, he did not experience any problems flying. Plaintiffs’ MSJ Ex. 11, Frljuckic Dep. at 60-65, 74-75.

104. Frljuckic admits that he submitted a DHS TRIP inquiry on November 7, 2012 and that DHS TRIP issued a letter in response to that inquiry on or about January 4, 2013. He also admits that he submitted a second inquiry on August 18, 2014 and DHS TRIP issued a letter in

response to that inquiry on or about October 31, 2014. Gov't MSJ Ex. 4, Moore Decl. ¶40.

19. **Wael Hakmeh's Watchlist Experiences**

105. Plaintiffs dispute Government Facts ¶¶ 87-88 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 7, Hakmeh Dep. at 41, 51, 53-63, 68-70, 73, 94-95, 132, 137, 140, 146-147, 156-157, 166-174, 212-215, 220. While Dr. Hakmeh admits that he specifically recollected the secondary inspections he was referred to after returning from two of his ten international trips in March 2017 and July 2017, Dr. Hakmeh testified repeatedly that he is consistently subjected to heightened scrutiny whenever he flies since 2014. Dr. Hakmeh travels regularly to Turkey in connection with medical missions to provide critical care training courses and life-saving emergency care to victims of the Syria conflict. His boarding pass is routinely designated "SSSS" upon returning from his medical missions in Turkey, and he is always taken to secondary inspection upon returning from international flights. Plaintiffs' MSJ Ex. 7, Hakmeh Dep. at 41-44, 53-63, 73, 132, 135-137, 166-174, 212-215, 220.

106. Dr. Hakmeh admits that he missed a flight after being escorted to secondary inspection upon deplaning by two TSA agents and interrogated for more than one to two hours, causing him to miss his connecting flight. Since this missed flight, Dr. Hakmeh admits that for the last four years he has booked all his international flights to leave from Chicago – he recounted approximately ten – “so that [his] ability to come back and work as an emergency physician isn't jeopardized,” Dr. Hakmeh has been “forced to” book all of his international trips to fly directly out of and back to Chicago, and he drives to and from Chicago (a five-hour drive) instead of flying to ensure he does not miss a connecting flight. Defendants omit, however, that in addition to driving to avoid connections, Dr. Hakmeh also always arrives at airports at least four hours before each flight to account for secondary screening. Plaintiffs' MSJ Ex. 7, Hakmeh Dep. at 66-70, 94-95.

107. Defendants also omit that he missed an international trip back to the U.S. from Turkey due to enhanced screening and was forced to spend the night. Plaintiffs' MSJ Ex. 7, Hakmeh Dep. at 135-137, 146-147.

108. Dr. Hakmeh recalls submitting a DHS TRIP inquiry and has not received a response.

Plaintiffs' MSJ Ex. 7, Hakmeh Dep. at 140.

20. **Yasseen Kadura's Watchlist Experiences**

109. Plaintiffs dispute Government Facts ¶¶ 89-93 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 3, Kadura Dep. at 104, 113-116, 138-141, 163-167, 169, 190-193, 202-204, 235-239, 260-263. Kadura admits that in 2011 and 2012, he crossed back into the United States at least five times, and that three of those crossings resulted in four to eight hour secondary inspection and interrogation. Kadura admits that during one of those inspections, CBP officers drew their weapons while he exited his car. However, Defendants neglect to mention that CBP officers stopped traffic at all inspection booths, before they handcuffed him and detained him, shoeless, in a freezing cold room without any windows or any place to sit for 7.5 to eight hours. At least one passenger filmed the incident on her phone. Defendants also neglect to mention that the next time he crossed the border returning from Mexico, he was again handcuffed – this time to a seat – as soon as his passport was swiped, for about seven to eight hours during which he was interrogated about, among other things, what his religion is and what mosque he goes to. Defendants also neglect to mention that the third instance resulted in his father being subjected to an invasive search, including of his crotch area, and treated like a criminal just because he was traveling with him. Plaintiffs' MSJ Ex. 3, Kadura Dep. at 103-104, 113-116, 137-141, 163-167, 190-193, 235-239.

110. Kadura admits that his phone was detained during one of these secondary inspections at the border. However, Defendants omit that he has had his phone confiscated twice at border crossings and not returned to him upon release. Moreover, the phones of his father and 17-year old brother, in addition to his father's laptop, were also seized because they were crossing the border with him. Defendants also omit that the second time his phone was confiscated, an ICE agent contacted him and asked him to meet him at a hotel room without his attorney to discuss how he can "help America" to achieve "democracy in Libya," in exchange for his phone and to "fix [his] travel issues." Kadura stopped taking his phone with him when he crosses the border and ships it home instead. Plaintiffs' MSJ Ex. 3, Kadura Dep. at 138-141, 148-149, 169, 202-204.

111. Kadura admits that upon reentry into the U.S. in August 2011 by air, he was subjected to secondary inspection, searched and interrogated between one and two hours. He further admits that on October 22, 2012, he was denied boarding a flight to Libya to visit his mother on a religious holiday. Plaintiffs' MSJ Ex. 3, Kadura Dep. at 190-193.

112. Kadura admits that he submitted a DHS TRIP inquiry form on November 21, 2012 and that DHS TRIP issued a form letter in response to that inquiry on or about May 8, 2013. Then, after filing a lawsuit challenging his denial of boarding on August 14, 2014, Kadura admits that DHS TRIP issued a "superseding final determination letter" that stated "[t]he U.S. Government knows of no reason" why they "should be unable to fly." Thus, Kadura admits that since receiving this letter, he has been able to fly on five domestic flights, one of which he was subjected to enhanced screening. Plaintiffs' MSJ Ex. 3B, Kadura Redress; Plaintiffs' MSJ Opp. Ex. 91, Kadura Redress; Gov't MSJ Ex. 4, Moore Decl. ¶ 42.

113. Kadura admits that he has declined to travel on a number of occasions due to his watchlist status. In fact, he missed a lot of weddings and funerals of family members in Libya, avoids domestic travel when possible, and chose to attend a lower-ranked and more expensive masters degree program to remain closer to his parents so he would not have to fly to visit them. Plaintiffs' MSJ Ex. 3, Kadura Dep. at 260-263.

#### 21. **Muhammad Khan's Watchlist Experiences**

114. Plaintiffs dispute Government Facts ¶¶ 94-97 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 18, Khan Dep. at 29-36, 39, 41-42, 45-60, 63-71, 74-84, 93-99, 131-133, 150-155, 157-158, 161-164, 166. Khan admits that in 2012, he was referred to secondary inspection upon entering the U.S. by land in Michigan. However, Defendants omit that he was traveling with his family and as a result, all their cell phones were taken, and they were detained with him. Plaintiffs' MSJ Ex. 18, Khan Dep. at 94-96.

115. Khan admits that in 2016 and 2017, he took three international trips and that he was subjected to enhanced screening prior to each leg of each flight. In one instance he was delayed two to three hours in Jordan to obtain his boarding pass, and then subjected to a three to four hour

secondary inspection upon arriving to the U.S., causing him to miss work. In another instance, he was delayed three to four hours in Saudi Arabia to obtain his boarding pass, causing him to miss his connecting flight. He rebooked the next available flight, which did not leave until three days later. Khan admits he was delayed another 30-40 minutes upon arriving in Jordan to obtain his boarding pass for his rebooked flight; however, upon arriving to the U.S. he was subjected to a secondary inspection that lasted three and a half hours. In the third instance, he almost missed his connecting flight in Istanbul due to delays in obtaining his boarding pass, and was again subjected to a three to four hour secondary inspection upon arriving in the U.S. Plaintiffs' MSJ Ex. 18, Khan Dep. at 33, 78, 84, 154.

