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STUART F. DELERY
Principal Deputy Assistant Attorney General
Civil Division

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

AMY POWELL
amy.powell@usdoj.gov

LILY FAREL
lily.farel@usdoj.gov

SCOTT RISNER
scott.risner@usdoj.gov

Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W
Washington, D.C. 20001
Phone: (202) 514-2395
Fax: (202) 616-8470
Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

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

I, Cindy A. Coppola, hereby declare the following:

1. (U) I am the Acting Deputy Director for Operations of the Terrorist Screening Center (“TSC”) and the current Unit Chief for the Nominations and Data Integrity Unit. I became a Unit Chief at TSC in July 2011. I have been a Special Agent with the Federal Bureau of Investigation (“FBI”) since 1997 and have served in a variety of criminal investigative, counterterrorism, and senior management positions.
2. (U) Each paragraph in this declaration is marked with letters indicating the level of classification applicable to that paragraph. Paragraphs marked with a “U” are unclassified. Paragraphs designated “U//LES” are to be considered “Unclassified//Law Enforcement Sensitive”. Paragraphs designated “U//LES//SSI” are to be considered “Unclassified//Law Enforcement Sensitive//Sensitive Security Information”. Paragraphs designated “U//SSI” are to be considered “Unclassified//Sensitive Security Information”.
3. (U) The TSC is a multi-agency center that was created by the Attorney General pursuant to Homeland Security Presidential Directive (“HSPD”)-6 on September 16, 2003. The TSC is administered by the FBI and receives support from, *inter alia*, the Department of Homeland Security (“DHS”), the Department of State (“DOS”), the Department of Justice, and the Office of the Director of National Intelligence. TSC is staffed by

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officials from multiple agencies, including FBI, DHS, DOS, Transportation Security Administration (“TSA”) and U.S. Customs and Border Protection (“CBP”).

4. (U) I make this declaration in support of the government’s motion for summary judgment. The matters stated herein are based on my personal knowledge and my review and consideration of information available to me in my official capacity, including information furnished by TSC personnel, including FBI Special Agents, TSA Federal Air Marshals, and other government agency employees or contract employees in the course of their official duties.

OVERVIEW OF U.S. TERRORIST WATCHLISTS

5. (U) Since the attacks of September 11, 2001, Congress and the President have mandated that federal executive departments and agencies share terrorism information with those in the counterterrorism community that are responsible for protecting the homeland, such as CBP officers conducting inspections at U.S. ports of entry, TSA personnel implementing the No Fly, and domestic law enforcement officers.
6. (U) Prior to the creation of TSC in 2003, nine U.S. Government agencies maintained twelve different watch lists intended to accomplish a variety of purposes.¹ One of these lists, the No Fly List, was originally maintained by the TSA, which was formerly within the Department of Transportation and is now part of DHS.

¹ (U) See, Government Accountability Office, *Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322, April 2003.

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7. (U) The Terrorist Screening Database (“TSDB”) was created pursuant to HSPD-6 and is the U.S. Government’s consolidated terrorist watchlist that is maintained by TSC. The TSDB is a sensitive but unclassified system that is updated continuously to ensure its accuracy. It contains no underlying derogatory intelligence information. Instead, the TSDB contains only sensitive but unclassified terrorist identity information consisting of biographic identifying information (*i.e.*, name, date of birth, place of birth). The TSDB also contains limited biometric information, when available, such as photographs, iris scans, and fingerprints. The terrorist identity information contained in the TSDB is deemed For Official Use Only (“FOUO”) so that government screening and law enforcement officers, such as CBP officers at ports of entry and state and local law enforcement, can use the identifying information from the TSDB even though they may not possess Secret or Top Secret security clearances. The information, however, is also considered to be Law Enforcement Sensitive (“LES”) and Sensitive Security Information (“SSI”) because it is derived from classified national security and unclassified but sensitive law enforcement information.²
8. (U) Generally, nominations to the TSDB are based on whether there is reasonable suspicion to believe that a person is a known or suspected terrorist. To meet this standard, the nominator, based on the totality of the circumstances, must rely upon

² (U) Because TSA screens commercial aircraft passengers using information from the TSDB and subset lists, it is my understanding that TSA has, pursuant to its statutory authority, designated an individual’s watchlisting status as SSI, which is information, the disclosure of which, TSA has determined would “[b]e detrimental to security or transportation.” 49 C.F.R. § 1520.5(a).

