

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

GULET MOHAMED,) Submitted <i>Ex Parte, In Camera</i>
)
Plaintiff,)
)
v.)
)
ERIC H. HOLDER, JR., <i>et al.</i> ,)
)
Defendants.)

Case No. 1:11-CV-50

DECLARATION OF G. CLAYTON GRIGG

I, G. Clayton Grigg, hereby declare the following:

1. (U) I am the Deputy Director for Operations of the Terrorist Screening Center ("TSC"). I became the Deputy Director for Operations at TSC in September 2013. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") since 1997 and have served in a variety of criminal investigative, counterterrorism, and senior management positions.
2. (U) The TSC is a multi-agency center that was created by the Attorney General pursuant to Homeland Security Presidential Directive ("HSPD")-6 on September 16, 2003. The TSC is administered by the FBI and receives support from, *inter alia*, the U.S. Department of Homeland Security ("DHS"), the Department of State ("DOS"), the

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Department of Justice, and the Office of the Director of National Intelligence. TSC is staffed by officials from multiple agencies, including FBI, DHS, DOS, Transportation Security Administration (“TSA”), and U.S. Customs and Border Protection (“CBP”).

3. (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. Paragraphs marked with “SSI” are considered to be Sensitive Security Information, *i.e.*, information which, if released publicly, would be detrimental to transportation security. Paragraphs marked with “FOUO” are For Official Use Only. Certain information in this declaration describing the watchlisting process is also subject to the Attorney General’s assertion of the state secrets privilege. In this document, that information is identified by either the “SSI” or “LES” markings.

4. (U) I submit this declaration in this case in response to some of the questions raised by the Court in its order of February 2, 2015, and in further support of the dispositive motions filed by the Government in this case. The matters stated herein are based on my personal knowledge and my review and consideration of information available to me in my official capacity, including information furnished by TSC personnel, including FBI Special Agents, as well as other Government agency employees or contract employees acting in the course of their official duties.

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(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. I understand that by order on February 2, 2015, the Court scheduled an *ex parte* and *in camera* hearing for Defendants to address eight questions raised by the Court, which, among things, seek a further explanation of why certain documents and information subject to the Attorney General’s state secrets privilege assertion would be at issue in further litigation of the Plaintiff’s claims and the Government’s defenses to those claims. I submit this declaration primarily to address the second question raised by the Court—“how the under seal documents as to which the state secrets privilege is claimed precludes adjudication of the procedural due process claims without their use and disclosure.” However, the discussion below also addresses issues raised by the Court’s third question, “how the defendants apply the criteria for placement on the No Fly List consistent with the restrictions listed in its publically disclosed criteria”; the Court’s fourth question, “any criteria other than those publicly disclosed for the purposes of placing United States citizens on the No Fly List”; and also the Court’s fifth question, “how defendants distinguish between United States citizens that are placed on the Selectee List and the need to have a level of security beyond those protections afforded through the Selectee List.” As explained below, these questions (two through five) put at issue documents and information concerning the substantive

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criteria and procedures for watchlisting determinations, including No Fly and Selectee List determinations, as to which the Attorney General has asserted privilege.¹

(U) DISCUSSION

6. (U) The Government's previous submissions have addressed the procedures, criteria, and safeguards in place so that watchlist placements are based on the most current, accurate, and thorough information available and that individuals are not being wrongfully watchlisted. These procedures, criteria, and safeguards are described at length in the 28 privileged discovery documents identified by the Government in response to the Court's September 15, 2014 order for an *in camera*, *ex parte* production, which were responsive to discovery requests in this case and are subject to the Attorney General's assertion of the state secrets privilege. These documents include, among other items, recent versions of the Watchlisting Guidance, documents that append the Watchlisting Guidance in whole or part, and documents that discuss the Watchlisting Guidance and how its various components work together, including training materials addressing the Watchlisting Guidance. The October 17, 2014 declaration of FBI Assistant Director Steinbach provides an overview of the 28 documents and explains why the information reflected in the documents is subject to the state secrets privilege.