116. Khan admits that he was also subjected to enhanced screening at each leg of a domestic trip he took in 2016. Plaintiffs' MSJ Ex. 18, Khan Dep. at 140-141.

117. Khan admits that he drives to avoid flying when he can; however, Defendants omit the reason is because Khan experiences psychological trauma and cannot sleep the day before he goes to the airport. Defendants also omit that Khan has not crossed the border since the 2012 incident, including to attend at least one wedding in Canada, to avoid the treatment he was subjected to at the border. Plaintiffs' MSJ Ex. 18, Khan Dep. at 74, 96-97.

118. Khan admits that he submitted a DHS TRIP inquiry on January 7, 2014 and a second inquiry on or about February 26, 2014. He further admits that DHS TRIP issued a letter in response to the second inquiry on or about July 14, 2015. Plaintiffs' MSJ Ex. 18, Khan Dep. at 205-207, 218; Gov't MSJ Ex. 4, Moore Decl. ¶ 43.

## 22. **Adnan Khalil Shaout's Watchlist Experiences**

119. Plaintiffs dispute Government Facts ¶¶ 98-100 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 14, Shaout Dep. at 5-17, 34-35, 37-39, 41-48, 71-72, 74-75, 77-78, 86-87, 90-91, 137, 143, 170, 192. Shaout admits that he has experienced enhanced screening before every leg of every flight he has taken since December 2004 – which are approximately 36 international flights and at least ten domestic flights. The clearance process alone prior to every leg takes approximately an hour and a half to two hours every time, 45 minutes if he's lucky. He is

subjected to secondary inspection upon every return from an international flight. He admits that he has missed at least one connecting flight due to enhanced screening, despite a two-hour connection, causing him to spend the night. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 34-48, 71-75, 77-78, 86-87, 89-91, 143-145, 170.

120. Dr. Shaout admits that he was escorted off a flight in public view at least once in June 2011 only to be subjected to enhanced screening and interrogated, although he had already cleared security. He admits that he ultimately boarded that flight; however, that was only because the entire flight was delayed. Dr. Shaout also admits that he was subjected to enhanced screening at the gate prior to departure at least once after having already cleared security. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 86-87.

121. Defendants omit that since 2004, Dr. Shaout arrives at the airport at least three hours in advance of all domestic flights and four hours in advance of all international flights to account for enhanced screening he is always subjected to. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 41.

122. Defendants also omit that Dr. Shaout has stopped traveling with cell phones due to the searching and copying of all his documents in his possession and his electronic devices at every secondary inspection – a process that has caused significant delays such that sometimes he sleeps on a chair as he waits. As a computer engineer, he has been able to determine that software was added to his phone during secondary inspections. Dr. Shaout denies that he testified secondary inspections take a half hour to three hours. Rather, he testified that the searching and copying of his documents and electronic devices alone during secondary inspections takes between a half hour to three hours. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 46-48, 169-170, 192-197.

123. Defendants also omit that Dr. Shaout is regularly interrogated the same religious questions “over and over and over” – including questions about where he prays, which mosque he goes to and what organizations he donates to. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 47, 146-149.

124. Dr. Shaout admits that he has not had problems related to travel since May 2017; however, he notes that these trips were all taken after joined this lawsuit. Plaintiffs' MSJ Ex. 14, Shaout Dep. at 137-138.

125. Dr. Shaout admits he submitted three DHS TRIP inquiries between 2011 and 2015 and that he received a letter in response to those inquiries. Gov't MSJ Ex. 4, Moore Decl. ¶ 44.

23. **Hassan Shibly's Watchlist Experiences**

126. Plaintiffs dispute Government Facts ¶¶ 101-103 in part. Plaintiffs generally refer for clarification to Plaintiffs' MSJ Ex. 8, Shibly Dep. at 52, 59-60, 66-68, 71-83, 85-100, 102, 112-113, 115, 121-122, 123-137, 163-172, 180-181, 182-186, 206-210, 216-227. Shibly admits that he has entered the U.S. by land at the U.S. Canada border at least 12-13 times between 2004 and 2017, and that between 2004 and 2016 he was referred to secondary inspection and interrogated every time. Contrary to Defendants' assertion, Shibly recollected only one inspection where he was detained between 15-30 minutes. Rather, for the rest, he estimated the secondary inspections typically lasted up to an hour or two, with two hours being the norm. Shibly further admits one of the secondary inspections lasted approximately six hours; however, Defendants neglect to mention that his mother and three siblings were detained with him because they were crossing with him. Plaintiffs' MSJ Ex. 8, Shibly Dep. at 47-48, 52, 55, 73, 108, 112-113, 126, 137, 143, 231, 307.

127. Additionally, Defendants neglect to mention that Shibly was stopped by armed officers and handcuffed several times, including once in front of his grandmother – who fainted at the sight and was taken by ambulance and hospitalized as a result. Defendants also omit that during this inspection, a CBP officer informed Shibly that he would be subjected to the same treatment the next time he reenters the U.S. Defendants also do not mention that many of Shibly's friends that were detained with him because they were crossing with him – along with his wife, children, mother and sister – began experiencing the same treatment as Shibly even when they cross the border without him. Plaintiffs' MSJ Ex. 8, Shibly Dep. at 73-75, 77-78, 107, 110-111, 310.

128. Shibly admits that he took at least ten international trips between 2006 and 2016 and more than 80 domestic flights since 2015. Shibly further admits that since approximately 2010, he has almost always been subjected to enhanced screening while flying. Shibly denies that he would wait 15-20 minutes for his boarding pass with the longest time taking 45 minutes. Rather, he typically waited between 40-45 minutes before almost every flight to go through the clearance

process. Shibly also admits that having to go through the clearance process meant that he would be subjected to enhanced screening by TSA for those flights. Defendants omit that Shibly was told by a Customs officer that he was being subjected to heightened scrutiny because “[w]e have to protect against bombs and terrorism.” Defendants also omit that he was also subjected to enhanced screening after a cruise. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 95, 218-220, 312-313.

129. Shibly admits that he recollected the specifics of two missed flights due to enhanced screening. Defendants neglect to mention that Mr. Shibly testified that he urged his wife on more than one occasion, after being detained for an interrogation prior to boarding with his family, to take the children and board the flight without him because he wanted to save them from the “long-term traumatic impact” of having to “see their parents consistently being targeted by their own government.” Defendants also neglect to mention that for one of the missed flights, he was traveling to meet with “senior White House leadership” to discuss the targeting of Muslims, including himself, by Customs and the FBI when they travel. During that meeting, he shook President Barack Obama’s hand and was not subjected to any enhanced screening beforehand. In fact, former DHS Director of Operations even felt safe enough to invite Mr. Shibly to his home while Mr. Shibly was continuing to be subjected to enhanced screening. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 88, 114, 120, 123, 183-184, 208.

130. Defendants neglect to mention that Shibly was subjected to heightened scrutiny while he was employed by Regional Elite and given unrestricted access to sterile areas of their airport and airplanes, and despite relationships he established through his career with senior level government officials, including former Commissioner of CBP Gil Kerlikowske and former Senior Advisor to President Barack Obama Valerie Jarrett. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 22, 86-88, 121, 125, 184-186.

