

EXHIBIT

A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

_____)	
ADHAM AMIN HASSOUN,)	
)	
Petitioner,)	
)	
v.)	Case No.1:19-cv-00370 EAW
)	
JEFFREY SEARLES, in his official)	
Capacity as Acting Assistant Field Office)	
Director and Administrator of the Buffalo)	
Federal Detention Facility,)	
)	
Respondent.)	
_____)	

PUBLIC DECLARATION OF BRIAN T. GILHOOLY,
FEDERAL BUREAU OF INVESTIGATION

I, Brian T. Gilhooly, hereby state and declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Assistant Director of the Counterterrorism Division, Operations Branch I, Federal Bureau of Investigation (“FBI”), United States Department of Justice. As the Deputy Assistant Director of the FBI’s Counterterrorism Division (“CTD”), I am responsible for, among other things, overseeing, guiding, and directing the conduct of FBI counterterrorism investigations. As Deputy Assistant Director, I have official supervision and control over the files and records of CTD, Operations Branch I, FBI, Washington, D.C.

2. In my capacity as Deputy Assistant Director of CTD, I have been delegated original classification authority by the Attorney General of the United States. *See* Executive Order 13526, Section 1.3(c). As a result, and pursuant to all applicable Executive Orders, I am responsible for the protection of classified information within CTD, including the sources,

methods, and techniques used by the FBI in collection of information. Thus, I have been authorized, pursuant to the responsibilities and obligations as defined in Executive Orders and through the delegation from the Attorney General, to execute declarations and affidavits in order to protect such classified information.

3. In my capacity as Deputy Assistant Director, I also have been delegated authority by the Director of the FBI to assert the law enforcement privilege where, for example, disclosure of information could cause harm to an investigation or investigative interest of the FBI, could impair the effectiveness of an investigative technique, method, or procedure of the FBI, or could tend to reveal a confidential source of information. As Deputy Assistant Director, I also am authorized to assert the attorney work product privilege and the deliberative process privilege.

4. The matters stated herein are based on my personal knowledge, on my review of documents, and on information furnished to me in the course of my official duties by employees of the FBI and DOJ, and my conclusions have been reached in accordance therewith.

5. This declaration is submitted in support of the Respondent's redactions and in opposition to the Petitioner's Motion to Compel in the above-referenced matter. The declaration also addresses the law enforcement privilege. I have submitted a public redacted version of this declaration in support of the assertion of the law enforcement privilege. I will also submit a classified *in camera, ex parte* declaration, in support of the assertion of the law enforcement privilege. In this public declaration, I describe as best as I am able to do in unclassified terms, the information subject to Petitioner's motion and the reasons why its disclosure reasonably could be expected to cause significant harm to national security and the FBI's law enforcement mission.

6. Law enforcement privileged information includes information that could reasonably be expected to risk circumvention of the law and to cause harm to a law enforcement or national security investigation, as disclosure of this information would provide significant insight into the internal workings of such investigations, including the methods and techniques, the subjects and sources, and the way in which such law enforcement privileged information is received, vetted, and disseminated among law enforcement agencies, including foreign government and law enforcement partners.

7. Through the exercise of my official duties, I am also familiar with the types of information that supports the FBI's decision-making respecting counterterrorism investigations.

BACKGROUND

8. In the course of my official duties, I am familiar with the issues presented in the case and have been personally briefed. I am aware that in or about August 2007, Petitioner was convicted in the Southern District of Florida for Conspiracy to Murder, Maim, or Kidnap Persons in a Foreign Country (18 U.S.C. § 956(A)(1); Conspiracy to Provide Material Support to Terrorists (18 U.S.C. § 374); and Providing Material Support to Terrorists (18 USC § 2339A). On January 22, 2008, Hassoun was sentenced to 188 months of confinement. He completed this sentence in or about October 2017.

9. I am advised that in May 2018, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, contending that he was being unlawfully held by Respondent. I understand that on or about January 2, 2019, the Honorable Frank P. Geraci, Chief Judge for the United States District Court for the Western District of New York, issued a Decision and Order that Petitioner be released on or about March 1, 2019. I also understand that on or about February 22, 2019, Respondent filed a notice informing Judge Geraci that he intended to

continue to detain Petitioner beyond March 1, 2019, pursuant to 8 C.F.R. § 241.14. I understand that on March 15, 2019, Petitioner filed the instant writ of habeas corpus and that on August 9, 2019, then-Acting Secretary of Homeland Security Kevin K. McAleenan (“Secretary McAleenan”) certified Petitioner’s continued detention under 8 C.F.R. § 241.14(d). Secretary McAleenan further certified Petitioner’s continued detention under 8 U.S.C. § 1226a(a) as an alien engaged in terrorist activity and engaged in an activity that endangers the national security of the United States.

