

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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COUNCIL ON AMERICAN-ISLAMIC))
RELATIONS – CONNECTICUT and))
MAKE THE ROAD NEW YORK,))
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Plaintiffs,))
))
v.))
)) Civil Action No.: 3:17-CV-1061-RMS
U.S. CITIZENSHIP AND IMMIGRATION))
SERVICES, U.S. CUSTOMS AND))
BORDER PROTECTION, and))
U.S. DEPARTMENT OF STATE,))
))
Defendants.))
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DECLARATION OF SUSAN C. WEETMAN

Pursuant to 28 U.S.C. § 1746, I, Susan C. Weetman, declare and state as follows:

1. I am the Deputy Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”), a capacity in which I have served since August 4, 2019. I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. Prior to serving in this capacity, from May 15, 2016, I was the Chief of the Programs and Policies Division within IPS, and, prior to that, from March 10, 2013, I served as the Branch Chief for Litigation and Appeals within the Programs and Policies Division.

2. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with

the efforts of Department personnel to process the subject request, and I am in charge of coordinating the agency's search and recovery efforts with respect to that request.

3. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), Members of Congress, and other government agencies, and those made pursuant to judicial process such as subpoenas, court orders, and discovery requests; (2) records management; (3) national security classification management and declassification review; (4) corporate records archives management; (5) research; (6) operation and management of the Department's library; and (7) technology applications that support these activities.

I. PLAINTIFFS' FOIA REQUEST

4. On April 12, 2017, Plaintiffs submitted a FOIA request to the State Department seeking 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 executive orders E.O. 13769 and E.O. 13780. The request also sought numerical data and statistics showing the number of individuals who have been subject to additional scrutiny, visa revocations, waivers of enforcement, or unfavorable treatment. The request also sought a fee waiver and expedited processing.

5. By email dated April 17, 2017, the Office of Information Programs and Services ("IPS") acknowledged receipt of Plaintiffs' FOIA request and granted Plaintiffs' request for expedited processing and fee waiver.

6. Plaintiffs filed their lawsuit on June 27, 2017, before IPS had released any records to Plaintiffs. Following the filing of the Complaint, the parties engaged in lengthy negotiations concerning the scope of Plaintiffs' FOIA request.

7. Following agreement on narrowing of the Plaintiffs' FOIA request and completing production of responsive documents, I understand that Plaintiffs inquired whether State had retrieved certain final reports described in Executive Order 13780 ("E.O. 13780") in its search efforts.

8. In the process of responding to Plaintiffs' inquiry, State located one final version of a report in the files of an official with the Bureau of Consular Affairs on the Department's classified system—the 60-day report on the progress of the program described in Section 5(a) of E.O. 13780 ("Section 5 Report").

9. The Department agreed to process the Section 5 Report as a matter of discretion. Processing the record involved discussions and consultations with the other agencies that have equities in the document, primarily the Department of Homeland Security, which under E.O. 13780 was tasked with drafting the report with input from the Department and other agencies.

10. After reviewing the document, I understand that the Department of Homeland Security withheld the Section 5 Report pursuant to the presidential communications privilege. I understand that Plaintiffs indicated their intent to challenge the withholding and assert that three documents processed by State are evidence of a waiver of the presidential communications privilege—documents C06762443, C06880428, and C06880690 ("Challenged Documents"). Plaintiffs also have now indicated they would be challenging State's withholdings on the three documents.

11. I understand through counsel that the Department of Homeland Security is asserting the presidential communications privilege to withhold the Section 5 Report in full. This declaration addresses the Section 5 Report and the Challenged Documents. It explains the basis for withholdings made by State and provides additional context for these records, based on my understanding of the records, which is based on information provided to me in the course of my official duties by subject matter experts.