131. Defendants omit that the enhanced screening he has been subjected to has caused him humiliation in front of family members, business leaders, executives and friends that have traveled with him. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 194.

132. Defendants also neglect to mention that Shibly has been consistently interrogated

about his religious beliefs and practices – such that it has been “a consistent theme throughout each and every time” he was detained at airports and at the border. Among the questions he was asked were, “Do you recruit people for Islam?” “Do you visit any Islamic extremist website? Are you part of any Islamic tribes?” “Have you ever been to a madrassah?” “Have you ever studied Islam full-time?”; whether he attends a particular mosque, which Muslim scholars he listens to, and how many gods and prophets he believes in. An officer told him he was asking these questions because “we have to protect against terrorism.” Mr. Shibly was also interrogated about his father’s charitable work for Syrian children. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 59, 92-94, 108, 172.

133. Shibly admits that he submitted a DHS TRIP inquiry on November 30, 2009 and August 26, 2013 and that he received letters in response to those inquiries on or about March 8, 2011 and November 15, 2013 respectively. Plaintiffs’ MSJ Ex. 8, Shibly Dep. at 233-244; Gov’t MSJ Ex. 4, Moore Decl. ¶ 45.

#### 24. **Donald Thomas’s Watchlist Experiences**

134. Plaintiffs dispute Government Facts ¶¶ 104-106 in part. Plaintiffs generally refer for clarification to Plaintiffs’ MSJ Ex. 8, Thomas Dep. at 44-59, 66-76, 78-87, 93-94, 98-100, 112-119, 138-143, 154, 161-163. Thomas admits that in October 2015 and January 2016, he was subjected to enhanced screening on two flights resulting in one to two hour delays; however, Defendants omit that several of his friends were subjected to enhanced screening as well because they were traveling with him in both instances.

135. Thomas admits that in February 2016, he traveled by land to Canada; however, Defendants omit that he and his friends traveling with him were all detained by Canadian authorities for an hour. Thomas further admits that he and his friends were detained and subjected to secondary inspection and interrogations for eight hours upon reentry. Defendants again neglect to mention that his friends crossing with him were also detained for eight hours, and that he was escorted to secondary inspection by seven government agents holding their guns.

136. Thomas admits that he was denied boarding an international flight to Malaysia in April 2016 after arriving at the airport with his wife and children and luggage containing everything

they owned, and after leaving his job, to permanently move to Malaysia. That day, he was told by an airline representative for the first time that he was on the No Fly List.

137. Thomas further admits that he filed a DHS TRIP inquiry shortly *before* his denial of boarding; however, Defendants omit the reason he filed shortly before his trip.

138. Thomas was met by an FBI agent shortly prior to his planned trip to Malaysia and interrogated about his Islamic beliefs, asked questions including “What does jihad mean? When does Islam allow violence? Why are you going to Malaysia? Do you know there’s a lot of extremist people in Malaysia?... When did you become Muslim?” Thomas had agreed to meet with the FBI agent because he and his friend were told separately by the FBI agent that Thomas would not be allowed to fly to Malaysia unless he spoke with the agent. This interrogation prompted Thomas to file a DHS TRIP inquiry prior to his flight. Thomas further admits that on September 1, 2016 he received a final determination letter in response to that inquiry.

139. Thomas also admits that he did not submit a DHS TRIP inquiry after he was denied boarding, nor did he receive a letter from DHS TRIP stating “[t]he U.S. Government knows of no reason” why they “should be unable to fly.” Nonetheless, after he joined this lawsuit, Thomas admits he has been able to fly, although he has been subjected to enhanced screening and has missed at least one flight as a result.

140. Thomas admits that prior to 2015, he was never subjected to enhanced screening.

## **OPPOSITION ARGUMENT**

### **I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE WATCHLIST**

Plaintiffs have long been assigned TSDB statuses. Indeed, the Government has repeatedly screened Plaintiffs in accordance with their TSDB statuses and various annotations, and disseminated their statuses to tens of thousands of entities around the world. These 23 innocent people the Government has stigmatized as “known or suspected terrorists” have standing to challenge the due process ramifications of the TSDB statuses that continue to impact their lives.<sup>5</sup>

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<sup>5</sup> Plaintiffs’ Administrative Procedures Act claim is co-extensive with their Procedural Due Process claim.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
Anas ELHADY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-375 (AJT/JFA)
	)	
CHARLES H. KABLE, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' STATEMENT IDENTIFYING FACTS RECITED IN THE  
COURT'S SEPTEMBER 4, 2019 ORDER THAT ARE DISPUTED**

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On December 4, 2019 the Court ordered Defendants to “file a statement that identifies with specificity those facts recited in the Court’s September 4, 2019 Order [Doc. No. 323], as to which it contends there is a genuine factual dispute, with a specific supporting reference to the existing summary judgment record.” Doc. No. 335. In accordance with the Court’s December 4, 2019 Order, the Government sets forth the following statement. In doing so, the Government does not concede that any specific fact disputed is material. *See* Def.’s Mem. in Opposition to Plaintiffs’ Mtn. for Summary Judgment, Doc. No. 311 at 1 (“Defs.’ MSJ Opp.”). Rather, the Government has identified herein facts recited in the Court’s September 4 Memorandum Opinion (“Mem. Op.”), where the Court relied on Plaintiffs’ Statement of Material Facts (“Pls.’ SMF”), notwithstanding that those facts were disputed, clarified, or placed in context in Defendants’ opposition. In granting Plaintiffs’ Motion for Summary Judgment, the Court must view the facts and all reasonable inferences in the light most favorable to the Government as the non-moving party. *See Rossignol v. Voorbaar*, 316 F.3d 516, 523 (4th Cir. 2003) (“When faced with cross-motions for summary judgment, the court must review each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law. When considering each individual motion, the court must take care to resolve all factual disputes and any competing, rational inferences in the light most favorable to the party opposing that motion.”) (internal quotation marks and citations omitted). Accordingly, the Government respectfully submits that the following facts as currently reflected in the Mem. Op. — all of which were specifically established or clarified by the Government in the course of summary judgment briefing — are not construed in the Government’s favor in accordance with the proper standard.

## I. Background

### A. The Terrorist Screening Database (“TSDB”)

- 1) Mem. Op. p. 4: “The information contained in the TSDB, which is unclassified, is ‘updated continuously and disseminated around the country and the world in real time.’” (citing Pls.’ SMF ¶¶ 5, 7).

Dispute: Standing alone, this finding inaccurately suggests that the information contained in the TSDB is publicly disseminated, and in a wholesale fashion, when the record reflects that a limited group of domestic and foreign screening partners receive only subsets of TSDB information, and only pursuant to written agreements that restrict the manner in which the information can be used. *See* DEX3 (Groh MSJ Decl.) ¶¶ 30, 32, 33. The Court similarly refers to dissemination or use of “the TSDB” elsewhere in the opinion without the context of these limitations. *See, e.g.*, Mem. Op. p. 6.

- 2) Mem. Op. p. 5: “The TSC may also consider an individual’s travel history, associates, business associations, international associations, financial transactions, and study of Arabic as information supporting a nomination to the TSDB.” (citing Pls.’ SMF ¶ 19).

