

# EXHIBIT 38

~~FILED UNDER SEAL~~

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE

4 ABDIQAFAR WAGAFE, *et al.*, on  
5 behalf of themselves and others  
6 similarly situated,

No. 2:17-cv-00094-RAJ

7 Plaintiffs,

8 v.

9 DONALD TRUMP, President of the  
10 United States, *et al.*,

11 Defendants.

12 **Expert Report of Jeffrey Danik**

13 I, Jeffrey Danik, hereby declare:

14 1. I make this declaration based on my own personal knowledge and if  
15 called to testify I could and would do so competently as follows:

16 **I. Qualifications**

17 2. I served as an FBI agent for over twenty-eight years as both a line-  
18 level case agent and in a supervisory capacity where I managed squads, Units and  
19 Task Forces of other FBI agents and police detectives. Between 1986 and 2001, I  
20 worked primarily criminal investigations including most of the FBI's complex  
21 White-Collar crime violations and many violent crime cases, including fugitives,  
22 drugs and kidnappings. During my career, my investigations, either as a case agent  
23 or as a direct supervisor of cases, resulted in hundreds of arrests, indictments and  
24 convictions, and the recovery and restitution of over one-hundred million dollars.  
25 My CV is attached as Exhibit A.

26 3. I was assigned in Palm Beach County, Florida on September 11, 2001.  
27 Palm Beach County was one of the national epicenters for investigative activity

1 related to the events of 9/11 because several of hijackers had lived and conducted  
2 pre-planning activities in Palm Beach County. I covered hundreds of leads related  
3 to terrorism in the following months and began participating to varying degrees in  
4 the development of the FBI's counterterrorism efforts from that day forward,  
5 including managing terrorism cases until an FBI Joint Terrorism Task Force  
6 (JTTF) could be established to take over our work.

7 4. In 2006, I was promoted to FBI Supervisor and assigned to the FBI's  
8 counterterrorism division in the National Threat Center Section, Threat  
9 Management Unit (TMU). TMU was responsible for maintaining and upgrading  
10 the FBI's classified emerging terrorist threat monitoring application called  
11 Guardian 2.0. I participated as an active member of a small team responsible for  
12 redesigning and rebuilding the Guardian 2.0 threat tool into the government's key  
13 terrorist threat tracking and incident management tool, which is used today by the  
14 FBI and other U.S. agencies worldwide. Additionally, while at TMU, I was  
15 responsible for supervising a team of civilian intelligence analysts responsible for  
16 reviewing defined cross-sections of Guardian data and writing classified  
17 intelligence reports disseminated to the intelligence community. I was also the  
18 primary designer of the unclassified eGuardian system at that time, which was  
19 launched after I left TMU, and is one of the most widely used threat reporting tools  
20 in the United States. It is utilized to document civilian and law enforcement reports  
21 of suspicious terrorist related activity and electronically route them for review and  
22 action.

23 5. I was involved with operations of three other Units within the  
24 National Threat Center Section, which also inform my opinions in this report. The  
25 Public Access Center Unit (PAC-U), which operates the public facing FBI Tip-  
26 Line; the Terrorist Screening Operations Unit (TSOU), which handled real-time  
27 inquiries from law enforcement as they were having encounters on the street with

1 persons listed in the Terrorism Screening Database (TSDB); and the Terrorist  
2 Review and Examination Unit, which was responsible for administrating the  
3 review of adjudication of the nomination process for placing individuals into the  
4 TSDB.

5 6. I was involved in these Units' operational work assisting them from  
6 time-to-time on projects. There was a relatively small number of assigned FBI  
7 supervisors who worked these Units and we met regularly to coordinate our  
8 missions and also personnel regularly transferred among the Units to work new  
9 assignments.

10 7. Between 2008 and 2011, I supervised a complex white-collar squad  
11 for the FBI in the Miami Division's Palm Beach County Office. In my role as an  
12 Acting Supervisory Resident Agent on several occasions, I administratively  
13 oversaw the JTTF in that office. During this time, I remained active in terrorism  
14 investigation matters, and reviewed classified intelligence for any relation to  
15 terrorism activities or informant development potential in my Area of  
16 Responsibility (AOR).

17 8. In 2010, I was assigned temporarily as the sole FBI representative in  
18 Ethiopia (the Horn-of Africa-HOA) and was one of four intelligence professionals  
19 on the U.S. Ambassador's counterterrorism and Intelligence briefing team. I  
20 participated in activities of the joint U.S. and foreign agency anti-terrorism efforts  
21 related to Somalia and regularly met with Embassy counterparts reviewing  
22 Classified intelligence collection platforms for information and leads impacting our  
23 Mission. I traveled to Djibouti (HOA) to obtain force protection briefings and  
24 update terrorism intelligence collection protocols in this critical area at the  
25 confluence of the Red Sea and the Gulf of Aden just west of Yemen.

26 9. During 2011 and 2012, I was assigned as one of three FBI  
27 representatives to Saudi Arabia and was the sole FBI representative that covered

1 Kuwait. I gained extraordinary exposure to counterterrorism matters during this  
2 two-year period and was materially involved in many of the FBI's and CIA's  
3 priority matters. On a daily basis, I would review active terrorism cases, obtain  
4 declassified versions for dissemination, coordinate with the CIA on actions in  
5 terrorism matters and participate in operational activities when authorized. I had  
6 extensive interaction with counterterrorism units at FBI Headquarters (FBIHQ) and  
7 Joint Terrorist Task Forces (JTTFs) in the FBI offices, particularly in New York,  
8 Washington, D.C., Miami and Los Angeles. I worked often with information  
9 obtained from the Terrorist Identities Datamart Environment (TIDE), the TSDB,  
10 the No Fly List and other Watchlists. I had extensive exposure to the FBI Name  
11 Check process where I personally submitted numerous names for clearance for  
12 official purposes related to FBI business but also in resolving numerous anomalies  
13 generated by the Name Check Program for other agencies in the U.S. Embassy.

14 10. Between 2013 and 2015, I was the supervisor of a highly successful  
15 violent crime task force where intelligence collection and informant development  
16 was a critical driver of our success. I spearheaded the efforts at informant  
17 identifying, recruitment, assessment and operation and worked closely with the  
18 FBI personnel responsible for the informant development program.

19 11. During my career, I received many awards and cash incentive  
20 bonuses. I received four Outstanding Law Enforcement Officer of the year  
21 Awards from the Department of Justice. I received a signed letter and a cash  
22 bonus from the FBI Director for my role as an undercover agent in a successful  
23 fraud and money laundering case. I operated a series of undercover operations and  
24 became a subject matter expert in operating and effectively administrating the FBI  
25 undercover technique. I coordinated the first criminal undercover operation in a  
26 particular Middle Eastern country, which resulted in the conviction of two  
27 individuals for terrorism charges.

1           12. Prior to my FBI career I served four years enlisted in the United States  
2 Air Force, I graduated with Honors from the University of Memphis and passed  
3 the Certified Public Accounting (CPA) exam in 1985. I was employed as a CPA  
4 by a Big-Four firm for two years before joining the FBI and was a licensed private-  
5 pilot.

6           13. I currently am a consultant for federal criminal defense attorneys and  
7 also provide businesses with cyber-security guidance, as well as conduct internal  
8 and due diligence investigations. I volunteer in a number of pro-bono roles in the  
9 community and am a court appointed Guardian-ad-Litem in the 15th Judicial  
10 Circuit of Florida for abused children who have been removed from their parents  
11 by Florida authorities.

12           14. In the past four years, I testified as an expert in the following case: *In*  
13 *re Murtada Abduladim R. Al Haddad*, Executive Office of Immigration Review,  
14 Immigration Court, Detroit, Mich. (June 29, 2020).

15           15. For my services as an expert witness in this case, including deposition  
16 and trial testimony, my firm, which I do not own, will receive \$200 per hour. My  
17 firm pays me a fixed salary that is less than that hourly rate. My travel time will  
18 be compensated at \$100 per hour, with an 8-hour maximum for any single trip to  
19 or from a destination, regardless of actual travel time. I am subject to  
20 reimbursement for all reasonable expenses incurred in the course of my work on  
21 this case, if any, such as travel expenses, including the actual costs of  
22 transportation, meals and lodging.

23           **II. Basis of Opinion**

24           16. The Plaintiffs have asked me to provide my opinion about USCIS's  
25 Controlled Application Review and Resolution Program (CARRP), particularly as  
26 it is applied to individuals in the United States who are applying for naturalization  
27 or adjustment of status to lawful permanent residence. They have asked for my  
28

1 opinion about CARRP’s criteria and methods for identifying a person as a  
2 “national security concern,” and for subjecting individuals to differential treatment  
3 in the processing and adjudication of their immigration benefits applications based  
4 on their identification of a “concern.” They have also asked for my opinion about  
5 whether CARRP is serving an important law enforcement and national security  
6 purpose, and whether I have concerns about the possibility for error and  
7 misunderstanding by USCIS officials.

8 17. I base my opinions on my own professional experiences and training,  
9 as well as my review of numerous documents produced to Plaintiffs in the  
10 discovery in this matter, deposition testimony in this and related cases, attached as  
11 Exhibit B, documents and legal filings from the *Elhady v. Peihota*, *Latif v. U.S.*  
12 *Dep’t of Justice*, and *Hamdi v. USCIS* litigation, and other public records.

13 **FBI Information Gathering**

14 18. Since 9/11/2001, the FBI has fundamentally shifted its orientation and  
15 expanded from just conducting traditional investigations to operating large,  
16 sophisticated intelligence-gathering programs. The FBI today receives vast  
17 quantities of information from individuals, local and state law enforcement  
18 agencies, fusion centers, and foreign governments. The FBI casts a very wide net  
19 for information potentially relevant to crime or pre-crime planning, terrorism, and  
20 national security concerns, and the information the FBI receives, particularly in the  
21 form of “Tips” can be of highly variable reliability and credibility.

22 19. *Tips and leads*. The FBI accepts a vast amount of information daily.  
23 This information can originate from any person anywhere in the world, often  
24 anonymously, regarding any topic or implicating any individual the reporting  
25 person may choose.

26 20. The government’s “See something, say something” program is much  
27 more than just a slogan. It is at the heart of a nationwide advertising and media

1 promotion effort funneling hundreds of thousands of tips about individuals to a  
2 large net of electronic government tip systems that generate an enormous number  
3 of tenuous allegations on an extremely wide range of criminal and national security  
4 concerns.

5 21. The “See something, say something” phrase is a guarded government  
6 asset; it is a registered trademark and licensed for use by the Department of  
7 Homeland Security (DHS), and often appears in government publications followed  
8 by the “®” symbol. DHS and many other government agencies use the Twitter  
9 hashtag for the phrase, reaching a worldwide audience through heavily promoted  
10 social media postings using #SeeSay.