II. FOIA EXEMPTIONS CLAIMED

FOIA Exemption 5 – Privileged Information

12. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency

Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is internal to the executive branch and normally privileged in the civil discovery context, including information that is protected by the attorney-client privilege and the deliberative process privilege. The Department withheld information in one of the documents at issue pursuant to Exemption 5. *Attorney-Client Privilege*

13. The Department has also withheld certain information in one of the documents at issue pursuant to the attorney-client privilege that reflects consultations undertaken in confidence between Department attorneys and officials for the purpose of obtaining legal advice. Where such information was withheld, the withheld information reflects the two-way confidential communications that occur between attorneys and their clients when seeking and providing legal advice, and includes facts divulged to one or more of the attorneys for the purposes of obtaining

legal advice as well as **opinions given by the attorneys** based upon and reflecting those facts. For these reasons, portions of the withheld information are exempt from release under Exemption 5 pursuant to the attorney-client privilege. A detailed description of the privileged nature of the material withheld under Exemption 5 is addressed in the Section III.

Deliberative Process Privilege

14. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their **internal deliberations related to policy formulation and administrative direction**. The Department withheld information in one of the documents at issue under Exemption 5 pursuant to the deliberative process privilege. Disclosure of this information, which is predecisional and deliberative, would result in foreseeable harm by inhibiting candid internal discussions and the expression of recommendations and judgments regarding current issues and preferred courses of action by Department and other U.S. Government personnel.

15. The withheld information is, accordingly, exempt from release under Exemption 5 pursuant to the deliberative process privilege. I have also determined that there is **no additional, meaningful non-exempt information that can be segregated and released**. A detailed description of the predecisional and deliberative nature of the material withheld under Exemption 5 as well as the harm that would foreseeably result from disclosure is addressed in the Section III.

FOIA Exemption 7 – Law Enforcement Information

16. 5 U.S.C. § 552(b)(7), states in relevant part that the FOIA does not apply to:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecution, or

would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law ...

17. The law to be enforced for FOIA Exemption 7 purposes includes administrative, regulatory, civil, and criminal law. Records pertaining to routine agency activities can qualify for FOIA Exemption 7 protection when those activities involve a law enforcement purpose. Although the records must be created for some law enforcement purpose, there is no requirement that the matter culminate in actual administrative, regulatory, civil, or criminal enforcement proceedings. In this case, the harm that could reasonably be expected to result from disclosure concerns revealing sensitive law enforcement techniques and procedures related to enforcement of the Immigration and Nationality Act (“INA”). The INA governs U.S. immigration matters. One major component of the INA is establishing substantive rules for noncitizens seeking a visa, entry, or admission to the United States. Both the Secretary of State and the Secretary of Homeland Security are specifically tasked with administration and enforcement of the provisions of the INA. The INA also requires the Department to maintain direct and continuous liaison with other government agencies for the purpose of obtaining and exchanging information for use in enforcing the provisions of the INA in the interest of the internal and border security of the United States. The Department oversees the screening process abroad through its consular officers who determine visa eligibility, and works closely with interagency partners, especially DHS, in this process.

18. Before an agency can invoke any of the harms enumerated in FOIA Exemption 7, it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. The specific law enforcement purpose of the material at issue is explained in greater detail below. At a high level, in the Section 5 Report, the State Department asserted FOIA Exemption 7(E) over information pertaining to the criteria and sources of information used for screening and vetting

visa applicants for the law enforcement purpose of enforcing the INA. In the three State Department documents at issue, the Department asserted FOIA Exemption 7(E) over material created by or originating from the Directorate of Visa Services in the Bureau of Consular Affairs (“CA/VO”) which was compiled for similar purposes. CA/VO manages all aspects of worldwide visa services to foreign nationals who wish to enter the United States. CA/VO interprets and applies immigration laws and regulations, and acts as a point of contact for the public. CA/VO is on the front line of enforcing the U.S. Government’s immigration laws and regulations. CA/VO also serves as a liaison with the Department of Homeland Security and other U.S. Government agencies with a role in administration and enforcement of U.S. immigration laws, as well as a liaison between State and its embassies and consulates abroad on visa matters. It routinely uses non-public law enforcement databases to support its core duties of enforcing the U.S. immigration laws, the INA and other applicable laws, to enforce and administer U.S. immigration laws, and to prevent and track fraud.

FOIA Exemption 7(E) – Law Enforcement Techniques and Procedures or Guidelines

19. 5 U.S.C. § 552(b)(7)(E) states that the FOIA does not apply to:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecution, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

20. Exemption 7(E) requires the Department to show that release of the requested information either (i) would disclose techniques and procedures for law enforcement investigations or prosecutions that are not publicly available; or (ii) would disclose guidelines for law enforcement investigations or prosecutions and that such disclosure could reasonably be expected

to risk circumvention of the law. The agency need not demonstrate an actual or certain risk of circumvention, but rather a reasonably expected risk.

