

EXHIBIT

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

JEFFREY SEARLS, in his official capacity
as Acting Assistant Field Office Director and
Administrator, Buffalo Federal Detention
Center,

Respondent.

DECLARATION OF CECILIA O. BESSEE

I, Cecilia O. Bessee, hereby state and declare as follows:

1. I am the Section Chief of the Litigation Section (LS), Litigation Branch in the Federal Bureau of Investigation's (FBI), Office of the General Counsel (OGC), at FBI Headquarters in Washington, D.C. I have been a member of the FBI's Senior Executive Service since 2017 when I was promoted to this position. Within the Litigation Branch, I have previously served as the Acting Deputy General Counsel, for approximately three years. Prior to that, I was selected as the Unit Chief of Civil Litigation Unit I, and I have also held a position in the Employment Law Unit.
2. The statements contained in this declaration are based upon my personal knowledge, my review and consideration of information available to me in my official capacity, and on information obtained from other FBI employees.
3. This declaration is submitted in support of Respondent's Motion to Adjourn the Evidentiary Hearing in the captioned matter.

4. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19. On March 11, 2020, the World Health Organization publicly characterized COVID-19 as a pandemic.¹ On March 13, 2020, the President declared a National Emergency in an effort to address the spread of COVID-19.² Further, on March 16, 2020, the President announced new guidelines to slow the spread of the virus, to include avoiding groups of more than 10 people and closing schools in many communities.³ This guidance follows recommendations by the Centers for Disease Control (CDC) to engage in social distancing,⁴

5. The United States Office of Personnel Management (OPM) has been issuing guidance to address how the Federal Government can implement measures to protect its workforce and the American public. Specifically, on March 7, 2020, OPM recommended the "incorporation of telework and 'social distancing' in COOP [Continuity of Operations] and emergency planning [to] allow the Federal Government to continue functioning efficiently and effectively, while ensuring the health and safety of employees."⁵ Further, on March 15, 2020, the Acting Director of the Office of Management and Budget (OMB) issued guidance to Federal agencies in the

¹ Centers for Disease Control and Prevention. "Coronavirus Disease 2019 (COVID-19): Situation Summary." www.cdc.gov, accessed March 13, 2020.

² See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed Mar. 17, 2020).

³ See The President's Coronavirus Guidelines for America, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last accessed March 17, 2020).

⁴ See, e.g., Centers for Disease Control "Interim Guidance for Businesses and Employers" <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last accessed March 17, 2020).

⁵ United States Office of Personnel Management Memorandum "Coronavirus Disease 2019 (COVID-19); Additional Guidance" (March 7, 2020), <https://www.chcoc.gov/content/coronavirus-disease-2019-covid-19-additional-guidance> (last accessed March 17, 2020). See also United States Office of Personnel Management Memorandum "Updated Guidance on Telework Flexibilities in Response to Coronavirus" (March 12, 2020), <https://www.chcoc.gov/sites/default/files/M-20-13.pdf> (last accessed March 17, 2020).

National Capital Region (NCR) to implement maximum telework flexibilities. OMB's guidance asked agencies "to offer maximum telework flexibilities to all current telework eligible employees, consistent with operational needs of the departments and agencies as determined by their heads."⁶

6. Moreover on March 17, 2020, the Executive Office of the President, Office of Management and Budget, issued guidance to agency heads to aggressively slow the spread of COVID-19 by directing, among other things, "...[T]he Government must immediately adjust operations and services to minimize face-to-face interactions...." "Exceptions may be needed when continued operations and services are necessary to protect public health and safety, including law enforcement and criminal-justice functions. Non-mission-critical⁷ functions that cannot be performed remotely or that require in-person interactions may be postponed or significantly curtailed."⁸

7. The FBI is implementing these guidelines to protect its employees and their communities, and to ensure that it can continue to protect the American people during this national emergency.

8. Those employees designated as non-mission critical and non-telework capable due to the nature of their duties, work location, or technology, may be approved for what OPM/OMB refer to as "weather and safety leave (administrative leave)."

⁶ Memorandum from the Acting Director of The Office of Management and Budget to the Heads of Departments and Agencies "Updated Guidance for National Capital Region on Telework Flexibilities in Response to Coronavirus" (March 15, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M20-15-Telework-Guidance-OMB.pdf> (last accessed March 30, 2020).

⁷ A mission-critical position is one whose functions absolutely cannot be put on hold.

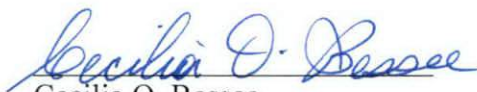
⁸ Memorandum from the Acting Director of Office of Management and Budget to the Heads of Department and Agencies titled Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19" (March 17, 2020). <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf> (last accessed March 30, 2020).

9. In this action, Petitioner has filed a motion to compel that seeks, among other things, FBI documents containing classified information. The FBI has asserted the law enforcement privilege, and the protections of the National Security Act of 1947, over this classified information. The government is also considering the possibility of asserting the state secrets privilege over this classified information, which would only need to be invoked were the court to compel the production of this information.

10. Pertinent to the foregoing, the classified materials involved in this case may be handled only on systems approved for the secure handling of national security information. FBI employees may not take such materials outside of FBI facilities, such as to personal residences.

Nevertheless, the FBI employees responsible for reviewing and working on litigation-related tasks concerning the classified information in this case have been urged to telework from their homes in response to directives regarding social distancing. Thus, in order to review and perform litigation-related work on classified materials in this case, including work relating to a possible assertion of the state secrets privilege, the relevant FBI employees need to travel to and work in FBI space despite state and federal public health officials' pleas to limit interaction with the public. This creates health and safety risks for these employees and those with whom they may interact at work.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of March 2020.


Cecilia O. Bessee
Section Chief
Litigation Section
Office of the General Counsel
Federal Bureau of Investigation