

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

MAHMOUD M. HEGAB, )  
)  
*Plaintiff,* )  
)  
*v.* )  
)  
LETITIA A. LONG, Director, National )  
Geospatial-Intelligence Agency, )  
)  
*and* )  
)  
NATIONAL GEOSPATIAL- )  
INTELLIGENCE AGENCY, )  
)  
*Defendants.* )  
)  
\_\_\_\_\_ )

Civil Action No. 1:11-cv-1067  
(JCC/IDD)

**MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANTS' MOTION TO DISMISS**

Having moved to dismiss this action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), defendants the National Geospatial-Intelligence Agency (“NGA”) and its Director, Letitia A. Long, respectfully submit this memorandum of law in support of their motion.

**INTRODUCTION**

This is a challenge seeking judicial review of the Executive Branch’s revocation of a federal employee’s national security clearance. The plaintiff, Mahmoud Hegab, is an NGA employee whose clearance was revoked because of security concerns related to him and his family, which arose pursuant to a reinvestigation of his clearance following his marriage.

On November 2, 2010, NGA made the preliminary determination to revoke Hegab's clearance. Hegab appealed this determination to the NGA's Personnel Security Appeals Board, which issued a final agency decision on July 27, 2011. Relying upon Executive Order 12968 and federal intelligence-community regulations and policies, the Board found that Hegab's access to classified information would not be "clearly consistent with the interests of national security."

On October 4, 2011, Hegab instituted this judicial action challenging NGA's revocation decision. In his six-count complaint, he alleges that the Government violated (1) his First Amendment freedom of religion, expression, and association (Counts I & II); (2) his right under the Due Process Clause of the Fifth Amendment to employment and reputation (Counts III, IV & V); and (3) his right under the Equal Protection Clause of the Fifth Amendment to non-discrimination in employment (Count VI).<sup>1</sup> More fundamentally, however, all six of the counts arise out of a single purported constitutional violation: the agency's revocation of his clearance "based solely on plaintiff's wife's religion, Islam, her constitutionally protected speech, and her association with, and employment by, an Islamic faith-based organization." *See* Compl. ¶¶ 60, 63, 66, 70, 76, 79 (prefacing each of the six counts with this alleged constitutional violation).

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<sup>1</sup>Plaintiff also asserts various other, and sometimes irrelevant, sources of constitutional authority to state his claims, *e.g.*, the Fourteenth Amendment which does not apply to the Federal Government. *See* Compl. Counts I-VI. But in the main his claims—relating to freedoms of religion, association, and expression; to liberty and property interests; and to employment discrimination—plainly arise under the First and Fifth Amendments of the Constitution. In any event, here the legal analysis is unaffected by which particular constitutional provision gives rise to the claims.

Because this court lacks jurisdiction to review the merits of the Executive Branch's national-security clearance determinations, and moreover because plaintiff fails to state a claim for relief in any event, this court should grant the Government's motion and dismiss this action with prejudice.

### **SUMMARY OF ARGUMENT**

First and foremost, the complaint must be dismissed for want of subject matter jurisdiction. The complaint's indispensable, core allegation is that the agency's revocation determination "was based" upon a violation of the Constitution. To assess the validity of this allegation—which in truth is nothing more than a routine charge of unlawful employment discrimination cloaked as a constitutional challenge—unavoidably requires that the court review the actual bases of the revocation determination itself, *i.e.*, the merits of a security clearance decision. But such a course has been squarely foreclosed by the Supreme Court's decision in *Department of Navy v. Egan* and its progeny in the Fourth Circuit. Accordingly, controlling law requires that the court dismiss this action for lack of jurisdiction.

Second, even assuming *arguendo* that this court had jurisdiction to review plaintiff's claims, his complaint still must be dismissed for failure to state a claim for which relief may be granted. To begin, plaintiff has improperly brought this case under the Administrative Procedure Act ("APA"), a vehicle that does not provide a cause of action for his challenge; rather, Fourth Circuit precedent mandates his cause be brought pursuant to federal-employment anti-discrimination laws. Moreover, plaintiff's First Amendment and Equal Protection claims fail

because *Egan* remains an insuperable bar to plaintiff being able to prove his claims, even assuming the court's jurisdiction to hear them. Finally, plaintiff cannot state a valid due process claim for a multitude of reasons, but ultimately because he has no protectable legal interest under the Due Process Clause in the grant of a national-security clearance and the privileges thereof.

## BACKGROUND

### A. Executive Order 12968 and Related Laws

1. "The President" of the United States, as "Commander in Chief of the Army and Navy of the United States,' U.S. Const., Art. II, § 2," has "authority to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position. . . that will give that person access to such information." *Department of Navy v. Egan*, 484 U.S. 518, 527 (1988). Thus, the "Presidents, in a series of Executive Orders, have sought to protect sensitive information and to ensure its proper classification throughout the Executive Branch by delegating this responsibility to the heads of agencies." *Id.* at 528.

As the Supreme Court has noted, "[i]t should be obvious that no one has a 'right' to a security clearance." *Id.* Rather, "[t]he grant of a clearance requires an affirmative act of discretion on the part of the granting official," and "[t]he general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Id.* The President, through Executive Order 12968, 60 Fed. Reg. 40245 (Aug. 2, 1995) (attached hereto as GEX 1), has

“establishe[d] a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.” 60 Fed. Reg. at 40245. This Executive Order explains that “[t]he national interest requires that certain information be maintained in confidence through a system of classification.” *Id.* at 40245. “The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security.” *Id.*

Under Executive Order 12968, a determination of eligibility for access to classified information “is a discretionary security decision.” E.O. 12968 § 3.1(b). “Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.” *Id.* Individuals with access to classified information “shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access.” *Id.* § 3.4(b).

The Executive Order sets out internal agency review procedures for “[a]pplicants and employees who are determined to not meet the standards for access to classified information established in . . . this order.” E.O. 12968 § 5.2(a). This review process is designed to provide meaningful review while protecting the interests of national security. *See id.* § 5.2(a), (d). An individual subject to a clearance revocation is allowed, with certain exceptions, several procedural protections. *Id.* § 5.2(a). However, the Executive Order makes clear that it “is not intended to, and does not, create any right to administrative or judicial review.” *Id.*

§ 7.2(e).

2. The provisions set forth in Executive order 12968 are reflected in Congressional enactments as well. Title 50 U.S.C. § 435(a) provides that the President shall “establish procedures to govern access to classified information which shall be binding upon all departments, agencies, and offices of the executive branch of Government.” Such procedures shall “provide that, except as may be permitted by the President, no employee in the executive branch of Government may be given access to classified information by any department, agency, or office of the executive branch of Government unless, based upon an appropriate background investigation, such access is determined to be clearly consistent with the national security interests of the United States.” *Id.* § 435(a)(1).

3. In addition, the Government’s intelligence community (“IC”), a federation of federal agencies designated as such by Congress, *see* 50 U.S.C. § 401A(4), has issued directives (“ICDs”) and policy guidances (“ICPGs”) concerning, among other things, access to classified information. *See generally* ICD 101 (describing the intelligence community policy system). Relevant here, ICD 704 lays out the IC’s personnel security standards and the procedures for access to sensitive compartmented information (“SCI”), and ICPGs 704.1, 704.2, and 704.3 elaborate on the requirements of ICD 704, providing guidance on the investigation, adjudication, and administrative procedures for an SCI clearance. Finally, NGA, as a component of the Department of Defense (“DoD”), also is subject to the personnel security program promulgated by DoD, *see* DoD Directive 5200.2 (establishing a personnel

security program applicable to all Defense Agencies).<sup>2</sup>

## **B. Factual and Procedural Background**

NGA is a combat-support and intelligence agency for DoD whose mission is to provide timely, relevant, and accurate geospatial intelligence in aid of national security objectives. *See* GEX 2. Due to the agency's national security objectives, all NGA employees are required to possess a Top Secret/Sensitive Compartmentalized Information ("TS/SCI") security clearance, regardless of their employment function within the agency. GEX 3.

On December 11, 2008, NGA's Human Resources recruitment specialist sent Hegab, a dual citizen of Egypt, a conditional offer of employment, requiring, among other things, that he obtain and retain a TS/SCI security clearance. GEX 4; *see* GEX 7 (Encl. 2). On June 26, 2009, the agency's internal personnel security branch favorably concluded that Hegab should be awarded a TS/SCI security clearance. GEX 5.

Hegab began working for NGA on January 4, 2010. Compl. ¶ 10. Shortly thereafter, he notified an NGA employee in the agency's personnel security branch that, two months earlier in November 2009, he had married a United States citizen with a dual citizenship in Jordan. *See id.*; GEX 7 (Encl. 2). This marriage occurred between the time Hegab had been granted his initial security clearance and the beginning of his employment with NGA.

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<sup>2</sup>All relevant ICDs and ICPGs are available at [http://www.dni.gov/electronic\\_reading\\_room.htm](http://www.dni.gov/electronic_reading_room.htm), and the DoD directives at <http://www.dtic.mil/whs/directives/#> (visited Nov. 18, 2011).

As a result of this significant new information, consistent with protocol, NGA initiated a counterintelligence risk assessment on his TS/SCI clearance. *See* ICPG 704.1(K) (stating that periodic reinvestigations may be initiated by the IC agency to resolve personnel security concerns). Following the completion of the risk assessment, on November 18, 2010, in a memorandum dated November 2, 2010, NGA notified Hegab of its intent to revoke his TS/SCI clearance, because of concerns related to the “foreign influence” adjudicative factor in ICPG 704.2. GEX 7 (Encl. 4). The unclassified statement of reasons for this action concluded:

The risks associated with you and your family members holding dual citizenship with another country other than the United States; your possession of a foreign national passport; your family members residing in Egypt; your continuing contact with multiple foreign nationals; your spouse being or having been publicly affiliated with one or more organizations that are reportedly active in advocating political issues that support governments other than the United States; and your publicly known affiliation with NGA significantly heighten the risks of you being a target for foreign intelligence or security services.

*Id.* (Encl. 2). The statement proceeded to inform him of his due process rights to respond and contest the preliminary revocation, rights of which Hegab, through counsel, availed himself. *See id.* (Encl. 3)

After reviewing and considering Hegab’s written response disputing the revocation, on March 4, 2011, NGA’s security office decided to issue a final revocation of his TS/SCI clearance. GEX 8. Hegab appealed the revocation through the final step of the agency’s security clearance adjudication process by requesting a personal appearance before NGA’s Personnel Security Appeals Board (“PSAB”),

which reviews all written materials prepared by the agency's security personnel and counterintelligence branch. GEX 6. PSAB is comprised of three voting members: one permanent member of the agency's personnel security office, one rotational term member of the agency's human resources department, and one member of the department to which the employee belongs. *Id.* Pursuant to this protocol, none of the voting members of the PSAB were involved in the risk assessment leading to the final revocation of Hegab's security clearance. *Id.* Moreover, NGA's office of general counsel attends the PSAB meetings in an advisory capacity and reviews all of PSAB's decisions before they are released to the employee. *Id.*

On July 26, 2011, Hegab, with counsel, personally appeared before the PSAB after making a second round of written responses to NGA's revocation decision. Compl. ¶ 52. After considering all the classified and unclassified materials before it and the oral responses of Hegab and his attorney, PSAB voted to uphold the previous decision to revoke the clearance. GEX 9. PSAB's determination issued on July 27, 2011, and notified Hegab of the agency's final decision to revoke his TS/SCI security clearance based upon the "foreign influence" adjudicative guideline in ICD 704 and ICPG 704.2. *Id.* PSAB's final decision concluded the agency's administrative procedures for challenging the revocation decision. *Id.*

On October 4, 2011, Hegab instituted this civil action.