21. The Department withheld information under Exemption 7(E) because disclosure could reveal investigative techniques and procedures related to the screening and vetting of visa applications for the law enforcement purpose of enforcing the INA. In the documents at issue, the Department is withholding information related to certain techniques used to screen and vet visa applicants, including information on the circumstances where certain types of investigations are required and the procedures for collecting information required for those investigations, the details of which are not known to the public. The Department also withheld information that constitutes guidelines for when heightened screening and vetting may be required. The release of these details could enable suspects to avoid detection or develop countermeasures to circumvent the ability of the Department and other U.S. federal law enforcement to effectively use these important law enforcement guidelines, thereby allowing circumvention of the law. Disclosure of the techniques, procedures, and guidelines presents reasonably foreseeable harm, as it would enable those seeking to circumvent U.S. immigration law to better understand vulnerabilities in the screening and vetting process and to evade detection, which would undermine the law enforcement purpose for which the information was compiled.

22. In each instance where the Department withheld information, I determined that release of the requested information would be reasonably likely to risk circumvention of the law, which presents reasonably foreseeable harm. Accordingly, the Department properly withheld certain information pursuant to Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). A detailed description of the nature of the material withheld under Exemption 7 is addressed in Section III.

III. RECORDS AT ISSUE

Executive Order 13780 Report

23. Section 5 of E.O. 13780 directs the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, to submit to the President three reports on the progress of the program described in subsection 5(a) of the order. As explained above, the Department identified one final version of one of the reports—the 60-day report on the progress of the program described in Section 5(a) of E.O. 13780—in the files of an official with the Bureau of Consular Affairs on the Department’s classified system.

24. I understand from the Department’s subject matter experts who are familiar with the Section 5 Report that the Department provided input to the Department of Homeland Security for purposes of compiling the report to advise the President. The report was maintained on the Department’s classified system, and, as described at 12 FAM 536.1, it is Department policy that a person can only access a classified file when that person receives appropriate security clearance and access is necessary in connection with performance of official duties. To the best of the subject matter experts’ recollection, distribution of the final report was limited to a small group of Department officials who had contributed to the report, who were in the clearance chain as the draft report was forwarded to the Department of Homeland Security, or who had a need-to-know for similar advisory purposes. To the best of the subject matter experts’ recollection, State Department officials did not share the final report outside of the Department.

25. In the Section 5 Report, State withheld information under FOIA Exemption 7(E), 5 U.S.C. § 552 (b)(7).¹ The report was compiled for the law enforcement purpose of assessing the strengths and weakness in the immigration vetting and screening systems at the time and identifying potential improvements to mechanisms to enforce and administer U.S. immigration law. The information over which State asserts Exemption 7(E) reveals information about specific law enforcement techniques and procedures used by U.S. officials for vetting immigrant and foreign visitor applications. The Department actively tries to prevent release of these details to the public. The Department conducted a thorough review of the withheld material and determined there was no information that may be reasonably segregated and released.

26. The withheld information includes the specific high value biographic data elements identified by interagency partners as necessary for the uniform baseline vetting process of immigrant and foreign visitor applications. If this information were disclosed, it would reveal the non-public techniques and procedures used by law enforcement to screen applicants, which could assist individuals seeking to circumvent the vetting procedures by allowing them to see what specific information is and is not relevant to screening. The disclosure of this information would reasonably be expected to risk circumvention of the law and presents the foreseeable harm of undermining the law enforcement purpose for which the information was collected.

27. The information also concerns the non-public data and vetting capabilities operated by interagency partners in automated system checks used for verifying an immigrant or foreign

¹ In this declaration, I only address the State Department's Exemption 7(E) withholdings in the Section 5 Report. Separate declarations from DHS and ODNI address the other FOIA exemptions in the Section 5 Report, including Exemption 1 and Exemption 5.

visitor applicant's identity and the authenticity of their travel documentation, detecting fraudulent behavior or travel patterns signaling potential risk, and identifying potential national security derogatory or law enforcement information that could preclude an individual from traveling to the United States or obtaining immigration benefits. This information, if disclosed, would reveal specific law enforcement techniques and procedures currently in use as it reveals certain systems and modes of analysis used for screening applicants. This presents a foreseeable harm of assisting individuals seeking to circumvent the vetting procedures by allowing them to ascertain the types of data relevant for screening and the specific law enforcement analysis used during screening.

