

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS – CONNECTICUT and MAKE
THE ROAD NEW YORK,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, U.S. CUSTOMS AND BORDER
PROTECTION, and U.S. DEPARTMENT OF
STATE,

Defendants.

Civil Action No.
3:17-cv-1061-RMS

DECLARATION OF JAMES V.M.L. HOLZER

I, James V.M.L. Holzer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Chief Privacy Officer for the United States Department of Homeland Security (“DHS”) Privacy Office (“PRIV”). I have been employed by DHS PRIV in this capacity since November 2020.
2. Previously, I served as the Deputy Chief Freedom of Information Act (“FOIA”) Officer for the United States Department of Homeland Security (“DHS”) Privacy Office (“PRIV”). I served in this capacity from May 2016.
3. Previously I served as the Director of the Office of Government Information Services within the National Archives and Records Administration and prior to that I served as the Senior Director of FOIA Operations and Management for DHS.

2. As the Deputy Chief FOIA Officer for the DHS Privacy, I acted as the Department of Homeland Security's principal point of contact and agency representative on FOIA-related matters. My official duties and responsibilities included the implementation of consistent FOIA management across DHS in collaboration with DHS Components. I provided regulatory and policy guidance, and technical advice and assistance to the Department on FOIA-related matters. I was also responsible for collecting, reviewing, consolidating, and submitting the data for the Annual FOIA Report and the Chief FOIA Officer Report to the Attorney General on behalf of the Department. I also supervised the DHS Privacy analysts responsible for receiving and responding to FOIA requests submitted to DHS Privacy. DHS Privacy's FOIA staff consists of 22 employees, including FOIA analysts and FOIA supervisory staff.

3. In connection with my official duties, I am familiar with and oversee the processes undertaken by DHS Privacy upon receipt of FOIA requests, third agency requests for consults, and third agency referrals of documents to DHS for processing.

4. I respectfully submit this declaration in support of defendant the United States Department of State's motion for summary judgment in the above-captioned FOIA matter. I make the statements herein based on my personal knowledge, including my review of the Complaint in this matter and the records discussed herein, as well as on information provided to me by others within the Executive Branch of the federal government with knowledge of the records at issue in this case, and on information I acquired in the course of performing my official duties.

Overview of DHS Privacy's Responsibilities

5. The mission of DHS Privacy is to preserve and enhance privacy protections for all individuals, to promote transparency of Department operations, and to serve as a leader in the privacy community. DHS Privacy (a) evaluates Department legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information (“PII”); (b) centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and to support implementation across the Department; (c) operates a Department-wide Privacy Incident Response Program to ensure that incidents involving PII are properly reported, investigated, and mitigated, as appropriate; (d) responds to complaints of privacy violations and provides redress, as appropriate; and (e) provides training, education, and outreach to build a culture of privacy across the Department and transparency to the public.

6. DHS Privacy is responsible for processing all FOIA and Privacy Act requests pertaining to approximately 14 DHS Headquarters-level offices. Those offices are: Executive Secretary; Science and Technology; Management Directorate; Strategy, Policy, and Plans; Office of Operations Coordination (OOC); Partnership and Engagement; DHS Privacy; General Counsel; Legislative Affairs; Public Affairs; Citizenship and Immigration Services Ombudsman; Immigration Detention Ombudsman; Office of the Secretary; Operations Coordination; and Center for Prevention Programs and Partnerships (includes Countering Weapons of Mass Destruction along with other former Policy offices). In addition, DHS Privacy presently provides FOIA services to the Cybersecurity and Infrastructure Security Agency (CISA), which is a DHS component. Finally, DHS Privacy coordinates the processing of FOIA requests across DHS components when the subject matter of a particular request involves a subject matter in which numerous DHS components have equities or relates to a particularly high-profile subject matter.

7. Through the exercise of my official duties as DHS Privacy's Deputy Chief Privacy Officer, I became familiar with Plaintiff's FOIA request, its Complaint in this litigation, and the State Department's consultation with DHS regarding a document requested by Plaintiff.

Plaintiff's FOIA Request and Complaint, the State Department's Referral, and DHS's Response

8. By letter dated April 12, 2017, Plaintiff submitted a FOIA request to the Defendant agencies, seeking the disclosure of multiple categories of records. Among other things, the Department of State (DOS) request sought policies, training materials, and communications related to the criteria and/or grounds to be considered during visa application adjudications, visa revocations, and consideration of refugee applications, including case-by-case waivers pursuant to certain Executive Orders.