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“articulable” intelligence or information which, taken together with rational inferences from those facts, reasonably warrants a determination that an individual is known or suspected to be or have been knowingly engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or terrorist activities. There must be an objective factual basis for the nominator to believe that the individual is a known or suspected terrorist. Mere guesses or “hunches,” or the reporting of suspicious activity alone are not enough to constitute a reasonable suspicion and are not sufficient bases to watchlist an individual. Additionally, nominations must not be based solely on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities, such as free speech, the exercise of religion, freedom of the press, freedom of peaceful assembly, and petitioning the government for redress of grievances.

9. (U) TSC and the TSDB are supported by a 24 hours a day/7 days a week/365 days a year operations center that is continuously updated with information concerning encounters with known³ or suspected⁴ terrorists.
10. (U) TSC receives sensitive but unclassified terrorist identity information for inclusion in the TSDB from two sources: (1) the National Counterterrorism Center (NCTC), which provides information about known or suspected international terrorists; and, (2) the FBI,

³ (U) A known terrorist is an individual who has been convicted of a crime of terrorism in a U.S. or foreign court of competent jurisdiction, or been charged with or indicted for a crime of terrorism in a U.S. or foreign court of competent jurisdiction.

⁴ (U) A suspected terrorist is an individual who is reasonably suspected to be, or have been, engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities based on an articulable and reasonable suspicion.

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which provides information about known or suspected domestic terrorists. The unclassified terrorist identity information is derived from classified intelligence or derogatory information that supports a finding that the individual is a known or suspected terrorist. If the individual is being nominated for the No Fly List, additional derogatory information must exist demonstrating that the individual meets the requisite criteria for inclusion on one of that particular list.

11. (U) Pursuant to Section 1021 of the Intelligence Reform and Terrorism Prevention Act of 2004, the NCTC serves as the primary organization in the U.S. Government for analyzing and integrating all intelligence possessed or acquired by the U.S. Government pertaining to terrorism and counterterrorism, excepting purely domestic counterterrorism information.⁵ NCTC also ensures that appropriate agencies have access to and receive intelligence needed to accomplish their assigned missions and serves as the central and shared knowledge bank on known and suspected international terrorists and terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.
12. (U) TSC, through the TSDB, makes terrorist identity information accessible to various screening and law enforcement agencies and entities by the regular export of updated subsets of TSDB data. For example, the No Fly List is a subset of TSDB information

⁵ (U) Because of the codification of NCTC in the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, Executive Order 13354, which originally created NCTC, was revoked by amendments to Executive Order 12333 in July 2008.

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that is used for a variety of national security purposes, including airline passenger and employee screening.

13. (U) The No Fly List, which is a subset of the TSDB, is defined as a list of individuals who are prohibited from boarding an aircraft.

14. (U) The No Fly List is treated as Sensitive Security Information (SSI), as is the watchlist status of an individual. *See*, 49 CFR 1520.5(b)(9)(ii).

NO FLY LIST CRITERIA

15. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶ (U//LES) [REDACTED]

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16. (U//LES//SSI) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ (U) Defined in 18 U.S.C. § 2331(5)(C) as “within the territorial jurisdiction of the United States.”

⁸ (U//LES//SSI) [REDACTED]

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17. (U//LES//SSI) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. (U//LES//SSI) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

HOW NAMES ARE ADDED TO and REMOVED FROM the TSDB and NO FLY LIST

19. (U) Names are added to and removed from the TSDB and No Fly List through an ongoing nomination and review process. Files from NCTC containing nominations to the TSDB are uploaded to the TSC. These files contain the nominee's identifying

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information, as well as the underlying information in support of the nomination. FBI case agents also submit nominations to the TSDB by completing the relevant forms and providing a summary of the underlying information that demonstrates that a person meets the standards for inclusion in the database. TSC refers to all of this underlying information as “derogatory information.”