11 22. The FBI maintains a large public access tip center located in  
12 Clarksburg, West Virginia with more than 150 staff members fielding public leads  
13 and tips 24 hours a day, seven days a week. The FBI’s mission unit name for the  
14 group is the Public Access Center Unit (referred to within the FBI as “PAC-  
15 U”). According to the fbi.gov website, since 2012, the Public Access Line has  
16 received more than two million calls. In the first ten months of 2017, Public  
17 Access Line personnel have answered more than 617,000 calls and processed in  
18 excess of 611,000 online tips, indicating that their collection efforts resulted in  
19 over 1.2 million tips in just ten-months.

20 23. Customer service representatives also assist with online leads that are  
21 captured through the FBI’s web portal, tips.fbi.gov.

22 24. An illustration of how tips are obtained comes from a video article  
23 available at fbi.gov: *Kari, Threat Intake Examiner, NTOC: “We get calls from  
24 everyone across the world, whether that be from outside the United States, inside  
25 the United States, for reporting anything that they think might be FBI-related.”*

26 25. The FBI Social media and fbi.gov postings also explains: *“The FBI  
27 Official Twitter account posted that there are “thousands” of Tips the FBI receives*



1 *each day. (footnote).” The FBI.gov website posted a story, accessed February*  
2 *2020, about the FBI Tip Line, that claimed that they receive 3,100 Tips per day.*

3 26. Using the FBI’s claim of 3,100 tips per day, that would amount to  
4 approximately 93,000 tips per month and 1.1 million tips per year, which is  
5 consistent with the 1.2 million tips the FBI claims it received in the above noted  
6 article in just ten months. That total does not include referrals from the FBI’s  
7 extensive eGuardian terrorism information referral network or the joint DOJ-DHS  
8 Nationwide Suspicious Activity Report (SAR) reporting tool.

9 27. In addition, the FBI receives tips from other agency tip lines such as  
10 these: the Federal Trade Commission, the Internet Crime Complaint Center (IC3),  
11 the Drug Enforcement Administration, the Department of Homeland Security  
12 (DHS), the National Center for Missing & Exploited Children, and Treasury  
13 Inspector General for Tax Administration.

14 28. *Nationwide Suspicious Activity Reporting Initiative.* The Nationwide  
15 Suspicious Activity Reporting (SAR) Initiative (NSI) is a joint collaborative effort  
16 by DHS, the FBI, and state, local, tribal, and territorial law enforcement partners.

17 29. Under the NSI, the FBI is the hub of a very large information-sharing  
18 system through which state and local law enforcement agencies across the country,  
19 along with private entities and fusion centers, share reports of potentially  
20 suspicious activity. The threshold for this kind of suspicious activity reporting is  
21 very low. Indeed, information received via the SAR Initiative is characterized as  
22 tips and leads, which in the overwhelming majority of cases do not reflect any  
23 actual criminal wrongdoing.

24 30. *Watchlisting system.* The FBI also has overall responsibility for  
25 receiving, compiling, and maintaining the Terrorist Screening Database (TSDB-  
26 commonly referred to as the “Watchlist” (or the “Terrorist Watchlist”) and which  
27 now includes over a million names. Watchlisting-related information is often

1 fragmentary and, like other information the FBI receives, requires follow-up by an  
2 experienced investigator or analyst to determine if it is of questionable provenance  
3 or reliability.

4 31. Thus, the magnitude of information making its way each day into the  
5 FBI's permanent record keeping system is massive.

6 32. It is important to note that by policy, the FBI reviews and evaluates  
7 the millions of tips or leads it receives through these reporting mechanisms. The  
8 threshold for referral for investigation of Tips received from the public through the  
9 Tip Line is very low, and unless the Tip is clearly outside of the FBI's  
10 investigative guidelines (e.g., constitutionally protected such as free speech,  
11 religious practice, motivated by racial animus, etc.) it is very often passed on for  
12 further investigation.

13 33. The FBI can open a counterterrorism assessment, primarily through its  
14 Guardian Threat Tracking Application, for any authorized purpose—meaning there  
15 is a very low threshold of suspicion.

16 34. A video article posted by the FBI at [fbi.gov](http://fbi.gov) provides insight into how  
17 the FBI responds to information collected through this vast network:

18 *Video Transcript*

19 *Special Agent Eric Reese, Watch Commander, FBI Public Access*  
20 *Center Unit:*

21 *The tip line works because the [www.fbi.gov](http://www.fbi.gov), the FBI's interface with*  
22 *the Internet, has on its main page a way for people to submit tips,*  
23 *whether they be crime tips, intelligence tips, or counterterrorism-*  
24 *related tips....You provide whatever information you feel comfortable*  
25 *with.... And then it's just a free form for you to submit whatever*  
26 *information you feel like the FBI would need to know about....analysts*  
27 *will vet them, they'll review them for believability, credibility, check*  
28 *internal databases and external databases to verify the information is*  
*a valid tip regarding criminal activity or counterterrorism activity.*

*...I think one of the most important things to know about the FBI's tip*  
*line...is every single piece of information that's submitted by an*

1 *individual is reviewed by FBI personnel at FBI Headquarters. So*  
2 *there's nothing that goes unaddressed. We basically listen to everything*  
3 *that people want to submit and we give it its due diligence. (Note:*  
4 *copied from FBI.gov with grammatical errors).*

5 35. FBI executives are also often quoted using a government companion  
6 phrase to “See something, say something”: “We will leave no stone unturned.”

### 7 **FBI Information Retention and Sharing**

8 36. The FBI’s threshold for investigation and retention of information is  
9 very low. By policy, the FBI endeavors to follow-up on every terrorism lead,  
10 necessarily meaning there is an investigative trail associated with uncorroborated  
11 information even after it is found not to be worth pursuing.

12 37. When the array of publicly available tip lines and suspicious activity  
13 reports are combined with an institutional philosophy that broad investigative  
14 efforts should be applied to these reports, it is easy to see how false, fabricated, or  
15 misunderstood behavior reported to the FBI can result in permanent records being  
16 created in government databases where salacious but false or inaccurate allegations  
17 might gain credibility in the eyes of an outside agency because it appears the FBI  
18 took investigative action, and so must have believed the allegations had some basis  
19 in truth.

20 38. Understanding that the FBI’s tip report receiving point is an  
21 unfiltered, open internet or telephone access point available to anyone on the  
22 planet, is critical to comprehending how highly prejudicial allegations against  
23 otherwise innocent individuals can become permanently etched in the record  
24 retention system of the FBI.

25 39. Below is screen shot of the first page of the FBI Tip Line intake form  
26 made on February 24, 2020. The form allows for the submission of completely  
27 anonymous tips from any person located anywhere on the planet by simply  
28 checking the “Decline” box before implicating the individual you are providing  
information about on the following pages of the electronic form.

## Electronic Tip Form

**Contact Information**

The FBI requests this information to assist in further investigating your tip. You do not have to provide your name or other personal information; however, failure to provide the requested information may impede or preclude law enforcement agencies from investigating your tip. Any information you provide about yourself or others may be used for authorized purposes.

First Name  Required  Decline

Last Name  Required  Decline

Date of Birth  Required  Decline

Phone International?  Yes  No

Type <input type="text"/>	Phone <input type="text" value="123-456-7890"/>	EXT <input type="text"/>
<span style="color: red;">Required</span> <input type="checkbox"/> Decline	<span style="color: red;">Required</span> <input type="checkbox"/> Decline	<span style="color: red;">Required</span> <input type="checkbox"/> Decline

Email  Required  Decline

Address Type  Required  Decline

40. There is no limit to what can be provided through the reporting mechanisms that transmit information to the FBI. The FBI PACU Tip Line is a wide open, unguarded internet entry point for people from across the world to report information that is dubious, retaliatory, or false but nonetheless usually becomes permanently recorded in FBI records systems. These tips can contain personal information about an otherwise innocent citizen or non-citizen, including their name, address, personally identifying information, place of work, family names, their associates, vehicles, etc. And the information can all be provided anonymously.

41. The FBI intentionally funnels reports toward mechanisms that entail a written or recorded account of what has been reported to the FBI. Indeed, a member of the public would have great difficulty providing information via live phone call to any FBI field office. FBI field offices force callers to go to the Tip Line to submit their information either telephonically or via the electronic portal. The Tip Line Unit Watch Commander confirms in the above transcribed interview that the FBI “listen(‘s) to everything people want to submit” and conducts “due

1 diligence” on it, including “checking internal and external databases”.

2 42. What the FBI does not usually do is delete the Tip from its record  
3 system when it is found to be inaccurate or a lie, or even when it appears an  
4 anonymous tipster is simply trying to plant fabricated information to exact some  
5 type of revenge against the subject (referred to as a “poison pen” tip).

6 43. This process creates a lengthy electronic paper trail in the FBI  
7 permanent records systems about individuals who are often innocent parties. Later,  
8 if the subject of the previous Tip is submitted to the FBI for a name check by an  
9 agency such as USCIS, these Tip records can become the basis for a summary  
10 Letterhead Memorandum (LHM) reporting the dubious or suspect information to  
11 USCIS.

12 44. Similarly, the information-sharing mandates that have been imposed  
13 across the federal government mean that information associated with an  
14 investigation, even where it turns up no wrongdoing, lives on in government  
15 systems, potentially for decades.

16 45. Once a counterterrorism allegation is received against any person by  
17 the FBI, disincentives within the FBI executive culture and broader federal law  
18 enforcement community operate against investigators “clearing” those people or  
19 closing out an inquiry with a definitive finding that they have no connection to  
20 terrorism, criminal activity or national security concerns. No FBI agent, FBI field  
21 office, or division wants to be responsible for closing out a lead that is later  
22 relevant to a criminal act or attack.

23 46. An example of these disincentives is the tragic mass shooting that  
24 took place in February 2018 at Marjory Stoneman Douglas High School in  
25 Parkland, Florida. The FBI in that case took the extraordinary step of identifying  
26 the component that was at fault for doing nothing with a citizen call-in tip that  
27 provided specific information that proved highly relevant and actionable, and that

1 might have resulted in the attack being thwarted. This unusual disclosure cut short  
2 a firestorm in the media that the local FBI Miami office had botched the case and  
3 instead revealed that the Miami Field Office was not responsible, because the  
4 FBIHQ Unit receiving the tip had never passed on the information to the Miami  
5 FBI office from the caller.

6 47. Even where the leads are closed out, the record of the follow-up  
7 investigation indicates that there was no “known connection” to terrorism—a  
8 hedge that leaves open the potential for further investigation. The identifying  
9 information obtained through the follow-up investigation remains in FBI files,  
10 along with any information originally submitted, essentially indefinitely.

11 48. In a similar sense, when any potential terrorism-related tip is closed  
12 out, the investigator and the supervisor approving the closing of the assessment  
13 routinely select a disposition of “Inconclusive” over the more definitive  
14 “Negative” or “No Nexus to Terrorism” options.