## **ARGUMENT**

### **Legal Standards**

***Rule 12(b)(1).*** On a motion to dismiss pursuant to Federal Rule of Civil

Procedure 12(b)(1), the plaintiff bears the burden of proving the court's subject matter jurisdiction. *See Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). The Rule 12(b)(1) motion should be granted if the jurisdictional facts are undisputed and the movant is entitled to prevail as a matter of law. *Id.* at 647. In ruling on such a motion, the court may consider evidence beyond the pleadings without being required to convert the motion into a Rule 56 motion for summary judgment. *See id.*; *cf.* Fed. R. Civ. P. 12(d). Because judicial review of the Executive Branch's security clearance determinations concerns the court's subject matter jurisdiction, *Reinbold v. Evers*, 187 F.3d 348, 357-58 (4th Cir. 2005), this court may consider matters outside the pleadings in ruling on the defendants' motion to dismiss under Rule 12(b)(1) (such as the Government's exhibits to this motion) without converting it to a Rule 56 motion for summary judgment, *see Evans*, 166 F.3d at 647.

**Rule 12(b)(6).** To survive a Rule 12(b)(6) motion to dismiss, a complaint must satisfy the "plausibility standard" announced by the Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Under this standard, the "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 1949 (quotation marks omitted). The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (citation and quotation marks omitted). Thus, a court

need not accept as true “a legal conclusion couched as a factual allegation,” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” cannot withstand dismissal. *Id.* at 1949-50. The court also should not credit “unwarranted inferences, unreasonable conclusions, or arguments” in ruling on a Rule 12(b)(6) motion. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009) (quotation marks omitted). “In other words, the complaint’s factual allegations must produce an inference of liability strong enough to nudge the plaintiff’s claims ‘across the line from conceivable to plausible.’” *Id.* at 256 (quoting *Iqbal*, 129 S. Ct. at 1952).

**I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION TO REVIEW THE UNDERLYING MERITS OF THE EXECUTIVE BRANCH’S SECURITY CLEARANCE DETERMINATIONS**

First and foremost, this entire action must be dismissed because this court lacks subject matter jurisdiction to review the merits of plaintiff’s clearance revocation under the holding of *Department of Navy v. Egan*, 484 U.S. 518, 527 (1988). Plaintiff founds each of his six counts upon a single, indispensable, core allegation: that the agency’s revocation of his clearance “was based” upon a violation of the Constitution. *See* Compl. ¶¶ 60, 63, 66, 70, 76, 79. To rule on whether a security clearance determination “was based” upon an unconstitutional reason necessarily and unavoidably requires the court to review the actual bases of the revocation decision, *i.e.*, the merits of the security clearance decision. But such a course has been squarely foreclosed by the Supreme Court’s decision in *Egan*. Accordingly, plaintiff’s cause must be dismissed.

**A. Applicable Law**

The President as Commander in Chief and head of the Executive Branch has constitutional authority “to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position in the Executive Branch that will give that person access to such information.” *Egan*, 484 U.S. at 527. Based on eligibility standards prescribed by the President’s Executive Order 12968, federal agencies grant security clearances only where “facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of national security.” E.O. 12968 § 3.1(b).

The Judiciary has “traditionally shown the utmost deference” with regard to the “authority of the Executive in military and national security affairs.” *Egan*, 484 U.S. at 530. In view of such deference, the Supreme Court in *Egan* held that the Merit Systems Protection Board (“MSPB”) lacked authority to review the Executive Branch’s decision to deny a newly hired employee a security clearance even though the employee then lost his job. *Id.* at 520. Notwithstanding the strong presumption in favor of judicial review of agency action, the Supreme Court held that the presumption “runs aground when it encounters concerns of national security, as in this case, where the grant of security clearance to a particular employee, a sensitive and inherently discretionary judgment call, is committed by law to the appropriate agency of the Executive Branch.” *Id.* at 527.

The Court explained that a security clearance determination was essentially an act of “[p]redictive judgment” that assesses only the likelihood that classified information may be compromised by granting an individual a clearance, but it “does not equate with passing judgment upon [the] individual’s character.” *Id.* at 528. The Executive Branch’s denial of a security clearance may “be based upon concerns completely unrelated to conduct, such as having close relatives residing in a country hostile to the United States.” *Id.* at 528-29. Thus, to be “denied [a] clearance on unspecified grounds in no way implies disloyalty or any other repugnant characteristic.” *Id.* at 529 (original alterations and quotation marks omitted).

By “attempt[ing] to define not only the individual’s future actions, but those of outside and unknown influences,” the Government performs in its security clearance determinations what is “an inexact science at best”:

Predictive judgment of this kind must be made by those with the necessary expertise in protecting classified information. For reasons too obvious to call for enlarged discussion, the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it. Certainly, it is not reasonably possible for an outside nonexpert body to review the substance of such a judgment and to decide whether the agency should have been able to make the necessary affirmative prediction with confidence. Nor can such a body determine what constitutes an acceptable margin of error in assessing the potential risk. . . . As noted above, this must be a judgment call.

*Id.* at 529 (citations, original alterations, and quotation marks omitted). Therefore, the Court held, “unless Congress specifically has provided otherwise,” the MSPB could not intrude on that judgment. *Id.* at 530.

Given the Executive's primacy in national security and the discretionary nature of security clearance decisions, all the courts of appeals have uniformly held that federal courts, like the administrative board at issue in *Egan*, have no authority to review the merits of agency decisions to withhold, revoke, or suspend security clearances. *See, e.g., Guillot v. Garrett*, 970 F.2d 1320, 1325-26 (4th Cir. 1992); *El-Ganayni v. U.S. Dep't of Energy*, 591 F.3d 176, 182 (3d Cir. 2010). As the Fourth Circuit has held: "[U]nder our circuit precedent, in the absence of a specific mandate from Congress providing otherwise, *Egan* deprives the federal courts of subject-matter jurisdiction to review an agency's security clearance decision." *Reinbold*, 187 F.3d at 357-58.

## **B. Analysis**

1. This case presents a straightforward application of the Supreme Court's ruling in *Egan*. The entirety of plaintiff's complaint rests upon the agency's allegedly unconstitutional "base[s]" for revoking his security clearance. Not only is this the foundational allegation for each of the six of the counts in the complaint, *see* Compl. ¶¶ 60, 63, 66, 70, 76, 79, but the vast majority of all of the complaint's factual allegations concerns the merits of plaintiff's specific clearance decision, *i.e.*, whether the agency's unclassified concerns regarding his wife's affiliations were factually supportable, *see, e.g., id.* ¶¶ 16-55 (arguing in detail why, in plaintiff's view, NGA's concerns with respect to his wife's citizenship, schooling, associational memberships, and employment were unwarranted, as demonstrated by the various exhibits and arguments he submitted during his administrative proceedings).

Plaintiff cannot dispute that for this court to rule on *any* of his claims, it would necessarily be required to delve into the merits of NGA's revocation decision. This is precisely the sort of judicial intrusion that the *Egan* ruling prohibits, and under well-settled precedent, this court lacks jurisdiction to review the agency's merits determination on the revocation of plaintiff's security clearance. *Reinbold*, 187 F.3d at 357-58.

Recently, this court rejected a challenge very similar to plaintiff's on *Egan* grounds. In *Ciralsky v. CIA*, No. 1:10-cv-911, 2010 WL 4724279, \*1 (E.D.Va. 2010) (Brinkema, J.) (unpublished), *appeal docketed*, No. 10-2414 (4th Cir. Dec. 15, 2010), the plaintiff also alleged constitutional violations relating to a revocation decision, specifically violations of his due process rights, his right to exercise his Jewish religion, and his right to equal protection based upon religion and ethnicity. This court observed that, "as the case law in this Circuit and the Supreme Court make clear, the . . . revocation of a security clearance is a *sui generis* act over which the federal courts have no jurisdiction." *Id.* at \*3 (noting that Ciralsky was unable "to cite a single case in which a court reviewed the merits of a security clearance decision and found for the plaintiff"). Like Hegab, "[a]ll of Ciralsky's claims and damages relate to the same act: the revocation of his security clearance." *Id.* Therefore, the court concluded, it lacked jurisdiction over all of Ciralsky's claims, including his constitutional claims, and dismissed the action. *Id.* at \*4. So, too, should this court.

In fact, the Fourth Circuit consistently has rejected every attempt to have a

federal court review the merits of a security clearance decision. *See, e.g., Reinbold*, 187 F.3d at 357-59; *Becerra v. Dalton*, 94 F.3d 145, 148 (4th Cir. 1996) (no jurisdiction to review Title VII claim arising out of security clearance determination); *Guillot*, 970 F.2d at 1321 (no jurisdiction to review Rehabilitation Act claims arising out of security clearance determination); *Romero v. Gates*, 431 Fed.Appx. 246, 247-48 (4th Cir. 2011) (unpublished) (no jurisdiction to review Rehabilitation Act, Title VII, or Age Discrimination in Employment Act claims arising out of a security clearance determination). In view of this settled law, plaintiff cannot seriously dispute that *Egan* forecloses judicial review of a federal agency's reasons for revoking a particular individual's security clearance.

2. The uniformity of the Circuit authority related above raises an additional point regarding this action. Because plaintiff's claims arise out of his belief that his security clearance was revoked and that he was effectively terminated in retaliation or discrimination for exercising his religious freedom, Title VII of the Civil Rights Act of 1964, not the Constitution, is his exclusive remedy.<sup>3</sup> *Brown v. GSA*, 425 U.S. 820, 829 (1976) (Title VII represents the "exclusive, preemptive administrative and judicial scheme for the redress of federal employment discrimination."); *see also*

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<sup>3</sup>In *Reinbold*, the Fourth Circuit noted—but declined to adopt—an "arguable" exception to *Egan* "in the limited circumstance" where the clearance determination "violated an individual's constitutional rights." 187 F.3d at 358. The Fourth Circuit declined to reach this issue because the plaintiff there had failed to state a constitutional claim in any event, and thus could not avail himself of the alleged exception. *Id.* at 359. Likewise, plaintiff here also fails to state a constitutional claim, as explained *infra* Part II, and this court need not break new ground on this issue for the same reasons as the Fourth Circuit in *Reinbold*.

*Bush v. Lucas*, 462 U.S. 367, 368 (1983) (declining to permit a First-Amendment *Bivens* remedy for a federal employee in view of the regulatory regime governing such claims in federal employment). As the Fourth Circuit held in *Middlebrooks v. Leavitt*, if a federal employee has a cognizable claim against the Government under Title VII, he cannot bring suit directly under the Constitution “based on the same, allegedly discriminatory conduct.” 525 F.3d 341, 349 (4th Cir. 2008).