10. I also understand that on December 13, 2019, the Court issued a Decision and Order that Petitioner’s continued detention is not lawfully authorized by 8 C.F.R. § 241.14(d) and that development of the record is necessary regarding whether 8 U.S.C. § 1226a(a)(6) lawfully authorizes Petitioner’s ongoing detention.

11. I am aware that this matter is proceeding in discovery and that Petitioner has served document requests on Respondent; including requests for any and all documents in the FBI’s possession, custody, or control that it relied upon to develop the recommendations in Director Wray’s letter dated February 21, 2019.

12. I understand that Respondent’s written responses to the Petitioner’s document requests included the assertion of objections and privileges supporting the nondisclosure of certain FBI documents and information that are both classified and law enforcement sensitive. I also understand that the aforementioned documents have been entered into a privilege log in this case and have been designated as “IV” for Investigatory Files and “IN” for Informant.¹ I also am

¹ (U) It is my understanding that specific assertions of the Informant privilege have been subsequently lifted by the Department of Homeland Security, the holder of the privilege in this matter. The classified and law enforcement information at issue in this litigation does not include reporting from any sources handled or operated by the FBI.

aware that Petitioner has filed responses to Respondent's filings and challenge the assertion of these privileges.

13. I am advised that in response to Petitioner's document requests, the FBI, the U.S. Attorney's Office, and other components of the DOJ have extensively reviewed more than 1,000 pages of documents, and prepared the documents for production, including making redactions based on the law enforcement privilege, as well as other privileges. For purposes of this declaration, I have reviewed the law enforcement privileged information contained in a sampling of those documents.

14. As the official charged with general supervisory responsibilities for the FBI's counterterrorism investigations, I have concluded that unauthorized disclosure of certain classified and sensitive law enforcement privileged information described herein could reasonably be expected to cause significant harm to law enforcement interests.

15. The matters stated herein are based on my personal knowledge, my background, training, and experience related to national security matters, my review and consideration of documents and information available to me in my official capacity, my judgment as Deputy Assistant Director, and information furnished to me by employees of the FBI and DOJ. I have reached my conclusions in accordance therewith.

16. Specifically, this declaration addresses the serious harm to the national security interests and law enforcement interests of the United States that could reasonably be expected to result from the disclosure of the information that is the subject of Petitioner's Motion to Compel and the Respondent's Reply.

17. In particular, the FBI's assertion of the law enforcement privilege encompasses the following categories of information implicated by Plaintiffs' motion to compel: (A) the identity

of subjects of national security investigations; (B) reasons for the national security investigations and results of the investigations; (C) sensitive sources and methods used in national security investigations; and (D) foreign government information and information sharing and cooperation with foreign partners. In addition, the FBI asserts the protections of the National Security Act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 3024(i)(1) (the “National Security Act”) over classified information implicating these categories.

SCOPE OF PRIVILEGE ASSERTED

18. I submit the present declaration to assert and in support of a claim of law enforcement investigatory privilege and the protections of the National Security Act over law enforcement sensitive information found in documents listed on the FBI privilege log that I understand to be responsive to Petitioner’s discovery request.

19. In the following sections of this declaration, I address the harms that would result from the disclosure of the FBI documents responsive to the Petitioner’s discovery requests, and which are described in the Respondent’s privilege log.

**NATIONAL SECURITY INVESTIGATIONS AND
CLASSIFIED CASE INFORMATION**

20. Protecting the United States from national security threats is the FBI’s top priority. The FBI is vested by law and Presidential directive with the primary role in the United States of investigating national security threats, including, but not limited to, counterterrorism and counterintelligence operations, and to collect foreign intelligence. Pursuant to Executive Order 12333, as amended, the FBI coordinates the Government’s collection of foreign intelligence through human sources and counterintelligence operations within the United States. The FBI is responsible for the integration of U.S. law enforcement and USIC efforts to deploy all available

means to identify, neutralize, and mitigate national security threats, consistent with U.S. law and Department of Justice policy. Executive Order 12333, Sec. 1.3(b)(20)(A).

