

TONY WEST
Assistant Attorney General
Civil Division

SANDRA M. SCHRAIBMAN
Deputy Branch Director
Federal Programs Branch

DIANE KELLEHER
diane.kelleher@usdoj.gov

AMY POWELL
amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W
Washington, D.C. 20001
Phone: (202) 514-4775
Fax: (202) 616-8470
Attorneys for Defendant

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AYMAN LATIF, et al., <i>Plaintiffs,</i>	Case 3:10-cv-00750-BR
v. ERIC H. HOLDER, JR., et al.,	DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE – EXHIBIT A

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE
EXHIBIT A
SECOND DECLARATION OF CHRISTOPHER M. PIEHOTA**

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Assistant Attorney General
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SANDRA M. SCHRAIBMAN
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DIANE KELLEHER
diane.kelleher@usdoj.gov
AMY POWELL
amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., #7318
Washington, D.C. 20001
Phone: (202) 514-4775
Fax: (202) 616-8470
Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

<p>AYMAN LATIF, <i>et al.</i>, Plaintiffs, v. ERIC H. HOLDER, JR., <i>et al.</i>, Defendants.</p>	<p>Case 3:10-cv-00750-BR SECOND DECLARATION OF CHRISTOPHER M. PIEHOTA</p>
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SECOND DECLARATION OF CHRISTOPHER M. PIEHOTA

I, Christopher M. Piehota, hereby declare the following:

1. (U) I am the Deputy Director for Operations of the Terrorist Screening Center (“TSC”). I became the Deputy Director for Operations in February 2010. I have been a Special Agent with the Federal Bureau of Investigation (“FBI”) since 1995 and have served in a

variety of counterterrorism, counterintelligence, intelligence, and senior management positions.

2. (U) I have reviewed Plaintiffs' amended complaint dated August 5, 2010, whereby Plaintiffs claim protected liberty interests in traveling within, to, or from the United States or over U.S. airspace, and seek, in part, an injunction from this Court providing meaningful notice of the grounds for their alleged inclusion on a government watchlist and an opportunity to rebut the government's charges. In order to provide the Court with sufficient information to consider the Defendants' Motion to Dismiss or in the Alternative for Summary Judgment, I described certain policies and procedures in my declaration filed on November 17, 2010, that cannot be publicly disclosed because the United States can neither confirm nor deny an individual's status in any terrorist database, nor reveal the criteria for placing an individual's name in such a database. The information would also reveal certain law enforcement and security procedures related to when U.S. persons are prohibited from boarding flights when located abroad. These policies and procedures also involve sensitive and classified national security information that are subject to a claim of law enforcement privilege.
3. (U) I submit this second declaration to formally assert and support a claim of law enforcement investigatory privilege over those paragraphs in my declaration previously filed on November 17, 2010, that described policies and procedures relating to the process for including an individual's name in any terrorist database, the non-disclosure of a person's status in any terrorist database, and how the government responds to U.S. persons prohibited from boarding flights when located abroad. The previously filed

declaration, which is available for the Court's *ex parte, in camera* review, describes in more detail, at a level too sensitive to discuss on a public record, the information over which I am asserting the law enforcement privilege.¹

4. (U) Pursuant to a December 11, 1998, delegation by then-FBI Director Louis J. Freeh, I am authorized to assert the law enforcement privilege over this information.

LAW ENFORCEMENT PRIVILEGE

5. (U) The law enforcement investigatory privilege is based on the harm to law enforcement efforts which might arise from public disclosure of investigatory files. Shielding such information from disclosure is designed to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.

TYPES OF INFORMATION REDACTED FROM MY NOVEMBER 17, 2010 DECLARATION

6. (U) Three types of information were redacted from my November 17, 2010 declaration pursuant to the law enforcement privilege; they include:
 - (U) Information related to refinements to the No Fly and Selectee Criteria (including those that were made after the attempted bombing of Northwest Flight 253 on December 25, 2009 (Redacted from Paragraph 14);
 - (U) Information related to the size of the Terrorist Screening Database, the No Fly List, and the number of U.S. persons on the No Fly List (Redacted from paragraph 18); and,
 - (U) Information related to the process TSC follows when it is advised that a U.S. person (a citizen or lawful permanent resident) has been denied boarding on a flight from

¹ (U) A more detailed description of the Terrorist Screening Database (TSDB) can be found in my previous declaration filed on November 17, 2010.

overseas bound for a destination in the United States or traversing through U.S. airspace (Redacted from Paragraphs 38-42).