Challenged Department of State Documents

28. C06762443 is a 10-page document entitled "Operational Q&A" intended for consular officers on implementing increased visa screening requirements in light of the Presidential Memorandum accompanying E.O. 13780. The Bureau of Consular Affairs compiled this document for the law enforcement purpose of enforcing the INA. In particular, the document was made available to consular officers at post for purposes of providing operational guidance regarding the implementation of additional vetting in common scenarios they might encounter in the field, including how to incorporate additional vetting into the existing screening process, how to apply additional vetting in certain security sensitive scenarios, and how to conduct certain elements of the vetting. The Department withheld portions of his document under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). The specific language to which the Department has applied Exemption 7(E) includes guidelines as well as techniques and procedures for purposes of enforcing the INA. In particular, the material includes non-public information discussing and describing the processes for collecting applicants' information and identifying and flagging certain

ineligibilities or potential ineligibilities in a database, including circumstances where certain types of investigations are required and procedures for collecting information required for those investigations. The information also includes non-public procedures for screening for security- and terrorism-related ineligibilities, including methods for identifying and flagging such grounds in a database, as well as procedures for reviewing and assessing potential fraud in a visa application. This guidance and most procedures described in the document remain active, though in some cases specific procedures have been updated to account for technical advances made across the U.S. Government screening and vetting enterprise. Disclosure of the withheld information could reasonably be expected to risk circumvention of the law and presents a reasonably foreseeable harm because terrorists and other bad actors could use it to conceal derogatory information, provide fraudulent information, or otherwise circumvent the security checks put in place to ensure that terrorists and other bad actors cannot gain visas into the United States. The withheld portions are therefore exempt from disclosure under Exemption 7(E). The Department conducted a line-by-line review of the document and determined that there is no additional meaningful, non-exempt information that can be reasonably segregated and released.

29. This document did not attach nor reproduce, in whole or in part, the Section 5 Report. I understand from the subject matter experts that the document concerns vetting issues that consular officers encounter in the field, whereas the Section 5 Report concerned the creation of a uniform vetting apparatus across the government. I also understand from the subject matter experts that its content was not derived from the Section 5 Report.

30. **C06880428** is a 14-page compilation of State Department cables related to multiple issues. From this compilation, the Department only produced one responsive cable that concerned

heightened screening and vetting of visa applicants—the “ALDAC: Heightened Screening of Visa Applications – Further Guidance.” The Department considered the distinct cables on a variety of unrelated issues to be separate records and therefore produced the responsive cable in part, while not producing the others because they were not responsive to the FOIA request.

31. The Bureau of Consular Affairs compiled the responsive cable regarding heightened screening and vetting of visa applications for the law enforcement purpose of enforcing the INA. The document was circulated to all diplomatic and consular posts to provide additional instructions and guidance for the implementation of increased screening requirements in connection with the Presidential Memorandum accompanying E.O. 13780. The Department withheld portions of the cable under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), as it contains techniques and guidance on when additional vetting information should be collected for purposes of enforcing the INA. The specific language to which the Department has applied Exemption 7(E) includes information discussing and describing the processes for identifying and flagging certain ineligibilities or potential ineligibilities in a database, including circumstances where certain types of investigations are required and procedures for collecting information required for those investigations. The information also includes discussion of factors that trigger certain kinds of investigations and the specific information to collect, and procedures for such collection, as part of screening for terrorism- and other security-related ineligibilities. This guidance and most procedures described in the document remain active, though in some cases specific procedures have been updated to account for technical advances made across the U.S. Government screening and vetting enterprise. Disclosure of any of the withheld information could reasonably be expected to risk circumvention of the law and presents foreseeable harm because terrorists and other bad

actors could use it to conceal derogatory information, provide fraudulent information, or otherwise circumvent the security checks put in place to ensure that terrorists and other bad actors cannot gain visas into the United States. The withheld portions are therefore exempt from disclosure under Exemption 7(E). The Department conducted a line-by-line review of the responsive document and determined that there is no additional meaningful, non-exempt information that can be reasonably segregated and released.