15 49. The vast majority of FBI Assessments, preliminary inquiries and full-  
16 field investigations that are closed without filing criminal charges very rarely  
17 document an investigative conclusion that the subject was not involved in the  
18 activity alleged. In fact, this is true for almost all investigations undertaken by any  
19 law enforcement agency in the United States. Instead, the investigations are closed  
20 with notations that the criminal conduct alleged could not be proven, which leaves  
21 doubt as to whether the subject could still have engaged in the activity but that  
22 evidence simply could not be obtained allowing a federal prosecutor to prove the  
23 subject’s involvement beyond a reasonable doubt to a jury.

24 50. Thus, the fact that the FBI has investigated or holds information about  
25 an individual often has little relation to whether that person has actually done  
26 anything wrong or intends/plans to violate any law. This is a function of the  
27 necessarily low threshold for receiving information, the fact that such information

1 may be unreliable or reflect completely innocent conduct, and that many of the  
2 names present in FBI systems are individuals who are potential witnesses and  
3 victims, not potential suspects.

4 **USCIS’s Identification of a “National Security Concern”**

5 51. Based on my review of the documents, I understand that USCIS’s  
6 CARRP program generally applies two categories of “national security concerns”  
7 to immigrant benefit applications it subjects to CARRP: “Known or Suspected  
8 Terrorist” (KST) or non-KST.

9 52. A KST is someone who has been nominated and accepted for  
10 placement on the Terrorist Screening Database (TSDB) maintained by the FBI.  
11 Under CARRP, USCIS generally discovers that a person is on the TSDB through a  
12 code in the TECS database, a database which is checked as part of the security and  
13 background checks run on applicants for immigration benefits shortly after their  
14 applications are filed. USCIS automatically considers any person revealed to be a  
15 KST through TECS or any other database a “national security concern” under  
16 CARRP. That is, where a person is a KST, USCIS does not make any  
17 determination of their own whether a person is a national security concern, other  
18 than verifying that the person is in fact on the Watchlist.

19 53. A non-KST, as USCIS defines it in their documents, is someone who  
20 USCIS determines to present a “national security concern” as defined in CARRP  
21 policy documents, including in Attachment A. CAR000084. USCIS relies on a  
22 number of sources to determine whether a person is a non-KST: TECS, FBI Name  
23 Check, interviews, and tips.

24 54. Documents I have reviewed indicate that many non-KST concerns are  
25 identified through TECS. As of 2015, one USCIS study found that 45% of non-  
26 KSTs subjected to CARRP were identified through TECS. DEF-0094986. USCIS  
27 relies on codes and narrative information in TECS to make its determination that a

1 person is a non-KST. It does this through codes that label, for example, individuals  
2 as non-KSTs because they are relatives, associates or “otherwise closely  
3 connected” to KSTs. I also understand from the deposition testimony in this case  
4 that USCIS uses the narrative information in TECS to identify non-KSTs,  
5 according to its definition of who is and is not a non-KST.

6 55. I also understand that the FBI Name Check is another large source by  
7 which USCIS determines a person is a non-KST. The USCIS study conducted in  
8 2015 found approximately 24% of non-KSTs were identified through the FBI  
9 Name Check. DEF-0094986. USCIS makes the determination when it receives the  
10 results of the FBI Name Check in the form of a Letterhead Memorandum (LHM),  
11 whether that LHM contains information that constitutes a “national security  
12 concern” under CARRP. *See, e.g.*, National Name Check Program,  
13 <https://www.fbi.gov/services/information-management/name-checks> (“It is  
14 important to note that the FBI does not adjudicate the name check requests, but  
15 only provides available information to a requesting agency for its adjudication  
16 process”); Deposition of Kevin Quinn 66:5-9 (“USCIS makes the determination”  
17 that someone is a non-KST from reviewing the LHM).

18 56. According to the 2015 study, interviews and “other screening tools”  
19 account for approximately 30% of non-KST concerns in CARRP. And  
20 approximately 86% of all non-KST concerns were generated by law enforcement  
21 or intelligence agency information, while 13% originated with USCIS, and the  
22 remainder with the public (due to public tip letters). DEF-0094988.

23 57. I understand from my review of documents that a person whose  
24 application is subject to CARRP because they are considered a KST, may not have  
25 their application approved, unless by USCIS headquarters officials, and that non-  
26 KSTs may not have their applications approved, unless a senior field office official  
27 signs off on it. I also reviewed the processes described in the training and policy



1 manuals for vetting identified national security concerns for the purpose of either  
2 ‘articulating a link,’ resolving the concern, or denying the application based on  
3 statutory criteria.

4 58. I’m also familiar with the distinction made by USCIS between a non-  
5 KST national security concern that is “confirmed” and one that is “not confirmed.”  
6 A “confirmed” concern is one where there is an articulable link and a “not  
7 confirmed” concern is one where there is an indicator(s), but where the concern  
8 cannot or has not been “confirmed.” Finally, I’m aware that a person may remain  
9 in CARRP as a “not confirmed” concern up through the adjudication of their  
10 application.

11 59. From a law enforcement perspective, many of the indicators that  
12 CARRP relies on to identify national security concerns do not facilitate meaningful  
13 conclusions about the person being an actual or legitimate national security  
14 concern. Many of the indicators are individually wholly consistent with innocent  
15 conduct and/or are commonplace, meaning they’re associated with overwhelming  
16 numbers of people, the vast majority of whom are not dangerous or criminal actors  
17 and have done nothing wrong. The indicators (in particularly those used to  
18 determine who presents a non-KST national security concern) are also too  
19 subjective for predicating an individual as a national security concern. Using  
20 unreliable, overbroad, subjective indicators in this fashion prompts those  
21 interpreting the indicators to increase the chances that arbitrary decisions about  
22 how to implement them can be made and the indicators are so general that it can be  
23 foreseen that they will not be used consistently or fairly.

24 **USCIS’s Reliance on the TSDB**

25 60. The TSDB, often referred to as the “Terrorist Watchlist,” is the  
26 unclassified database by which the identities of persons “known” or “suspected” of  
27 engaging in terrorism are disseminated and shared with U.S. Government agencies

1 responsible for screening persons for entry into the United States, and also  
2 disseminated to federal, state, and local law enforcement agencies for appropriate,  
3 lawful investigative or intelligence use. The standard for inclusion on the list is  
4 low and referred to as “reasonable suspicion.”

5 61. As of June 2017, approximately 1.2 million individuals, including  
6 approximately 4,600 U.S. citizens or lawful permanent residents, were included in  
7 the TSDB. According to the Congressional Research Service, “[i]n FY2011, there  
8 were more than 1.2 billion queries against [the TSDB].” CRS, *The Terrorist*  
9 *Screening Database and Preventing Terrorist Travel*, Nov. 7, 2016 at 2. An  
10 individual’s placement into the TSDB does not require any evidence that the  
11 person engaged in criminal activity, committed a crime, or will commit a crime in  
12 the future; and even individuals who have been acquitted of terrorism-related  
13 crimes may still be listed in the TSDB. Significantly, TSDB information is  
14 electronically disseminated in real-time to law enforcement officers throughout the  
15 United States through the National Crime Information Center (NCIC). There is  
16 rarely any encounter between a police officer in the United States and a civilian  
17 without the TDSB being queried by the police to determine if the person contacted  
18 is included in the database (including the issuance of minor traffic tickets). The  
19 TSDB is a massive, powerful database of information that is involved in an  
20 extraordinary number of interactions daily between individuals and law  
21 enforcement.

22 62. To protect citizens from terrorist attacks the government maintains  
23 information which documents its investigations. It has been the FBI’s position in  
24 open source reporting that notifying a person that they are on the TSDB could  
25 compromise legitimate investigations aimed at thwarting terrorist acts. However, a  
26 very significant problem arises once the individual accepted as being included in  
27 the Watchlist incurs a harm because of their inclusion. The government appears to

1 lack a routine, reliable system to conduct a legitimate post-inclusion Due Process  
2 methodology by which the suspected individual can seek redress. The  
3 government's reluctance to provide meaningful redress has unnecessarily cast  
4 suspicion on these Watchlists and, in my opinion, that is counterproductive to their  
5 overall mission by weakening, not strengthening the intelligence tool that the  
6 Watchlist was meant to be.

7 63. A personal example from my experience illustrates the potential  
8 systemic reluctance to accept redress and removal of a person from being unjustly  
9 suspected. During one of my counterterrorism FBI assignments, I met an  
10 individual who applied for a visa to enter the United States to accompany a family  
11 member who had been chosen to attend a multi-year, critical public-interest  
12 sabbatical in the United States. The individual related to the person awarded the  
13 sabbatical had a name hit indicating they were a well-documented major terrorist  
14 located in a country on the other side of the world. Based on my assignment at the  
15 time and my training and extensive operational experience in counterterrorism, I  
16 knew that the name hit had to be false. The individual and the terrorist were not  
17 the same person in my opinion; an opinion that was also shared by close  
18 counterparts of mine assigned to counterterrorism matters with me in my Unit. I  
19 coordinated with domestic and foreign intelligence agencies, conducted  
20 appropriate investigation and collected evidence, and then prepared a summary  
21 report documenting that it was impossible that the family member who was the  
22 subject of the name hit was the terrorist (who was dead at that time). I contacted  
23 the responsible line-level U.S. Government agents with my information asking that  
24 they process a request to clarify the individual's name as contained in FBI records  
25 so that they could travel. The government agents absolutely refused to review my  
26 investigative package and refused to consider submitting my information for  
27 review to the appropriate nominating Unit who was responsible for having

1 incorrectly included the family member’s identity in the system that triggered the  
2 name hit. My efforts to advocate were thwarted – even though there was ample,  
3 well-documented evidence that he did not belong on the list.

4 64. Experiences like these have led me to conclude that once an  
5 individual has their name placed in an FBI system or list, it is very difficult to get  
6 off the list. It takes little evidence of any kind to get an innocent person’s identity  
7 associated to unlawful behavior—and nothing more than “reasonable suspicion,”  
8 which can be based on inferences, to get placed into the TSDB—but it is very  
9 difficult to get off the list, even where you have significant evidence that a person  
10 is not a threat.

11 65. CARRP can impose significant harm on applicants for immigration  
12 benefits. It blocks them from having their applications adjudicated in a timely  
13 manner, if at all, and it blocks their applications from being approved, even when  
14 they are otherwise eligible.

15 **USCIS’s Reliance on the FBI Name Check**

16 66. The FBI runs the National Name Check Program, through which more  
17 than 50 federal agencies submit requests for potentially relevant information on  
18 individuals who are seeking federal employment, an immigration benefit, a  
19 security clearance, or other benefits and privileges. Upon receiving a Name Check  
20 request, the FBI searches an individual’s name against its records systems,  
21 including the centralized records of FBI Headquarters, field offices, and legal  
22 attaché offices, as well as all investigative, administrative, personnel, and general  
23 files.

24 67. USCIS is one of the most significant sources of Name Check requests  
25 to the FBI. For example, in just seven months in 2012, USCIS submitted about  
26 1,073,362 FBI Name Check requests. DEF-00370081.