¹ (U) I am advised that the Government will separately address other questions raised by the Court's order.

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7. (U) I will not repeat that description of the documents here, but rather, in response to the Court's February 2, 2015 order, will focus on how criteria, procedures, and safeguards described in the 28 documents set forth a level of detail that, if available in this litigation, would further demonstrate the rigorous, exacting, and careful process that is utilized in No Fly List determinations. Specifically, I discuss information in the 28 documents as they relate to two critical features of the watchlisting process: (i) the watchlisting standards, including the minimum substantive derogatory criteria for inclusion on the No Fly List and the TSDB (Terrorist Screening Database), and (ii) the safeguards and quality control measures governing the nomination and review process.

A. (U) WATCHLISTING STANDARDS

8. (U) Placement on the watchlist is not a determination that someone has committed a crime, but rather an assessment of whether, based on analysis of available intelligence and investigative information, a person meets the applicable criteria for watchlisting. The watchlisting community has extensive experience assessing threats and determining whether established criteria are satisfied. That process inherently depends on analytical judgments about whether the relevant criteria have been met. The Watchlisting Guidance and the procedures and training materials derived from the Watchlisting Guidance ("Guidance Materials") reflect an extensive and comprehensive effort by the watchlisting community to establish and describe a standardized watchlisting process by clarifying and elaborating on the substantive criteria utilized and providing analysts with specific

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operational and technical guidance for use in the nomination, review, and redress processes.

9. (U) Approved by the National Security Council Deputies Committee, the Watchlisting Guidance is a comprehensive overview of the Government's terrorist watchlisting policies and procedures. The Watchlisting Guidance provides a mechanism to address the risks posed by terrorism. This helps ensure that threats posed by watchlisted individuals may be more effectively identified and mitigated. The Watchlisting Guidance and Guidance Materials collectively reflect the U.S. Government's processes and authoritative explanations of the various watchlisting criteria over the past several years. These explanations and implementation guidance in their current forms inform virtually all aspects of TSC's operations and are essential to the watchlisting process.

1. (U) The No Fly List Criteria

10. (U) I understand that Plaintiff in this case has challenged the meaning and application of the criteria for placing individuals on the No Fly List, and more specifically, has complained of the "lack of any written guidelines" governing the nomination process,² which he claims is based on "generalities" that "allow Defendants to effectively put whoever they want on their No Fly List."³ The criteria⁴ for a No Fly List determination

² (U) Plaintiff's Partial Motion for Summary Judgment, ECF No. 161, at 13.

³ (U) Plaintiff's Memorandum in Opposition to Defendant's Partial Motion for Summary Judgment, ECF No. 164, at 8.

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are applied pursuant to the specific guidance set forth in the Watchlisting Guidance, which include detailed instructions, procedures, factors, and other considerations for making accurate determinations. Thus, any examination of the application of the No Fly List criteria would have to account for the Watchlisting Guidance, which forms the basis for TSC's operations in the nomination and review process.

11. (U//~~LES~~)
[REDACTED]

⁴ (U) Any individual, regardless of citizenship, may be placed on the No Fly List if he or she represents: (1) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) or an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to an aircraft (including a threat of air piracy, or threat to airline, passenger, or civil aviation security); or, (2) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to the homeland; or, (3) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) against any U.S. Government facility abroad and associated or supporting personnel, including U.S. embassies, consulates and missions, military installations (as defined by 10 U.S.C. 2801(c)(4)), U.S. ships, U.S. aircraft, or other auxiliary craft owned or leased by the U.S. Government; or, (4) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so. See March 2013 Watchlisting Guidance, § 4.5 (B48 at TSC 4289).
§ (U//~~LES~~)

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[REDACTED]

12. (U//~~SS//LES~~)

[REDACTED]

[REDACTED]

⁶ (U//~~SS//LES~~)

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[REDACTED]

