

Exhibit K



Testimony

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Statement Before the Senate Committee on Homeland Security and Governmental Affairs
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Good morning Chairman Lieberman, Ranking Member Collins, and members of the committee. Thank you for the opportunity to discuss the Terrorist Screening Center (TSC) and its role in the interagency watchlisting process.

The attempted terrorist attack on Northwest Flight 253 on December 25, 2009, highlights the ever-present terrorist threat to our homeland. Over the past seven years, the TSC has played a vital role in the fight against terrorism by integrating terrorist information from the law enforcement and intelligence communities into a single database known as the Terrorist Screening Database (TSDB), which populates the various terrorist screening systems used by the government. Following the Christmas Day attempted attack, intense scrutiny has been placed on the requirements to nominate individuals to the watchlist and particularly to the no-fly and selectee lists, which are subsets of the TSDB. These requirements, or standards, have evolved over time based on the experience of the watchlisting community and the issuance of additional Presidential Directives. Throughout this process, the TSC has remained committed to protecting the American public from terrorist threats while simultaneously protecting privacy and safeguarding civil liberties. As our efforts continue to evolve in response to new threats and intelligence, your support provides us with the tools necessary to continue our mission. Let me begin by telling you about the terrorist watchlisting process and how this process related to Umar Farouk Abdulmutallab.

Terrorist Nomination Process

The TSDB, commonly referred to as the terrorist watchlist, contains both international and domestic terrorist information. The procedure for submitting information on individuals for inclusion on the terrorist watchlist is referred to as the nomination process. The nomination process is the most fundamental and singularly important step in the watchlisting process. It is through this process that individuals are added to the terrorist watchlist. Nominations originate from credible information developed by our intelligence and law enforcement partners. These intelligence and law enforcement agencies are referred to as originators in the watchlisting community because it is through their work that nominations are developed. Federal departments and agencies submit nominations of known or suspected international terrorists to the NCTC (National Counterterrorism Center) for inclusion in NCTC's Terrorist Identities Datamart Environment (TIDE) database, which is the source of all international terrorist identifier information in the TSDB. NCTC reviews TIDE entries and nominates entries to TSC that include sufficient biographical or biometric identifiers and

supporting derogatory information that meet the watchlisting standard described below. Similarly, the FBI collects, stores, and forwards to the TSC information relating to domestic terrorists that may not have connections to international terrorism.

When submitting a nomination to NCTC, an originator may, but is under no obligation to submit recommendations regarding specific screening systems the nomination should be exported to (e.g., inclusion on either the no-fly or selectee list). If an originator submits a nomination without a recommendation, NCTC may make an appropriate recommendation based on the totality of associated information. Recommendations made by NCTC will be passed to the TSC for final disposition.

TSC accepts nominations when they satisfy two requirements. First, the biographic information associated with a nomination must contain sufficient identifying data so that a person being screened can be matched to or disassociated from a watchlisted terrorist. Second, the facts and circumstances pertaining to the nomination must meet the reasonable suspicion standard of review established by terrorist screening Presidential Directives. Reasonable suspicion requires articulable facts which, taken together with rational inferences, reasonably warrant the determination that an individual "is known or suspected to be or has been engaged in conduct constituting, in preparation for, in aid of or related to terrorism and terrorist activities." The reasonable suspicion standard is based on the totality of the circumstances in order to account for the sometimes fragmentary nature of terrorist information. Due weight must be given to the reasonable inferences that a person can draw

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from the available facts. Mere guesses or inarticulate “hunches” are not enough to constitute reasonable suspicion. A TSC interagency group composed of members from the intelligence and law enforcement communities issued clarifying guidance to the watchlisting community in February 2009.

TSC makes the final decision on whether a person meets the minimum requirements for inclusion into TSDB as a known or suspected terrorist and which screening systems will receive the information about that known or suspected terrorist. It is not uncommon for a nomination to have multiple recommendations throughout the watchlisting process. In the end, however, TSC works with NCTC and the originators to ensure a nomination is exported to as many screening systems as the nomination information supports.

The watchlisting and nomination process can best be described as a watchlisting enterprise because it requires constant collaboration between the originators, NCTC, and TSC. NCTC relies upon the information provided by the intelligence and law enforcement community, TSC relies upon NCTC to analyze and provide accurate and credible information, and the screening community relies upon TSC to manage that information and to efficiently export it to their screening systems.

Export to Supported Systems

Once a known or suspected terrorist is identified and included in the TSDB, TSC ensures the timely dissemination of the terrorist identity data to our screening partners. The utility of the watchlisting process is greatest when the information is efficiently disseminated to those who need it the most. The TSC’s subject matter experts, who are composed of experienced analysts and designated agency representatives, review nominations to determine whether they meet the criteria for inclusion in the screening systems supported by the TSDB. The four major U.S. government systems supported by the TSDB are: Department of State’s Consular Lookout and Support System (CLASS) for passport and visa screening; Department of Homeland Security’s TECS system for border and port of entry screening; the no-fly and selectee lists used by the Transportation Security Administration for air passenger screening; and the FBI’s National Crime and Information Center’s Known or Suspected Terrorist File (formerly known as the Violent Gang/Terrorist Organization File (VGTOF)) for domestic law enforcement screening. The criteria for inclusion in each of these systems are tailored to the mission, legal authorities, and information technology requirements of the department or agency that maintains the system. Accordingly, each of these systems contains a different subset of data from TSDB.