In view of these and many additional precedents, this court should decline to treat plaintiff’s purported constitutional challenge as such, when in fact it is nothing more than a grievance arising out of the federal employment relationship for which Title VII is the exclusive remedy. *Hall v. Clinton*, 235 F.3d 202, 205-06 (4th Cir. 2000); accord *Pueschel v. United States*, 369 F.3d 345, 348 (4th Cir. 2004) (finding that Title VII establishes the “exclusive and preemptive” scheme under which federal employees can seek redress for employment discrimination). Seen for what it truly is, this action is simply a routine Title VII case of the sort that *Egan* clearly forecloses under long-settled Circuit law. *Reinbold*, 187 F.3d at 357-59; *Becerra*, 94 F.3d at 148; *Guillot*, 970 F.2d at 1321.

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In sum, to address whether the specific reasons underlying NGA’s revocation of plaintiff’s security clearance were constitutionally sound, the court would unavoidably need to weigh the merits of NGA’s specific reasons. This the court cannot do under *Egan* and its progeny in the Fourth Circuit, and this action must be dismissed for lack of jurisdiction.

## II. AT ALL EVENTS, PLAINTIFF HAS FAILED TO STATE A CLAIM FOR WHICH RELIEF MAY BE GRANTED

Even assuming *arguendo* that this court had jurisdiction review plaintiff's claims, his complaint still must be dismissed for failure to state a claim for which relief may be granted, Fed. R. Civ. P. 12(b)(6).

### A. The Cause of Action

As a threshold matter, plaintiff's complaint is legally deficient because it is brought pursuant to the wrong legal vehicle, the APA, 5 U.S.C. §§ 702 & 706(2)(B). See Compl. ¶ 4. As the D.C. Circuit has explained, the APA "provides no cause of action to review [a federal agency's] decision . . . to revoke [a] security clearance because that decision is an 'agency action . . . committed to agency discretion by law.' [APA, 5 U.S.C. § 701(a)(2)]." *Oryszak v. Sullivan*, 576 F.3d 522, 526 (D.C. Cir. 2009).<sup>4</sup> Therefore, the complaint "fail[s] to state a claim upon which relief can be granted" and must be dismissed. *Id.* In addition, the APA does not permit relief for money damages, 5 U.S.C. § 702, yet plaintiff seeks, among other things, back pay and benefits in his prayer for relief. The APA does not vest the court with jurisdiction to award such relief, in the absence of a claim that the plaintiff is seeking pay due for work already completed. See *Hubbard v. EPA*, 982 F.2d 531, 533 & n.4 (D.C. Cir. 1992); *M.K. v. Tenet*, 99 F. Supp. 2d 12, 24-25 (2000), *reconsideration granted in part on other grounds*, 196 F. Supp.2d 8 (D.D.C. 2001).

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<sup>4</sup>In *Oryszak*, the D.C. Circuit also held that *Egan* was not a jurisdiction-stripping case. Such a ruling, however, is contrary to the controlling case law of the Fourth Circuit which expressly holds that *Egan* is jurisdiction-stripping. *Reinbold*, 187 F.3d at 357-58.

Moreover, as explained *supra* Part I.B.2, as this case is, in fact, a routine employment discrimination case cloaked as a constitutional challenge, plaintiff further has failed to state a claim because he cannot bring suit directly under the Constitution “based on the same, allegedly discriminatory conduct” that otherwise could, and so must, be challenged under Title VII. *Middlebrooks*, 525 F.3d at 349.

**B. First Amendment Claims (Counts I & II)**

Plaintiff claims that NGA has deprived him of his First Amendment right to freely associate with others, including by marriage to his spouse, regardless of their religion or protected speech. *See* Compl. Counts I & II. Even assuming *arguendo* the court’s jurisdiction over the claim despite a lack of authority, *Reinbold*, 187 F.3d at 358-59, *Egan* would remain an insurmountable barrier to plaintiff stating a claim to relief.

In this regard, this First Amendment challenge is similar to the claim raised by the plaintiff in *El-Ganayni*, 591 F.3d at 180-86. There, the plaintiff claimed that the Government had revoked his security clearance in retaliation for his First Amendment activities. *Id.* at 184. The Third Circuit upheld the district court’s dismissal on the ground that El-Ganayni failed to state a claim, reasoning that to prove his First Amendment claims, the plaintiff would need to show that his “political speech was a substantial or motivating factor in the decision to revoke his clearance.” *Id.* (quotation marks omitted). But such a showing “would inevitably require review of the merits of the [agency’s revocation] decision”:

There is simply no way to prove or disprove what was—or perhaps more importantly for this case, what was not—a

substantial or motivating factor in the decision to revoke [the] clearance without demanding *some* explanation of that decision from the [agency]. It would require discovery of [] officials and documents concerning the various factors that led to the decision to revoke the clearance . . . . We can discern no difference between that inquiry and the review of the merits that is forbidden by *Egan*.

*Id.* (quotation marks omitted). Thus, the court of appeals held, the agency could not be held to a “burden” of justifying the decision to revoke the clearance “because the [agency] has no duty to justify the decision, period.” *Id.* at 186.

Likewise, under *Egan* and the President’s expansive authority over national security affairs, NGA has no duty to justify its clearance revocation decisions. *Cf.* E.O. 12968 § 5.2(d) (providing that the administrative procedures for security-clearance decisions, at the discretion of the agency head, may be revoked in the interests of national security and that this decision is unreviewable). Because plaintiff cannot make out his claims in Counts I & II without showing that NGA’s revocation decision was motivated by impermissible reasons under the First Amendment, he cannot state a claim to relief, and the counts must be dismissed under Rule 12(b)(6).<sup>5</sup> *El-Ganayni*, 591 F.3d at 185-86.

### **C. Due Process Claims (Counts III, IV & V)**

*Egan* also is a barrier to plaintiff stating claims under the Fifth Amendment that he was deprived of his property and liberty interests in his employment and

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<sup>5</sup>Here the Government hastens to add that despite plaintiff’s inflammatory accusations, and despite the Judiciary’s inability to review the merits of the issue under *Egan*, NGA of course did not render Hegab’s revocation decision for an impermissible anti-religion reason, a charge belied by the fact that the agency hired and initially granted him a clearance knowing full well his religious affiliation.

reputation without due process of law, *see* Compl. Counts III, IV & V. In fact, “every court of appeals,” including the Fourth Circuit, “which has addressed the issue has ruled that a person has no constitutionally protected liberty or property interest in a security clearance or a job requiring a security clearance.” *Stehney v. Perry*, 101 F.3d 925, 936 (3d Cir. 1996); *see Jamil v. Secretary of Defense*, 910 F.2d 1203, 1209 (4th Cir. 1990).

1. With respect to plaintiff’s due process claim that the agency deprived him of his right to continued employment, Compl. Count III—and to the extent that the agency’s placing of Hegab on administrative leave may be construed as depriving him of a continued-employment property interest—he has been given all the process he is due inasmuch as the agency provided him multiple levels of administrative review, with “notice and an opportunity to respond,” *Jamil*, 910 F.2d at 1209, prior to the revocation that required his placement on administrative leave. *See* Compl. ¶¶ 12, 22, 33, 38, 52 (describing the administrative procedures provided to plaintiff). In this Circuit, “notice and an opportunity to respond” to a termination based upon a clearance revocation is all that is required for constitutional due-process purposes, and the fact that plaintiff “protests the propriety of the revocation of his security clearance [and] dispute[s] . . . the merits of that decision does not render the procedure inadequate.” *Jamil*, 910 F.2d. at 1209.

2. Plaintiff’s claim concerning a due-process liberty interest in future employment opportunities, Compl. Count IV, also must be dismissed. As a threshold matter, the fact that plaintiff was denied a security clearance does not

mean that he is automatically precluded from positions with other federal agencies. *Cf. Croddy v. FBI*, 2006 WL 2844261, \*4 (D.D.C. 2006) (unpublished) (individuals denied positions with the FBI and Secret Service because of failed polygraph examinations failed to show they were denied a protected liberty interest, as they thereafter had obtained law enforcement positions with the Department of Homeland Security and Drug Enforcement Administration).

Furthermore, even if the revocation of his clearance may preclude him from obtaining a job which requires one, plaintiff could not establish a deprivation of a liberty interest because an individual has no right to employment in the national security arena or to a security clearance. While the Supreme Court has stated that a liberty interest includes “the right . . . to engage in any of the *common* occupations of life,” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972) (emphasis added), a position requiring a security clearance is not such a job. To the contrary, the courts specifically have held that an individual has neither a property nor liberty interest in such a job. *Egan*, 484 U.S. at 528; *Stehney*, 101 F.3d at 937; *Jones v. Department of the Navy*, 978 F.2d 1223, 1226 (Fed. Cir. 1992); *Dorfmont v. Brown*, 913 F.2d 1399, 1403-04 (9th Cir. 1990). In *Dorfmont*, the court of appeals rejected a plaintiff’s claim that the revocation of her security clearance deprived her of the ability to practice her chosen profession, since without it she could no longer obtain employment with a defense contractor. *Id.* at 1403. The court found that “[t]he ability to pursue such employment stands on precisely the same footing as the security clearance itself. If there is no protected interest in a security clearance,

there is no liberty interest in employment requiring such clearance.” *Id.* Therefore, even if a plaintiff was precluded from obtaining employment in the area of national security, he has not been deprived of a liberty interest to pursue his chosen career. Here, plaintiff’s claim is especially hollow, since Hegab’s chosen career at NGA was as a financial/budget analyst, Compl. ¶ 8, a line of work that does not normally require a TS/SCI security clearance.

3. Plaintiff’s claim that his reputation has been impugned likewise must be dismissed for failure to state a claim. Compl. Count V. “To state this type of liberty interest claim under the Due Process Clause, a plaintiff must allege that the charges against him: (1) placed a stigma on his reputation; (2) were made public by the employer; (3) were made in conjunction with his termination or demotion; and (4) were false.” *Sciolino v. City of Newport News, Va.*, 480 F.3d 642, 646 (4th Cir. 2007). Plaintiff has not, and cannot, allege that (a) the agency has made any public accusations with regard to him or his reputation; or that (b) the revocation of a security clearance impugned his moral character.

First, plaintiff has failed to “plead that the allegedly stigmatizing information was ‘published’ or otherwise disseminated by the [agency] to the public.” *Chabal v. Reagan*, 841 F.2d 1216, 1223 (3d Cir. 1988) (quoting *Bishop v. Wood*, 426 U.S. 341, 348 (1976)); see *M.K.*, 196 F.Supp.2d at 15 (“loss of security clearance and termination of employment . . . does not sufficiently damage a plaintiff’s reputation without ‘public accusations that will damage [the plaintiff’s] standing and associations in the community’”). Moreover, even if NGA had made

statements that his security clearance had been denied or revoked, plaintiff still could not establish a liberty interest because such statements do not impugn his moral character or reputation. To repeat *Egan*, “[a] clearance does not equate with passing judgment upon an individual’s character. Instead, it is only an attempt to predict his possible future behavior and to assess whether, under compulsion of circumstances or for other reasons, he might compromise sensitive information.” 484 U.S. at 528; see *Jamil*, 910 F.2d at 1209 (“because of the inherently discretionary judgment required in the decisionmaking process, no one has a right to a security clearance, and revocation *does not constitute an adjudication of one’s character*” (emphasis added; quotation marks omitted)); *Jones*, 978 F.2d at 1226 (“loss [of security clearances] did not reflect upon their characters”).