20. (U) TSC personnel then review each nomination to determine (a) whether the biographic information associated with a nomination contains sufficient identifying data so that a person being screened or vetted can be matched to or distinguished from a watchlisted terrorist on the TSDB; and (b) whether the nomination is supported by the minimum substantive derogatory criteria for inclusion in the TSDB, with limited exceptions, as well as the additional derogatory requirements for the No Fly List, where appropriate. TSA employees assigned to and stationed at the TSC serve as subject matter experts regarding those individuals nominated to the No Fly List.
21. (U) Upon conclusion of the TSC’s review, TSC personnel will either accept or reject the TSDB nomination. If a nomination is accepted, the TSC will create a TSDB record, which includes only the “terrorist identifiers” (i.e., name, date of birth). It is during this review that the TSC also verifies whether the nomination meets the specific criteria for the No Fly List, if applicable.
22. (U) As previously stated, because the TSDB is a sensitive but unclassified system, it does not contain substantive derogatory information or classified national security information,

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to allow government screening or law enforcement officers, such as CBP officers at ports of entry and state and local law enforcement, to use the identifying information from the TSDB even though they may not possess Secret or Top Secret security clearances.

23. (U) To uphold the directive in HSPD-6 to maintain “thorough, accurate and current” information within the TSDB, several quality control measures are continuously applied by nominating agencies, the TSC, and NCTC. These measures include periodic reviews and audits to guarantee the integrity of the information relied upon for maintenance of TSDB records, and an ongoing responsibility upon the nominating agencies to notify NCTC or TSC of any changes that could affect the validity or reliability of that information. TSC reviews are particularly frequent and thorough for the small fraction of TSDB records concerning U.S. Persons.
24. (U) In those cases where modification or deletion of a record relating to international terrorism is required, the nominating agency must promptly notify NCTC, which will process the request and transmit it to the TSC for action. For nominations relating to domestic terrorism, the FBI must follow applicable FBI procedures to request that a FBI-nominated TSDB record be modified or deleted.
25. (U) Most of the derogatory information relied on by nominating agencies consists of operational facts derived from underlying international counterterrorism investigations or intelligence collection methods, which are generally classified to protect intelligence sources and methods. When separated from the classified means by which they were

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obtained, the terrorist identity information stored in the TSDB is deemed sensitive but unclassified for terrorist watchlisting, screening, and law enforcement purposes. This allows government officials to access TSDB data for screening and law enforcement purposes without compromising an investigation or intelligence collection methods.

26. (U) Because the contents of the TSDB are derived from classified and sensitive law enforcement and intelligence information, the U.S. Government does not confirm or deny whether an individual is watchlisted (*i.e.*, in the TSDB or on one of the subset lists, such as the No Fly List). Disclosure of an individual's watchlist status may reveal, as a general matter, that an individual is of counterterrorism investigative interest to the U.S. Government, which would harm national security.

**HARMS TO NATIONAL SECURITY RESULTING FROM DISCLOSING
AN INDIVIDUAL'S INCLUSION OR NON-INCLUSION ON A WATCHLIST**

27. (U) Disclosing TSDB status and revealing the U.S. Government's investigative interest in an individual would harm national security by allowing that individual, and/or members of a group that he or she is associated with, to take new precautions against surveillance (such as altering his or her appearance or obtaining new identification) and change the level of any terrorism related activity in which he or she or other members are engaged. That in turn could render law enforcement and intelligence officers unable to gather further intelligence on his or her activities or determine his or her whereabouts, making it easier for the subject to devise a new scheme and resurface to commit a

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terrorist act. In the past, ongoing national security investigations have been harmed when a known or suspected terrorist has learned that he or she is included in the TSDB and/or is the subject of a national security investigation. Release of this information has compromised ongoing surveillance efforts to gather information about the individual and has also resulted in FBI agents, whose identities had become known to the suspect, being placed in personal danger.

28. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. (U) Also of specific concern is that the individual and/or terrorist group could be able to identify a specific means by which the U.S. Government gathered information about them, thereby endangering classified or law enforcement sensitive sources and methods.

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These sources and methods include undercover operations, and confidential human sources, in which case the risk to undercover employees and confidential human sources may increase.

30. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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32. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. (U) By the same token, the U.S. Government does not confirm that someone is not included in the TSDB, because it tends to deny whether he or she is or ever was the subject of a counterterrorism investigation or an intelligence gathering effort. Confirmation of non-inclusion would substantially harm law enforcement investigative and intelligence gathering interests because such knowledge would serve to encourage the commission of an act of terrorism and lead someone intent on committing an act of terrorism to move without detection or fear of detection. Knowing which members of a terrorist group have escaped the attention of law enforcement and intelligence investigations will permit such groups to manipulate the system, to move about without detection or fear of detection, and even provide an incentive for them to prepare for and commit an act of terrorism before coming to the attention of government authorities.