27 68. USCIS submits Name Check requests for individuals applying for

1 naturalization, adjustment of status to lawful permanent residence, asylum, and  
2 waivers. See <https://www.fbi.gov/services/information-management/name-checks>.<sup>1</sup>  
3 If there is a hit on a person's name, meaning that person's name is contained in an  
4 FBI file, an analyst with the FBI Name Check program will review the files that  
5 contain the hit and transmit back to USCIS a summary of reportable information  
6 about why the person's name was contained in an FBI file. That summary is  
7 known as the FBI Letterhead Memorandums (LHM).

8 69. It is important to understand who at the FBI is doing the Name Check  
9 research and what method is followed that results in the reporting of information  
10 via the LHM.

11 70. The Name Check query is not conducted by FBI agents or operational  
12 personnel. The persons conducting the name checks are civilian employees, most  
13 with no operational knowledge, training, or familiarity with national security  
14 concerns. They are simply researchers who take a name, enter it into the FBI  
15 computer system and receive a listing of possible documents contained in FBI  
16 records that contain possible matches to the name they had queried. The initial  
17 return of the Name Check query looks something like a response Google would  
18 provide after a query: it is simply a list of potentially relevant files and documents  
19 that may or may not pertain to the subject of the query.

20 71. It is then up to the researcher to pick and choose between what may or  
21 may not be relevant to their query. Many times the researcher can open the  
22 documents in search results electronically. The FBI researcher then reads the  
23 document and tries to determine if the report is actually about the person who is the  
24 subject of the inquiry or if it pertains to someone else with a similar or identical  
25 name. This presents an opportunity for confusion and misplaced suspicion, since  
26

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27 <sup>1</sup> DEF-00370081 also states that USCIS uses the FBI Name Check on Forms I-192,  
28 I-590, I-601, I-601A, I-687, I-698, I-730, and I-881.

1 the researcher may have to make a judgment call about whether information in FBI  
2 files pertains to the subject of the query -- a decision that can be incorrect,  
3 particularly where language and transliteration issues make it difficult to utilize a  
4 standard spelling of a name or related biographic information.

5 72. The real opportunity for breakdown occurs in the interpretation of the  
6 information in the report. Since the analyst usually has no operational experience,  
7 it is in their summary LHM where substantial errors can occur. They may  
8 mischaracterize incidents as significant, misunderstand that certain investigative  
9 techniques do not imply actual wrongdoing, let alone guilt, and fail to appreciate  
10 that an investigation might have been undertaken simply as a precaution and that  
11 the investigators in reality did not consider the activity a threat.

12 73. In addition, it is also important to understand that the FBI Name  
13 Check Program searches against both “main files” and “reference files” for USCIS.

14 74. This was not always the case. Prior to 2002, the former Immigration  
15 and Nationality Service (INS) only had the FBI run Name Checks against FBI  
16 main files, but after 9/11 that changed. The FBI began running FBI name checks  
17 against reference files as well for immigration benefits adjudications. *See, e.g.,*  
18 Exhibit C (Decl. of Michael Cannon ¶23, *Bavi v. Mukasey*, 07-cv-1394 (C.D. Cal.  
19 2008)). This change led to a massive expansion of the FBI Name Check program,  
20 and for a time created an enormous backlog in processing the name checks. By  
21 adding reference files as well, the Name Check program found far more hits on  
22 names that then required pulling and reviewing files. According to publicly  
23 available information, the FBI has continued to have challenges in timely  
24 processing USCIS FBI Name Checks, resulting in delays and backlogs.

25 75. The addition of the reference files was significant for another reason.  
26 A name hit on a “main file” in the FBI Name Check describes an individual who is  
27 or was the subject of an FBI investigation—meaning they were the focus of the

1 investigation, the individual suspected of committing the activity under  
2 investigation. By contrast, a name hit in a “reference file” would be an individual  
3 whose name appears as part of an FBI investigation. A “reference” could include  
4 an associate, a witness, a conspirator. It could be fellow law enforcement officers  
5 assisting the FBI with an investigation, third-party records custodians, parties  
6 named by interviewed witnesses, and victims of the crime being investigated.  
7 “Main” and “Reference” are starkly different classifications. Therefore, a person  
8 listed in an LHM that is designated as a Reference not only isn’t the suspect of a  
9 crime, but in the majority of cases should be thought of as an innocent party by  
10 default, absent further definitive description of the details regarding how and why  
11 the individual was included as a “Reference.”

12 76. A document in the discovery states that USCIS was finding that  
13 around 70 percent of LHMs that USCIS received contained “no useful data”  
14 related to national security information. DEF-00138573.

15 77. The USCIS also concluded that the agency pays an average \$13.55  
16 per every Name Check run, and \$10,651.78 per each “applicable” LHM.

17 78. Over time, as FBI’s investigations and techniques have become more  
18 expansive, I would expect USCIS to generate more Name Check hits and LHMs  
19 than in the past. More names will be associated with reference files for reasons that  
20 could have nothing to do with unlawful or even suspicious behavior.

21 79. To give an example of the sorts of activities that will come up in  
22 reference file LHMs, the FBI has an extensive community outreach program. Field  
23 Offices are required to have a plan and documentation that they are going out into  
24 the community and developing liaison relationships with groups that are the target  
25 of hate crimes, such as the African-American, Native American Indian, Jewish and  
26 Muslim communities. The purpose of these liaison contacts is to develop rapport,  
27 explain the FBI’s jurisdiction and how the FBI can assist the groups, encourage

1 persons within the community to trust and report suspected criminal activity to the  
2 FBI, and dispel negative rumors about FBI investigative activity.

3 80. These liaison meetings are often documented in FBI records systems,  
4 including names of persons contacted, their contact information, and attendees. For  
5 example, in 2011, FBI documents of community liaison activities were made  
6 public through the Freedom of Information Act (FOIA) that revealed that the FBI's  
7 community outreach program in San Francisco had collected and stored the names,  
8 identifying information, and opinions of attendees at FBI community liaison  
9 meetings, among other things. The information was documented and stored not just  
10 in files used to maintain records of community outreach, but in FBI intelligence  
11 files – specifically, files of the FBI Directorate of Intelligence's Domain  
12 Management Program, which are designed to “assess threats, vulnerabilities, and  
13 gaps and new opportunities for intelligence collection.”

14 81. I reviewed several of the publicly revealed FBI Memorandum  
15 documenting the San Francisco FBI community liaison meetings. These FBI  
16 Memos included biographical details about individuals contacted during liaison  
17 operations.

18 82. Text is searchable in the FBI record keeping system. The query of a  
19 name will result in what generally looks like a Google-type response on the name  
20 and contain a list of FBI files contained in that system where that query search  
21 term appears. The inclusion of a name in a Memo documenting an FBI outreach  
22 effort would most likely be included in the Name Check response. These persons  
23 would be classified as “References” in FBI parlance. Any further reporting to  
24 outside agencies about the result of the name query (for example USCIS) would  
25 require care to distinguish the innocent way in which that individual's identity  
26 ended up in the permanent FBI record system.

27 83. Thus, in using the Name Check program, USCIS taps into the vast  
28



1 system of FBI-held information described above. Much of that information,  
2 however, reflects no actual wrongdoing, and the presence of an individual's name  
3 in FBI files does not necessarily imply wrongdoing. LHMs can easily be  
4 misinterpreted by USCIS officials who are unfamiliar with and untrained in law  
5 enforcement and national security matters.

6 84. The natural consequences of the magnitude of information in FBI files  
7 is that researchers responding to Name Check requests frequently locate  
8 information that appears to relate to the subject of the request, even though it may  
9 pertain to someone else, reflect innocent conduct, or result from reports of dubious  
10 credibility. The subsequent LHM is generated by an operationally inexperienced  
11 civilian FBI employee who is expected to competently extract relevant national  
12 security-related information from a document someone else wrote and then provide  
13 that summary report to an untrained USCIS FDNS officer who must make a further  
14 conclusion about the import of that information. The system relies too heavily on  
15 civilian USCIS officers with almost no national security operational experience,  
16 limited understanding of the vast array of information contained in myriad  
17 government databases, and lack of awareness of how frequently questionable or  
18 unreliable data is collected and retained in FBI files. The result is a high risk that  
19 partially extracted information from FBI files summarized to USCIS, where other  
20 civilian employees try to further interpret the summary, leave a wide gap where  
21 they can be misinterpreted, taken out of context, or given undue weight.

#### 22 **Deficiencies in DHS's Use and Evaluation of National Security Information**

23 85. Deficiencies in DHS's intelligence function increase the risk that FBI  
24 information transmitted to DHS, including to USCIS FDNS via LHMs, will be  
25 misinterpreted or used inappropriately. The assessment of an individual's  
26 involvement with activity that is possibly a national security concern can be very  
27 difficult to make, even for experienced and trained counterterrorism investigators,

1 but it is much more difficult for civilian officers such as USCIS FDNS personnel,  
2 who have little experience or training in law enforcement, terrorism or terrorist  
3 organizations, tradecraft, court testimony, or interpreting intelligence community  
4 intelligence reporting products. The significant challenge of understanding the  
5 myriad national security databases, their utility and limitations, and the relation of  
6 bits of information in one database to strands of information in another often leads  
7 to conclusions that are questionable and which can be destructive and dangerous.

8 86. The Senate Select Committee on Intelligence, the Senate Homeland  
9 Security and Governmental Affairs Committee, and the Senate Judiciary  
10 Committee requested the Offices of Inspector General (OIG) of the Intelligence  
11 Community (IC), Department of Homeland Security (DHS), and the Department of  
12 Justice (DOJ) conducted a rare joint review of the domestic sharing of  
13 counterterrorism information between the FBI and DHS. Review of Domestic  
14 Sharing of Counterterrorism Information Prepared by the Inspectors General of  
15 the: INTELLIGENCE COMMUNITY, DEPARTMENT OF HOMELAND  
16 SECURITY & DEPARTMENT OF JUSTICE, March 2017. The resulting report  
17 found that the relationship between the FBI and certain DHS components was  
18 strained and highly variable and lacked standardized processes. The variance in  
19 quality of both the relationships and access to information was significant,  
20 particularly regarding intelligence functions related to counterterrorism. The report  
21 highlighted immature turf battles between FBI and DHS components, institutional  
22 jealousy, and inefficiencies on several levels in the information collection and  
23 sharing process.

24 87. Significantly, the joint OIG report was critical of the intelligence  
25 function within DHS itself, including the intelligence administration, collection,  
26 and sharing functions within DHS's own dedicated intelligence organizational  
27 structure.

1           88. The failings identified through this rare effort of the joint agency IGs  
2 calls into question how untrained, non-law enforcement officers without adequate  
3 intelligence knowledge and training who are assigned to USCIS-FDNS can  
4 reliably execute a delicate analysis of summary intelligence and investigative  
5 reports from the FBI in executing their CARRP duties, particularly when a  
6 dysfunctional relationship has been found to exist between the agencies and when  
7 DHS's own dedicated intelligence component is dysfunctional.