**D. Equal Protection Claim (Count VI)**

Finally, plaintiff’s equal protection claim of “discrimination in employment” is patently non-actionable under well-settled law. Compl. Count VI. The Fourth Circuit, time and again, has held that employment discrimination claims challenging a security clearance revocation are non-actionable under the jurisdictional ruling of *Egan*. *Reinbold*, 187 F.3d at 357-59; *Becerra*, 94 F.3d at 148; *Guillot*, 970 F.2d at 1321; *Romero*, 431 Fed.Appx. at 247-48. To the extent that plaintiff’s Count VI, styled as a “discrimination in employment” claim, is in fact an employment discrimination claim, the court is without jurisdiction to review it, see *supra* Part I.B.2. Moreover, assuming *arguendo* that *Egan* and its progeny in this Circuit did not bar plaintiff’s discrimination claim, additional circuit precedent

makes clear that Title VII, not the Constitution, is the exclusive remedy for such a claim. *Id.*; see *Middlebrooks*, 525 F.3d at 349.

Even assuming *arguendo* that plaintiff's labeling of an employment-discrimination claim as arising under the Equal Protection Clause were sufficient to create this court's jurisdiction and overcome all the precedent stating otherwise, the claim still would fail under Rule 12(b)(6) for the same reasons plaintiff's First Amendment claims fail, *see supra* Part II.B. Specifically, to state a valid equal protection claim and find, as plaintiff alleges, that revocation of Hegab's clearance was "an unreasonable classification" because it was allegedly "based on" impermissible reasons, Compl. ¶ 80, the court must delve into the actual reasons underlying the revocation. Indeed, in the same case in which the Third Circuit found that the plaintiff's First Amendment claims failed under Rule 12(b)(6) on this ground, it also found that his equal protection claim—that the agency's clearance revocation was based upon his religion and national origin—failed: Adjudicating the claim "would inevitably require review of the merits of [the agency's] decision" to revoke the clearance, in violation of *Egan. El-Ganayni*, 591 F.3d at 186.

### CONCLUSION

For the foregoing reasons, the court should dismiss this action for lack of jurisdiction or, in the alternative, for failure to state a claim upon which relief may be granted.

Respectfully submitted,

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DATED: December 5, 2011



# Government Exhibit 1

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## Presidential Documents

Title 3—

Executive Order 12968 of August 2, 1995

The President

Access to Classified Information

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

### **PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS**

**Section 1.1. Definitions.** For the purposes of this order: (a) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, the "military departments," as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) "Applicant" means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) "Authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(d) "Classified information" means information that has been determined pursuant to Executive Order No. 12958, or any successor order, Executive Order No. 12951, or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011), to require protection against unauthorized disclosure.

(e) "Employee" means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) "Foreign power" and "agent of a foreign power" have the meaning provided in 50 U.S.C. 1801.

(g) "Need for access" means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) "Overseas Security Policy Board" means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) "Security Policy Board" means the Board established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) "Special access program" has the meaning provided in section 4.1 of Executive Order No. 12958, or any successor order.

**Sec. 1.2. Access to Classified Information.** (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:

(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee's background;

(2) have a demonstrated need-to-know; and

(3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a); and

(C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has ac-

quired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Nothing in this section shall be construed to affect the authority of an investigating agency to obtain information pursuant to the Right to Financial Privacy Act, the Fair Credit Reporting Act or any other applicable law.

**Sec. 1.3. *Financial Disclosure.*** (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421);

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or;

(B) the design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(f) of the Atomic Energy Act of 1954, as amended).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Policy Board.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

**Sec. 1.4. *Use of Automated Financial Record Data Bases.*** As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under \$10,000 that are reported as possible money laundering violations, and records of foreign travel.

**Sec. 1.5. *Employee Education and Assistance.*** The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and

(b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

## **PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE**

**Sec. 2.1. *Eligibility Determinations.*** (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified and access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

**Sec. 2.2. *Level of Access Approval.*** (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

**Sec. 2.3 *Temporary Access to Higher Levels.*** (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

(1) is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;

(2) will not exceed 180 days; and

(3) is limited to specific, identifiable information that is made the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

**Sec. 2.4. Reciprocal Acceptance of Access Eligibility Determinations.** (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investigations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

**Sec. 2.5. Specific Access Requirement.** (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that information.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

**Sec. 2.6. Access by Non-United States Citizens.** (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional lawful investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

### PART 3—ACCESS ELIGIBILITY STANDARDS

**Sec. 3.1. Standards.** (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or con-

tracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.

**Sec. 3.2. Basis for Eligibility Approval.** (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant's or employee's security record. Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

**Sec. 3.3. Special Circumstances.** (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

(1) Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

(2) Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Policy Board not later than 180 days after the effective date of this order.

(3) Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years; provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

**Sec. 3.4. *Reinvestigation Requirements.*** (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

#### **PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS**

**Sec. 4. *Authority.*** Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

## PART 5—REVIEW OF ACCESS DETERMINATIONS

**Sec. 5.1. *Determinations of Need for Access.*** A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

**Sec. 5.2. *Review Proceedings for Denials or Revocations of Eligibility for Access.*** (a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

(1) provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(4) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(5) provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

(6) provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

(7) provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant's or employee's security record, unless such appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate access to classified information in the interests

of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f)(1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

## PART 6—IMPLEMENTATION

**Sec. 6.1. Agency Implementing Responsibilities.** Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency's personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order;

(b) cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and

(c) conduct periodic evaluations of the agency's implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Policy Board.

**Sec. 6.2. Employee Responsibilities.** (a) Employees who are granted eligibility for access to classified information shall:

(1) protect classified information in their custody from unauthorized disclosure;

(2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;

(3) report all violations of security regulations to the appropriate security officials; and

(4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

**Sec. 6.3. Security Policy Board Responsibilities and Implementation.** (a) With respect to actions taken by the Security Policy Board pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Policy Board pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Policy Board shall consult where appropriate with the Overseas Security Policy Board. In carrying out its responsibilities under section 1.3(c) of this order, the Security Policy Board shall obtain the concurrence of the Director of the Office of Management and Budget.

**Sec. 6.4. Sanctions.** Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

## PART 7—GENERAL PROVISIONS

**Sec. 7.1. Classified Information Procedures Act.** Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App. 1).

**Sec. 7.2. General.** (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to:

(1) the agency employing the employee who is the subject of the records or information;

(2) the Department of Justice for law enforcement or counterintelligence purposes; or

(3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of Executive Order No. 10450, the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended, or access by historical researchers and former presidential appointees under Executive Order No. 12958 or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.



THE WHITE HOUSE,  
August 2, 1995.

# Government Exhibit 2

**NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**  
Know the Earth... Show the Way... Understand the World

FACT SHEET

## National Geospatial-Intelligence Agency

As both a member of the U.S. Intelligence Community and a Department of Defense Combat Support Agency, the National Geospatial-Intelligence Agency (NGA) produces timely, relevant and accurate geospatial intelligence, or GEOINT, to help all levels of users meet their strategic and operational needs in support of national security.

NGA supports the President's national security priorities and receives guidance and oversight from the Department of Defense, the Office of the Director of National Intelligence and Congress.

NGA's GEOINT mission helps customers and mission partners know the Earth... show the way... and understand the world.



NGA Seal

### GEOINT

GEOINT is the use of imagery, imagery intelligence and geospatial data to describe and depict features and activities and their location on the Earth, helping users visualize what is happening, where it is happening and why it is happening.

Everything and everyone is located *somewhere* on the surface of the Earth, and that's what GEOINT depicts.

GEOINT makes information from other intelligence sources, or "INTs," actionable and is the foundation for community integrated intelligence.

### Mission

NGA has a broad mission, as part of the U.S. Intelligence Community. Examples of NGA's mission set include:

- Supports the warfighter by enabling the mission and protecting military forces
- Provides information and services to ensure the safety and security of America's homeland
- Supports safety of navigation in the air and on the sea
- Delivers strategic intelligence that helps national policymakers stay informed and make decisions on a variety of topics including emerging global issues, counterterrorism, counter-proliferation, and other national security issues
- Supports U.S. federal government agencies during humanitarian and disaster relief and recovery operations at home and abroad
- Collects, verifies, and maintains foundation data used to support the geospatial intelligence mission
- Provides real-time data and operational context about what is happening on the battlefield or around the world

NGA's geospatial intelligence mission supports four main customer sets:

1. The warfighter
2. National policymakers
3. Local first responders through federal agencies
4. Intelligence Community partners

**NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**  
Know the Earth... Show the Way... Understand the World

FACT SHEET

## Functional Management

NGA is the lead federal agency responsible for GEOINT. The Director of NGA serves as the functional manager for the National System for Geospatial Intelligence (NSG), as well as the Allied System for Geospatial Intelligence (ASG). This GEOINT enterprise is a large consortium with more than 400 relationships.

## The NGA Vision

NGA is committed to pushing the envelope of geospatial intelligence to better meet the current and future needs of users – in times of peace, in times of crisis and in times of war.

To this end, NGA's vision seeks to put the power of GEOINT in the hands of the users by creating a more dynamic, more efficient and, ultimately, more effective environment today to meet the geospatial intelligence needs of tomorrow.

This NGA Vision is built on two overarching goals:

- Providing online, on-demand access to NGA's GEOINT knowledge, and
- Creating new value for geospatial intelligence by broadening and deepening our analytic expertise

To achieve these goals, NGA is moving toward an environment that is more interoperable and integrated – providing its analysts and users access to the best GEOINT data quickly and dynamically.

The NGA Vision will create a new service delivery model that includes:

1. An online self-service tier that provides online access to GEOINT data for users who know what they want and need. It makes available applications and tools designed both to broaden the scope of the data and information available and provide information more efficiently;
2. A pro-active, assisted service tier that combines the online capabilities with face-to-face assistance from the GEOINT experts and representatives at NGA; and
3. A responsive full-service tier that provides full, hands-on expert service by NGA's GEOINT professionals.

The NGA Vision implementation will improve access to GEOINT content, improve sharing of GEOINT applications, improve customer service and strengthen analytic capabilities and processes.



To learn more about NGA, scan this barcode with your smart phone or visit us at [www.nga.mil](http://www.nga.mil). \*Users may need to download a barcode reader from their app store.

For the latest NGA news and events, make sure to follow NGA on Facebook ([www.facebook/NatIGEOINTAgency](http://www.facebook/NatIGEOINTAgency)) and Twitter (@NGA\_GEOINT).

As a Department of Defense Combat Support Agency and a member of the U.S. Intelligence Community, NGA provides geospatial intelligence, or GEOINT, in support of U.S. national security and defense, as well as humanitarian assistance and disaster relief. GEOINT is the exploitation of imagery, imagery intelligence and geospatial data to describe, assess and depict features and activities and their location on the Earth.