9. On June 27, 2017, Plaintiff commenced this lawsuit against the Defendant agencies, seeking disclosure of the records described in its FOIA requests.

10. Thereafter, DOS conducted a search for records responsive to the portions of Plaintiff's FOIA request, as narrowed by agreement between the parties. It is my understanding that as part of a subsequent, supplemental search conducted in the discretion of DOS, the agency located a final copy the 60-Day Progress Report ("Report") that was submitted pursuant to Section 5(b) of Executive Order 13780. Because this Report was submitted to the President by the Secretary of Homeland Security with the input of certain other cabinet-level officials, the Department of State provided DHS with the Report so that DHS might review the document and determine whether any withholdings would be appropriate, pursuant to the FOIA.

11. DHS determined that the Report is exempt from disclosure in full pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5) because it is subject to the presidential communications

privilege. The Department further determined that parts of the Report are exempt from disclosure pursuant to certain FOIA Exemptions, specifically Exemption 5, because it is protected by the deliberative process privilege; and Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), because it contains non-public information concerning law enforcement techniques and procedures.

Description of the Report

12. On March 6, 2017, President Trump issued Executive Order 13780, “Protecting the Nation from Foreign Terrorist Entry into the United States,” which declared that “it is the policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals,” and directed the government to undertake a series of actions “to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the [United States Refugee Assistance Program].” Among other things, Section 5 of Executive Order 13780 addressed “Implementing Uniform Screening and Vetting Standards for All Immigration Programs” and provided that:

The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. This program shall include the development of a uniform baseline for screening and vetting standards and procedures, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that applicants are who they claim to be; a mechanism to assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States; and any other appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits.

Section 5(b) of the Executive Order further provided that:

The Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall submit to the President an initial report on the progress of the program described in subsection (a) of this section within 60 days of the effective date of this order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

13. As referenced in the Executive Order, the term “immigration screening” refers to the systemic examination or assessment of individuals seeking to immigrate to the United States, conducted to detect potential threat or risk to the United States. Immigration screening may include cross-referencing government databases, investigations of locations or geographic areas, and the use of other Government resources to determine potential security risks. The extent of the investigation frequently varies based on the benefit or relief being sought by the prospective immigrant. While significantly overlapping with immigration screening, the term “immigration vetting” usually refers to more individualized analysis of available background information on the non-citizen, to determine ongoing eligibility for requested new benefits or relief. In certain circumstances, to ensure thorough screening, DHS may potentially conduct immigration vetting on a given individual on an ongoing basis.

14. In May 2017, the Secretary of DHS submitted the Report to the President. As required by Section 5(b) the Executive Order, the Report addressed the progress relating to the proposed implementation of a program to ensure consistent and comprehensive immigration screening and vetting consistent with the requirements of the Executive Order, including a description of a plan developed by the interagency group to build a uniform baseline for a screening and vetting regime. Specifically, in response to the Executive Order, an interagency working group convened that included multiple Executive Branch agencies involved in the vetting and screening

process. The working group sought to establish a common set of criteria for different immigration screening and vetting procedures, to avoid duplicative and overlapping efforts, and to ensure that all necessary and appropriate information was sought. In addition, pursuant to the request set forth in Section 5(b), the Report generally provided a discussion of the then current respective agency roles and actions; a proposal for an interagency coordination and governance structure for the vetting and screening processes; and recommendations regarding potential changes to screening and vetting processes and standards to achieve the goals of the Executive Order.

15. The Report was, and remains, closely held within the Executive Branch. The Report states that it was sent to the President, and my review of DHS records indicates that the Report was in fact sent from DHS on May 22, 2017, using Joint Worldwide Intelligence Communications System (“JWICS”). JWICS is a secure Internet system used by the United States Government to transmit classified information. DHS subsequently received confirmation of that the Report was received by the National Security Council, a component of the Executive Office of the President. The Report was also shared by JWICS with the Department of Justice, Department of State, the Office of the Director of National Intelligence, and the Central Intelligence Agency because those agencies were part of the interagency group that drafted the report. DHS also circulated the Report to a limited number of offices within certain DHS components that contributed to the Report. Specifically, the Report was shared with U.S. Customs and Border Protection, the DHS Office of Intelligence and Analysis, and the Office of Policy (currently the Office of Strategy, Policy, and Plans).