8 **USCIS's Misinterpretations of FBI Investigations and Nomenclature**

9           89. There are several other issues I have identified in the CARRP policies  
10 that cause me to believe USCIS is misunderstanding and misusing the FBI  
11 information presented to them.

12           90. First, I understand that a result of "deconfliction" in CARRP may be  
13 that the FBI requests that USCIS hold a case in abeyance (or withhold  
14 adjudication) for a period of time so as not to compromise an ongoing  
15 investigation. Some of the named plaintiffs, and presumably many class members  
16 given my understanding, who were identified as non-KST national security  
17 concerns, were visited by the FBI shortly after filing their applications.

18           91. Based on my experience at the FBI, I am of the opinion that the  
19 relationship between [REDACTED]  
20 [REDACTED] and the subsequent visit by law enforcement to the individual  
21 [REDACTED] is most likely related to use of  
22 that information as leverage over the person when speaking with them about  
23 providing information or to become an informant. It is also my experience that  
24 attempts like these [REDACTED]  
25 [REDACTED]  
26 [REDACTED]. This database, however, is highly restricted from access by  
27 FBI personnel, except for a very limited number of key employees with a "need to

1 know.” [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED].

9 92. Second, USCIS instructs its officers in CARRP that “it is important to  
10 remember that USCIS makes independent determinations about whether a person  
11 is an NS concern for immigration purposes. So, just because the FBI ‘clears’ a  
12 subject, it is still possible that they remain in CARRP as an NS concern.” DEF-  
13 00166783. Other CARRP documents make similar statements. For example, one  
14 says that if a law enforcement agency tells USCIS that their investigation  
15 uncovered no derogatory information or that the investigation was closed, “USCIS  
16 could still articulate a link between the subject and one of the areas of national  
17 security concern.” DEF-00095286. Another says the fact that a law enforcement  
18 investigation is “closed” “does not necessarily mean that there is no NS concern or  
19 that the NS concern was resolved,” CAR000087, or that “no NS concern exists if  
20 the LHM indicates a definitive finding of no nexus to national security to the  
21 USCIS subject.” CAR000088.

22 93. As a result, USCIS officers are placed in the difficult position of  
23 coming to a conclusion one way or another about whether a person is a “national  
24 security concern”. Such a result is certainly consistent with what I’ve been advised  
25 of, that the majority of non-KST concerns in CARRP are “not confirmed” concerns  
26 and remain in CARRP as “unresolved” concerns.

27 94. As I discussed above, it is common in counterterrorism investigations

1 that a person is rarely “cleared” of a national security concern, even though there  
2 was never any evidence obtained to show wrongdoing.

3 95. An example of this is, beginning in 2008, the FBI began to impose a  
4 very short investigative window of 30 days in which suspicious activity leads  
5 entered into Guardian had to be resolved. Although it is commendable to demand  
6 potential threats be quickly followed up on, an arbitrary, “must Close” deadline  
7 can lead to incidents being Closed as inconclusive, when additional time might  
8 have resulted in a finding of no nexus to terrorism. This deadline was dropped but  
9 the timeframe when it was in place is not known.

10 96. To enforce its artificial 30-day deadline, when the policy existed,  
11 FBIHQ threatened that the single, top executive in an FBI field office, usually a  
12 Special Agent-in-Charge, would personally have one of their performance review  
13 criteria be established as whether or not Guardian leads were Closed within the  
14 arbitrary thirty-day period. Anything less than a 90% rate of new incidents being  
15 Closed in 30 days would result in failure by the field office top executive on that  
16 performance criteria.

17 97. A bureaucracy such as the FBI could be expected to react to such an  
18 edict with a simple philosophy that all Guardian leads WILL be Closed within 30  
19 days, regardless of investigative status. It has long been a threat to FBI field office  
20 personnel when a bureaucratic edict which appears arbitrary emanates from  
21 FBIHQ (e.g. selecting 30 days as a magic number for Guardian lead resolution  
22 without supporting data), the bureaucracy’s admonishment to the Field agents is a  
23 long-standing response along the lines of, “well this is specifically on the SACs  
24 performance review.” Field agents have heard this chant for fifty years from  
25 FBIHQ on many different topics, implying a clear threat that, if you are the one  
26 who is responsible for causing the SAC their end-of-year cash bonus, or the delay  
27 of their next promotion, there could be severe consequences for you.

1 98. Consequentially, many field personnel could be reasonably expected  
2 to close Guardian leads as Inconclusive during that time period because they did  
3 not have time to fully vet the subject of the tip within the arbitrary thirty-day  
4 deadline. Later, when the tip, and its amorphous “Closing” justification language  
5 makes its way into the LHM responding to an FBI name check request, an  
6 otherwise innocent person who was the subject of the Tip can be left under a cloud  
7 of having had an “inconclusive” label affixed to them in connection to terrorism.

### 8 **III. Opinions**

9 99. It is my opinion that CARRP is an ill-conceived program when it  
10 comes to protecting national security. Applicants for lawful permanent residence  
11 and naturalization who are already in the United States are open books—they can  
12 be investigated by law enforcement officials here in the United States.

13 100. The FBI and other law enforcement agencies [REDACTED]  
14 [REDACTED]. That is  
15 sufficient notice for law enforcement to investigate, if there is something to  
16 investigate. In fact, USCIS is bound to report for investigation to the FBI any  
17 articulable national security concern that they have. The FBI would then have the  
18 opportunity to professionally investigate the concern and possibly resolve it. But I  
19 believe it is unwarranted and improper for USCIS to upend its adjudications  
20 process and deny applications that would otherwise be approved, based on  
21 information it could easily misinterpret and based on criteria which is overbroad  
22 and subjective. Much like the challenge with closing or resolving FBI  
23 counterterrorism leads or assessments, USCIS officers are provided no incentive or  
24 organization cover for an officer to try to resolve a concern or to advocate for the  
25 approval of a benefit flagged as a national security concern.

26 101. Denying naturalization and permanent residency to individuals who  
27 are eligible for these important benefits based on what could be gravely

1 misunderstood FBI information—information which most of the time if examined  
2 from the full FBI document rather than a summary, and by trained and experienced  
3 law-enforcement officers, could clarify that the activity is innocuous or innocent.

4 102. The consequences USCIS imposes on applicants because of  
5 information originating with the FBI and other federal agencies can be exceedingly  
6 inappropriate and unfair. It is one thing to maintain information in government  
7 investigative files for precautionary purposes or for future reference if the  
8 individual comes under suspicion for a legitimate reason; it is another to impose  
9 significant consequences on individuals' lives on the basis of that information,  
10 without giving those individuals an opportunity to explain its significance and  
11 resolve what may be baseless or unwarranted concerns.

12  
13  
14 I declare under penalty of perjury of the laws of the State of Florida and the  
15 United States that the foregoing is true and correct. Executed this 1st day of July,  
16 2020 in Palm Beach, Florida.

17   
18 Jeffrey Danik

# **Exhibit A**



## **Jeffrey A. Danik FBI Supervisor-Retired**

### **Miami FBI Office**

#### **FBI Supervisor and periodic Acting Assistant Special Agent-in-Charge (A/ASAC)**

This was an intensive leadership position. Supervised a highly successful Task Force of FBI Agents and police officers targeting transnational crime organizations. Interdiction of cargo and supply chain theft gangs concentrating on bonded warehouses, freight forwarders, and at airports and seaports. Instituted a nationwide outreach effort, coordinating efforts of several law enforcement major theft task forces. Successfully established a highly effective industry liaison program. Supervised investigations resulting in the arrest and conviction of dozens of criminals, dismantling gangs, millions of dollars in recoveries and lengthy prison sentences.

Acting Assistant Special Agent in Charge. Was periodically assigned Executive duties over nine violent-crime squads for one of the FBI's largest Violent Crime Programs. Supervised over 150 employees assigned across squads investigating transnational narco-traffickers, violent gangs, fugitives, bank robberies, kidnapping and crimes against children.

#### **Success examples:**

USA v. Cruz; Llufrío et al; Theft of gold shipment from commercial aircraft at Miami International Airport. Multiple convictions, substantial recovery of cargo, restitution ordered.

USA v. Marino; Tarrío et al; Theft of massive shipment of diabetic test strips posing danger to public if reintroduced into supply chain. Multiple convictions, restitution ordered.

USA v Valle et al: Five defendants convicted in multi-million-dollar theft of pre-retail medical products under the Safe Doses Act. Removed millions of doses of possibly contaminated stolen cold medicine and baby formula from being reintroduced into the food supply chain.

#### **Speaker:**

Transported Asset Protection Association Seminar, Austin, Texas.

Miami-Dade Public Safety Training Institute, Cargo-Major Theft Conference, Miami, Florida.

Florida International Bankers Association (FIBA) Anti-Money Laundering Conference, Miami, Florida.

## **FBI Certified Police Instructor**

Provided extensive domestic and international police training on behalf of the FBI.

### **Representative examples:**

Conducted a 10-day school in Russia for 80 Russian Police Detectives on Money Laundering, corruption, Financial Crime and policing in a democracy;

Conducted a one-week school in Macedonia for 50 Detectives on violent crime, Money Laundering, corruption, Financial Crime and policing in a democracy;

Conducted public corruption training for fifty Detectives from police agencies throughout Africa at the International Law Enforcement Academy (ILEA) in Botswana;

Conducted terrorism training for FBI employees throughout the United States including as team leader in New York City, Washington, D.C. and Pittsburgh and internationally in Rome, Italy.

Myself and one U.S Treasury Department officer conceived, planned, instructed and coordinated a highly successful 4-day Terrorism Finance/Money Laundering school at Riyadh, Saudi Arabia attended by numerous police and anti-money laundering compliance officials from eleven countries in the Middle East.

Adjunct instructor for the FBI Miami Division Police Instructor Certification course.

## **FBI International Operations Division-Saudi Arabia and Kuwait**

As Assistant Legal Attaché and periodically as Acting Legal Attaché, coordination of FBI operations between the United States and Saudi Arabia and the United States and Kuwait. Heavy emphasis on Counterterrorism cases, Terror Finance matters and law enforcement training. Extensive daily collaboration with numerous U.S. government agencies on significant operational and policy matters related to complex terrorism investigations. Provided consultation and coordinated coverage of several hundred significant terrorism leads in the United States, Saudi Arabia and Kuwait.

### **Success examples:**

USA v Gufran Mohammed and Mohammed Said; worked directly for the case agent as team leader for a delicate, significant aspect of this prosecution; Defendants charged with Material Support of Terrorism to al-Qaeda, al-Shabab and al-Nusra Front. Defendants arrested in Saudi Arabia and extradited to the U.S. Both Defendants Pled guilty.

Was a team member working at direction of case agent, covering leads regarding Suliman Abu Ghaith, a senior al-Qaeda official and son-in-law of Mohammed bin Laden.