Approximately two-thirds of the NGA workforce is assigned to NGA Campus East, and approximately one-third is assigned to the two St. Louis facilities. In addition, NGA professionals are continuously deployed to worldwide locations providing intelligence expertise in support of national defense objectives.

# Government Exhibit 3

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**From:** Clapper, James R.  
**Sent:** Tuesday, February 28, 2006 12:51 PM  
**To:** \*\*\*All NGA - NGANet  
**Subject:** D-Mail 05-06: Security Clearance Suspension Procedure

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: NONE  
TERMS: NONE

Given the nature of our mission, all NGA positions require a Top Secret security clearance with Sensitive Compartmented Information (SCI) access. I want to clarify NGA policy with respect to actions we will take for all employees whose security clearances have been temporarily suspended while the Defense Intelligence Agency adjudicates whether their clearances should be permanently revoked.

Employees whose security clearances are suspended will be granted 45 calendar days of Administrative Leave. This provides employees time to research and respond to allegations surrounding their clearance suspension and to identify alternative, temporary employment options in the private sector. After the 45 days, they will be placed on Indefinite Suspension without pay. During Indefinite Suspension, employees may request the use of Annual Leave and/or Sick Leave, as appropriate.

To ensure all employees in this situation are treated in a fair and consistent manner, effective immediately, this policy will also be applied to employees whose clearances have already been suspended and who are not currently on Indefinite Suspension. Because NGA's security clearance cases are currently adjudicated by the Defense Intelligence Agency, NGA does not have any control over adjudicative timelines.

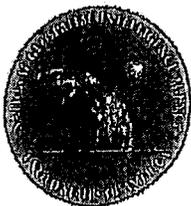
Please note that employees testing positive for drug usage or who have tampered with a specimen are *not* covered by this policy. The penalty for a positive, substituted, or adulterated drug test remains removal from NGA.

For questions regarding this policy, please contact your HD Consultant.

JRC

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: NONE  
TERMS: NONE

# Government Exhibit 4



**NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

4600 Sangamore Road  
Bethesda, Maryland 20816-5003

December 11, 2008

Mahmoud M Hegab

[REDACTED]  
Arlington, VA 22202

Dear Mahmoud M Hegab

You have been tentatively selected for the permanent position of Financial/Budget Analyst, Pay Band 03, in Washington, DC with the National Geospatial-Intelligence Agency (NGA), headquartered in the Washington, DC metropolitan area. Based on the current pay chart, your total salary will be \$62,130.00. This includes base salary plus locality for your respective locale.

This offer of employment is contingent upon your meeting the NGA requirements for U.S. citizenship (all immediate family members including spouse/cohabitant, parents, siblings, and children must also have U.S. citizenship), education, security clearance, drug testing, and maybe a physical eye exam. Subsequent to meeting these requirements, you will be reviewed for placement in a permanent position based on the diverse assignment needs for NGA's global mission. The location of your position could be in any one of NGA's traditional sites (Washington, DC, Bethesda, MD, and St. Louis, MO) or anywhere else within the continental U.S. or abroad.

As a result of the Department of Defense (DoD) Base Realignment and Closure (BRAC) initiative, all major NGA facilities within the greater Washington, DC metro area will be consolidated to Fort Belvoir, VA in 2011. Note that you may be required to relocate in the future, based on mission need, nature of work performed by NGA, and the needs of NGA partners worldwide.

All conditional candidates will be required to demonstrate their ability to meet the minimum visual requirements for their discipline. NGA may withdraw the conditional offer of employment of a candidate who is unable to meet the vision requirements or, at Agency discretion, may consider the candidate for other suitable disciplines.

As an NGA employee, you may be required to work shifts to satisfy mission requirements. However, if you are in an analytic discipline in the Analysis and Production Directorate, you will be required to work shifts at some point in your career.

NGA provides education and career development opportunities to its employees to ensure the workforce is prepared to meet current and future mission requirements. You must successfully complete any required training program for your position. Be advised that this training may be held at a number of local NGA sites on day or evening shifts. Transportation is not provided and is solely the responsibility of the employee. Employees participating in internal NGA training programs of 160 hours or longer, and who receive salary covering the training period, must execute a service agreement agreeing to continue NGA service for a period of three times the length of the training period. Employees who begin, but do not successfully complete, extensive training courses, including the Geospatial Intelligence Training Program (GITP), may be terminated and/or required to reimburse the Government for training costs (excluding salary) associated with their attendance. Employees, who leave NGA after completion of training, but prior to completion of their service obligation, may be required to reimburse the Government for training costs (excluding salary) associated with their attendance. Execution of a service agreement does not commit NGA to continue your employment.

All positions assigned to NGA are in the Excepted Service under Title 10 USC 1601 appointment authority and require a two-year probationary period. During this two-year probationary period, you may be released from duty if the Agency determines that your work performance or conduct fails to demonstrate your qualification or fitness for future employment. Failure to successfully complete required training is a releasable offense.

All NGA positions require enrollment in the Direct Deposit Program (mandatory direct deposit payroll).

Due to the sensitive nature of the work performed within NGA, you must obtain and retain a Top Secret security clearance with access to Sensitive Compartmented Information before a firm employment offer can be made. Complete, sign and date the enclosed Questionnaire for National Security Positions (SF 86). Detailed instructions and telephone numbers are in the enclosed Guidelines, entitled *Helpful Hints on Completing the SF 86*. In addition, the following actions must be accomplished:

a. Complete the enclosed two fingerprint cards (SF 87). You may take the fingerprint cards to your local police station for assistance. Please forward completed fingerprint cards with your signed and dated three signature pages (certification, general, and medical release page) of the *Questionnaire for National Security Positions (SF86)*, completed through the Electronic Questionnaires for Investigations Processing (e-QIP) system, in the enclosed envelope to NGA, Mail Stop P-97, 12310 Sunrise Valley Drive, Reston, VA 20191-3449. If Personnel Security does not receive your security paperwork within 21 days from the date of this letter, you will no longer be considered for this position and will have to reapply at a later date.

b You will be tested for the use of illegal drugs The results must demonstrate that you are not using illegal drugs We will instruct you when and where to report for drug testing

c You may be required to successfully complete a polygraph examination for the position you applied for and/or for any future position(s) You will be notified at a later date of the location and time of the examination

d Request you complete the enclosed SF 256, *Self-Identification of Handicap*, and SF 181, *Race and National Origin Identification*, forms Completion of these forms is strictly voluntary, and your failure to do so will not affect your employment consideration The information you provide will be used for data collection and analysis purposes in the area of equal employment opportunity

e Complete the enclosed NGA Form 1300-3, *Military Status Questionnaire* and the *Pre-Appointment Certification Statement for Selective Service Registration*

f Complete the enclosed form SF 144, *Statement of Prior Federal Service*

g Complete the enclosed *Memorandum of Understanding*

To accurately determine entitlements, if you have served in the military, you must submit a copy of the Service No 2 or Member No 4, DD 214, *Report of Separation from the Armed Forces of the United States*, for each period of service Each DD 214 must include the type of discharge you received and the exact starting and ending dates of service Your entitlements based on military service cannot be computed until this documentation is provided

If you are or ever have been a Federal employee and are receiving an annuity or have applied for an annuity you must notify the Applicant Processing Team immediately The selection of an applicant receiving an annuity from the Civil Service Retirement and Disability Fund must meet special Department of Defense (DoD) employment criteria

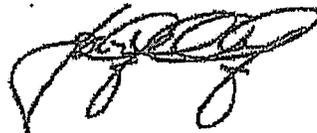
If you have accepted Voluntary Separation Incentive Pay (VSIP) or a buyout from a federal agency, you (1) may not accept employment with the federal government within one year of separating with the incentive, or (2) if you are reemployed within five years, you must comply with the incentive payback requirements of the Authority under which the incentive was authorized The repayment requirement covers any kind of employment (permanent, temporary, expert, consultant, and reemployed annuitant) as well as personal service contracts To determine your eligibility for employment and liability for repayment of the incentive, please forward a copy of the SF 50 containing separation incentive information to NGA, ATTN Mail Stop P-41, 12310 Sunrise Valley Drive, Reston, VA 20191-3449

Since NGA scans all paperwork into electronic storage, please complete all forms in black ink and submit all human resource related forms, using the enclosed envelope, to NGA, ATTN Applicant Processing Team, Mail Stop P-41, 12310 Sunrise Valley Drive, Reston, VA 20191-3449 *within 21 days* If additional time is required, please contact the Applicant Processing Team. Failure to comply with this request, or any of the conditions listed above, will result in loss of further employment consideration for the above stated position.

You are welcome to visit our website at [www.nga.mil](http://www.nga.mil) to view valuable information.

If you have any questions concerning the enclosed security forms, please call their Customer Support Center at 703 262 4281. If your question is about the human resource forms, information provided, or if at anytime during the hiring process your address, phone number, and/or name changes, please contact the Recruitment Center by calling 703 755 5900.

Sincerely,



Johnny McGinley  
Recruiting Manager  
NGA Recruitment Center

Enclosures a/s

IMPORTANT REMINDERS

The following security-related items are to be mailed, using the enclosed envelope, to Security Applicant Processing Team, Mail Stop P-97, 12310 Sunrise Valley Drive, Reston, VA 20191-3449

- 1 Sign and date all three signature pages from the Questionnaire for National Security Positions (SF 86)
- 2 Two (2) Fingerprint Cards (SF 87)

The following human resources-related items are to be mailed, using the enclosed envelope, to NGA, ATTN Applicant Processing Team, Mail Stop P-41, 12310 Sunrise Valley Drive, Reston, VA 20191-3449

- 1 Memorandum of Understanding (Security Clearance, Polygraph, Drug Testing, Training Agreement, Visual Requirements, and Relocation/Shift Work)
- 2 NGA Form 1300-3 (Jan 06)
- 3 Self-Identification of Handicap (SF 256)
- 4 Race and National Origin Identification (SF 181)
- 5 Pre-Appointment Certification Statement for Selective Service Registration
- 6 Statement of Prior Federal Service (SF 144)
- 7 Declaration of Federal Employment (OF 306)

NOTE: Per NGA requirements, all forms listed above (with the exception of SF 256 and SF 181) are mandatory and must be returned in the pre-addressed envelope enclosed with this package.