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34. (U) Furthermore, to confirm that someone is not in the TSDB would imply that the Government's silence regarding another person is confirmation of the other person's inclusion in the TSDB.
35. (U) To the extent that an individual's watchlist status is alleged to have been disclosed by airline employees, airport screeners, or other government personnel, that still does not justify displacing the non-disclosure policy, and in no way diminishes the risks of such a course.
36. (U) Law enforcement and the Intelligence Community benefit from the ambiguity of the policy of the U.S. Government of neither confirming nor denying an individual's watchlist status. Watchlisted individuals, although suspicious about their status at the time they are denied boarding, or are required to undergo secondary security screening, do not know the specific reasons for these circumstances. Persons in the TSDB are generally the subject of, or implicated by, ongoing law enforcement or intelligence-gathering investigations. Confirming an individual's watchlist status may therefore also confirm the existence of an on-going counterterrorism investigation that implicates the individual. Such confirmation could also jeopardize the sources and methods utilized in conducting a counterterrorism investigation because the individuals would have a strong sense of how they had come to the attention of law enforcement authorities.
37. (U) Neither confirming nor denying that a person is in the TSDB protects the nature, source and methods of intelligence gathered during a counterterrorism investigation.

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Publicly revealing inclusion or non-inclusion could harm national security, because an individual or associated terrorist group could use a person's disclosed TSDB status to their advantage by allowing the individual to avoid future detection, destroy evidence, coerce witnesses, change plans from what is known by law enforcement or intelligence agencies, or recruit new members who are unknown to the government. Releasing an individual's status could also enable that person or an associated terrorist group to manipulate or circumvent enhanced airline screening or border inspection procedures, thus increasing their ability to commit an act of terrorism.

38. (U) Any effort to draw distinctions between disclosures that would and would not cause harm to intelligence or law enforcement interests would itself reveal sensitive intelligence and/or law enforcement information. For this reason, the information at issue – whether someone is or is not in the TSDB – must be treated uniformly because to answer the query negatively or positively would set a dangerous precedent whereby future requesters could determine whether their names were included on a watchlist simply by filing a civil lawsuit.

39. (U) Ultimately, the nondisclosure of the contents of the TSDB protects the operational counterterrorism and intelligence collection objectives of the federal government, as well as the personal safety of those involved in counterterrorism investigations. The TSDB remains an effective tool in the government's counterterrorism efforts in part because its contents are not disclosed.

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**HARMS TO NATIONAL SECURITY RESULTING FROM DISCLOSURE OF
INFORMATION UNDERLYING AN INDIVIDUAL'S INCLUSION IN THE TSDB**

40. (U) For reasons similar to those listed above, the government does not reveal the basis for an individual's inclusion in the TSDB. Nominations to the TSDB (and the No Fly List) are typically based on classified information, including information obtained from confidential sources, various types of surveillance, and/or other extremely sensitive sources and methods. Moreover, the underlying information may involve an ongoing national security investigation.

41. (U) I have read the Third Amended Complaint in this action, which asks that the Court order Defendants to "provide Plaintiffs with a legal mechanism that affords them notice of the reasons and bases for their placement on the No Fly List and a meaningful opportunity to contest their continued inclusion on the No Fly List." Third Amended Complaint at p. 29. Over and above the harms from overturning the Government's policy regarding disclosure of watchlist status, imposing an obligation to disclose information supporting nominations to the No Fly List would risk severely compromising the investigative efforts, for the reasons noted above. Such information is classified, extremely sensitive, and shared only on a "need to know" basis within the Government. It often reflects information gained from specific sources and methods which are not generally known to the public and are not known to the individual who is being investigated.

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42. (U) Moreover, overturning the Government's policy of non-disclosure would result in release of this sensitive information to individuals on the No Fly List, individuals that are reasonably suspected to be terrorists. Such disclosures could eliminate any secrecy or operational advantages that the Government has in its investigations.
43. (U) Even to link the name of the subject of a classified counterterrorism investigation to that investigation is to reveal information that is, itself, classified and/or law enforcement sensitive.
44. (U) For all the above-discussed reasons, I have concluded that the disclosure of any individual's inclusion or non-inclusion in federal terrorism screening or law enforcement databases or "watchlists," as well as, where and/or if applicable, the disclosure of information underlying any such inclusion, reasonably could be expected to cause serious harm to the national security of the United States.