Dispute: This finding inaccurately suggests that the enumerated factors in this paragraph are “information supporting a nomination.” But as Defendants clarified, they are factors that may be considered (though cannot on their own suffice) in making a determination. Defs.’ MSJ Opp. at 3, ¶ 18-19 (citing Groh MSJ Decl. ¶ 25; *see* Defs.’ SMF ¶ 13); *see* PEX62 (Overview Document) at 4; *see, e.g.*, PEX25 (Groh Tr.) at 340-41 (studying Arabic is not itself conduct in furtherance of terrorism, but “in context of additional factors, it could be relevant” information for the agency to consider); 343-44 (international travel is not necessarily conduct in furtherance of terrorism but could be relevant information depending on the totality of the circumstances). Defendants clarified that “Plaintiffs’ reference to the ‘study of Arabic’ comes from a deposition question posed by Plaintiffs’ counsel, and it does

not suggest that the study of the Arabic language is the only language that might be considered.” *Id.* at n.2 (citing Groh Tr. 340-4).

- 3) Mem. Op. p. 6-7: “The TSC shares the TSDB with various ‘partners,’ including federal state and foreign government agencies and officials, who then use that information to support their screening, vetting credentialing, diplomatic, military, intelligence, law enforcement, visa, immigration and other security functions. Pls.’ Statement of Material Facts ¶ 21; Pls.’ MSJ Ex. 62 at 1-2, 5-6. These partners include . . . [a list of agencies and functions (citing Pls.’ SMF)].”

Dispute: The use of TSDB information for the screening described in this paragraph does not necessarily result in particular outcomes or ineligibility for the listed programs or benefits. *See* PEX62 (“If the individual is confirmed to match the identity in the TSDB, each encountering agency will take appropriate action according to the internal procedures and policies and consistent with the application of its expertise and the regulatory and statutory standards applicable to each screening and vetting activity to serve its agency mission.”). For example, TSA conducts security threat assessments for various credentialing programs in which it consults, among other resources, the TSDB, but an individual’s inclusion in the TSDB is not determinative of TSA’s eligibility determination and merely serves as a factor indicating that an individual requires further scrutiny. *See* Defs.’ SMF ¶ 35 (citing DEX1 (Froemling Decl.) ¶ 50).

- 4) Mem. Op. p. 7: “The FBI, which administers the TSC, also uses the TSDB to conduct and facilitate law enforcement screening and investigations, and, for that purpose, shares TSDB information with more than 18,000 state, local, county, city, university and college, tribal, and federal law enforcement agencies and approximately 533 private entities through its National Crime Information Center (“NCIC”) system, which these law enforcement agencies and private entities then use to screen individuals they encounter in traffic stops, field interviews, house visits, and municipal permit processes.” (citing Pls.’ SMF ¶¶ 107-110).

Dispute: This finding does not accurately capture the highly regulated context in which TSDB information is contained and accessible in the NCIC system, and inaccurately

suggests that a private entity could lawfully access the KST file in the NCIC system in a non-criminal justice setting. First, the TSDB as a whole is not made available through NCIC; rather TSC exports only a subset of the TSDB (the KST File) to the NCIC. DEX52 (Rago MSJ Decl.) ¶¶ 2, 6. Second, information in an NCIC file can only be accessed pursuant to a properly formed query on a specific individual. *Id.* (limitations on query). Third, the employees at qualified private entities that have access to the NCIC are only permitted to use an NCIC query the same way a law enforcement entity would—for criminal justice purposes. PEX82 at 3, 28 C.F.R. §§ 20.3(b), 20.33(a)(7), 20.20(a). Fourth, the reference to a “house visit” is based on testimony provided in response to a request for a definition of encounters, and the witness does not purport to describe authorized uses of NCIC; it also referred to “a call to a house,” not a “house visit.” PEX28 (DeSarno Tr.) 136. Finally, the uses listed by Plaintiffs would not be authorized uses unless they were specifically related to criminal justice (and not, for example, mere civil permits). *See also* PEX71.

- 5) Mem. Op. p. 7: “The FBI also uses the TSDB to screen its own applicants and employees, and to conduct background checks on individuals seeking to purchase firearms or obtain firearm licenses.” (citing Pls.’ SMF ¶¶ 117-118).

Dispute: The Court’s citation to Plaintiffs’ material facts suggests that it relied on Plaintiffs’ incorrect characterization that “TSDB status may be used to deny purchase of a firearm altogether.” Pls.’ SMF ¶¶ 117-118.<sup>1</sup> Although NCIC is queried, a match to the KST File is not a basis for denial of a firearm purchase, and also does not result in a “mandatory 3-day waiting period.” The three-day waiting period is a statutory maximum and where any issue is resolved prior to the expiration of this period, the firearms dealer will receive authorization

<sup>1</sup> This assertion is immaterial because no Plaintiff has alleged any inability to purchase a firearm due to purported TSDB status, *see* Defs.’ SMF ¶ 38—but it merits correction nonetheless.

to proceed with the sale. DEX53 (Stark-Nutter MSJ Decl.) ¶¶ 10-13.” Defs.’ MSJ Opp. at 16-17, ¶¶ 117-118.

- 6) Mem. Op. p. 7, n.7: “These private entities [with access to TSDB information through NCIC] include the police and security forces of private railroads, colleges, universities, hospitals, and prisons, as well as animal welfare organizations; information technology, fingerprint databases, and forensic analysis providers; and private probation and pretrial services.” (citing Pls.’ SMF ¶ 109).

Dispute: This sentence relies on Plaintiffs’ description of the types of organizations that have NCIC access, which was drawn from Plaintiffs’ research into names of the organizations they reviewed from the ORI List, which returned flawed results. In response to Pls.’ SMF ¶ 109, Defendants referred the Court “to PEX82 (March 1, 2019 CJIS supplemental response) at 8 for a description of the types of private entities that may have access to the NCIC, and in what circumstances they qualify for such access. *See also* Rago MSJ Decl. ¶¶ 9-12.” Defs.’ MSJ Opp. at 15, ¶ 109. For example, rather than “animal welfare organizations,” CJIS testified that NCIC access was only provided to the law enforcement divisions of certain animal welfare organizations, such as Societies for the Prevention of Animal Cruelty (SPCAs), that have agreements to assist law enforcement by conducting animal cruelty investigations. PEX82 at 4.

- 7) Mem. Op. pp. 7-8: “Individuals who are included in the TSDB, or who are misidentified as or near matches to TSDB listees, may experience ‘delay, inconvenience, or other difficulties at a point of screening where TSDB data is used to screen for terrorists,’ including being denied boarding on international flights, being subject to secondary inspection, having their electronic devices and those of their travel companions subject to an advanced search, and, if they are a foreign national, being denied admission to the United States.” (citing Pls.’ SMF ¶¶ 24, 28-29, 32-33, 138).