# Government Exhibit 5

**Simms Marvin L Sr NGA-SISPI USA CIV**

---

**From:** [REDACTED] Mr NGA-SISP USA CTR  
**Sent:** Thursday, July 16, 2009 3:23 PM  
**To:** [REDACTED] NGA-SISPI USA CIV  
**Subject:** FW: Notification for successful clearance/security determination

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: FOUO  
TERMS: NONE

-----Original Message-----

**From:** [REDACTED]@nga.ic.gov [mailto:[REDACTED]@nga.ic.gov]  
**Sent:** Friday, June 26, 2009 10:18 AM  
**To:** PSD APT  
**Cc:** [REDACTED] C Mr NGA-SISPA USA CIV; [REDACTED] L Sr NGA-SISPI USA CIV  
**Subject:** Notification for successful clearance/security determination

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: FOUO  
TERMS: NONE

(SYSTEM GENERATED EMAIL - PLEASE DO NOT REPLY)

**SUBJECT:** Notification for successful clearance/security determination

**GRANTING AGENCY:** NGA

**NAME:** Hegab, Mahmoud M  
**EMPLID:** [REDACTED] **SSN:** [REDACTED]  
**DOB:** [REDACTED] **POB:** [REDACTED]

<b>EMPLOYEE TYPE:</b> Applicant	<b>CASE TYPE:</b> Initial Investigation
<b>TYPE OF INVESTIGATION:</b> SSBI	<b>INVESTIGATION AGENCY:</b> DIA
<b>DATE INVEST. OPEN:</b> 03/14/2009	<b>DATE INVEST. COMPLETED:</b> 04/08/2009
<b>CASE OPEN DATE:</b> 05/01/2009	<b>EFFECTIVE DATE:</b> 06/26/2009
<b>ELIGIBILITY TYPE:</b> TS/SCI	<b>EXCEPTION BASIS:</b> Waiver

**SECURITY SPECIALIST:** [REDACTED]

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: FOUO  
TERMS: NONE

CLASSIFICATION: UNCLASSIFIED  
CAVEATS: FOUO  
TERMS: NONE

# Government Exhibit 6

U-2008-492/SIS

## INFORMATION PAPER

SUBJECT: NGA Personnel Security Appeals Process

1. Purpose. Establish the National Geospatial-Intelligence Agency (NGA) Personnel Security Appeals Board (PSAB, or "Board") process for deciding appeals of NGA security clearance determinations to deny or revoke eligibility for access to collateral and Sensitive Compartmented Information.

2. Content. The PSAB will provide personnel an opportunity to appeal denial or revocation determinations.

### A. PSAB Composition.

I. The NGA PSAB will consist of three members. The Director, Office of Security, Ms. Alvina Jones, is the PSAB President and only permanent member. The second member will be a Division Chief, Human Development Strategies Office, Human Development Directorate, serving a 1-year, rotational term. SISPA will request a third member who will be a senior official from the appellant's Key Component who is not in the appellant's supervisory chain. If the appellant is from SI, the third member will be from a Key Component other than SI.

II. The Office of General Counsel (OGC) will attend PSAB meetings and serve as an advisor to the PSAB members. OGC will review PSAB decisions before the appellant is notified.

### B. Appeal Procedures.

I. An appellant may appeal, to the PSAB, in writing, a final security clearance determination to deny or revoke access eligibility. Appeals may be with or without a request for a personal appearance before the PSAB.

II. The PSAB President shall determine the time and place of meetings, preside over meetings, and provide decision documentation and rationale regarding the PSAB decision for delivery to the appellant.

### III. The Personnel Security Division, Adjudications Branch (SISPA) shall:

a. Facilitate communication between the PSAB and the appellant, ensure appeals are processed as provided in Annex D, Director of Central Intelligence Directive 6/4, provide copies of relevant documentation to the PSAB members, resolve administrative issues, and prepare correspondence to the appellant advising of the PSAB decision.

b. Maintain a file of all PSAB decisions and related documentation.

c. Forward the appellant's written appeal and the case file upon which the final determination was based to the PSAB at least 10 days prior to the scheduled meeting.

d. Schedule a personal appearance, if requested by the appellant, in a timely manner.

IV. The PSAB shall:

- a. Meet to ensure timely disposition of appeals, as needed.
- b. Review the entire case file, including all available investigative results and related documentation, with any response made by the appellant, and any information provided during the personal appearance, if the appellant exercises that option. The PSAB President may request clarification of adjudication policy and procedures from SISPA.
- c. Provide the appellant an opportunity, at the conclusion of the personal appearance, to make a closing statement.
- d. Decide each case by a majority vote. PSAB decisions are final and conclude the NGA appeal process.
- e. Notify the appellant in writing of the PSAB's decision.
- f. At the conclusion of the PSAB proceedings, forward to SISPA the appellant's written appeal, the case file upon which the final determination was based, and documentation received from the appellant during the Board proceedings.

V. Personal Appearance by Appellant

- a. Appellant's personal appearance should require no more than 60 minutes. If the appellant requires more than 60 minutes to present his or her testimony, the appellant will be afforded additional time.
- b. The appellant will provide his or her oral testimony. The PSAB members may ask the appellant questions for clarification of information.
- c. The appellant may submit additional relevant documents, materials, or information not previously submitted for the PSAB members to consider.
- d. Appellant may be represented by counsel or another representative at his or her own expense.
- e. The appellant may not present or cross-examine witnesses.

3. Point of Contact. The NGA point of contact for the PSAB is Mr. Robert Winston, Chief, Adjudications Branch, 703-██████████, or ██████████@nga.ic.gov.

# Government Exhibit 7

UNCLASSIFIED//FOR OFFICIAL USE ONLY



NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

NOV 02 2010

U-2010-906/SIS

MEMORANDUM FOR MR. MAHMOUD M. HEGAB, XXX-XX-3812

[REDACTED] ARLINGTON, VA [REDACTED]

SUBJECT: Intent to Revoke Eligibility for Access to Sensitive Compartmented Information

REFERENCES: As listed in Enclosure (1)

1. National Geospatial-Intelligence Agency (NGA) personnel are subject to initial and periodic review of their background information to determine that their eligibility for access to Sensitive Compartmented Information (SCI) is clearly consistent with the interests of national security. A preliminary decision has been made to revoke your eligibility for access to SCI. Adverse information from an investigation of your personal history has led to the security concerns listed in the Statement of Reasons (SOR) (Enclosure (2)) and has raised questions about your trustworthiness, reliability, and judgment. If this decision becomes final, you will not be eligible for access to SCI or employment in sensitive duties in accordance with references a through f.

2. You may challenge this preliminary decision by responding, in writing, with any information or explanation which you think should be considered in reaching a final decision. Instructions for responding to a SOR (Enclosure (3)) are provided to assist you if you choose to respond. The Adjudicative Guideline (Enclosure (4)) is used to determine whether certain adverse information is a security concern. The preliminary decision will become final if you fail to respond to this letter. You may obtain legal counsel or other assistance; however, you must do so at your own expense.

3. You must notify the Adjudications Branch, through your Point of Contact (POC) within 10 calendar days, of your intent to respond to the SOR. If you choose not to respond, you will forfeit an opportunity to contest this unfavorable personnel security determination. Should you choose to respond to the SOR, you must submit your written response within 45 calendar days from the date you receive this letter, unless you request and are granted an extension.

4. Failure to respond will result in the preliminary decision to revoke your eligibility for access to SCI becoming final, and will conclude the NGA appeal process.

4600 SANGAMORE ROAD  
BETHESDA, MARYLAND 20816-5003

3838 VOGEL ROAD  
ARNOLD, MISSOURI 63010-6238

REPLY TO THE FOLLOWING:

2310 SUNRISE VALLEY DRIVE  
RESTON, VIRGINIA 20191-3449

1200 FIRST STREET, SE  
WASHINGTON, DC 20303-0001

UNCLASSIFIED//FOR OFFICIAL USE ONLY

**UNCLASSIFIED//FOR OFFICIAL USE ONLY**

U-2010-906/SIS

**SUBJECT: Intent to Revoke Eligibility for Access to Sensitive Compartmented Information**

5. **USE FOR REVOCATION** Effective immediately, your eligibility for access to SCI is suspended pending further evaluation of your case. While your case is being evaluated, you will not have access to SCI and collateral classified information, computer systems, or physical access to any Department of Defense facility.

6. You are asked to sign the Acknowledgment of Receipt (Enclosure (5)) and complete the notification of intent to respond to the SOR. If you do intend to respond, refer to the enclosed instructions. You may also request documents from your investigative file as explained in Enclosure (3).

7. You may contact your POC through the NGA Personnel Security Division Special Actions Branch at 703-262-4281.

8. This correspondence is marked "For Official Use Only" solely to protect your personal privacy; there is no restriction on your use or disclosure of the information.



**BRENDA S. SANDERS**  
Chief, Adjudications Branch

5 Enclosures  
As stated

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**UNCLASSIFIED//FOR OFFICIAL USE ONLY**

REFERENCE LIST TO U-2010-906/SIS

- a. Executive Order 12968, "Access to Classified Information," 2 August 1995, as amended
- b. Intelligence Community Directive 704, "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 1 October 2008
- c. Intelligence Community Policy Guidance 704.1, "Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- d. Intelligence Community Policy Guidance 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- e. Intelligence Community Policy Guidance 704.3, "Denial or Revocation of Access to Sensitive Compartmented Information, Other Controlled Access Program Information, and Appeals Processes," 2 October 2008
- f. Department of Defense Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996

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Enclosure 1

**UNCLASSIFIED//FOR OFFICIAL USE ONLY**

## STATEMENT OF REASONS

Subject of Investigation: Mr. Mahmoud M. Hegab, XXX-XX-3812

1. The security concerns listed below were derived from your Single Scope Background Investigation dated 8 April 2009, and documents contained in your Personnel Security File.

2. Information presented below presents an elevated foreign influence risk that is problematic and unacceptable to the national security of the United States.

a. You, your parents, and siblings hold dual citizenship with the United States and Egypt, and you stated you are 80% certain your spouse holds dual citizenship status with Jordan. Furthermore, you stated you still possess a passport issued by the Egyptian government.

i. You state willingness to renounce your citizenship with Egypt and surrender your Egyptian passport. However, according to Citizenship Laws of the World, published by the Office of Personnel Management in March 2001, to renounce your citizenship with Egypt would require you to obtain prior authorization through the President of Egypt; and to turn in your Egyptian passport would require contact with foreign national government officials.

ii. Having contact with foreign national government officials to renounce your citizenship and turn in your passport combined with open source information identifying you as a Financial/Budget Analyst with NGA, increase the potential for you to be monitored by foreign intelligence services, especially if you have future travel to Egypt.

b. You reported continuing contact with multiple foreign nationals (including relatives), some of who reside outside of the Continental United States.

c. You reported residing in Egypt from May 2004 to November 2007, and being employed as an Office Manager for a company which your father is has part ownership.

d. Your spouse's attendance and graduation from the Islamic Saudi Academy, whose curriculum, syllabus, and materials are influenced, funded and controlled by the Saudi government.

e. Information available through open sources identifies your spouse as being or having been actively involved with one or more organizations which consist of groups who are organized largely around their non-United States origin and/or their advocacy of or involvement in foreign political issues.

Enclosure 2

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3. The NGA Adjudications Branch has determined that you fail to meet the standards of the following Adjudicative Guideline for determining initial or continued access to classified information and Sensitive Compartmented Information.

Guideline B – Foreign Influence: The risks associated with you and your family members holding dual citizenship with another country other than the United States; your possession of a foreign national passport; your family members residing in Egypt; your continuing contact with multiple foreign nationals; your spouse being or having been publicly affiliated with one or more organizations that are reportedly active in advocating political issues that support governments other than the United States; and your publicly known affiliation with NGA significantly heighten the risks of you being a target for foreign intelligence or security services. You and your spouse’s foreign interests, activities, and contacts elevate the potential for conflicts of interest between your obligation to protect sensitive or classified United States information and technology and your desire to help a foreign person, group, or country by providing that information.