Routinely briefed senior Intelligence agency officials, senior FBIHQ officials, military commanders and Ambassadors on counterterrorism efforts and operations of the FBI in Saudi Arabia and Kuwait.

Lead agent, reporting to the Director's security detail, for security related to the diplomatic visit of the FBI Director.

FBI lead for one of the largest and most successful Counter-Radicalization meetings ever held between the U.S., several western allies and Saudi Arabia.

USA v Hitselberger, Kuwait in-county lead; coordinated extensively with Kuwait officials and the Department of State for the arrest and deportation of Hitselberger to the USA.

Recruited and processed numerous candidates for the FBI National Academy from host nations.

### **FBI Supervisor, Acting SSRA-West Palm Beach**

Supervised FBI agents and police officers in a Task Force environment investigating a large number of complex criminal cases, utilizing Sensitive Undercover Operations in Human Trafficking, Elected Official corruption, Law Enforcement officer corruption and significant Health Care Fraud cases. Routinely served as Acting Senior Supervisory Resident Agent responsible for 85 employees and three Supervisors.

#### **Successes:**

Operation Sledgehammer: Supervisor; Conceived and implemented this long-term FBI Undercover Operation. Resulted in the arrest and conviction of over one hundred persons, including healthcare professionals, for conspiracy, fraud and money laundering. Investigation was awarded the prestigious Attorney General's Award for Fraud Prevention.

Undercover Operation, Human Trafficking: Supervisor; conceived and implemented this highly successful long-term FBI Undercover Operation. Resulted in the arrest and conviction of numerous persons involved in human trafficking, narcotics trafficking and the illegal sale of guns. Several individuals were rescued from exploitation. Dismantled a substantial portion of a violent local gang, the Crazy Locos. Targets were convicted of various crimes including homicides, robbery, firearms and narcotics charges.

Operation Blind Justice: Conceived, implemented and oversaw this entire FBI Undercover Operation aimed at law enforcement corruption. Resulted in the arrest and conviction of sixteen individuals, eleven of whom were prison guards. Several defendants conspired to possess cocaine with intent to distribute related to their transporting multi-kilo cocaine loads. Personally, designed this operation, selected the Undercover officers, oversaw multiple operations and planned and staffed the take-down, requiring an elaborate scenario using two SWAT Teams. Responsible for all liaison with integral partners at Palm Beach and Martin County Sheriff's Offices, Florida DOC, ATF and ICE.

### **FBI-Washington, D.C.-Counterterrorism Division**

Counterterrorism supervisor and periodically Acting Unit Chief in the FBI's National Threat Center Section. Was part of a small team that designed and implemented the government's primary terrorist incident tracking tool, "The Guardian Threat Tracking System". I was a system administrator and oversaw, with others, the civilian support team for Guardian. I managed a group of analysts mining Guardian for data who then produced intelligence products for the entire IC. Was the lead planner for the design of the eGuardian system (the unclassified version of Guardian).

#### **Associations:**

- Member of ASIS, an International Association of security professionals.
- Associate Member, Police Benevolent Association (PBA), Palm Beach County, FL.
- Member, Society of Former Special Agents of the FBI.
- Court Appointed-Volunteer, Florida 15<sup>th</sup> Circuit Judicial District, Office of the Guardian ad Litem.
- Inspector, Palm Beach County Supervisor of Elections (part-time, election related).

# **Exhibit B**

**List of Documents Reviewed**

1. CAR000001
2. CAR000010
3. CAR000084
4. CAR000095
5. CAR0000104
6. CAR000349
7. CAR000595
8. CAR000751
9. DEF-00000018
10. DEF-00000200
11. DEF-00024823
12. DEF-00026308
13. DEF-00037134
14. DEF-00038557
15. DEF-00049884
16. DEF-00049888
17. DEF-00049889
18. DEF-00061729
19. DEF-00063447
20. DEF-0088994
21. DEF-0089001
22. DEF-0090745
23. DEF-0094979
24. DEF-00095286
25. DEF-00112637
26. DEF-00134868

27. DEF-00134869
28. DEF-00134973
29. DEF-00135556
30. DEF-00138573
31. DEF-00138577
32. DEF-00163516
33. DEF-00164380
34. DEF-00166783
35. DEF-00166909
36. DEF-00225900
37. DEF-00370080
38. DEF-00372555
39. *Wagafe v. Trump*, No. 2:17-cv-00094-JCC, Dkt. 47, Plaintiffs' Second Amended Complaint (W.D. Wash. Apr. 4, 2017)
40. *Wagafe v. Trump*, No. 2:17-cv-00094-JCC, Dkt. 47-1, Exhibits A–I to Plaintiffs' Second Amended Complaint (W.D. Wash. Apr. 4, 2017)
41. Transcript of Heffron, Christopher Deposition (Dec. 12, 2019) and exhibits
42. Transcript of Emrich, Matthew Deposition (Jan. 8, 2020) and exhibits
43. Transcript of Quinn, Kevin Deposition (Jan. 31, 2020) and exhibits
44. 2020-06\_Wagafe\_Internal\_Data\_FY2013-2019\_(Confidential\_Pursuant\_to\_Protective\_Order)
45. *Bavi v. Mukasey*, No. 8:07-cv-01394-DOC-RNB, Dkt. 20-3, Decl. of Michael A. Cannon (C.D. Cal. Feb. 15, 2008)

# **Exhibit C**

1

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

_____ )	
MANSOUR BAVI, et al., )	
)	
Plaintiffs, )	
)	
v. )	Case No:
)	07-cv-1394
MICHAEL MUKASEY, Attorney General )	
of the United States, )	
et al., )	
)	
Defendants. )	
_____ )	

DECLARATION OF MICHAEL A. CANNON

Michael A. Cannon, pursuant to 28 U.S.C. § 1746, declares the following:

- (1) I am currently the Section Chief of the National Name Check Program Section ("NNCPS") at the Headquarters of the Federal Bureau of Investigation ("FBI") in Washington, D.C. I have held that position since March 7, 2005.
- (2) In my current capacity as Section Chief, I supervise the National Name Check Units. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.
- (3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the policy and the procedures of the United States Citizenship and Immigration Services ("USCIS").



Specifically, I am aware of the name check requests for Mansour Bavi, Abbas Amirichimeh, Kwang Ho Lee, James Moorhead, and Carlos Guillermo Flores, the plaintiffs in this civil action.

#### NATIONAL NAME CHECK PROGRAM

(4) The National Name Check Program (“Program”) has the mission of disseminating information from the FBI’s Central Records System in response to requests submitted by federal agencies, congressional committees, the federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies. The Central Records System (“CRS”) contains the FBI’s administrative, personnel, and investigative files. The Program has its genesis in Executive Order No. 10450, issued during the Eisenhower Administration. That executive order addresses personnel security issues and mandates National Agency Checks as part of the pre-employment vetting and background investigation process for prospective Government employees. The FBI performs the primary National Agency Check conducted on all United States Government employees. From this modest beginning, the Program has grown exponentially, with more and more customers seeking background information from FBI files on individuals before bestowing a privilege, such as Government employment or an appointment, a security clearance, attendance at a White House function, a “green card” or naturalization, admission to the bar, or a visa. More than 70 federal, state, and local agencies regularly request FBI name searches. In addition to serving our regular Government customers, the FBI conducts numerous name searches in direct support of the FBI’s counterintelligence, counterterrorism, and homeland security efforts.

**EXPLANATION OF THE CENTRAL RECORDS SYSTEM**

(5) The FBI's CRS enables the FBI to maintain all information which it has acquired in the course of fulfilling mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. This system consists of a numerical sequence of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity, or foreign intelligence matter. Certain records in the system are maintained at FBI Headquarters. Records which are pertinent to specific FBI Field Offices are mostly maintained at those Field Offices.

(6) FBI Headquarters and each Field Division can access the CRS through the FBI's General Indices. The General Indices are arranged in alphabetical order and consist of indices on various subjects, including the names of individuals and organizations. Only the information considered pertinent, relevant, or essential for future retrieval is indexed.

(7) Communications directed to FBI Headquarters from various Field Offices and Legal Attaches are filed in the pertinent case files and indexed to the names of individuals, groups, or organizations which are listed in the case captions or titles as subjects, suspects, or victims. Searches made in the index to locate records concerning particular subjects are made by searching the name of the subject requested in the index.

(8) The entries in the General Indices fall into two categories:

- (a) "main" entries – entries that carry the name corresponding with the subject of a file contained in the CRS.
- (b) "reference" entries – entries (sometimes called "cross-references") that generally only mention or reference an

individual, organization, etc., that is contained in a document located in another "main" file.

(9) In 1995, the FBI implemented the Automated Case Support ("ACS") system for its Headquarters, Field Offices, and Legal Attaches. More than 105 million records were converted from automated systems previously utilized by the FBI. The ACS system consists of the following three automated applications that support case management functions for all investigative and administrative cases:

- (a) **Investigative Case Management:** This application provides the ability to open, assign, and close investigative and administrative cases as well as to set, assign, and track leads. A case is opened by the Office of Origin, which sets leads for itself and other field offices, as needed. The offices that receive the leads are referred to as Lead Offices. When a case is opened, it is assigned a Universal Case File Number, which is utilized by FBI Headquarters and all offices conducting or assisting in the investigation. Using fictitious file number "111-HQ-12345" as an example, an explanation of the Universal Case File Number is as follows: "111" indicates the classification for that specific type of investigation; "HQ" is the abbreviated form used for the Office of Origin of the investigation (in this case, FBI Headquarters); and "12345" indicates the individual case file number for that particular investigation.
- (b) **Electronic Case File:** This application serves as the central electronic repository for the FBI's official text-based documents. It supports the universal serial concept, where only the creator of a document serializes it into a file, providing single source entry of serials into the computerized system. All serials originated by the Office of Origin are maintained in the Office of Origin's case file.
- (c) **Universal Index:** This application, sometimes referred to as "UNI", continues the universal concepts of the ACS system by providing a complete subject/case index to all investigative and administrative cases. Only the Office of Origin is required to index. However, the Lead Offices

may index additional information as needed. The Universal Index, which consists of an index of approximately 99.8 million records, functions to index names to cases, and to search names and cases for use in the FBI investigative and administrative cases. Names of individuals or entities are recorded with identifying information such as the date or place of birth, race, sex, locality, social security number, address, or date of event.

(10) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the investigative FBI Special Agent, the supervisor in the field division conducting the investigation, and the supervising FBI Special Agent at FBI Headquarters. The FBI does not index every name in its files, but indexes only that information considered pertinent, relevant, or essential for future retrieval. Without a "key" (index) to this mass information, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be effectively used to serve one of the mandated missions of the FBI, to investigate violations of federal criminal statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter.

