

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

GULET MOHAMED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:11-CV-0050
	)	
ERIC H. HOLDER, JR., in his official capacity as	)	
Attorney General of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**JOINT STATUS REPORT**

In accordance with the Court order dated August 6, 2014, Dkt. 124, the parties hereby submit this Joint Status Report regarding the status of discovery disputes thus far. The parties have recently made some additional progress.

- The Parties have agreed to the text of a stipulated protective order governing the handling of Sensitive Security Information. *See* Exhibit A. The parties jointly request the entry of this Order. Defendants are not thereby agreeing to the production of any particular information, but this order would govern the handling of any information that may be produced pursuant to its terms.
- Defendants have provided Plaintiff a draft of a proposed stipulated protective order governing the handling of Law Enforcement Privileged Information. Plaintiff objects to one provision of that draft and the parties continue to discuss options to resolve the disagreement.<sup>1</sup>

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<sup>1</sup> Because most information likely to be at issue is both Sensitive Security Information and subject to the Law Enforcement Privilege, Defendants maintain that it is necessary for both orders to be in place before any privileged information could be produced.

- The parties have had substantive discussions regarding interrogatories 4, 7, 8, and 10. *See* Dkt. 91-1. With respect to interrogatories 4, 7, and 8, the parties have discussed the production of certain privileged information pursuant to the above-mentioned protective orders, which would likely resolve the current dispute. The parties are unable to reach an agreement regarding part of the information requested in Interrogatory 8 (the religion of persons) and regarding Interrogatories 5 and 10 (the reasons why a nomination is rejected or why a person is moved between lists). In summary, the parties have agreed to resolve their discovery dispute with regard to certain interrogatories in the following manner, though the issue of whether the following information should be subject to a protective order is still being discussed:
  - With regard to Interrogatory 4, the parties agree that Defendants will include as part of their answer to this interrogatory information concerning the number of lawful permanent residents (LPRs) in the Terrorist Screening Database (TSDB) and on the Selectee and No Fly Lists for the fiscal years 2012 and 2013, because the TSDB began tracking LPR status in May 2012. Defendants will provide their entire answer to Interrogatory 4 pursuant to the appropriate protective orders.
  - With regard to Interrogatory 7, the parties agree that, for the fiscal years 2009 through 2013, Defendants will provide Plaintiff with the information available to them regarding the number of U.S. persons on the No Fly List who have information listed in the field available for naturalization certificate numbers. Defendants will provide this information pursuant to the appropriate protective orders.

- With regard to Interrogatory 8, the parties agree that, for the fiscal years 2009 through 2013, Defendants will provide Plaintiff with the information available to them regarding the place or places of birth of U.S. persons on the No Fly List. Defendants will provide this information pursuant to the appropriate protective orders.
- Otherwise, the parties remain largely at an impasse over the production of information subject to the State Secrets privilege, the law enforcement privilege, and/or the statute protecting Sensitive Security Information (SSI).
- Because the parties anticipate further progress on these discovery issues, the parties jointly propose to submit another status report to the Court on or before August 29, 2014.

### **Plaintiff's Statement**

Plaintiff writes separately to make two points. First, Plaintiff would like to bring to this Court's attention two recently leaked government documents, including the 2013 Watchlisting Guidance which details the factors that Defendants consider when making and processing nominations. Plaintiff will argue that this document is relevant, not only to show just how objectionable and evidence-free Defendants' watch listing process is, but also to how this Court handles Defendants' state secrets privilege. The other document leaked is titled *Directorate of Terrorist Identities (DTI): Strategic Accomplishments 2013* and it shows, among other things, that the second highest concentration of watchlisted persons is a town of less than 100,000: Dearborn, Michigan. Plaintiff will argue that the only explanation for this concentration in Dearborn—a place that even the local US Attorney recently acknowledged had never seen even a single terrorism prosecution—is the fact that Dearborn has perhaps the highest proportion of Muslims

and Arabs in the country. Plaintiff will be filing a notice with this Court next week attaching both of these documents.

Second, with regards to Plaintiff's request for information about the religious identity of listed US persons, Plaintiff would like to elaborate on his proposal to alleviate the burden that Defendants' objections are relying upon. In short, Defendants have argued that, because they do not track religion in their TSDB records, their search would have to include a review of the underlying records. Defendants have estimated that a review of a single record would take one hour.

Plaintiff, however, has determined that a review of even 5 to 10 percent of the underlying records would likely be a sufficient sample size from which statistically valid inferences about all US person records. While Plaintiff does not know exactly how many US persons are in the TSDB, some media reports have indicated that the number may be in the hundreds or around a thousand. This means that the entire burden to Defendants may be just 50 to 100 hours of work.

### **Defendants' Statement**

With respect to Plaintiff's points, Defendants do not acknowledge the authenticity of the purportedly leaked documents, and will respond to the proposed Notice in due course. Moreover, nothing in Plaintiff's "narrowed" proposal regarding religious affiliation of a subset of the TSDB alters significantly the arguments previously made. As Defendants explained in the opposition to the motion to compel, this (likely privileged) information is burdensome to obtain, is not probative of the claims and defenses in this matter, and moreover requires intensive review of likely classified material. *See* Defs' Opp. (Dkt. 102) at 23-26.

Defendants have three additional updates for the Court. First, as discussed in the previous Status Report, Defendants remain opposed to producing any law enforcement privileged or SSI information under an attorney-eyes only protective order. Nonetheless, in accordance with the Court's oral order at the hearing, Defendants have reviewed all documents that were produced in the *Ibrahim* litigation in the Northern District of California; a number of unprivileged records produced in *Ibrahim* have already been provided to Plaintiff. Defendants have identified a small number of additional documents that were ordered produced under an attorneys-eyes-only protective order in the *Ibrahim* litigation that are arguably within the scope of discovery in this case. Given the Court's instruction at the hearing, although Defendants continue to object to the production of such material, Defendants anticipate producing that information shortly after appropriate protective orders are entered and suitable acknowledgements obtained.

Second, in light of the unusual nature of the Court's August 6, 2014 Order regarding an in camera submission, Dkt. 125, Defendants are considering filing a motion for reconsideration or clarification. Defendants anticipate that such a motion would be filed on or before Friday, August 22, 2014.

Third, the Court asked questions at the hearing about another matter pending in the District of Oregon, *Latif v. Holder*, No 10-750. As the Government explained in a status report filed in *Latif* on August 4, 2014, it seeks a six-month voluntary remand in *Latif*, as over the next six months the Government intends to make changes to the existing redress process regarding the No Fly List, in coordination with the various agencies involved in aviation security screening, informed by the myriad legal and policy concerns that affect the Government's administration of the No Fly List and the redress process, and with full consideration of the Court's opinion in

*Latif*. See *Latif* Joint Status Report, No. 10-750, Dkt. 144 (D. Ore. Aug. 4, 2014). As the Government further explained in *Latif*, once these new procedures have been developed, and also within the six months of the requested voluntary remand in that matter, the Government intends to reopen and reconsider the *Latif* Plaintiffs' redress requests using the new process. See *id.* The *Latif* court has taken the Government's proposed approach under advisement and has requested that the parties provide answers to several questions in a status report due on August 29, 2014. The Government also is considering the effect of its proposed remand on other pending cases.

Dated: August 15, 2014

Respectfully submitted,

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