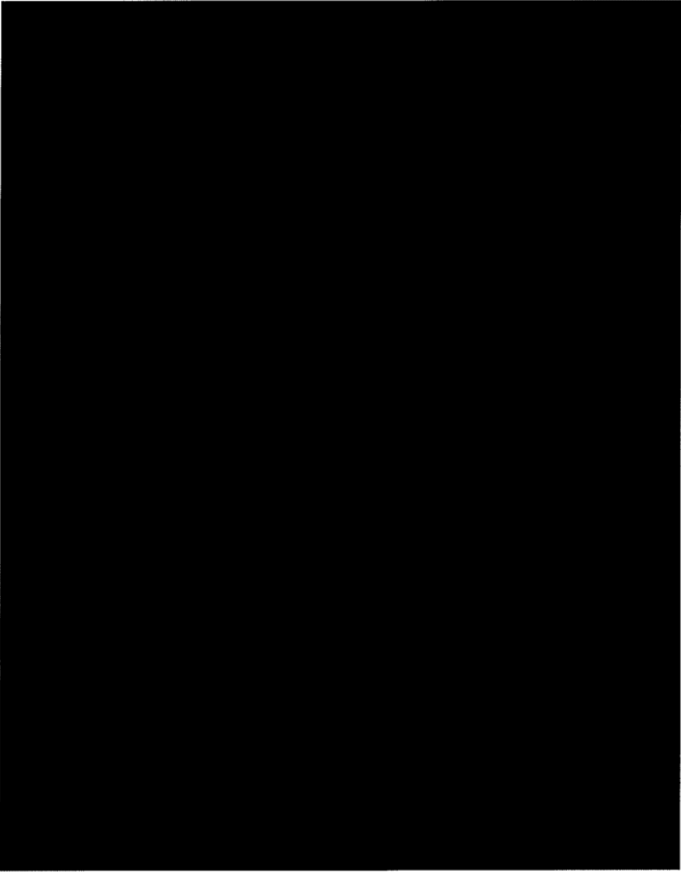
13. (U//~~SS//LES~~) [REDACTED]

[REDACTED]

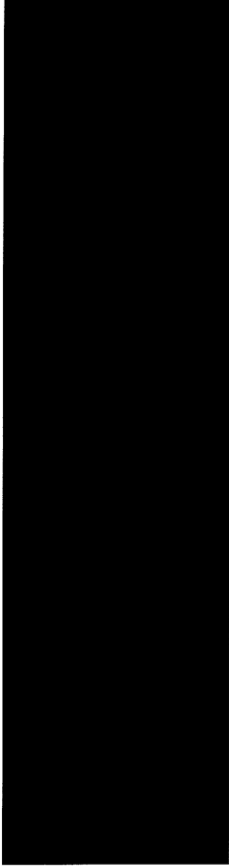
⁷ (U//~~SS//LES~~) [REDACTED]
⁸ (U//~~SS//LES~~) [REDACTED]

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14. (U//SSM//LES)



⁹ (U//SSM//LES)

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[REDACTED]

15. (U//~~SENSITIVE~~)

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¹² (U//~~SENSITIVE~~)

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16. (U//~~FOUO~~)

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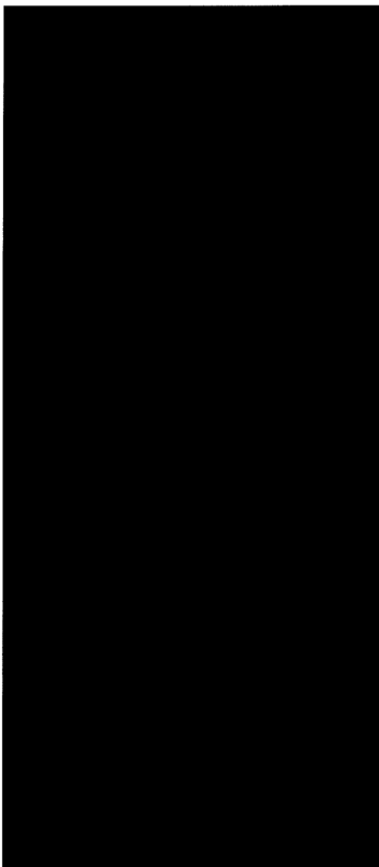
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2. (U) The Criteria for Inclusion in the TSDB

17. (U) I am advised that Plaintiff has focused part of his due process challenge on the criteria for inclusion in the TSDB, and again that he has described the standard as vague and complained of the “lack of any check or oversight on the TSDB compilation process.”¹⁷ Here again, the Watchlisting Guidance and Guidance Materials provide considerable detail on the application of the standard for inclusion in the TSDB and provide analysts with guidance as to how to implement it.