Dispute: Mere TSDB inclusion (as opposed to placement on the No Fly List subset) does not result in being denied boarding on international flights, and all other actions described in the quoted passage, including secondary inspections, searches of electronic devices, and

determinations of admissibility, are conducted pursuant to CBP's legal and policy requirements, and can be taken against *all* travelers, not just TSDB listees. CBP does not deny boarding to individuals on international flights based on TSDB status, and does *not* deny U.S. citizens reentry based on TSDB status (or any of its subset lists). PEX27 (Howe Tr.) at 59-61. Instead, CBP may make a recommendation to an air carrier not to board a passenger if CBP believes that passenger will be inadmissible upon arrival in the U.S. Howe Tr. at 34-35, 58. *See* Defs.' MSJ Opp. at 4. In addition, Defendants clarified that "CBP decides what actions to take . . . at the border based on law enforcement need. CBP Officers inspecting travelers have discretion, subject to legal and policy requirements and in accordance with their training and experience." Defs.' MSJ Opp at 5, ¶ 33 (citing Howe Tr. 270 and DEX51 (Howe MSJ Decl.) ¶ 14). Further, TSA attested that a typical enhanced screening at an airport lasts 10 to 15 minutes, and that the majority of people selected for enhanced screening are not selected due to TSDB status. DEX1 (Froemling MSJ Decl.) ¶¶ 10, 39.

- 8) Mem. Op. p. 8: "In cases where the individual is a match to an identity in the TSDB, DHS TRIP refers the matter to the TSC Redress Office, which then conducts a review of the underlying information supporting the individual's inclusion in the TSDB, including by consulting with the nominating agency or foreign government, to determine whether they should be removed. Pls.' Statement of Material Facts ¶ 131; Defs.' Statement of Material Facts ¶ 26."

Dispute: The review is not limited to "underlying information supporting the individual's inclusion in the TSDB." Instead, TSC reviews the available derogatory and exculpatory information about the traveler, including any information provided by the traveler as a part of the inquiry, to make a new determination as to whether the individual continues to satisfy the standard for inclusion in the TSDB and its subsets. Defs.' SMF ¶ 26 (citing DEX4 (Moore Decl.) ¶ 12; Groh MSJ Decl. ¶¶ 56-60).

## B. The Individual Plaintiffs

- 9) Mem. Op. p. 9: “Plaintiffs are routinely subjected to additional screening when they fly on a commercial airplane and when they enter the United States at a land border or port, though the frequency and invasiveness of that secondary screening varies; and they contend that their inclusion in the TSDB can be inferred from a range of adverse consequences they have suffered, including, but not limited to, adverse land border crossing experiences, [Pls.’ SMF] ¶¶ 35-47, adverse experiences with electronic searches at the border, *id.* at ¶¶ 48-53, adverse air travel experiences, *id.* at ¶¶ 68-86, and adverse immigration experiences, *id.* at ¶¶ 95-96.”

Dispute: Plaintiffs have not established that they are all “routinely” subjected to additional screening or inspection. *See generally* Defs.’ SMF ¶¶ 38-106 (summarizing each Plaintiff’s testimony about their travel experiences).<sup>2</sup> For example, Plaintiff John Doe 2 has never encountered enhanced screening despite travelling on more than 20 domestic flights since 2000, and only encountered additional CBP inspections. *Id.* ¶ 64 (citing DEX23 at 8-11; DEX24 at 26-54, 120-22). Plaintiff Saleem Ali travelled extensively domestically and internationally and only occasionally encountered additional security at the airport or the border. *Id.* ¶¶ 43-46 (citing DEX10 at 78-80, 86-89). Others have stopped experiencing travel delays altogether. *Id.* ¶¶ 41 (Halabi); 61 (Coleman); 93 (Kadura). At most, the Court could conclude that a few of the Plaintiffs claim to be “routinely” subjected to additional screening or inspection.

In addition, the reference to “adverse immigration experiences” is not complete or accurate. All Plaintiffs are U.S. citizens and have not had any adverse immigration experiences. *See* Pls.’ SMF ¶¶ 95-96. Two of them claimed that their immigration

<sup>2</sup> Defendants also respectfully refer the Court to Defendants’ reply brief, which further clarifies some of the differences between TSA and CBP authorities. Plaintiffs’ SMF uses the terms “screening” and “inspection” interchangeably but those terms involve both very different authorities and very different experiences for the traveler. Defs.’ MSJ Reply at 2 (citing DEX1 (Froemling MSJ Decl.) ¶¶ 10-12 and DEX51 (Howe MSJ Decl.) ¶¶ 14-16).

applications on behalf of third parties not before the Court were “delayed” but Defendants clarified that the length of time stated is not necessarily “delay.” Defs.’ MSJ Opp. ¶¶ 95-96. And Defendants further explained that Plaintiffs cannot plausibly show that the purported delay was connected to the TSDB: “For example, Al Halabi’s wife’s visa was more likely delayed by the fact that he was charged with espionage, court martialled, and received a bad conduct discharge, not as a result of the TSDB. *See* [PEX5 (Al Halabi Tr.)] at 163-172; DEX63, 64. Hakmeh has provided no reason to believe that a five-year wait for his wife’s petition was due to placement in the TSDB, and it is not clear that a five-year wait is even particularly unusual. [PEX7 (Hakmeh Tr.) at 261.] The same holds true for Baby Doe’s mother, whose wait for her U.S. citizenship was only two years, and whose petition was sponsored by Father Doe, who is not even a Plaintiff in this action. [PEX2 (Father Doe Tr.) at 82.]” Defs.’ MSJ Opp. at 36.

- 10) Mem Op. pp.9-10: “When attempting to return to the United States by car after a brief trip to Canada in April 2015, Plaintiff Anas Elhady (“Elhady”) was surrounded by CBP officers, handcuffed, and then escorted to a room where he was held for more than ten hours and repeatedly interrogated about his family members and other associates. *Id.* ¶ 35; *see* Pls.’ MSJ Ex. 1 at 181-92. During this time, Elhady required emergency medical attention and was transported to a hospital, where he was administered Basic Life Support. [Pls.’ SMF] ¶ 36. Elhady was transported to and from the hospital in handcuffs. *Id.* On at least two prior occasions, Elhady was detained for approximately seven to eight hours when attempting to cross the border into the United States, and was handcuffed, stripped him of his belongings, kept in a cell, and prohibited from contacting his attorney. *Id.* ¶ 37. Elhady has also had his phone confiscated multiple times at the U.S. border, been pressured to reveal its password to border agents, been questioned about its contents, and been told by an FBI agent that his cell phone conversations were being monitored. *Id.* ¶ 49. When Elhady attempted border-crossings, CBP officers told him “Are you serious? Someone like you should have stopped crossing the border by now.” *Id.*; Pls.’ MSJ Ex 1 at 152. As a result of these experiences, Elhady stopped crossing the border altogether and stopped flying for more than a year. *Id.* ¶ 35; Pls.’ MSJ Ex. 1 at 186-92, 194.”

Dispute: Defendants disputed aspects of Elhady’s description of his detentions. The cited testimony regarding Elhady’s subjective experiences and impression does not establish those

subjective impressions as objective fact. Defs.' MSJ Opp. at ¶¶ 35-37; pp. 23-24 (analyzing testimony). Elhady was not held in a room for "more than 10 hours." He alleged various timeframes for his 2015 detention, with a timespan between six and twelve hours, beginning in the middle of the night, but each of those claims included the hours he spent receiving medical care. Defs.' SMF ¶ 73 (citing DEX29 at 8-12 and DEX30 at 131-35, 142-44); Defs.' MSJ Reply at 13-14. Elhady's phone was inspected but not "confiscated." Twice it was inspected and released to him at the Port of Entry; on other occasions, the inspection took longer and the devices were returned to him after his release. Defs.' MSJ Opp. ¶ 49 (citing PEX1 (Elhady Tr.) 134, 177; *cf. id.* 94, 177). Defendants also explained the procedures under which CBP may search electronic devices at the border, and there is nothing in the record suggesting that the inspection of Elhady's devices deviated from those policies. *See* Defs.' MSJ Opp. ¶¶ 47-53 (citing PEX64). Finally, the record does not support Elhady's allegation that he stopped crossing the border altogether and stopped flying for a year as a result of these experiences. Defendants explained that "[a]lthough [Elhady] claims to be deterred from travel as a result, he continued travelling internationally after his issues began, has travelled internationally as recently as a 2017 trip to Yemen, Elhady Tr. 111-24, and his domestic air travel has been wholly without incident, Defs.' SMF ¶¶ 71-74. On his most recent reentry to the U.S. upon returning from Yemen, he recalls being questioned for 30 minutes about his activities overseas. Elhady Tr. 121-24. Defs.' MSJ Opp. at 24; *see also* Defs.' SMF ¶ 72 (no domestic travel issues).