The TSDB exports most pertinent to Umar Farouk Abdulmutallab—CLASS, TECS, and the no-fly and selectee lists—are discussed below.

CLASS

CLASS is a database administered by the Department of State’s Bureau of Consular Affairs and is used by consular officers abroad to screen visa applicants for travel to the United States. CLASS accepts nearly all records from the TSDB because minimal biographic information is necessary for visa screening. In other words, given where (overseas) and when (well in advance of travel to the U.S.), the government has time to work through what can sometimes be less than complete biographical information—time that might not otherwise be feasible in other screening situations like a routine traffic stop or a busy overseas airport where the presence of U.S. officials is often minimal. The Department of State also uses a screening system known as CLASS-PASSPORT to screen applications for U.S. passports.

The TSC aids the Department of State in identifying known or suspected terrorists through two different processes. The first is the Security Advisory Opinion (SAO) process, whereby individuals that are watchlisted could be identified at the time of their visa application to visit the United States. When consular officers process visa applications, checks are run in CLASS to determine whether any derogatory information exists to warrant a visa denial. If it is determined that the visa applicant is a possible match to an individual on the terrorist watchlist, the consular officer requests an SAO. The SAO request is forwarded to the TSC, where the Department of State’s subject matter experts at the TSC review the associated TSDB and TIDE records to determine whether the visa applicant is in fact the same watchlisted individual. The TSC’s only role in this process is to determine if the individual applying for the visa is the same individual on the terrorist watchlist. In the case of a positive match, the TSC forwards the information to the Department of State’s Visa Office, in the Bureau of Consular Affairs, to prepare an SAO in response to the request. The SAO is then forwarded to the consular officer adjudicating the visa, who has the authority to issue or deny visa applications. Individuals that are watchlisted at the time of their visa application could be identified through this process.

The second State Department process supported by the TSC is the Visa Revocation Program. The Visa Revocation Program was initiated after 9/11 and is designed to identify individuals who may have received visas prior to that person being identified as a known or suspected terrorist. Every day, the Department of State automatically generates a report that identifies all individuals with a valid visa that could potentially match a person in the TSDB. State officers compare information in CLASS (exported from TSDB), to existing records of visa holders in the Department of State’s Consular Consolidated Database (CCD). This report is then evaluated by the State Department experts at the TSC who determine whether there is a positive match to a watchlisted individual. If there is a positive match, then the TIDE record and related derogatory information is made available to the Department of State for review. The secretary of state holds broad discretionary authority to revoke a visa. Therefore, TSC forwards the information to the Department of State’s Visa Office to determine whether to revoke the visa. Individuals that are watchlisted in TSDB after receiving their visas can be

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identified through this process.

TECS

TECS serves as the Department of Homeland Security's primary lookout system and receives daily exports of TSDB records from the TSC. Additionally, TECS receives non-terrorist related subject records from more than 20 federal agencies, including a wide spectrum of data, and provides alerts for a variety of law enforcement needs. U.S. Customs and Border Protection (CBP) is the principal owner and primary user of TECS and uses the system to screen individuals at air ports, land, and sea ports of entry. Through TECS, CBP screens against the terrorist watchlist at all 327 ports of entry and by all of the 15 pre-clearance offices located in Canada, the Caribbean, and Ireland. They also use the terrorist watchlist to conduct screening operations at international mail and cargo facilities. Similar to CLASS, TECS accepts nearly all records from the TSDB. For subjects in TSDB, CBP is alerted to their travel when a commercial airline forwards the passenger manifest to CBP using the Advanced Passenger Information

System (APIS). APIS enhances border security by providing officers with pre-arrival and departure manifest data on all passengers and crew members

No-Fly and Selectee List

The no-fly and selectee lists are unique among TSDB subsets in that they are the only subsets within the terrorist watchlist that have their own substantive minimum derogatory criteria requirements, which are considerably more stringent than the reasonable suspicion standard required for inclusion in TSDB itself. Following the creation of the TSC in 2003, the Homeland Security Council Deputies Committee established the initial terrorist screening nomination criteria for the no-fly and selectee lists in October 2004. At that time, the no-fly list consisted of substantive derogatory criteria that focused attention on individuals intending to commit acts of terrorism against civil aviation or the domestic homeland. Over time, that initial criteria proved to be too restrictive. Consequently, in February 2008, the Homeland Security Council Deputies Committee approved additional criteria that served to broaden the scope of terrorists eligible for the no-fly list. In other words, the criteria to place individuals on the no-fly list has broadened to make the no-fly list more inclusive to respond to additional terrorism threats. The Department of Homeland Security Office of Inspector General recognized the significance of the additional criteria when, in a May 2009 report, it stated, "Major security gaps have been addressed by adding no-fly criteria."¹