(11) When the FBI searches a person's name, the name is electronically checked against the FBI's Universal Index. The searches seek all instances of the individual's name, social security number, and dates close to his or her date of birth, whether a main file or reference. As previously stated, any "main" file name would be that of an individual who is, himself or herself, the subject of an FBI investigation, whereas any "reference" would be an individual whose name appears as part of an FBI investigation. For example, "references"

include associates, witnesses, or conspirators. Additionally, there may be a myriad of other reasons to explain why an FBI Special Agent conducting an investigation believed it important to include a particular name in the FBI's index for later recovery. The names are searched in a multitude of combinations, switching the order of first, last, and middle names, as well as combinations with only the first and last names, first and middle names, and so on. The Program application searches names phonetically against the Universal Index records and retrieves similar spelling variations (which is especially important considering that many names in our indices have been transliterated from a language other than English).

(12) If there is a match with a name in a FBI record, it is designated as a "Hit," meaning that the system has stopped on a possible match with the name being checked. If a search comes up with a match to a name and either a close date of birth or social security number, it is designated an "Ident."

#### **RESOLUTION RATE**

(13) There are four stages involved in the completion of an individual name check: batch processing, name searching, file review, and dissemination. The first stage in the process, batch processing, involves the transfer of the name check requests from USCIS to the NNCPS on magnetic tapes. Each tape can hold up to 10,000 names. (Some requests are transmitted via facsimile or verbally via telephone.) The tapes are uploaded into an FBI system and the names are electronically checked against the FBI's Universal Index (UNI). Historically, during the batch processing phase, approximately 68 percent of the name checks submitted by USCIS are returned to USCIS as having "No Record" within 48-72 hours. A "No Record" indicates that the FBI's Universal Index database contains no identifiable information regarding a

particular individual. Duplicate submissions (i.e., identically spelled names with identical dates of birth and other identical information submitted while the original submission is still pending) are not checked, and the duplicate findings are returned to USCIS within 48-72 hours.

(14) The second stage in the process is name searching. For the name check requests that are still pending after the initial electronic check, additional review is required. An FBI employee in the NNCPS physically enters the applicant's name into the computer database searching different fields and information. A secondary manual name search completed typically within 30-60 days historically identifies an additional 22 percent of the USCIS requests as having "No Record," for a 90 percent overall "No Record" response rate. The results of this 22 percent also are returned to USCIS.

(15) The third and fourth stages in the process are file review and dissemination. The remaining 10 percent are identified as possibly being the subject of an FBI record. At that point, the FBI record must be retrieved and reviewed. If the record was electronically uploaded into the FBI's ACS electronic record-keeping system, it can be reviewed quickly. If not, however, the relevant information must be retrieved from an existing paper record. Review of this information will determine whether the information is identified with the request. If the information is not identified with the request, the request is closed as a "No Record" and USCIS is so notified.

(16) Additional searches against the FBI's Universal Index, additional manual name searches, and/or additional file review of a name check request, depending on the length of time a name check request is pending in the processing queue, may occur periodically during the name check process to ensure that stale information is updated.

(17) Once a record is retrieved, the FBI reviews the file for possible derogatory information. Less than one percent of USCIS's requests are identified with a file containing possible derogatory information. If appropriate, the FBI forwards a summary of the derogatory information to USCIS.

(18) At each stage of processing, the NNCPS generally works on the oldest name checks first – a first-in, first-served protocol. This protocol reflects that all applicants are equally deserving and ensures that all applicants are treated fairly. However, if an applicant's name check requires a review of numerous FBI records and files, even though that person came in first, the name check may require additional time until all responsive records are located and reviewed.

(19) The general exception to the first-in, first-served policy exists when USCIS directs that a name check be handled on an "expedited" basis. USCIS determines which name checks are to be expedited based on criteria it determines. Once designated as an "expedite," that name check proceeds to the front of the queue along with other prioritized name check requests, in front of the others waiting to be processed.

(20) Another exception to the first-in, first-served policy is a near-term effort agreed to by USCIS and the FBI to reduce the number of pending USCIS name check requests by prioritizing "single hit" name checks. This key initiative is explained in paragraph (33) below.

#### **GROWTH OF THE NAME CHECK PROGRAM**

(21) Prior to September 11, 2001, the FBI processed approximately 2.5 million name check requests per year. As a result of the FBI's post-9/11 counterterrorism efforts, the

number of FBI name checks has grown. For fiscal year 2006, the FBI processed in excess of 3.4 million name checks.

(22) A significant portion of the incoming name checks submitted over the past few years has been submitted by USCIS. In fiscal year 2003, 64% (approximately 3,929,000) of the total incoming name checks were submitted by USCIS; in fiscal year 2004, 46% (~1,727,000) of the total incoming name checks were submitted by USCIS; in fiscal year 2005, 45% (~1,512,000) of the total incoming name checks were submitted by USCIS; and in fiscal year 2006, 45% (~1,633,000) of the total incoming name checks were submitted by USCIS.

#### USCIS NAME CHECK REQUESTS

(23) In November 2002, heightened national security concerns prompted a review of the former Immigration and Naturalization Service's ("INS's") procedures for investigating the backgrounds of individuals seeking immigration benefits. It was determined that deeper, more detailed clearance procedures were required to protect the people and the interests of the United States effectively. One of the procedures identified was the FBI's name check clearance. Before November 2002, only those "main" files that could be positively identified with an individual were considered responsive to the immigration authorities name check requests. However, because that approach ran a risk of missing a match to a possible derogatory record, the FBI altered its search criteria to include "reference" files as well. From a processing standpoint, this meant the FBI was required to review many more files in response to each individual background check request.

(24) In December of 2002 and January of 2003, the former INS resubmitted 2.7 million name check requests to the FBI for background investigations of all individuals with



then-pending applications for immigrations benefits for which the Immigration and Nationality Act required background investigations. Those 2.7 million requests were in addition to the regular submissions by the former INS. Currently, the FBI has returned an initial response to all 2.7 million resubmitted requests. Moreover, although many of the FBI's initial responses to those resubmitted requests indicated that the FBI had no information relating to the specific individual who was the subject of the request, approximately 16 percent – or over 440,000 – resubmitted requests indicated that the FBI may have information relating to the subject of the inquiry. The FBI is still in the process of resolving those 440,000 requests. Currently, less than 6,300 of those resubmitted requests remain pending.

(25) The FBI's processing of the more than 440,000 residuals has delayed the processing of regular submissions from USCIS. A dedicated team within NNCPS has been assigned to handle only these re-submitted name check requests. To the extent that the team members are working on only these applications, they are unavailable to process the normal submissions.

(26) There are numerous factors that have contributed to delays in the processing of name check requests. One is the volume of incoming name checks – the total volume of incoming name check requests combined with pending name check requests has historically outpaced the NNCPS's available resources to process this volume. As it concerns submissions by USCIS, for Fiscal Year 2006, USCIS submitted approximately 1,633,000 name check requests, of which approximately 718,000 represented naturalization-related name checks and approximately 658,000 represented adjustment of status-related name checks. As of the end of Fiscal Year 2006, the NNCPS had over 364,600 pending USCIS name check requests, of

which over 157,300 represented naturalization-related name checks and over 157,800 represented adjustment of status-related name checks.

(27) The number of "hits" on a name when it is reviewed may further contribute to a delay in processing a name check request. A "hit" is a possible match with a name in an FBI record. The number of times the name appears in FBI records correlates to the number of records which require review.

(28) The processing of common names also contributes to a delay in processing a name check request. The names associated with a name check request are searched in a multitude of combinations, switching the order of first, last, and middle names, as well as combinations with just the first and last, first and middle, and so on. Without detailed information in both the file and agency submission, it is difficult to determine whether or not a person with a common name is the same person mentioned in FBI records. Common names can often have more than 200 hits on FBI records.

(29) The accessibility of the FBI record needed for review also contributes to a delay in processing a name check request. If the date of the record predates October 1995, the paper record has to be located, retrieved, and reviewed; if the date of the record is later than October 1995, the record text may or may not be available electronically depending on the type of record and whether it has been uploaded electronically. A paper record could be at one of over 265 possible locations across the country. Requests often involve coordinating the retrieval and review of files from the various 56 different FBI field offices. One person's name check may involve locating and reviewing numerous files, all at different physical locations. Each request must be communicated internally from the NNCPS to the field, and handled according to the

current priorities of the particular field office. Since it is a paper based process, it is a process subject to misplaced or misfiled files. The process is time consuming and labor intensive.

(30) Another contributing factor which was briefly mentioned earlier in this declaration is the expedited request. Processing an expedited case means that an employee is not available to work on a normal name check request.

**THE NATIONAL NAME CHECK PROGRAM IS ADDRESSING THE FACTORS THAT  
CONTRIBUTE TO DELAYS IN PROCESSING A NAME CHECK**

(31) The FBI is seeking a number of improvements to its process. Over the short-term:

(32) NNCPS is continuing to develop the Name Check Dissemination Database ("NCDD"), an electronic repository for name check results, to eliminate manual and duplicate preparation of reports to other Agencies, and provide avenues for future automation of the name check process.

(33) NNCPS is partnering with other Agencies to provide contractors and personnel to process name checks. For example, the FBI and USCIS have implemented a key initiative to use contractor resources to prioritize the processing of "Single-Hit" USCIS Name Check requests, that is, pending name check requests that have only one FBI file potentially identified with it that needs to be reviewed in order to process the request. By applying contractor resources to process these "Single Hit" requests, the FBI may significantly reduce the pending USCIS name check workload.

(34) The FBI is in the process of hiring additional employees to fill current vacancies and has procured an employee development program to streamline the training of new

employees, thereby significantly decreasing the amount of time needed before a new employee can begin to significantly impact the NNCPS workload. These efforts have led to the development of a name check employee training manual.

(35) NNCPS, through the Records Management Division's Records Automation Section, is scanning the paper files required for review in order to provide machine readable documents for the Dissemination Database. It is also building an Electronic Records System that allows for future automation of the name check process.

(36) NNCPS is working with customers to streamline incoming product and to automate exchange of information.

(37) As a mid-term improvement, NNCPS is exploring technology updates to the name check process. Specifically, the FBI procured textual analysis software in order to investigate ways to further automate the name check process. The goal is to incorporate analytical software applications that reduce the time spent to verify the identity of the individual and, once verified, assists in the adjudication analysis. This type of automation should decrease the time required to process a name check, thereby increasing production. The FBI is building a proof of concept system for eventual integration into the FBI's core databases.

(38) As a long-term improvement, the FBI is developing a Central Records Complex that will create a central repository of records. Currently, paper files/information must be retrieved from over 265 locations throughout the FBI. The Central Records Complex will address this issue, creating a central repository-scanning of documents, and expediting access to information contained in billions of documents that are currently manually accessed in locations around the United States and world. In addition, the essential long term improvement for FBI

Name Checks is to adjust the fee schedule to reflect the actual cost of providing name check services. Once in place, the FBI will be able to scale resources proportionally with workload demands – pending name checks will pay for themselves. At this time fees do not cover the basic costs of providing the service. Therefore, the FBI cannot adequately apply resources to processing name checks without pulling critically needed personnel and funding from other programs. The FBI procured services to conduct a study to determine an appropriate fee structure. The independent contractor hired to conduct the study has completed its work and the proposed fee structure is undergoing the Federal rulemaking process.