- 11) Mem. Op. p.10: "Like Elhady, Plaintiffs Kadura, al Halabi, Shibley, Frljuckic, and John Doe 3, among others, have been forcibly arrested (often at gunpoint) and detained for long hours in front of their family. Pls.' SMF ¶¶ 37-47 (also noting similar experiences by El-Shwehdi, Coleman, Khan, and Samir and Shahir Anwar)."

Dispute: The listed Plaintiffs had different experiences at the border, and none of their experiences was “like” Elhady’s. None of the Plaintiffs were “arrested” at the border; rather, some of them were temporarily detained for the duration of a border inspection. In each instance, the cited testimony regarding subjective experiences and impressions does not establish those impressions as fact. *See* Defs.’ MSJ Opp. ¶¶ 37-47. Moreover, CBP established that it does not have a policy requiring its officials to draw a weapon or use handcuffs whenever they encounter a traveler who matches to the TSDB; rather, TSDB status can be a basis for referral to secondary and any determination of the propriety of a CBP Officer’s actions during inspections is based upon the totality of the circumstances of each individual encounter. Defs.’ MSJ Opp. ¶ 30. Defendants’ SMF described the same testimony accurately. *See generally* Defs.’ SMF ¶¶ 38-106. For example:

- Kadura began being referred to secondary inspection by CBP after his return from Libya in 2011 (during a civil war), including during at least three of five land border crossings. Defs.’ SMF ¶¶ 89-93; Defs.’ MSJ Reply ¶¶ 89-93. During one land border crossing, he claims that the officers directed him to exit the car while they had their hands near their guns. *Id.* (citing PEX3 (Kadura Tr.) at 164); Pls.’ SMF ¶ 38. He was not travelling with his family on that occasion. He recalls that his inspections at the border lasted anywhere from one to eight hours. *Id.* Two other crossings were without incident at all. *Id.* And he now travels without difficulty. *Id.*
- Al-Halabi claims that (following his arrest and court martial), he was on several occasions referred to secondary inspection by CBP. Defs.’ SMF ¶¶ 41-42 (citing DEX7 at 5-8 and DEX8 (Al-Halabi Tr.) at 37-41, 48-51, 72, 88-89). The longest inspection lasted five hours, and members of his family were with him on that trip. Al-Halabi Tr. at 74-79. More recently, he has had no travel difficulties. *Id.* at 107-108. His testimony does not indicate that weapons were drawn on any of these occasions, only that he was detained for the duration of a secondary inspection.
- El-Shwehdi claims that on four occasions, when returning from Libya during the civil war (following his criminal conviction), he was detained by CBP for secondary inspections lasting from two to six hours. Defs.’ SMF ¶¶ 77-78 (citing DEX33 at 5-12 and PEX20 (El-Shwehdi Tr.)); El-Shwehdi Tr. at 139-96 (describing international trips, including inspections); Defs.’ MSJ Opp. at 24 (analyzing testimony). His testimony does not indicate that weapons were drawn, and his family was not with him on any international trips. El-Shwehdi Tr. at 172 (“All my trips overseas by myself”).
- Coleman claims that CBP detained him upon re-entering the country on a few occasions for the duration of an inspection, and that the longest such detention lasted about two hours. Defs.’ SMF ¶¶ 59-62, as amended by Defs.’ MSJ Reply ¶¶ 59-62. His testimony

does not indicate that weapons were drawn. He has since travelled domestically and internationally without incident. *Id.*

- 12) Mem. Op. p. 10: “In addition to Elhady, Plaintiffs Shaout, El-Shwehdi, John Doe 2, Samir Anwar, Ali and Baby Doe have had their electronics and those of family members searched, seized and copied.” (citing Pls.’ SMF ¶¶ 49-53)

Dispute: Plaintiffs have not established that their devices were “seized” or “copied,” only that in some instances, they were temporarily detained for inspections in accordance with CBP policy upon their entry to the country. *See* Defs.’ SMF ¶¶ 31-32 (describing CBP policies regarding inspections of electronic devices), Defs.’ MSJ Opp. ¶¶ 48-53 (same).

Under some circumstances, devices may be copied, but there is no indication in the record that this happened to the Plaintiffs, much less routinely. *Id.* Plaintiffs’ experiences are not similar to Elhady’s, *see* Defs.’ MSJ Opp. at ¶ 49 (describing Elhady’s testimony), or similar to one another. For example:

- Shaout speculated that the Government must have been copying or placing software on his devices, but there is no evidence of that. *See* Pls.’ SMF ¶ 50; Defs.’ MSJ Opp ¶ 50. There is no testimony that the Government ever detained his devices longer than the length of the inspection.
- El-Shwehdi does not indicate that the Government ever detained his devices longer than the length of the inspection. PEX20 (El-Shwehdi Tr.) at 160, 182, 212.
- Al-Halabi testified that his phone was not returned at the same time he was released, not that it was never returned. Pls.’ SMF ¶ 51; Defs.’ MSJ Opp. ¶ 51 (citing DEX8 (Al-Halabi Tr.) at 81).

- 13) Mem. Op. p. 10: “Some Plaintiffs, including Shibley, Amri, Hakmeh, Shaout, El-Shwehdi, Fares, Coleman, Thomas, Khan, Shahir Anwar, Baby Doe, and Kadura, have regularly and repeatedly had their travel disrupted by long and invasive secondary inspections, causing them to, on some occasions, miss connecting flights, and sometimes to avoid travel altogether. [Pls.’ SMF] ¶¶ 68-84. And on a few occasions, some Plaintiffs, including Ahmed, John Doe 4, Elhuzayel, Thomas, Amri and Kadura, have been denied the ability to even board flights. *Id.* ¶¶ 85-86.”

Dispute: The record does not support the claim that these secondary inspections “regularly and repeatedly . . . disrupted” travel or were regularly “long and invasive.”<sup>3</sup> And none of these Plaintiffs have avoided travel altogether. *See generally* Defs.’ MSJ Opp ¶¶ 68-84 (disputing or clarifying specific contentions in these paragraphs); *see also* Defs.’ SMF ¶¶ 47-48 (Amri); 52-53 (Shahir Anwar); 59-61 (Coleman); 77 (El-Shwehdi); 79-81 (Fares); 87-88 (Hakmeh); 89-93 (Kadura); 94-96 (Khan); 98-99 (Shaout); 101-02 (Shibly); 104-05 (Thomas).