¹⁴ (U//SS//LES)
¹⁵ (U//SS//LES)
¹⁶ (U//SS//LES)



¹⁷(U) Plaintiff’s Partial Motion for Summary Judgment, ECF No. 161, at 14.

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18. (U//~~SENSITIVE~~)

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19. (U//~~SENSITIVE~~)

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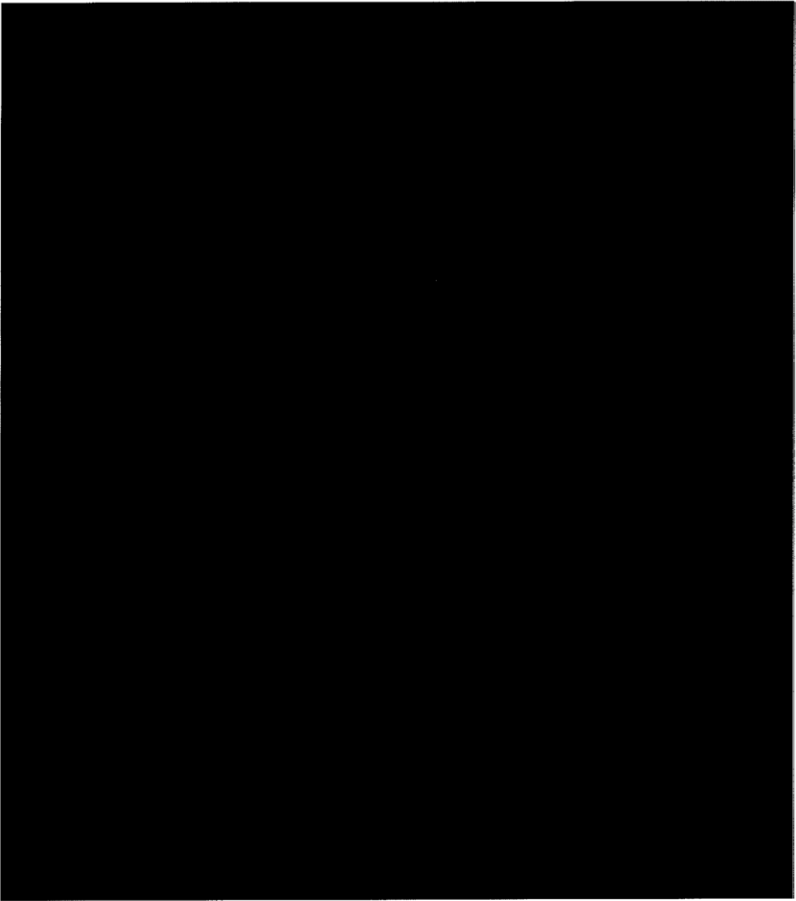
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3. (U) Constitutionally Protected Activities

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21. (U//~~SENSITIVE~~)



22. (U//~~SENSITIVE~~)

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[REDACTED]

21. (U//~~SS//LES~~)

[REDACTED]

²³ (U//~~SS//LES~~)