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## Instructions for Responding to a Statement of Reasons

### 1. Purpose.

a. A preliminary decision has been made to revoke your eligibility for access to Sensitive Compartmented Information (SCI) pending further evaluation of your case. This means that you will not have access to SCI and collateral classified information, computer systems, or physical access to any Department of Defense facility.

b. The Statement of Reasons (SOR) is based on adverse information from an investigation of your personal history. The security concerns listed in the SOR have raised questions about your trustworthiness, reliability, and judgment.

2. Authorities. This guidance implements Intelligence Community Directive Number 704, "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 1 October 2008; Intelligence Community Policy Guidance 704.1, "Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008; Intelligence Community Policy Guidance 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008; Intelligence Community Policy Guidance 704.3, "Denial or Revocation of Access to Sensitive Compartmented Information, Other Controlled Access Program Information, and Appeals Processes," 2 October 2008, and Department of Defense Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996.

### 3. Timelines.

a. You must notify your point of contact (POC) within 10 calendar days from receipt of the Letter of Intent (LOI) and SOR if you will or will not respond to the SOR.

b. Your written response is due 45 days from the date you receive the LOI and SOR, unless you request and are granted an extension of time by the Adjudications Branch through the point of contact identified in the LOI.

### 4. Procedures.

a. Review the adverse information in the SOR.

i. Carefully read the security concerns and supporting adverse information in the SOR to determine if the findings are accurate and whether there are circumstances that were not included which might have a favorable bearing in your case.

ii. You may obtain a copy of relevant documents and records upon which the SOR is based.

iii. You may obtain a complete copy of releasable investigative records concerning your personal history under the provisions of the Privacy Act (5 United States Code 552a). The POC identified in the LOI can help you obtain copies of these records. If you do submit a request for your investigative records, ask the POC for a time extension to the deadline for responding to the SOR since it may take up to 30 calendar days to receive these records.

b. Gather documentation that supports your case.

i. After you have received the requested documents and records upon which the SOR is based, organize the supporting documents. Documentation shall be organized according to the security concerns presented in the SOR.

ii. You may submit any documents that you believe should be considered in making a final decision. The information can involve refutation, explanation, extenuation, or mitigation of the reasons provided to you in the SOR as to why your security clearance should not be denied or revoked. The only limitation is that the information must be true, relevant, and material to the concerns as to why your eligibility for SCI access should not be denied or revoked. Examples of useful documentation include, but are not limited to the following: court records; financial; certificates of completion for rehabilitation programs, etc.

iii. You may provide statements from co-workers, supervisors, friends, neighbors, and others concerning your judgment, reliability, and trustworthiness, and any other information you think should be considered in making a final decision.

c. In your LOI, a POC has been designated to support you and provide assistance. You may obtain legal counsel or other assistance; however, you must do so at your own expense.

d. The Adjudicative Guidelines are used to determine eligibility for access to SCI and collateral information. Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest of unquestioned allegiance to the United States, and a person's reliability, trustworthiness, and ability to protect classified information. Decision-makers evaluate all information bearing on the person's loyalty and suitability developed through a background investigation. When reaching a security determination, the decision-maker will consider all available, reliable information about the person, past and present, favorable and unfavorable.

e. You may challenge this preliminary decision by responding, in writing, with any information or explanation you think should be considered in reaching a final decision. You are responsible for the substance of your response.

i. You should address each security concern cited in the SOR separately. Information that is untrue should be specifically refuted. If you believe the adverse information, though true, does not support the security concern or presents an incomplete picture, you should provide information that explains your case.

ii. Decision makers will consider the written record, including your written response and supporting documentation, in making their final decision.

iii. Your letter must be dated and signed by you.

iv. Place your written response and supporting documents in a single envelope or package and send it to the National Geospatial-Intelligence Agency, (Insert Name of POC from LOI), 12310 Sunrise Valley Drive, Reston, Virginia 20191-3449, telephone 703-262-4281.

v. You will be notified in writing of the final decision. In most cases, this decision will be made within 60 days after receipt of your written response. If the decision is in your favor, your access eligibility will be granted or restored. If the decision is to deny or revoke your eligibility for access to SCI, you may appeal the decision to a higher authority.

f. If you do not submit a written response to the SOR, a final decision will be rendered, effectively concluding the due process.

## **GUIDELINE B**

### **FOREIGN INFLUENCE**

1. The Concern. Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in United States interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

2. Conditions that could raise a security concern and may be disqualifying include:

a. Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

b. Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

c. Counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

d. Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

e. A substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

f. Failure to report, where required, association with a foreign national;

g. Unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

h. Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure or coercion;

i. Conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

3. Conditions that could mitigate security concerns include:

a. The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

b. There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the United States interest;

c. Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

d. The foreign contacts and activities are on United States Government business or are approved by the cognizant security authority;

e. The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

f. The value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

From: Mr. Mahmoud M. Hegab, XXX-XX-3812

To: Adjudications Branch

Through: Chief, Special Actions Branch

Subject: Acknowledgment of Receipt for a Letter of Intent and Statement of Reasons

**PART I**

I have received a memorandum from the National Geospatial-Intelligence Agency (NGA), U-2010-906 /SIS, dated NOV 02 2010, subject: Intent to Revoke Eligibility for Access to Sensitive Compartmented Information.

**PART II**

I intend to (select one):

Not submit a response to the Statement of Reasons (SOR) effectively concluding the due process.

Respond via the NGA Special Actions Branch within 45 calendar days of the date I acknowledged receipt of the SOR.

**PART III**

Check **one** of the following:

I request a copy of relevant documents and records upon which the SOR is based.

I do not request a copy of documents and records upon which the SOR is based.

---

(Signature) MR. MAHMOUD M. HEGAB

Date

# Government Exhibit 8

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NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

MAR 04 2011

U-2011-167/SIS

MEMORANDUM FOR MR. MAHMOUD M. HEGAB, XXX-XX-3812

[REDACTED] ALEXANDRIA, VA [REDACTED]

SUBJECT: Final Revocation of Eligibility for Access to Sensitive Compartmented Information

REFERENCES: As listed in Enclosure (1)

- 1. The National Geospatial-Intelligence Agency (NGA), Adjudications Branch, has made a final determination to revoke your eligibility for access to Sensitive Compartmented Information (SCI) effective this date.
- 2. Reference a informed you of the reasons for this action.
- 3. Reference b and all documentation pertaining to your case were carefully considered in reaching a final determination. In accordance with references c through g, this determination was based on the following:

Foreign Influence – Your response has mitigated the concerns of citizenship, foreign contact, overseas employment and residency, as well as your spouse’s education at the Islamic Saudi Academy. However, the information provided does not mitigate your spouse’s current affiliation with one or more organizations which consist of groups who are organized largely around their non-United States origin and/or their advocacy of or involvement in foreign political issues. This concern elevates the potential for conflicts of interest between your obligation to protect sensitive or classified United States information and technology and your desire to help a foreign person, group, or country by providing that information.

- 4. You may appeal this Letter of Revocation (LOR) in one of two ways:
  - a. In writing without a personal appearance. You may submit a written appeal to the Personnel Security Appeals Board (PSAB) and forego the personal appearance. If you submit a written appeal, you may also provide supporting documentation. The PSAB will consider the written record, including your written appeal and any supporting documentation you provide, in making its final decision.
  - b. In writing with a personal appearance. You may submit a written appeal and request a personal appearance before the PSAB. This appearance is intended to provide you with an opportunity to present information for consideration in your case.

4600 SANGAMORE ROAD  
BETHESDA, MARYLAND 20816-5003

3838 VOGEL ROAD  
ARNOLD, MISSOURI 63010-6238

12310 SUNRISE VALLEY DRIVE  
RESTON, VIRGINIA 20191-3449

1200 FIRST STREET, SE  
WASHINGTON, DC 20303-0001

REPLY TO THE FOLLOWING:

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U-2011-167/SIS

SUBJECT: Final Revocation of Eligibility for Access to Sensitive Compartmented Information

You will have an opportunity to orally respond to the security concerns noted in the LOR and submit supporting documentation to the PSAB. The PSAB will consider both the written record and the information from your personal appearance in making its final decision.

5. You must notify the PSAB within 10 days of receipt of the LOR of your intent to appeal, without or with a personal appearance (Enclosure (2), Part II). Guidance for Appealing an LOR is provided at Enclosure (3).

6. If you appeal, your case file, including all of the information you supplied in reference b, will be forwarded to the PSAB for consideration. If you require an extension, you must make your request in writing to the PSAB.

7. You should address questions regarding this LOR to NGA Personnel Security Division at 703-262-4281.

8. This correspondence is marked "For Official Use Only" solely to protect your personal privacy; there is no restriction on your use or disclosure of the information.



BRENDA S. SANDERS  
Chief, Adjudications Branch

3 Enclosures  
As stated

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REFERENCE LIST TO U-2011-167/SIS

- a. National Geospatial-Intelligence Agency, Adjudications Branch memorandum, U-2010-906/SIS, dated 2 November 2010, subject: Intent to Revoke Eligibility for Access to Sensitive Compartmented Information
- b. Mr. Hegab's rebuttal 19 January 2011 responding to the National Geospatial-Intelligence Agency, Adjudications Branch memorandum, U-2010-906/SIS, dated 2 November 2010, subject: Intent to Revoke Eligibility for Access to Sensitive Compartmented Information
- c. Executive Order 12968, "Access to Classified Information," 2 August 1995, as amended
- d. Intelligence Community Directive 704, "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 1 October 2008
- e. Intelligence Community Policy Guidance 704.1, "Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- f. Intelligence Community Policy Guidance 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- g. Department of Defense Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996

From: Mr. Mahmoud M. Hegab, XXX-XX-3812

To: Brenda S. Sanders, Chief, Adjudications Branch

Subject: Acknowledgement of Receipt of Final Revocation of Eligibility for Access to Sensitive Compartmented Information

Part I

I have received a memorandum from the National Geospatial-Intelligence Agency (NGA), U-2011-167/SIS, dated MAR 04 2011, subject: Final Revocation of Eligibility for Access to Sensitive Compartmented Information

\_\_\_\_\_  
(Signature) MR. MAHMOUD M. HEGAB

\_\_\_\_\_  
Date

-----  
Part II

I intend to (select one):

\_\_\_\_\_ Not appeal the final determination by the Adjudications Branch, effectively concluding the due process.

\_\_\_\_\_ Appeal to the Personnel Security Appeals Board (PSAB) in writing through the NGA Personnel Security Division (SISP), which I can contact at 703-262-4281. I understand my written appeal is due 45 days from the date I receive this form.

\_\_\_\_\_ Appeal in writing to the PSAB with a personal appearance. I understand the written portion of my appeal is due 45 days from the date I received this form.

