

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.)	
_____)	

EXHIBIT A TO
DEFENDANTS' RESPONSE TO COURT ORDER

DECLARATION OF MICHAEL STEINBACH

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

GULET MOHAMED,

Plaintiff,

v.

ERIC H. HOLDER, JR., et al.,

Defendants.

Case No. 1:11-cv-0050

~~Filed In Camera, Ex Parte~~

IN CAMERA, EX PARTE DECLARATION OF MICHAEL STEINBACH

I, Michael Steinbach, hereby declare the following:

1. (U) I am the Assistant Director of the Counterterrorism Division, Federal Bureau of Investigation ("FBI"), United States Department of Justice.
2. (U) As Assistant Director, I have official supervision and control over the files and records of the Counterterrorism Division of the FBI. These files and records include classified national security information, as well as national security information that is sensitive but unclassified. I have been delegated original classification authority by the Attorney General. See Executive Order 13,526, Section 1.3(c). As a result, and pursuant to all applicable Executive Orders, I am responsible for the protection of classified national security information within the Counterterrorism Division, including the sources and methods used by the FBI in the collection of national security information. In my position as Assistant Director of the Counterterrorism Division, I also have the responsibility of protecting sensitive but unclassified information, including information shared with the FBI by other

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U.S. government agencies and by foreign partners. Thus, I have been authorized by the Director of the FBI to execute declarations and affidavits in order to protect such classified information and such sensitive but unclassified information.

3. (U) Each paragraph in this declaration is marked with letters indicating the level of classification and restrictions on dissemination applicable to that paragraph. Paragraphs marked with a "U" are unclassified. Paragraphs marked with an "S" are classified as SECRET, *i.e.*, information the disclosure of which could reasonably be expected to cause serious damage to the national security. Designations of "NF" or "NOFORN" identify information that may not be disseminated to foreign countries or nationals. This declaration is itself a classified, and therefore it is available to the Court solely for *ex parte, in camera* review.
4. (U) Paragraphs marked with "LES" are considered to be Law Enforcement Sensitive, *i.e.*, information the disclosure of which could undermine ongoing law enforcement investigations or law enforcement techniques. The matters stated herein are based on my personal knowledge, my background, training, and experience relating to counterterrorism; my consideration of information available to me in my official capacity; and information furnished by Special Agents and other employees of the FBI, as well as other Department of Justice employees.

(U) BACKGROUND

5. (U) Through the exercise of my official duties, I have become familiar with this civil action in which the plaintiff, Gulet Mohamed ("Plaintiff"), challenges his alleged placement on the government's No Fly List. Plaintiff generally alleges that he has been denied various constitutional rights in connection with his alleged placement on the No Fly List. I understand that Plaintiff has served discovery requests on the FBI and the Terrorist Screening Center ("TSC"), which is administered by the FBI. In this discovery, I understand that Plaintiff seeks, among other things, any documents "regarding" Plaintiff, and TSC and FBI policies and procedures regarding the operation

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of the No Fly and Selectee Lists and the Terrorist Screening Database ("TSDB").

6. (U) I understand that on September 15, 2014, the Court ordered the Defendants to submit *in camera* and under seal, for *ex parte* review, all documents in the Defendants' privilege log that the Plaintiff has requested and the Defendants have refused to produce on the basis of the assertion of the state secrets privilege except those documents specific to the Plaintiff or specific to any other individual by name. Defendants have identified 28 (twenty-eight) entries on the TSC privilege log that are responsive to the Court's order, namely TSC privilege log entries B1, B2, B11, B12, B13, B14, B15, B16, B18, B19, B20, B21, B22, B24, B25, B45, B48, B50, B56, B68, B72, B73, B78, B79, B80, B83, B85 and B86.

(U) 28 NON-PLAINTIFF/INDIVIDUAL SPECIFIC DOCUMENTS

7. (U) Defendants have identified 28 documents from the TSC's privilege log that are responsive to the Court's September 15, 2014 order for an *in camera, ex parte* production. These 28 documents include information over which the Attorney General has asserted the state secrets privilege, and they also contain information over which the Government has asserted the law enforcement privilege or information that is "sensitive security information."
8. (U) The Attorney General's assertion of the state secrets privilege covers three categories of information, all of which are found to some degree in these 28 documents. See generally, Declaration of Attorney General Eric H. Holder, Jr. (dated May 27, 2014). Most relevant here, the Attorney General asserted the state secrets privilege over the Watchlisting Guidance, which is unclassified but highly sensitive, especially in its entirety. See Holder Decl. ¶¶ 6, 14. These 28 documents include either recent versions of the Watchlisting Guidance, or substantial portions from the Watchlisting Guidance as used in other documents, such as training documents derived from substantial portions of that Guidance. The Attorney General also asserted the state secrets privilege over certain types of classified information, including information which would tend to reveal the

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subjects of counterterrorism investigations and operations, and information which pertains to intelligence sources and methods. See Holder Decl. ¶¶ 8-12. For example, some of these 28 documents are training documents that, although not specifically about any particular individual, nonetheless include information identifying and concerning individual subjects for training purposes, including the existence of Terrorist Identities Datamart Environment (“TIDE”)¹ records for these individuals. Other documents contain classified policy information which would tend to reveal intelligence sources and methods. See Holder Decl. ¶¶ 6, 12.

9. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ (U) TIDE is the National Counterterrorism Center’s classified database of terrorist information.

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10. (S//NF) [REDACTED]

11. (U) Information in these 28 documents is also subject to the Government's assertion of the law enforcement privilege. Each of the 28 documents contains information subject to the law enforcement privilege. Disclosure of this information could reasonably be expected to risk circumvention of the law and harm to national security, as disclosure of these documents would provide considerable insight into the internal workings of the watchlisting process, including the type, quality, and amount of information needed to watchlist an individual, as well as how this information is received, vetted, and disseminated throughout the intelligence community. This

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would undermine ongoing investigative efforts, or would undermine the viability of certain law enforcement techniques.

12. (U//LES) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. (U) Certain of these 28 documents also contain "sensitive security information" ("SSI"). SSI is a type of information that is protected from disclosure by statute and by regulation. The Transportation Security Administration is responsible for determining what information qualifies as SSI. TSA has confirmed the presence of SSI information in 21 of the 28 documents.²

14. (U) In the following paragraphs, I will provide a brief description of how each of the 28 documents contains the information over which the state secrets privilege has been asserted. I will also briefly

² (U) The 21 documents that include SSI information are: B1, B2, B11, B12, B14, B15, B16, B19, B21, B22, B24, B25, B45, B48, B50, B56, B68, B72, B73, B78, and B86. Although 3 of the remaining 7 documents contain notations indicating the presence of SSI, TSA determined that these 3 documents, as well as the other 4 documents that do not contain such notations, currently do not contain SSI.

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describe the law enforcement sensitive information contained in each of the 28 responsive documents.

(U) The Watchlisting Guidance (B15, B48)

15. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) Watchlisting Guidance Training and Policy Documents (B2, B11, B12, B14, B16, B24, B25)

16. (U) Several of the 28 documents are training and policy documents about how the watchlisting guidance should be used and applied. As such, these documents draw heavily from the then-current version of the Watchlisting Guidance; they also incorporate the Watchlisting Guidance or substantial parts of it directly into the training documents themselves. For the reasons set forth in the Attorney General's declaration, disclosure of this information would risk significant harm to the national

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security by revealing how and why the U.S. Government selects individuals for watchlisting. Holder Decl. ¶¶ 6, 14. For similar reasons, as explained in the Giacalone Declaration, disclosure of this information would also risk circumvention of the law and cause harm to the national security.

17. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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19. (U//LES)

[REDACTED]

20. (U//LES)

[REDACTED]

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[REDACTED]

21. (U//LES) [REDACTED]

22. (U//LES) [REDACTED]

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~~SECRET//NOFORN~~

[REDACTED]

23. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

26. (U//LES) [REDACTED]

[REDACTED]

27. (U//LES) [REDACTED]

[REDACTED]

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[REDACTED]

28. (U//LES) [REDACTED]

[REDACTED]

29. (U//LES) [REDACTED]

[REDACTED]

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[REDACTED]

(U) Watchlisting Nomination Forms (B18, B79)

30. (S//NF) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) Nominations and Data Integrity Unit, Standard Operating Procedures 2008-2012 (B1, B13, B50, B68, B72)

31. (S//NF) [REDACTED]

[REDACTED]

[REDACTED]

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~~SECRET//NOFORN~~

[REDACTED]

32. (U//LES) [REDACTED]

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[REDACTED]

33. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

(U) Terrorist Review and Examination Unit, Standard Operating Procedures 2010-2012 (B19, B20)

34. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

(U) Redress Unit, Standard Operating Procedures 2011 (B21, B22)

36. (U//LES) [REDACTED]

(U) GAO Report (B45)

37. (S//NF) [REDACTED]

³ (S//NF) [REDACTED]

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~~SECRET//NOFORN~~

[REDACTED]

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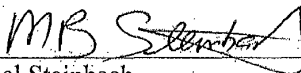
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(U) CONCLUSION

38. (U) For these reasons, I have concluded that the disclosure of the documents and information in the categories listed above reasonably could be expected to cause harm to national security and to risk circumvention of the law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of October 2014.



Michael Steinbach
Assistant Director
Counterterrorism Division
Federal Bureau of Investigation
Washington, DC

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