16. The Report is classified in part at the Secret level, and the full and unredacted version is accordingly available only on classified networks at DHS. This classified version of the Report is


available only to those with appropriate clearances and also based on a “need to know;” that is, when an agency employee receiving the information has a need for the record in the performance of the employee’s duties, as similarly applied under the Privacy Act of 1974, 5 U.S.C. 552a(b)(1).

Explanation of Applicable Exemptions

17. Based on its review of the Report described above, DHS has determined that, with the exception of certain pages within the Report which contain a copy of Executive Order 13780 and the Presidential Memorandum of March 6, 2017, the Report is properly withheld in full pursuant to Exemption 5, because it is protected by the presidential communications privilege. The Report is also properly withheld in part pursuant to Exemptions 1, 5 (deliberative process privilege), and 7(E).

Applicability of Exemption 5 (Presidential Communications Privilege) to the Report In Full

18. Exemption 5 exempts from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

19. The Report at issue in this case is properly withheld in full pursuant to Exemption 5, pursuant to the presidential communications privilege. At the threshold, because it is a communication generated by, exchanged within, and internal to the Executive Branch, it is an “inter-agency and intra-agency” record 

20. As required by Section 5(b) of the Executive Order, this Report presents the interim results of the interagency group’s review of certain screening and vetting procedures. The Report advises the President on topics such as the vetting of visa applicants, the admission of aliens into

the United States, and methods of combatting threats to public safety. Further, it makes recommendations to the President on potential additional information collection, systems checks, and inter-agency collaboration with respect to the screening and vetting of non-citizens. As such, the Report not only contains advice provided to the President by top advisors, at the President's request, but also describes the nature of the decision-making process being undertaken, explains the considerations used to guide that decision-making process, and addresses specific issues that should be evaluated to assist the President in making final decisions.

21. The FOIA provides that agencies shall withhold information "only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in [the statute] . . ." 5 U.S.C. § 552(a)(8)(A)(i). In assessing whether information should be withheld pursuant to the presidential communications privilege, DHS is mindful that the privilege protects the President and his advisers' abilities to engage in effective communications and decision-making. In order to discharge his duties under Article II of the Constitution, the President must be able to receive confidential advice of all kinds, from a variety of sources. If such communications are disclosed, Presidents and their advisers will be unable to confidently engage in confidential decision-making without fear that their deliberations will be open to public view. Candid discussions will naturally be chilled or inhibited, and the efficiency of government policymaking would suffer. Here, there is reasonably foreseeable harm that would result from the release of the Report.

22. Specifically, the disclosure of the communications and deliberations contained in the Report would necessarily inhibit presidential advisors from engaging in the full and candid exploration of issues and options that is essential to effectively prepare advice and recommendations for the President on sensitive topics such as immigration policy. As explained

above, the Report is a confidential communication to the President focusing on controversial issues relating to immigration, vetting, and related procedures for ensuring national security. Compelled release of this report would plainly threaten President's ability to receive frank and candid advice concerning the sensitive field of immigration policy and related security reforms. Indeed, the quality of the Presidential decision-making process would be damaged if agency heads in the Executive Branch cannot focus solely on providing comprehensive and candid information about border security and immigration policy to the White House, and rather must evaluate advice and information through the lens of potential public release.

Applicability of Other FOIA Exemptions to the Report in Part

23. In addition to being exempt in full pursuant to Exemption 5 under the presidential communications privilege, parts of the Report are also properly withheld pursuant to Exemption 5 (deliberative process privilege) and Exemption 7(E).

Exemption 5: Deliberative Process Privilege

24. Parts of the Report are also properly withheld pursuant to Exemption 5 because they fall within the scope of the deliberative process privilege. The deliberative process privilege is intended to protect the decision-making processes of the Executive Branch from public scrutiny in order to enhance the quality of Executive Branch decisions. To be protected by the deliberative process privilege, the information at issue must be both “pre-decisional” and “deliberative.”