REFINEMENTS TO NO FLY AND SELECTEE LISTS CRITERIA

7. (U) The criteria for the No Fly and Selectee Lists are discussed in paragraphs 15-18. The criteria themselves are marked as Sensitive Security Information (“SSI”). Paragraph 14 contains information about the refinements that have been made to the No Fly and Selectee Criteria since its inception and after the attempted bombing of Northwest Flight 253 on December 25, 2009. The redacted information from footnote 6 lists the representatives of the intelligence, law enforcement and screening communities who participated in the specific revisions implemented to counter the specific terrorist threat observed on December 25, 2009.
8. (U) Disclosure of the recent refinements to the No Fly and Selectee criteria used to place individuals on these watchlists would compromise critical law enforcement and national security interests. It would harm the government’s ability to prescreen passengers for maximum aviation safety because disclosure would provide terrorists and their associates with the precise standards used to restrict an individual’s ability to board planes. Armed with such knowledge, terrorists would be able to gauge the particular focus of the government’s counterterrorism efforts and adjust their tactics accordingly to circumvent these measures. They would redeploy individuals who are not within the scope of the refined focus of the No Fly and Selectee Lists so that they have a greater chance of ensuring that one of their operatives is able to board a flight bound for U.S. destinations or set to transit through U.S. airspace.

SIZE OF THE TSDB AND NO FLY LIST

9. (U) Disclosing the exact numbers of the persons listed within the TSDB, as well as which of how many are exported to the No Fly List, could also reveal sensitive intelligence and/or law enforcement information. Knowing the exact size of the list could enable terrorists and their associates to gauge if they are on the No Fly List or not. This is particularly true with respect to U.S. persons, since they make up a relatively small part of the No Fly List. If exact numbers were disclosed, terrorists could manipulate the system to discover which of their associates were not included on any watch list and, thus, have escaped the attention of law enforcement and intelligence officers. Such knowledge would also allow terrorists to alter their recruiting efforts to focus on those persons who would be more likely to escape screening and security procedures, giving those members a greater chance of avoiding detection by law enforcement and intelligence officers while preparing a terrorist operation. Such a disclosure could compromise ongoing counterterrorism investigations by giving members of terrorist groups the opportunity to gauge whether someone in particular is the subject of an FBI national security investigation, causing them to alter his or her behavior, take new precautions against surveillance and change the level of any terrorism-related activity in which he or she is engaged.

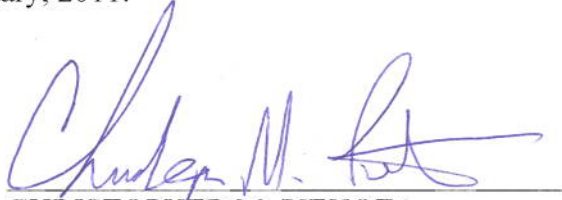
PROCESS FOR U.S. PERSONS PROHIBITED FROM BOARDING FLIGHTS WHEN LOCATED ABROAD

10. (U) Paragraphs 38 through 42 detail the policies and operational procedures used for U.S. persons prohibited from boarding flights when located abroad. The process is a government undertaking designed to balance travel difficulties encountered by U.S. persons abroad and aviation security. Disclosure of these law enforcement and security procedures would reveal sensitive intelligence and/or law enforcement information. The details associated with the operational procedures in Paragraphs 38 through 42 include the factors TSC considers when it is notified that such a denial of boarding has occurred. In such circumstances, TSC considers information related to national security and ongoing law enforcement investigations, as well as factors related to aviation security.
11. (U) Release of the operational procedures as well as the law enforcement and security information contained in Paragraphs 38 through 42 may frustrate the purposes of the process by which the U.S. government seeks to balance the right of a U.S. Person to enter the United States with aviation and national security. Disclosure would harm these efforts, as terrorists or their associates would be able to discern details regarding the manner in which the U.S. accommodates the return to this country of citizens and lawful permanent residents located overseas and would chill the government's continued use of these procedures.

For the reasons stated above, on behalf of the FBI's TSC, I assert the law enforcement privilege against disclosure of those paragraphs designated Law Enforcement Sensitive ("LES") within my declaration previously filed on November 17, 2010.

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of January, 2011.



CHRISTOPHER M. PIEHOTA
Deputy Director for Operations
Terrorist Screening Center