REDRESS PROCESS

45. (U) The DHS Traveler Redress Inquiry Program (DHS TRIP) provides the public with a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced at airports or other ports of entry. Information concerning DHS TRIP is available at <http://www.dhs.gov/dhs-trip>. This program acts as a mechanism for travelers who have experienced difficulties while traveling, such as delayed or denied airline boarding, denied or delayed entry into or exit from the United

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States at ports of entry, or being repeatedly identified for additional screening by TSA or inspection by CBP at ports of entry.

46. (U) Since there are many reasons why a traveler may seek redress, DHS TRIP works with DHS component agencies, such as CBP and U.S. Immigration and Customs Enforcement (“ICE”), and other government agencies, including the Department of State and the TSC, as appropriate, to make an accurate and thorough determination about the traveler’s redress matter.
47. (U) TSC supports DHS TRIP by helping to resolve complaints that appear to be related to data in the TSDB. This interagency redress process is described in the *Memorandum of Understanding on Terrorist Watchlist Redress Procedures*⁹, which was executed on September 19, 2007, by the Secretaries of State, Treasury, Defense and Homeland Security, the Attorney General, the Director of the FBI, the Director of NCTC, the Director of the Central Intelligence Agency, the Director of National Intelligence, and the Director of the TSC.
48. (U) Even though approximately 99% of the individuals who file DHS TRIP complaints are not in the TSDB, when a traveler’s inquiry may appear to concern data in the TSDB, the matter is referred to the TSC Redress Unit, which assigns the matter to a TSC redress analyst for research.¹⁰ Upon receipt of a DHS TRIP complaint, the TSC Redress Unit

⁹ (U) A copy is attached hereto.

¹⁰ (U) TSC does not accept redress inquiries directly from the public, nor does it respond directly to redress inquiries.

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reviews the available information, including the information and documentation provided by the traveler, and determines (1) whether the traveler is an exact match to an identity in the TSDB; and, if an exact match exists, (2) whether the identity should continue to be in the TSDB or whether the status should be changed (for example, removed from the TSDB or changed from the No Fly List to the Selectee List).

49. (U) In cases where the traveler is an exact match to an identity in the TSDB, the TSC Redress Unit will provide copies of the complaint form and other relevant information to the nominating agency to assist in the resolution of the complaint. The TSC Redress Unit will then work with the agency that originally nominated the individual to be included in the TSDB to determine whether the complainant's current status in the TSDB is suitable based on the most current, accurate, and thorough information available. The TSC Redress Unit may ask the nominating agency to provide updated information or analysis, as well as for recommendations on addressing the DHS TRIP complaint.
50. (U) After reviewing the available information and considering any recommendation from the nominating agency, the TSC Redress Unit will make a determination on whether the record should remain in the TSDB, or have his or her TSDB status modified or removed, unless the legal authority to make such a determination resides, in whole or in part, with another government agency. In such cases, TSC will only prepare a recommendation for the decision-making agency and will implement any determination once made. When changes to a record's status are warranted, TSC will ensure such corrections are made,

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since TSC remains the final arbiter of whether terrorist identifiers are removed from the TSDB. TSC will also verify that such modifications or removals carry over to the various screening and law enforcement systems that receive TSDB data (e.g., the No Fly List).

51. (U) After the TSC Redress Unit completes its review of the matter, DHS TRIP is notified of the recommendation so DHS TRIP may send an appropriate determination letter to the traveler. The determination letter provides as much information to the traveler as possible without disclosing the traveler's status in the TSDB or other law enforcement databases, or whether there is other government agency interest in the individual that may be considered law enforcement sensitive. The letter does not reveal the person's status because that could alert an individual, or any terrorist group the individual is associated with, to the fact that he or she is of investigative interest to the FBI or other members of the Intelligence Community.

52. (U//SSI) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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

Executed this 13th day of February 2013, in Virginia.



CINDY A. COPPOLA
Acting Deputy Director for Operations
Terrorist Screening Center