21. National security investigations are based on, among other things, the existence of intelligence threats that are either country-based and/or issue-based. Specific investigative objectives will depend on the allegations and facts of each case. There are certain general objectives that should be considered in national security investigations. For instance, identifying potential vulnerabilities, targets, compromised information, or at-risk information must be done with as much speed and specificity as are possible during an investigation. It is critical to ascertain the circumstances and details of any known, suspected, or alleged threats to national security, *e.g.*, who is a threat, to whom, where, when, why, and how, and to fully identify the subjects and potential targets involved. It is also important to ascertain the intention and motivation of the persons responsible for any threats or compromises. Acquiring an understanding of the significance of the information and the impact of its threat and compromise is inherent to a national security investigation. Thus, the amount and type of information collected during the course of a national security investigation can be quite vast and sensitive.

22. The President of the United States, through the authority vested in him by the Constitution and the laws of the United States, has prescribed procedures governing access to classified information. Specifically, through Executive Orders issued by the President, a uniform system of classifying, safeguarding, and declassifying national security information has been created. *See* Executive Order No. 13526 (formerly Executive Order No. 12958, 60 Fed. Reg. 19825 (April 17, 1995), as amended by Executive Order No. 13292, 68 Fed. Reg. 15315 (Mar. 25, 2003); *see also* Executive Order 12968, 60 Fed. Reg. 40,245 (Aug. 2, 1995) (establishing a

uniform Federal personnel security program for employees who will be considered for access to classified information)).

23. Among the categories of classified information included in Executive Order 13526 are: foreign government information (Section 1.4(b)); intelligence activities, sources, and methods (Section 1.4(c)); and foreign relations and activities of the U.S., including confidential sources (Section 1.4(d)). Additionally, Section 4.1(a) requires that persons given access to classified information have a security clearance, sign a nondisclosure agreement and have a need-to-know the information. Section 5.5 provides for sanctions against Government employees who knowingly, willfully, or negligently disclose classified information in violation of the Executive Order.

24. As addressed below, certain information in this case remains properly classified at this time at the “SECRET” level in the interests of national security. Pursuant to Executive Order 13526, Section 1.2(a)(2), the “SECRET” classification “shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.” As indicated above, based on my knowledge of the information involved in this case, and in accordance with the national security interest in protecting classified information and as an original classification authority, I have determined that the classified information that the Government seeks to protect in this case should remain classified at the “SECRET” level and may not be produced to any person not meeting the requirements established in Executive Order 13526 Section 4.1(a), including the need to know requirement described above. Thus, I have concluded that the unauthorized disclosure of the information addressed herein, which the Government seeks to protect, could reasonably be expected to cause serious damage to the national security of the United States.

**INFORMATION SUBJECT TO THE LAW ENFORCEMENT PRIVILEGE
AND THE HARM TO NATIONAL SECURITY FROM DISCLOSURE**

25. Counterterrorism and other national security investigations undertaken by the FBI have a law enforcement purpose, and disclosure of information regarding the identity of subjects of those investigations, the reasons for and results of those investigations, the sources and methods used in those investigations, information regarding cooperation and information sharing with foreign partners, or information received confidentially from foreign partners, would seriously undermine those investigations and the ability of the FBI to effectively carry out other investigations which rely upon the confidentiality of such information, source and methods, and foreign partner information sharing and cooperation.

26. In addition to the classified case information contained in FBI documents responsive to the Petitioner's discovery requests, there is unclassified case information that should be protected under the law enforcement privilege. In unclassified and unprivileged terms, this information includes information revealing the FBI's investigative interest in certain individuals, specific law enforcement methods and techniques used in the FBI's national security investigations, specific information obtained, or gaps in information, relating to the investigations, the FBI's opinions and conclusions about certain witnesses and evidence gathered in the investigations, personal information which if revealed would discourage cooperation, and information which would indirectly tend to reveal confidential cooperation from a foreign government.

27. Examples of the information withheld on law enforcement privilege grounds include portions of interview reports that reflect witnesses were asked questions regarding third parties that had not been previously disclosed as of investigatory interest to the FBI. Disclosure of the identity of these individuals would result in many of the same harms as disclosing the identity of subjects of investigations. *See* DEF-00009400, 9402, 9417, 9494-95, and 9498.

28. The FBI's assertion of the law enforcement privilege also extends to agents' assessments of witness physical demeanor and credibility. FBI agents are trained to take note of the interactions and reactions of individuals that they interview. Based on the interviewee's physical reactions to the agents' questions, the agents may investigate certain statements more than others. Release of this type of information would disclose what FBI agents deemed to be important with respect to a particular interview, could alert a witness that the FBI had concerns regarding the witness's credibility, and could inform the witness or others of the mannerisms agents notice during interviews. *See* DEF-00009516-17, 9519-20.