For international terrorists, the process to be included on the no-fly list begins, as it does with every nomination, with a federal agency nominating an individual to NCTC for inclusion in TIDE. NCTC analysts review the nomination to ensure it meets nomination criteria and then forward the nomination to the TSC. Analysts at the TSC perform a comprehensive review of the nomination, which includes a review of the derogatory information contained in TIDE and the FBI's Automated Case System. During this process, if there is a reasonable suspicion that the individual is engaging in terrorism or terrorist activity, the terrorist would be added to the TSDB. Placement on the no-fly list requires two components, sufficient biographical information and sufficient derogatory information. If additional information existed to satisfy any of the substantive derogatory criteria and the minimum biographic criteria for the no-fly list, the terrorist's name would be exported to the no-fly list as well. If the analyst reviewing the no-fly nomination determines that there is insufficient information to warrant inclusion on the no-fly list, the nomination is forwarded to the TSA (Office of Intelligence and/or the Federal Air Marshal Service (FAMS)) subject matter experts at the TSC for further analysis and a final recommendation. The TSA subject matter expert will review the nomination and all accessible derogatory information associated with the individual and apply the no-fly and selectee list criteria to that information. Based upon that review and analysis, the TSA/FAMS subject matter expert will then decide based upon that criteria whether the individual will be included on either the no-fly or selectee list.

Inclusion on the no-fly list prohibits a potential terrorist from boarding a commercial aircraft that departs or arrives in the United States. It also prohibits an airplane carrying an individual on the no-fly list from transiting United States airspace. The selectee list is used to provide the individual with a secondary screening. Currently, TSA provides the no-fly and selectee list to commercial air carriers, who are then responsible for passenger prescreening against the no-fly and selectee lists. With the implementation of the Department of Homeland Security's Secure Flight Program, the U.S. government will assume the responsibility of passenger prescreening against the no-fly and selectee lists, which will improve the overall effectiveness of this process.

Actions Since December 25, 2009

Before December 25, 2009, TSC did not receive a nomination to watchlist Umar Farouk Abdulmutallab and, as a result, he was not watchlisted in TSDB. Following the attempted terrorist attack, the president of the United States initiated a review of the facts that permitted Umar Farouk Abdulmutallab to board Northwest Airlines Flight 253. In his January 7, 2010 memorandum, the president concluded that immediate actions must be taken to enhance the security of the American people. These corrective actions were also required to ensure that the

standards, practices, and business processes that have been in place since the aftermath of 9/11 are appropriately robust to address the evolving terrorist threat facing our nation in the coming years. As a result, the TSC was given two instructions. The first was to conduct a thorough review of the TSDB and ascertain the current visa status of all known and suspected terrorists, beginning with the no-fly list. That process has now been completed. The second was to develop recommendations on whether adjustments are needed to the watchlisting nominations guidance, including biographic and derogatory criteria for inclusion in TIDE and

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nomination process, including upgrade and downgrade criteria for inclusion in TSDB and TSDB, as well as the no-fly and selectee lists. To do so, TSC convened its Policy Board Working Group with representation from NCTC, DHS, CIA, NSA, DOD, DOJ, DOS, and NSC to achieve interagency consensus. That process is underway and TSC is working with its interagency partners to develop appropriate recommendations for consideration by the president.

As of yet, however, there have been no formal changes to watchlisting criteria, including the criteria for inclusion on the no-fly list, since February 2008 when those criteria were last expanded. At the direction of the White House and in conjunction with NCTC, the TSC has made some temporary and limited additions to the watchlist to counter the specific terrorist threat observed on December 25, 2009. As a result, a threat-related target group was identified and individuals from specific high-threat countries already residing in TIDE or TSDB were added to the no-fly and selectee lists, or upgraded to TSDB if necessary, to prevent future attacks.

Conclusion

As the investigation into the events that allowed Umar Farouk Abdulmutallab to board Flight 253 continues, the TSC remains focused on fulfilling its presidential and interagency mandates to share terrorist screening information with our domestic and foreign partners. We have a standing commitment to improve our operational processes, to enhance our human capital and technological capabilities, and to continue to protect Americans from terrorist threats while protecting privacy and safeguarding their civil liberties. Terrorist watchlisting has been a vital tool in the counterterrorism efforts of the United States government and will continue to be so in the future. Chairman Lieberman, Ranking Member Collins, and members of the committee, thank you for the opportunity to address this committee. I look forward to answering your questions.

¹ U.S. Department of Homeland Security Office of Inspector General, *Role of the No Fly and Selectee Lists in Securing Commercial Aviation*, OIG-09-64, May 2009.

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