For example:

- Amri expressly disclaimed that he was in any way injured by Defendants’ conduct during his international travels (which would include any CBP inspections upon reentry), and that his international travel experiences do not form any part of his claims in this case. DEX55 (Stipulation); *see* Defs.’ MSJ p. 20 n.11; Defs.’ MSJ Opp. p. 21 (noting that Plaintiffs’ discussion of Mr. Amri’s alleged international travel difficulties was irrelevant, in light of his disclaimer).
- Baby Doe’s father was referred to secondary inspection by CBP on one occasion while Baby Doe waited with his mother. Defs.’ SMF ¶ 63; Pls.’ SMF ¶ 84.
- Hakmeh’s descriptions mischaracterize the evidence, which does not establish that he consistently encounters delay. *See* Defs.’ MSJ Opp. ¶ 74; *see also* Defs.’ SMF ¶¶ 87-88. Moreover, he generally arrives at the airport 2-3 hours prior to flight, *see* Defs.’ MSJ Opp. ¶ 74; Defs.’ MSJ Reply at 16 (citing PEX7 (Hakmeh Tr. at 70-71), which is consistent with general recommendations for all travelers.
- Shaout estimated that his secondary inspections lasted half an hour to three hours, and he has not had any adverse experiences in connection with recent travel (and no adverse experiences in over two years). Defs.’ SMF ¶¶ 98-99.
- Fares does not recount regular inspections, nor long or invasive inspections. *See* Pls.’ SMF ¶ 80; Defs.’ MSJ Opp. ¶ 80; Defs.’ SMF ¶¶ 79-81 (describing inspections lasting from ten minutes to a maximum of two hours, and not on all trips).
- Thomas describes only one incident of secondary inspection. Defs.’ SMF ¶¶ 104-05.
- Shahir Anwar was referred for secondary inspection on only one occasion (in 2006) for an estimated two to three hours, and has subsequently travelled without incident. Defs.’ MSJ Opp. ¶ 82; Defs.’ SMF ¶¶ 52-53.
- Plaintiffs claim that Ahmed was informed that he was on the No Fly List and later removed, but Ahmed has never been denied boarding on a flight, and has flown subsequent to that alleged conversation on multiple occasions. *See* Pls.’ SMF ¶ 85; Defs’

<sup>3</sup> Some of the cited paragraphs relate only to enhanced screening for air travel (which is conducted by TSA for selected air travelers), not to secondary inspections (which are conducted by CBP prior to entry into the U.S.). *See supra* n.1. Defendants respond here to the allegations about secondary inspections because that appears to be the basis of the Court’s conclusions.

MSJ Reply 8-10 (analyzing testimony). None of the Plaintiffs currently claims to be unable to fly.

### III. Analysis

#### A. Justiciability

14) Mem. Op. at 15 n. 12: The Court concluded that Plaintiffs “could become aware of their Watchlist status” as a result of various alleged statements by Government officials.

Dispute: Plaintiffs’ testimony does not establish this fact under the summary judgment standard. For example:

- Frljuckic testified that he was told that he may be subject to the same treatment again. Frljuckic Tr. 84. But this does not reveal watchlist status. One can be referred to secondary inspection by CBP (and have these travel issues repeatedly) for a multitude of reasons that have nothing to do with the TSDB. Defs.’ SMF ¶¶ 89-93.
- Fares recalled that he was informed that he was “given his designation,” which he thought meant he “needed to be subjected to additional questioning and screening.” On a single occasion, TSA informed Fares that the reason he was taken off the flight was that he had been selected for enhanced screening but that the TSA agent had failed to properly perform the screening the first time. Defs.’ MSJ Opp. at 24 (analyzing documents and testimony). Being selected for enhanced screening does not mean that one is on a watchlist. *See* Defs.’ SMF ¶ 8 (majority of people selected for enhanced screening are not selected due to TSDB status).

15) Mem. Op. at 15-16. “Defendants concede that there is uncontradicted testimony that at least five of the Plaintiffs in this action—Amri, John Doe 3, Elhuzayel, El-Shwehdi, and Frljuckic—are regularly subjected to enhanced screening that they attribute to their inclusion in the TSDB. [Doc. No. 299, at 39, 45]”

Dispute: Defendants acknowledged that “[c]onstruing their allegations favorably [to Plaintiffs in deciding Defendants’ motion for summary judgment], only five of the 23 Plaintiffs testified that they continue to receive enhanced screening on a regular basis (Amri, John Doe 3, Elhuzayel, El-Shwehdi, Frljuckic).” Defs.’ MSJ at 37. But in granting Plaintiffs’ motion, the Court must construe those allegations in the light most favorable to Defendants instead. *See Rossignol*, 316 F.3d at 523. As set forth in Defendants’ filings:

- Amri has only twice been subjected to enhanced screening. Defs.’ SMF ¶¶ 47-48; Defs.’ MSJ Opp. at 20; Defs.’ MSJ Reply at 11.

- John Doe 3 claims to have been subjected to enhanced screening on all flights, but could not recall specific incidents for at least five of those flights. Defs.’ SMF ¶¶ 65-67. Moreover, he has not flown domestically in over two years. *Id*
- Elhuzayel testified that he has encountered enhanced screening on only two trips. Defs.’ SMF ¶ 76.

On page 45 of the MSJ, Defendants also acknowledged that three of the 23 remaining plaintiffs testified that they are always subject to significant delays of more than two hours at the border (Elhady, Frjulcklic, Kadura). These Plaintiffs, however, did not all say that they are regularly subjected to enhanced screening at the airport. Elhady has never received enhanced screening, despite taking multiple domestic flights. Defs.’ SMF ¶ 72. Kadura conceded that he no longer experiences any issues with domestic travel. Defs.’ SMF ¶ 93.

- 16) Mem. Op. at 16: “[B]ecause of the enhanced screening and other travel-related difficulties they have encountered, multiple Plaintiffs have refrained from exercising their movement-based rights, including their right to international travel.” (citing Pls.’ SMF ¶ 36 (Elhady), 44 (Frjulcklic, 45 (John Doe 3), 46, 77 (El-Shwehdi), 47 (Coleman, Khan, and Anwar), 83 (Kadura), 84 (Baby Doe 2)).

Dispute: Defendants have disputed throughout summary judgment briefing that any of these Plaintiffs “have refrained from exercising their movement-based rights.” Defendants analyzed the relevant testimony and explained why the proffered testimony did not support the conclusion that Plaintiffs were deterred from travel. *See* Defs.’ MSJ at 46-47 (rejecting allegations that Plaintiffs were deterred from travel in light of extensive evidence of subsequent travel for all of these Plaintiffs); Defs.’ MSJ Opp. at 22-26 (same); Defs.’ MSJ Reply at 32-33 (same).

## B. The Procedural Due Process Claim

### 1. Plaintiffs' Movement-Related Interests

17) Mem. Op. pp. 20-21: “[S]everal Plaintiffs refrain from exercising their right of international travel because of the treatment they have been subjected to due to their Watchlist status when attempting to fly internationally or cross the border into the United States.... Other Plaintiffs, including,” *inter alia*, “Coleman, Pls.’ MSJ Ex. 6 at 57, Khan, Pls.’ MSJ Ex. 18 at 93, Shahir Anwar, Pls.’ MSJ Ex. 16 at 66, Amri, Pls.’ MSJ Ex. 16 at 126, and Fares, Pls.’ MSJ Ex. 19 at 104, have all avoided international travel to varying degrees due to negative experiences with border crossings and air travel that they attribute to their inclusion in the TSDB.”