29. The FBI has asserted the law enforcement privilege over references to the utilization of specific law enforcement databases in specific situations and the results of searches in those databases. While the existence of the systems in question is public knowledge, the FBI's use of those systems to obtain information regarding specific individuals or facts is law enforcement sensitive, as it would reveal the importance the FBI placed in obtaining or verifying certain types of information and when the FBI employs particular methods in conducting its investigations. Moreover, the results of those searches reveal the extent of the FBI's knowledge, and perhaps gaps in its knowledge, regarding certain individuals. *See* DEF-0009275, 9430.

30. The FBI has withheld certain personal information that was provided by witnesses during voluntary interviews. The FBI depends upon the willingness of members of the public to speak candidly with agents. Although the FBI cannot guarantee witnesses' complete confidentiality, the FBI does make every attempt to safeguard personal information shared by members of the public so as not to erode public trust or discourage that individual or others from speaking with the FBI in the future. In this case, the FBI has withheld a limited amount of information on this basis, including personal identifying information for certain third party witnesses (such as

USCIS A-File numbers, driver's license numbers, social security numbers, or phone numbers), personal information regarding members of various witnesses' families, and the identity of a third party minor. *See* DEF-00009356, 9399, 9408, 9415, 9494-9495, 9501, 9516-17, and 9519-20.

31. The FBI also has withheld markings identifying the basis for the classification of documents and the date upon which classification is set to expire because disclosure of those markings would tend to indicate the nature of the investigation to which the document relates. *See* DEF-00009275-76, 9317-18, 9355-70, 9399-16, 9417-29, 9435-61, 9467-92, 9494-97, 9499-15, 9518, and 9521-23.

32. The FBI withheld lead information in Electronic Communications ("ECs"), as disclosure would reveal the importance the FBI placed on certain information, and the steps taken, or not taken, to follow up on that information. *See* DEF-00009360, 9362, 9634-65, 9409, 9413, 9415, and 9149.

**CATEGORIES OF NATIONAL SECURITY INFORMATION
COVERED BY LAW ENFORCEMENT PRIVILEGE**

33. The assertion of the law enforcement privilege covers certain national security information within the following four general categories: subject identification; reasons for investigation and results; sources and methods; and foreign government information and/or information pertaining to information sharing and cooperation with foreign partners.

SUBJECT IDENTIFICATION

34. The first category of information encompassed by the law enforcement privilege is information which would indicate that a particular individual or entity is or was the subject of a national security investigation, unless the identity of the subject has been made public or has been declassified under proper authority. *See* DEF-00009371-9398, 9400, 9402-03, 9437-41,

9522–23, 10927-35 and 10936-41. In unclassified terms, this category includes information that could tend to confirm or deny whether a particular individual or entity is, was, or was not the subject of an FBI national security investigation. This type of information may include the name of an individual or entity, and reporting on an individual or entity which indicates they are or were the subject of an investigation. Protection of this information is critical to the FBI's national security efforts, and disclosure reasonably could be expected to cause significant harm to the national security.

35. Disclosure that particular individuals or entities are the subjects of open national security investigations obviously would alert the subjects to the fact of the FBI's current interest in them. Such knowledge would cause significant harm to FBI national security investigations, as subjects could reasonably be expected to destroy evidence, attempt to influence witnesses, or take steps to alter their conduct so as to avoid detection of their activities. In these circumstances, disclosure of the fact that they are subjects could significantly hinder the FBI in gathering further intelligence on their activities or determining their whereabouts. In addition, knowledge that they are under investigation might enable subjects to anticipate the activities of the FBI. Such knowledge would also alert associates of the subjects to the fact that the FBI may be aware of their associations with the subjects, causing them to take similar steps to avoid scrutiny. Disclosure could also enable subjects to ascertain the identities of confidential informants ("CIs") or other sources of intelligence, putting those sources at risk.

36. Similarly, even where an investigation has been closed, disclosing that an individual or entity formerly was the subject of a classified national security investigation reasonably could be expected to cause significant harm to national security. Disclosure that an individual or entity has been, but is no longer, under investigation might induce that subject to evaluate previous

conduct and interactions to determine what information the Government might have obtained about them. To the extent that the former subject's terrorism-related intentions were not previously detected and the individual or entity later decided to undertake terrorist activity, their knowledge that they were no longer the subject of investigative interest might embolden that person or entity to operate or take action, confident that there is no threat of detection. In addition, the fact that investigations are closed typically does not indicate that subjects have been "cleared" of wrongdoing. The FBI frequently reopens closed cases based on new information.