25. The withheld parts of the Report are “pre-decisional” because they were prepared to assist the ultimate decision-maker—the President—in his decision-making process relating to border security and immigration policy. The recommendations and discussion in this Report did

not constitute the government's final position on these issues and accordingly do not contain binding policy or other guidance. Instead, they were created to advise and assist the President in carrying out national security policies. Specifically, the recommendations and pre-decisional discussion were included in the report to assist the President in making decisions on whether to institute certain new information collections, system checks, and interagency coordination requirements in the immigration screening and vetting processes. The discussions in the Report also advised the President as to the proposals of certain agencies for appropriate next steps on these issues.

26. The withheld parts of the Report are also "deliberative" because they reflect the President's decision-making process, including advice and recommendations by the Secretary of DHS and other Cabinet-level officials regarding the adequacy certain immigration security procedures, and proposals for improving various screening and vetting processes.

27. As noted above, the FOIA provides that agencies shall withhold information "only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in [the statute] . . ." 5 U.S.C. § 552(a)(8)(A)(i). DHS is mindful that the deliberative process privilege generally protects the candid discussion of policy proposals within the government and protects the public from confusion that would result from the release of non-final policy proposals. Disclosure of the Report would likely inhibit Executive Branch decision-making because it would chill frank discussion and collaboration among Executive Branch employees and senior-level decision-makers. If Executive Branch personnel who make recommendations on matters of national security discern that their preliminary assessments and recommendations, such as those contained in this Report, could be released for public consumption, they are likely to refrain from full and candid statements of their views to final

decision-makers. The loss of forthright analysis and review would significantly impede the comprehensive discussion of issues that is necessary to reach a well-reasoned and fully vetted final decision in matters of immigration policy and national security.

28. Release of sensitive communications such as these would undermine the ability of Executive Branch employees to openly engage in candid analysis presented to senior level officials, including the President, regarding matters of immigration, border control, and national security. It would reveal Cabinet-level thinking on a particular set of issues before that thinking had been reduced to a final policy decision, which in turn would hinder the confidentiality necessary to the proper formulation of Presidential policy on issues of national security and foreign policy. This lack of candor would seriously impair the Executive Branch's ability to foster forthright, internal discussions necessary for efficient and proper decision-making. It is therefore crucial that the candid views expressed in this Report are protected from disclosure to ensure that the President will receive similarly frank advice on such critical matters in the future. Moreover, although much of the report is not classified, the pre-decisional discussions and recommendations refer to information that, when compiled together, give a very clear view of gaps in U.S. Government screening and vetting enterprises and a picture of how DHS currently conducts those activities and timeframes within which DHS anticipates suggested improvements. Indeed, much of this information is also withheld as law enforcement techniques or guidelines, under Exemption 7(e), as set forth more fully below. It is accordingly foreseeable that the release of this information would undermine agency efforts to enhance the national security by exposing existing and proposed changes to agency operations to protect the nation and thereby rendering such existing and proposed protections ineffective. Accordingly, and for the foregoing reasons,

this Report is protected in part by the deliberative process privilege encompassed by Exemption 5.

Exemption 7(E): Law Enforcement Techniques and Procedures

29. Exemption 7(E) exempts from disclosure “records or information compiled for law enforcement purposes” that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

30. DHS has properly withheld portions of the Report pursuant to Exemption 7(E). Specifically, the Department withheld information concerning the methodology and criteria used for identifying threats to the national security. This Report meets Exemption 7(E)’s threshold requirement that it constitute a record “compiled for law enforcement purposes.” The Report, was developed in response to the President’s request for information and recommendations on the “implementation of a program that would identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.” Accordingly, the Report includes an assessment of current strengths and weakness in the immigration vetting and screening systems, and potential improvements to mechanisms for enforce and administer the immigration laws. Accordingly, since the focus of the report is how the Government can enhance its law enforcement processes for identifying persons seeking to evade security measures in order to engage in criminal conduct, the Report itself was compiled for law enforcement purposes.

31. The information being withheld under FOIA Exemption 7(e) also consists both of law enforcement guidelines and non-public techniques. The Report's discussion of certain screening and vetting processes can be considered "guidelines" because they identify threshold issues that may trigger additional screening, and thus focus law enforcements efforts in specific circumstances. Disclosure of these guidelines would reasonably risk circumvention of the law, because publishing the focuses and thresholds in certain vetting procedures would enable individuals to better avoid triggering additional scrutiny and thereby increase their chances of not being identified as persons presenting fraudulent information or having criminal or terrorist intent.