Dispute: Plaintiffs do not cite to anything in the record that establishes that their treatment was due to their Watchlist Status, which is only one of many reasons that one may be referred for secondary inspection at the border. Further, while the record supports that some Plaintiffs have foregone at least some international travel in the past, this statement does not acknowledge or account for the fact that several of these Plaintiffs did not consistently, or have not recently, foregone international travel. For example:

- With respect to Plaintiff Mark Amri, Defendants respectfully refer the Court to the clarifications in paragraph 13 above.
- With respect to Plaintiff Coleman, between September 2017 and February 2018, Coleman traveled more than five times by air domestically, and twice internationally, and did not experience any travel difficulties in connection with these trips. PEX6 at 118-19. Coleman does not believe that he is currently on any watchlist, *id.* at 154— and thus has no objective reason to be deterred from any prospective travel.
- Regarding Fares’ canceled 2016 trip to Jordan, no one (from the Government or otherwise) told him he could not make this trip. PEX19 at 103. Further, in 2017, Fares flew roundtrip three times between the U.S. and Jordan without incident, except for one instance of CBP questioning for approximately one hour upon arrival in the U.S. PEX19 at 123, 129, 139.
- With respect to Plaintiff Shahir Anwar, he testified that he “didn’t go to Canada for a little bit”, but he travelled internationally repeatedly, including after his travel issues began. *See* Defs.’ SMF ¶¶ 52-54; Defs.’ Opp. at 11; Defs.’ MSJ Reply at 11-12.
- Plaintiff Khan has repeatedly travelled internationally since first experiencing delays in 2012, including three trips in 2016 and 2017. Defs.’ SMF ¶¶ 94-97; Defs.’ Opp. at 28.

18) Mem. Op. p. 21: “[S]everal Plaintiffs have chosen not to exercise their right to travel domestically due to negative experiences while flying domestically that they attribute to their

Watchlist status. These Plaintiffs include Khan, who avoids flying domestically and drives instead as a result of experiences that have contributed to ‘psychological trauma’ associated with air travel. . . . Plaintiffs El-Shwehdi and Hakmeh have also chosen on various occasions to avoid domestic flights as a result of their domestic air travel experiences.” (citing Pls.’ MSJ Exs. 18, 20, 7).

Dispute: These factual findings are supported in part by the record but do not account for the additional context provided by Defendants, that these Plaintiffs do not consistently, or have not more recently, foregone air travel. With respect to Mr. Khan, Defendants established that, since he alleges that he began experiencing enhanced screening, “he has flown domestically ‘quite a few time[s],’ [DEX 44 (Khan Tr.)] at 155,” “including a minimum of three round-trip flights,” two of which “were without incident,” *id.* at 156-57. Defs.’ SMF ¶ 96.

With respect to Mr. El-Shwehdi, Defendants established that he “has flown commercially more than 20 times since 2011, including 17 domestic flights.” Defs.’ SMF ¶ 77 (citing DEX 33 at 5-12). With respect to Mr. Hakmeh, Defendants established that he has “taken at least five domestic roundtrip flights between 2013 and 2018.” Defs.’ SMF ¶ 87 (citing DEX39 at 8-10 and DEX40 at 158-59, 232, 234). He encountered enhanced screening on one of these trips, *id.* (citing DEX39 at 9-10; DEX40 (Hakmeh Tr.) at 156-57), but “[h]e encountered no relevant issues on subsequent domestic roundtrip flights,” *id.* (citing DEX39 at 9).

## 2. Plaintiffs’ Reputational Interests

- 19) Mem Op. p. 24: “The dissemination of an individual’s TSDB status to these entities would reasonably be expected to affect any interaction an individual on the Watchlist has with law enforcement agencies and private entities that use TSDB information to screen individuals they encounter in traffic stops, field interviews, house visits, municipal permit processes, firearm purchases, certain licensing applications, and other scenarios. For example, Plaintiffs might experience in other interactions with law enforcement agencies or affiliated private entities the same kinds of encounters they complain about at the border—being surrounded by police, handcuffed in front of their families, and detained for many hours.”

Dispute: This conclusion of fact is erroneous. It appears to be based on the incorrect inference that numerous entities use NCIC information for non-law enforcement purposes. Defendants respectfully refer the Court to the clarification in paragraph 4 above; restrictions on NCIC use make it untenable to suggest that status would “affect any interaction an individual on the Watchlist has with law enforcement agencies.” Moreover, there is no evidence in the record establishing that any of the Plaintiffs has been detained or handcuffed by local police as a result of KST status through an NCIC query or through misuse of NCIC. No related allegations appear in Plaintiffs’ SMF, and one Plaintiff who alleges that he was handcuffed by local police admitted that in the incident in question, he had been arrested at a traffic stop along with his brother, after an officer detected a strong odor of marijuana emanating from the vehicle. Doe 4 Depo. Tr. at 102-113.

### **3. Risk of Erroneous Deprivation**

- 20) Mem. Op. at 25. “None have been convicted, charged or indicted for any criminal offense related to terrorism, or otherwise.”

Dispute: To the extent the phrase “or otherwise” is intended to indicate that none of the Plaintiffs have any criminal convictions or charges (regardless of whether they are related to terrorism), that is incorrect. At least four of the Plaintiffs currently have criminal convictions. *See* Defs.’ MSJ Opp. at 4 n.3 (citing DEX63, 64 (Al Halabi); PEX21 (“Doe 2 Tr.”) 144-46, 152-55; DEX65, 66 (El-Shwehdi); DEX67(Elhuzayel)). Defendants have not conceded that all of these charges are wholly unrelated to terrorism. For example, El-Shwehdi pleaded guilty to, *inter alia*, making false statements to the IRS, in connection with his failure to report his charity’s violations of sanctions on Iraq and in collaboration with an entity called Islamic African Relief Agency. *See* Defs.’ MSJ Opp. at 24 (citing DEX65, 66); *see*

*also* <https://www.treasury.gov/press-center/press-releases/Pages/js2025.aspx> (designation of IARA as Specially Designated Global Terrorist); *LARA v. Gonzales*, 477 F.3d 728 (D.C. Cir. 2007) (upholding designation of U.S. branch). And Al Halabi was court martialled on multiple charges, including violation of the Espionage Act, relating to his conduct while stationed at Guantanamo Bay. He pleaded guilty to lesser offenses, including, *inter alia*, violating orders related to the mishandling of classified information, and making false statements to an investigator. *See* Defs.’ MSJ Opp. at 23 n.16 (citing DEX63, 64). Any past criminal conviction or offense can be a basis for referral to secondary inspection. Defs.’ Opp. at 4 (citing Howe MSJ Decl. ¶ 14).

21) Mem. Op. p. 26: “[U]nder the TSDB’s inclusion standard, the TSC may consider a wide range of factors in determining whether an individual belongs on the Watchlist, including an individual’s ‘race, ethnicity, or religious affiliation,’ beliefs and activities protected by the First Amendment, travel history, personal and professional associations, and financial transactions.” (citing Pls.’ SMF ¶¶ 18-19).

Dispute: Defendants respectfully refer the Court to the clarification in paragraph 2 above.

Dated: December 16, 2019

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2020, I electronically filed the foregoing Joint Appendix with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Joshua Waldman  
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