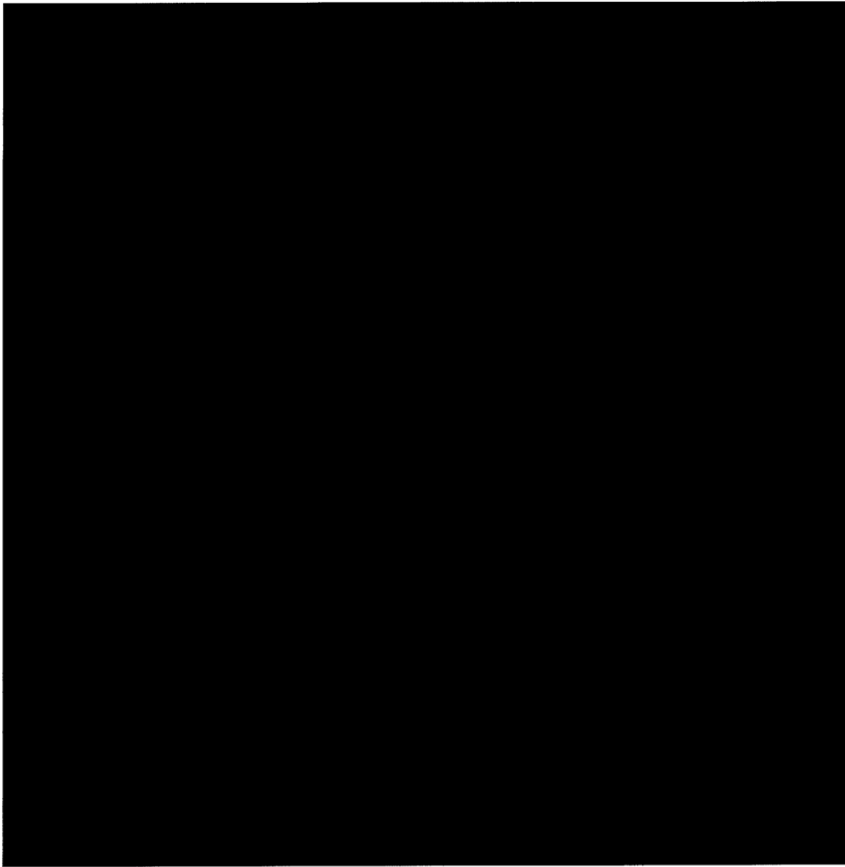
²⁴ (U//~~SS//LES~~)

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B. (U) PROCEDURES AND QUALITY CONTROL MEASURES

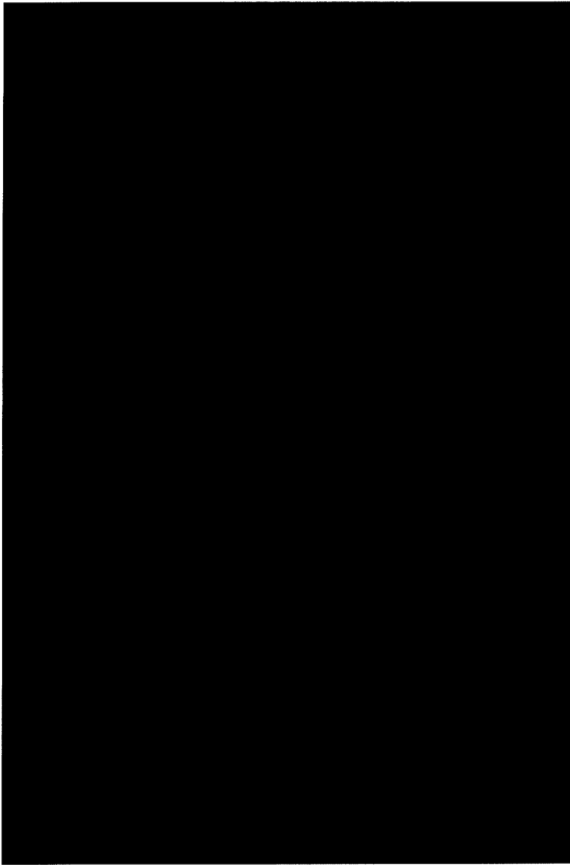
22. (U) Next, the privileged Watchlisting Guidance and Guidance Materials detail the quality control measures surrounding the nomination and review process, which make up an important feature of the procedural process afforded to individuals placed on the No Fly List. As I explained in my December 9, 2014 declaration, prior to placing an individual on the No Fly List, TSC personnel use a multi-faceted review process that involves coordination with National Counterterrorism Center (“NCTC”) and the nominating agency, as necessary, so that the nominations meet the criteria for inclusion and are not based on impermissible grounds. My previous declaration also explained the role of No-Fly-Selectee subject matter experts, who are charged with reviewing every nomination to the No Fly or Selectee Lists. The information in the 28 privileged documents previously provided to the Court sheds additional light on TSC’s role in the nomination and review process – specifically, the role of the Nominations and Data Integrity Unit (“NDIU”), the TSC unit responsible for ensuring that the TSDB is “thorough, accurate and current.”