(39) For the reasons stated earlier, the FBI cannot provide a specific or general time frame for completing any particular name check submitted by USCIS. The processing of name checks, including those which are expedited at the request of USCIS, depends upon a number of factors; including where in the processing queue the name check lies; the workload of the analyst processing the name check; the volume of expedited name checks the analyst must process for, among others, military deployment, “age-outs,” sunset provisions such as Diversity Visa cases, compelling reasons such as critical medical conditions, and loss of Social Security or other subsistence; the number of “Hits,” (i.e., possible matches) that must be retrieved, reviewed and resolved; the number of records from various Field Offices that must be retrieved, reviewed and resolved; and, more generally, the staff and resources available to conduct the checks. Unfortunately, the proprietary software NNCPS utilizes to process name checks does not report where in the processing queue a particular name check request may lie vis-à-vis other name checks. Additionally, until review of each case is undertaken no estimate for the time required to complete it can even be attempted, no estimate can be made as to when the plaintiffs’ cases will

be reached by NNCPs staff, nor can any reliable estimate be made as to how long it will take to complete the review once it has begun. While the FBI is sensitive to the impact of the delays in processing name check requests, the consequence of the FBI's mission on homeland security requires that its name check process be primarily focused on providing accurate and thorough results. When the name check is completed, the FBI provides the results to USCIS as quickly as possible.

(40) It is important to note that the FBI does not adjudicate applications for benefits under the Immigration and Nationality Act. If appropriate, the FBI generally provides a summary of available information to USCIS for its adjudication process.

**PLAINTIFFS' NAME CHECK REQUESTS**

(41) The name check request for plaintiff Mansour Bavi was received by the FBI from USCIS on or about May 14, 2005 and was completed on December 23, 2007. The FBI performed its check in response to USCIS's request in accordance with the procedures outlined above. The results of the name check were forwarded to USCIS in Washington, D.C., in due course, in accordance with the FBI's normal protocol.

(42) The name check request for plaintiff Abbas Amirichimeh was received by the FBI from USCIS on or about June 13, 2003 and was completed on November 13, 2007. The FBI performed its check in response to USCIS's request in accordance with the procedures outlined above. The results of the name check were forwarded to USCIS in Washington, D.C., in due course, in accordance with the FBI's normal protocol.

(43) The name check request for plaintiff Kwang Ho Lee was received by the FBI from USCIS on or about January 31, 2007 and was completed on November 25, 2007. The

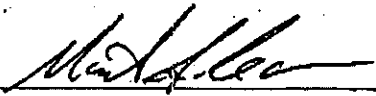
FBI performed its check in response to USCIS's request in accordance with the procedures outlined above. The results of the name check were forwarded to USCIS in Washington, D.C., in due course, in accordance with the FBI's normal protocol.

(44) The name check request for plaintiff James Moorhead was received by the FBI from USCIS on or about February 1, 2006 and has not been completed. The FBI is performing its check in response to USCIS's request in accordance with the procedures outlined above. The results of the name check will be forwarded to USCIS in Washington, D.C., in due course, in accordance with the FBI's normal protocol.

(45) The name check for plaintiff Carlos Guillermo Flores was received by the FBI from USCIS on or about April 9, 2004 and has not been completed. The FBI is performing its check in response to USCIS's request in accordance with the procedures outlined above. The results of the name check will be forwarded to USCIS in Washington, D.C., in due course, in accordance with the FBI's normal protocol.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11<sup>th</sup> day of February 2008.

  
MICHAEL A. CANNON  
Section Chief  
National Name Check Program Section  
Records Management Division  
Federal Bureau of Investigation  
Washington, D.C.

(Rev. 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 12/13/2002

To: Director's Office

Attn: Director Mueller  
Deputy Director Gebhardt  
EAD/Admistration Lowery

From: Records Management  
Contact: DAD Bob Garrity, 4-7141

Approved By: Lowery W Wilson Jr

Gebhardt

Drafted By: Garrity Robert J Jr

Case ID #: 66F-HQ-A1358157-<sup>55</sup> (Pending)  
62-HQ-C1039976-129 (Pending)

Title: RECORDS MANAGEMENT DIVISION  
NATIONAL NAME CHECK PROGRAM  
IMMIGRATION AND NATURALIZATION SERVICE

Synopsis: This summarizes the current status of name checks for the Immigration and Naturalization Service (INS) and recommends approval for the FBI to waive one-half of the user fees to re-check 2.2 million names of aspiring citizens.

Details: At the weekly briefing meeting this date, the Director inquired about a New York Times article critical of FBI performance in the checking of names of aliens seeking citizenship through the naturalization process.

Mission of the National Name Check Program

The mission of the National Name Check Program (NNCP) is to disseminate information from the FBI's Central Records System in response to requests submitted by federal agencies, congressional committees, the federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies. The Central Records System contains administrative, personnel and investigative files. The NNCP has its genesis in Executive Order 10450, issued during the Eisenhower Administration. This executive order addresses personnel security issues, and mandates National Agency Checks (NAC) as part of the pre-employment vetting and background investigation process. The FBI is a primary NAC conducted on all U. S. Government employees. These checks are all coordinated through the NNCP Unit. The NNCP has historically conducted nearly three million name checks annually.

uploaded  
12/13/2002 (S)



To: Director's Office From: Records Management  
Re: 66P-HQ-A1358157, 12/13/2002

FBI-INS MOU

The FBI conducted names checks for INS pursuant to a Memorandum of Understanding (MOU), executed on January 15, 1985, which established and defined the searching requirements agreed to between the two agencies. Since the name checks are a fee-for-service arrangement, all agencies execute an MOU defining the contractual arrangements agreed upon. There is an escalating fee schedule, depending on the nature and scope of the records search requested. The greater the depth of search of FBI records, the higher the fee charged. The checks requested by INS were searched using the "three-way phonetic" search and with a report of main files only. This is a risk management issue, the factors of which, of course, changed after September 11. Agencies which heretofore were willing to save money by requesting a less-than-complete search, are now no longer willing to risk that course of action.

"Missed" Name Check

INS recently notified the FBI that one of the names searched with a "no record" response had subsequently been determined to be involved in a foreign counterintelligence investigation. INS inquired as to how the FBI could have an investigation on an individual, yet report "no record" when INS inquired. Based on the information provided, the NNCP re-checked the name and found no main file, but did identify cross references concerning the individual. In other words, the FBI did not have the individual listed as the subject of a main file, but did have his name referenced in another file. Because of the search parameters established by the MOU, the computerized search was only searching for and reporting on main files.

This explanation was provided to INS representatives Terrance M. O'Reilly, Associate Commissioner, Field Service Operations, and Janise Sposato, Deputy Associate Commissioner (DAC), in a meeting on October 16, 2002. INS representatives stated that none of them were in their current positions in 1985, and none were aware that they had contracted with the FBI for less than a full and complete search of FBI records. They intended to discuss this revelation with the Commissioner, INS, and would re-contact the FBI. Not waiting for INS response, NNCP immediately modified the search criteria to cover "around-the-clock phonetic" searches and main and cross reference hits.

Request for Re-Check

On November 21, 2002, DAC (S) met with Section Chief David Hardy, Record/Information Dissemination Section, RMD,

To: Director's Office From: Records Management  
 Re: 66F-HQ-A1358157, 12/13/2002

to discuss the need for many names to be re-checked. She explained that in the post-September 11 environment, the INS could not accept anything less than a full and complete search of all FBI records on aliens seeking citizenship through the naturalization process. INS was requesting that the FBI re-check 2.2 million names; names already checked once but under the old main file search criteria. During this meeting, DAC (S) estimated costs to the INS for the re-submission of the 2.2 million names, which ranges from a low of \$9.6 million to a high of \$28.8, depending on the number of "hits" and files reviewed. Reiterating the governments' mission regarding the fight against terrorism, DAC (S) requested that the FBI share the burden of this expense by waiving one-half of the fees normally charged for such a search. There is no direct cost to the FBI, only the loss of additional revenue from other agency customers.

#### New York Times Article

The December 13, 2002 edition of the *New York Times* carried an article entitled, Citizenship Delayed for 1,500; Security Check Backlog Cited. In this article, a comment attributed to an anonymous source states, "...[w]hile there is disagreement about exactly what the problem is, several government officials said it concerned the FBI's inability to check all the names they are given. A law enforcement official who insisted on anonymity said recent communication problems between the FBI and the naturalization service had allowed some people with questionable backgrounds to become citizens."

The "communication problems" alluded to are doubtless the misunderstanding about the scope and depth of the records searches under the MOU.

INS officials advised us that they had instructed all regional offices to suspend any further naturalization proceedings until all 2.2 million names were re-checked and the aspiring citizen's background vetted. That is what is happening now, and the background behind the recent cancellation of naturalization proceedings throughout the country.

#### Name Re-Check Progress

The first batch of the INS electronic tapes with names to be re-checked arrived on December 1, 2002. Since then, a total of 87 tapes have been received. Forty-one (41) tapes have been run against our indices and completed. These tapes contained 947,779 names, of which 809,181 (85.4%) were "no record" responses back to INS. This 85% no record response is consistent with our historic relationship with INS records

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Re: 66F-HQ-A1358157, 12/13/2002

checks. The remaining 138,598 (14.6%) names resulted in a "hit" within our records, and require us to retrieve the file to first determine if the subject is identical to the name checked, and then prepare a summary of any derogatory information in our files.

#### Recommend Fee Sharing

National security interests dictate that the 2.2 million names be reprocessed. If a terrorist was inadvertently naturalized, it would be an indefensible position from a Department of Justice standpoint for the FBI to argue that we were in strict compliance with the agreed upon MOU, especially since it is with a sister DOJ agency. The NNCP has already received the tapes with the 2.2 million names and has begun the process of re-checking these names. Processing the tapes will delay more recent INS submissions, but they have accepted this likelihood.

RMD recommends Director Mueller approve the FBI's waiver of one-half of the normal fees for re-checking the 2.2 million names.

#### Remedial Action Initiated

- The NNCP is expeditiously re-checking these names and providing INS with full and complete information from FBI records.
- The NNCP is contacting all of our agency customers and reviewing with them the provisions of existing MOUs, to ensure that no other agency is laboring under a misperception about the depth and scope of their requested FBI name check.

Recommendation: That the Director approve the waiving of one-half of the normal fee charged to INS. This will result in significant savings to INS, and not result in out-of-pocket expenses for the FBI, although there will be lost opportunity costs in that we will not be able to serve fee-paying customers as timely as preferred.

Under the circumstances, in the post-September 11 environment, the NNCP shares in the culpability of not ensuring that all customers were completely aware of the services contracted for under existing MOUs.

To: Director's Office From: Records Management  
Re: 66F-HQ-A1358157, 12/13/2002

Approved: \_\_\_\_\_ (S) \_\_\_\_\_ Date: 1/27/02

Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_

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