32. This document did not attach nor reproduce, in whole or in part, the Section 5 Report. I understand from the subject matter experts that the document concerns heightened vetting, whereas the Section 5 Report concerned the creation of a uniform vetting apparatus across the government. The cable relates to providing unique, heightened, post-by-post vetting protocols based on localized threats that could elude uniform vetting. Posts were instructed to identify those risks and implement vetting protocols that addressed them. I understand from the subject matter experts that its content was not derived from the Section 5 Report.

33. C06880690 is a 16-page draft version of a supporting statement for a Paperwork Reduction Act submission to the Office of Management and Budget (“OMB”), primarily drafted by the Bureau of Consular Affairs and with input and substantive comments from attorneys in the Department, regarding supplemental questions for visa applicants. The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the attorney-client privilege and the deliberative process privilege.

34. The document is a redline draft and contains highlighted, in-line proposed changes to the text as well as attorney comments, questions, and advice. It includes the marking “Draft/Deliberative/Attorney Work Product” in the header of the document. In particular, the draft

contains comments and questions from attorneys in the Department's Office of the Legal Adviser in the Offices of Consular Affairs, Management, and Human Rights and Refugees whose role was to advise the Department on the performance of the Department's consular functions, compliance with administrative law, and issues related to human rights and refugee law. The communications were intended to be and were, in fact, kept confidential, and the document was only circulated between the attorneys and their policy clients, namely the Bureau of Consular Affairs and other bureaus within the Department with equities in the document. The purpose of the communications was to provide legal advice to ensure accurate legal discussions and consistency with the Department's position on the interpretation of domestic and international law, to evaluate the defensibility of the positions advanced, and to comply with the requirements of the Paperwork Reduction Act. The Department conducted a line-by-line review of the document and determined that there is no meaningful, non-exempt information that can be reasonably segregated and released.

35. The Department also withheld this document pursuant to the deliberative process privilege. Release of the withheld material, which is predecisional (it predates the final version of the submission) and deliberative (it reflects proposed language for the submission, including edits and comments on the substance of the submission) with respect to the final content and framing of the submission, would reveal the details of intra-agency discussions regarding the development of the submission to OMB. Disclosure of this information would foreseeably harm the ability of responsible Executive Branch officials to consider the collection of particular information in visa applications, as well as the justification for such collection, and formulate final opinions by inhibiting candid discussion and the expression of recommendations and judgments regarding draft

language and courses of action. If non-final recommendations or opinions on foreign affairs issues such as visa applications and adjudications are released, it may cause international confusion about the United States' stance on these issues. Release has the potential to confuse the public about the Department's opinions toward or procedures related to visa adjudication, including information to be collected and the justifications for such collection, which may be different from non-final language used in the drafts. For these reasons, the withheld information is exempt from disclosure under Exemption 5 pursuant to the deliberative process privilege.

36. Under the Paperwork Reduction Act, the agency was required to seek approval from OMB before promulgating a form seeking additional information from visa applicants, in connection with the Presidential Memorandum accompanying E.O. 13780 that instructed the agencies to enhance screening and vetting procedures for all visa applicants. The OMB submission seeks approval to collect certain additional categories of information that are also generally proposed in the Section 5 Report. However, where the OMB submission seeks approval for overlapping categories of information, the submission requests the collection of additional information within each category that was not explicitly proposed in the Section 5 Report. Moreover, the Section 5 Report proposes collection of certain information that is not sought in the OMB submission and the OMB submission seeks to collect information that was not proposed in the Section 5 Report. I understand from the subject matter experts that the OMB submission was not derived from the Section 5 Report, nor does it otherwise disclose the contents of the Section 5 Report.

CONCLUSION

37. The Department has conducted a careful line-by-line review of the four records at issue. The Department ensured that any reasonably segregable, non-exempt information within these records was disclosed and determined that no further information from withheld or partially withheld responsive documents could be released without revealing information warranting protection under the law.

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

Executed this 25th day of January 2023, Charleston, S.C.

Susan C. Weetman

Susan C. Weetman