32. Other withheld information contained in the Report can be considered "techniques" because it describes and highlights processes that would enable the agency to identify persons presenting fraudulent information or having criminal or terroristic intent (e.g., critical data fields on application forms, types of national security and public safety questions conducted during interviews for benefit adjudications; proposed additional screening procedures; and ensuring there is a uniform approach for criminal checks and terrorism-related checks as part of the vetting process). DHS also withheld information relating to existing and proposed ways in which Executive branch agencies collaborate in vetting and screening processes; that is, ensuring there is adequate harmonization across agencies for full visibility on individuals throughout each phase of their immigration lifecycles. This is also properly considered a law enforcement technique because this interagency collaboration is a tool in the Department uses to carry out its law enforcement function of securing the border and protecting the national security by effectively screening and vetting persons seeking to enter or remain in the United States.

33. There are certain portions of the Report that are currently classified at the Secret level containing matrices that identify types of immigration-related adjudications and categories of information, which was being evaluated for use in the screening and vetting processes for those respective adjudications. Although DHS is obligated to treat these portions of the Report as classified at the Secret level, DHS is not currently asserting FOIA exemption b1 over these matrices. During the review process in preparation for filing this declaration, DHS personnel questioned whether classification of matrices at the Secret level remains appropriate. Accordingly, DHS intends to initiate a declassification review of those portions of the Report. DHS is, however, asserting FOIA exemption b7E over these matrices because the information contained in them would alert adversaries as to the types of potentially derogatory information they may need to overcome in order to enter or remain in the United States. This would enable such adversaries to evade detection during the screening and vetting processes, thereby allowing them to enter or remain in the United States and carry out criminal or terroristic acts.

34. Although it is publicly known that DHS, its components, and other agency conduct assessments of persons seeking entry to the United States prior to admission, it is not publicly known what information DHS considers, or how DHS weighs and evaluates that information when making admission determinations. Moreover, the specific recommendations and advice set forth in the Report, concerning potential changes to immigration security procedures, are also non-public. The release of such information would reasonably lead to circumvention of the law because it would provide insight to the public, including adversaries of the United States, as to specific mechanisms employed in immigration screening and vetting processes. Among other things, such disclosure could allow adversaries to anticipate certain obstacles to entering or

remaining in the United States and take measures to avoid those obstacles and impede the Department for discovering their criminal and/or terroristic intentions.

35. The FOIA provides that agencies shall withhold information "only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in [the statute] . . ." 5 U.S.C. § 552(a)(8)(A)(i). Disclosure of information on current or potential screening and vetting processes, including gaps in those processes that existed and may continue to exist, would enable persons with ill intent towards the United States to evade detection and thwart agency efforts to secure the border against threats and thereby cause harm to the national security. It is foreseeable that an adversary could presume that certain vulnerabilities remain unresolved, and if that assessment is correct, then they would be able to exploit a current security gap. On the other hand, a sophisticated and cautious actor could assume that some or all of the vulnerabilities mentioned in the Report have been fixed, and therefore adjust their behavior to better overcome the specific obstacles identified in the report. In summary, disclosure of this information concerning specific vetting and screening standards and processes could foreseeably harm the U.S. Government's responsibility to ensure individuals do not circumvent immigration laws by modifying their activities to avoid detection or arrest at certain times.

Segregation of Non-Exempt Information

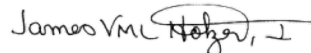
36. I have reviewed this report, page-by-page in its entirety. I have determined that a portion of the Report's Appendix is comprised of Executive Order 13780 and the Presidential Memorandum dated March 6, 2017, both of which were previously made public. I have determined that these pages may be released to Plaintiffs in this matter, as they contain only documents that were previously made available to the public. Moreover, because the Report was

developed in response to that Executive Order and Memorandum, the release of these pages does not reveal the content or nature of any Presidential communications. However, because the presidential communications privilege covers communications in their entirety, the remainder of the Report is withheld in full pursuant to the privilege. Further, I have determined that there is no additional reasonably segregable, non-exempt information within the Report. As such, aside from the pages described in this paragraph, DHS has withheld this document in full pursuant to Exemption 5, and has withheld portions of the document pursuant to Exemptions 5 and 7(e).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated: 25 January 2023

Washington, D.C.



James V.M.L. Holzer
Deputy Chief Privacy Officer DHS Privacy Office
U.S. Department of Homeland Security