-----  
Part III

The following information is provided so that I may be contacted by the PSAB:

a. Home Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject: Acknowledgement of Receipt of Final Revocation of Eligibility for Access to  
Access to Sensitive Compartmented Information

b. Home Phone \_\_\_\_\_

c. Home E-mail \_\_\_\_\_

d. Cell Phone \_\_\_\_\_

---

PART IV

I will submit this notice to the PSAB through SISF within 10 calendar days from receipt of the letter of Final Revocation of Eligibility for Access to Sensitive Compartmented Information.

\_\_\_\_\_  
(Signature) MR. MAHMOUD M. HEGAB Date

\_\_\_\_\_  
(Signature) SISF Date

## Guidance for Appealing a Letter of Denial or Revocation

1. A decision has been made to deny or revoke your eligibility for access to Sensitive Compartmented Information (SCI). This means that you are not eligible to review or handle SCI, or perform sensitive or classified duties. Denial or revocation of your eligibility could prevent you from continued employment in your present position. The Letter of Denial (LOD) or Revocation (LOR) explains this decision and is based on adverse information which raises security concerns about your trustworthiness, reliability, or judgment.

2. This guidance implements Intelligence Community Directive Number 704, "Personnel Security Standards And Procedures Governing Eligibility For Access To Sensitive Compartmented Information And Other Controlled Access Program Information," 1 October 2008, and Department of Defense (DoD) Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996.

3. The LOD or LOR may be appealed in one of two ways:

A. In writing without a personal appearance. You may submit a written appeal to the NGA Personnel Security Appeals Board (PSAB) and forego the personal appearance. If you submit a written appeal, you may also provide supporting documentation. The PSAB will consider the written record, including your written appeal and supporting documentation, in making its final decision.

B. In writing with a personal appearance. You may submit a written appeal and request a personal appearance before the PSAB. This appearance is intended to provide you with an opportunity to present information for consideration in your case. You will have an opportunity to orally respond to the security concerns noted in the LOD or LOR and submit supporting documentation to the PSAB. The PSAB will consider both the written record and the information from your personal appearance in making its final decision.

4. Timelines.

A. You must notify the PSAB within 10 days of receipt of the LOD or LOR of your intent to appeal, without or with a personal appearance.

B. Your written appeal is due 45 days from receipt of the LOD or LOR.

C. If the option to appear before the PSAB has been selected, you will receive written notification of the date, time, and location for the personal appearance after receipt of your written appeal.

5. Appeal in Writing without a Personal Appearance.

A. You may submit any documents that you believe should be considered by the PSAB. The information can involve refutation, explanation, extenuation, or mitigation of the reasons provided to you in the LOD or LOR as to why your security clearance should be denied or revoked. The only limitation is that the information must be *true, relevant, and material* to the concerns as to why your eligibility for SCI access should be denied or revoked, and should not be unduly repetitive of information that is already part of the record.

B. Place your written response and supporting documents in a single envelope or package and send it to the PSAB through the National Geospatial-Intelligence Agency (NGA), Personnel Security Division, 12310 Sunrise Valley Drive, Reston, Virginia 20191-3449, telephone 703-262-4281.

6. Appeal in Writing with a Personal Appearance.

A. *What is the procedure for the personal appearance?*

I. The PSAB President will preside at your personal appearance and will follow the standard order of procedure described below. The proceeding will be conducted so that it can be understood by a person with no legal training. It will begin with the introduction of the PSAB President and Board members. The PSAB President will then answer any procedural questions that may be asked.

II. The PSAB members will have been provided with the case file containing the documents the Adjudications Branch (SISPA) considered in making its adverse decision. If you have additional relevant documents, materials, or information that was not initially provided in the written appeal, you will be asked to submit the documents for the PSAB to consider.

III. You may be represented by counsel or another representative at your own expense.

IV. During the personal appearance, you will be asked to provide your oral testimony relevant to resolution of the case. The PSAB members may ask you questions and you should answer them clearly, completely, and honestly.

V. At the end of the personal appearance, you will be given an opportunity to make a closing statement. You should stress the highlights rather than review the entire case. You should show how the weight of all available information supports overturning the unfavorable personnel security determination.

B. *Where will the personal appearance be conducted?* The personal appearance will be conducted in an NGA facility.

C. *Will the Government be represented by an attorney at the proceeding?* An Office of General Counsel attorney will serve as an advisor to the PSAB members.

D. *Should I hire an attorney?* You may prepare for, and appear, at the personal appearance by yourself. The proceeding is designed to be easily understood. However, you may have a personal representative or hire an attorney at your own expense. If you desire to be represented by an attorney or anyone else, you must arrange for it immediately. Postponement of the personal appearance will be granted by the PSAB President only for *good cause*, and delay in finding an attorney or other representative is generally *not* a good reason to delay a scheduled personal appearance.

E. *How do I arrange for a personal representative or attorney at my personal appearance?*

I. If you plan to have a personal representative or attorney at your personal appearance, you must notify NGA Personnel Security Division at 703-262-4281 a minimum of five business days prior to your appearance date. You will have to provide the following visitor information:

a. Visitor information

i. Last Name, First Name, Middle Initial

ii. Social Security Number

iii. Citizenship

iv. Date of Birth

v. Place of Birth (City and State)

b. Company information (if applicable)

i. Company Name

ii. Company Address

iii. Employment Point of Contact and phone number

II. Access to an NGA site is limited to authorized individuals.

III. Visitors are considered to be an individual without an NGA issued Identification Badge. All uncleared visitors must be authorized and will be escorted at all times. Uncleared visitors may not proceed onto the site.

F. *What should I do to prepare for my personal appearance?*

I. The personal appearance is your opportunity to provide oral comments and documents demonstrating your eligibility for access to SCI should be granted or reinstated. The PSAB members presiding at your personal appearance will have already reviewed your case file. Therefore, your goal should be to explain your reasons for having the decision reversed, by providing additional information and documentation, rather than repeating information you previously provided.

II. Ensure your documents are organized in the order that you intend to present them. Bring four copies of the documents – one for each PSAB member and one for you to refer to, if needed. Also, bring an additional copy of the documents to allow you to refer to them, if needed, to answer questions that may be directed to you by the PSAB members.

III. Your personal appearance should not exceed 90 minutes.

G. *May I or the Government bring witnesses to the proceeding to testify?* You will not have the opportunity to present or cross-examine witnesses nor will the Government. Individuals who desire to present the view of others must do so in writing (e.g., letters of reference, letters from medical authorities, etc.). Usually a signed and dated letter is sufficient; however, more weight will be given to statements in the form of a notarized statement or affidavit attested to as being true.

H. *Will I be questioned at the personal appearance?* You may be questioned by the PSAB members for clarification of information that is part of the record. You will be advised by the PSAB President of applicable provisions of Section 1001 of Title 18 of the United States Code, which makes it a criminal offense, punishable by a substantial fine and period of imprisonment, to knowingly and willfully make a false or misleading statement or representation to any department or agency of the United States.

I. *Will there be formal rules of evidence that I must understand and comply with?* The only requirements to admit information into the record is that it must be *true*, *relevant*, and *material* to the issues affecting your eligibility for SCI and not unduly a repetition of information that is already part of the record.

J. *What documents may I submit?* You may submit any documents that you believe should be considered by the PSAB. The information can involve refutation, explanation, extenuation, or mitigation of the reasons provided to you in the LOD or LOR issued by the Adjudications Branch (SISPA). The only limitation is that the materials must be *true*, *relevant*, and *material* to your appeal, and should not be unduly a repetition of information that is already part of the record.

K. *Will the PSAB make the final decision regarding my eligibility for a security clearance?* Yes. You will be notified in writing of the PSAB's decision at a later date;

the PSAB President will not announce the decision. PSAB decisions are final and conclude the security clearance appeal process.

L. *What is the "record" of my case?* The record of your case will consist of all the information already considered by SISPA in making the decision to deny or revoke your eligibility for access to SCI, and will include your written appeal and any additional documentation you may submit at the personal appearance.

M. *What regulations govern the PSAB proceedings?* Executive Order 12968, "Access to Classified Information," 2 August 1995, as amended, Intelligence Community Directive Number 704, "Personnel Security Standards And Procedures Governing Eligibility For Access To Sensitive Compartmented Information And Other Controlled Access Program Information," 1 October 2008, and DoD Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996.

# Government Exhibit 9



**NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

**JUL 27 2011**

U-2011-683/SIS

MEMORANDUM FOR MR. MAHMOUD M. HEGAB, XXX-XX-3812,  
[REDACTED] ALEXANDRIA, VA  
[REDACTED]

**SUBJECT:** PSAB Decision to Affirm Letter of Revocation (LOR)

**REFERENCES:** As listed in Enclosure (1)

1. References (a) through (f) require that adjudicative decisions to grant eligibility for access to classified information be "clearly consistent with the interests of national security," and based on affirmative evidence of "strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment."
2. After carefully reviewing the documentation in your case file, and considering your written appeal and personal appearance, the Personnel Security Appeals Board (PSAB) has affirmed the original determination to revoke your eligibility for access to Sensitive Compartmented Information (SCI) per references (a) through (f).
3. The PSAB determined that your written appeal and the information you provided during your personal appearance failed to mitigate security concerns related to the Adjudicative Guideline provided in reference d.
4. This decision is final and concludes the appeal process.
5. You are asked to sign the Acknowledgment of Receipt (Enclosure (2)) and submit it to the NGA Personnel Security Division either by mail at 12310 Sunrise Valley Drive, Mail Stop P-97, Reston, Virginia 20191, or by fax at 703-453-3783.
6. This correspondence is marked "For Official Use Only" solely to protect your personal privacy; there is no restriction on your use or disclosure of the information.

A handwritten signature in black ink, appearing to read "Allison W. Hall".

ALLISON W. HALL  
President, Personnel Security Appeals  
Board

2 Enclosures  
As stated

REFERENCE LIST TO U-2011-683/SIS

- a. Executive Order 12968, "Access to Classified Information," 2 August 1995, as amended
- b. Intelligence Community Directive 704, "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 1 October 2008
- c. Intelligence Community Policy Guidance 704.1, "Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- d. Intelligence Community Policy Guidance 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information," 2 October 2008
- e. Intelligence Community Policy Guidance 704.3, "Denial or Revocation of Access to Sensitive Compartmented Information, Other Controlled Access Program Information, and Appeals Processes," 2 October 2008
- f. Department of Defense Regulation 5200.2-R, "Personnel Security Program," January 1987, as amended, 23 February 1996

Enclosure 1

**UNCLASSIFIED//FOR OFFICIAL USE ONLY**

From: Mr. Mahmoud M. Hegab, XXX-XX-3812

To: Adjudications Branch

Subject: Acknowledgement of Receipt for PSAB Decision to Affirm Letter of Revocation

1. I have received a memorandum from the National Geospatial-Intelligence Agency (NGA), U-2011-683/SIS, dated JUL 27 2011 , subject: PSAB Decision to Affirm Letter of Revocation (LOR).
2. I understand that my eligibility for access to Sensitive Compartmented Information has been revoked.
3. I understand the decision of the Personnel Security Appeals Board (PSAB) is final and concludes the appeal process.
4. If additional information is needed, I may contact the NGA Personnel Security Division (SISP) at 703-262-4281.

---

(Signature) MR. MAHMOUD M. HEGAB

---

Date

---

(Signature) SISP

---

Date