23. (U//~~LES~~)

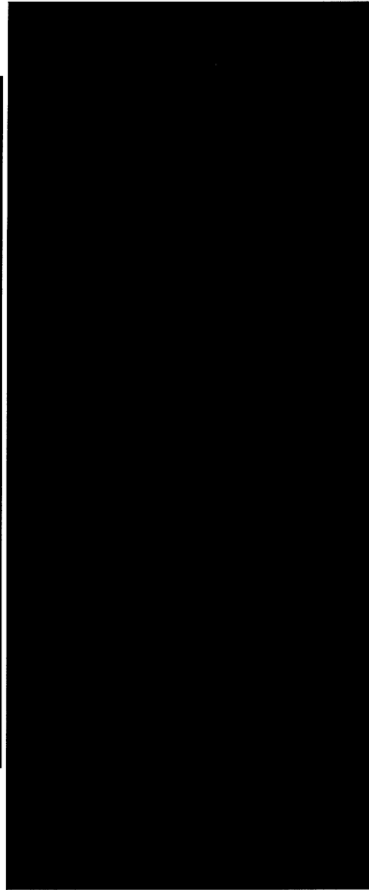
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24. (U//~~LES~~)



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[REDACTED]

C. (U) EXCEPTIONS TO THE NO FLY LIST CRITERIA

25. (U//~~SS//LES~~) [REDACTED]

[REDACTED]

26. (U//~~SS//LES~~) [REDACTED]

[REDACTED]

³¹ (U//~~SS//LES~~) [REDACTED]

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27. (U//~~SENSITIVE~~)

[REDACTED]

28. (U//~~SENSITIVE~~)

[REDACTED]

29. (U) As explained above, while there are four separate criteria for a No Fly determination, see footnote 4, above, the Watchlisting Guidance and Guidance Materials provide substantial additional detailed information about the procedures and information, including the type of substantive derogatory information necessary to make

³² (U//~~SENSITIVE~~)

³³ (U) 49 U.S.C. 44903(i)(2)(C)(v).

³⁴ (U//~~SENSITIVE~~)

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determinations on whether to include persons in the TSDB or on the No Fly List. The level of additional detail for substantive derogatory information in particular illustrates that a No Fly determination takes into account particular derogatory information about a person that supports a reasonable suspicion that he or she is a threat to commit a violent act of terrorism that is dangerous to human life.

(U) CONCLUSION

30. (U) In sum, the privileged Watchlisting Guidance and Guidance Materials, and information about the processes they describe demonstrate the rigor and care by which watchlisting and, especially No Fly determinations are made. As previously explained to the Court, the disclosure of these materials in order to litigate the Plaintiffs' claims reasonably could be expected to cause significant harm to national security. The materials and information in the 28 documents constitutes a detailed summary of how the TSC performs its function, with the input and assistance of other agencies involved in the watchlisting process, and the level of detail provided (including specific examples of how particular judgments should be made) would provide a comprehensive roadmap to adversaries that would enable them to avoid the kind of behavior that may be detected and result in a person being watchlisted. Such a course would risk significant harm if a suspected terrorist was allowed to board a plane because they learned the intricate details of the watchlisting and No Fly List nomination process.

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Executed this 4th day of March, 2015 in Florida.



G. CLAYTON GRIGG
Deputy Director for Operations
Terrorist Screening Center

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