REASONS FOR INVESTIGATION AND RESULTS

37. The second category of information encompassed by the law enforcement privilege is information that could tend to reveal the predicate for an FBI national security investigation regarding a particular person or entity, information obtained during the course of such an investigation, and the status and results of the investigation. *See* DEF-00009361-9365, 9371-9398, 9400, 9402-03, 9437-41, 9476, 9522-23, 10927-35 and 10936-41. This would include information (if any) the FBI obtained from the U.S. Intelligence Community (USIC) related to the reasons for any investigation, and information regarding subjects of investigation that could tend to reveal the predicate for, information obtained in, or results of a national security investigation. Disclosure of such information reasonably could be expected to cause significant harm to national security.

38. In unclassified terms, disclosure of this information would reveal a range of sensitive national security investigative information. Obviously, disclosure of this information would reveal what the FBI knows or does not know and what the FBI deems important to a national security investigation. Disclosure of such information would alert current and future subjects to those activities which are likely to arouse suspicion and result in the opening of an investigation,

thus providing valuable insight to those intent on terrorism and other criminal activity on how to avoid detection. Disclosure of such information may also alert subjects and others of the sources of that information, thus revealing sensitive sources and methods including the existence of CIs reporting on that subject.

SOURCES AND METHODS

39. The third category of information encompassed by the law enforcement privilege is information which would reveal sensitive sources and methods used in a national security investigation. *See* DEF-00009275–76, 9359–65, 9371–98, 9400, 9402-9403, 9409, 9413, 9415, 9417, 9419, 9437–41, 9443, 9498, 9522–23, 10927-35 and 10936-41. This category includes information that could tend to reveal particular sources, methods, techniques, or classified policies and procedures, used by the FBI in national security investigations with respect to specific individuals and entities. This would include information related to court-ordered searches or surveillance, confidential informants (“CIs”), and other investigative or operational sources and methods the FBI may use in a national security investigation regarding a particular person, the reasons such sources and methods were used, the status of the use of such sources and methods, and results derived from such sources and methods.

40. The disclosure of information in this category reasonably could be expected to cause significant harm to national security. Protecting FBI sources and methods for investigating or countering potential national security threats is of the utmost significance because the FBI’s top priorities are to protect the United States from terrorist attacks and foreign counterintelligence operations. The disclosure of sources and methods would assist adversaries by revealing how the FBI performs these vital tasks. It would allow adversaries to exploit this information to deploy countermeasures or escape detection, thereby interfering with the FBI’s mission.

Disclosure of sensitive sources and methods also would risk compromising the use of those sources and methods in the future, and potentially risk harm to specific individuals, including CIs.

FOREIGN GOVERNMENT INFORMATION AND INFORMATION PERTAINING TO INFORMATION SHARING AND COOPERATION WITH FOREIGN PARTNERS

41. The last category of information encompassed by the law enforcement privilege is information received from a foreign government with the understanding that it and/or the nature of the FBI's information sharing and cooperation with foreign partners in a national security investigation will remain confidential, or information reflecting assistance supplied to the United States by a foreign government. *See* DEF-00009371-98.

42. In unclassified terms, disclosure of classified information reflecting assistance supplied to the United States by foreign government counterparts in connection with national security investigations reasonably could be expected to cause significant harm to national security. The FBI's ability to carry out its responsibilities to conduct national security investigations and collect foreign intelligence often depends on the cooperation of foreign government officials, foreign intelligence services, or foreign security services. Through a series of international agreements, memoranda of understanding, Mutual Legal Assistance Treaties, letters rogatory, and other voluntary and compulsory agreements, as well as professional relationships between the U.S. Government and foreign governments, the FBI receives and retains law enforcement and intelligence information from participating countries which the FBI uses in the course of its investigations.

43. Maintaining the confidentiality of foreign government information is critical to sustaining ongoing, productive cooperation with friendly foreign nations in the field of counterterrorism.

The release of official government documents that reveal the nature of the confidential assistance

provided to the FBI would compromise established confidentiality agreements, and thereby reasonably could be expected to strain relations between the United States and the foreign government(s). That release also could have a chilling effect on the free flow of vital information to U.S. intelligence and law enforcement agencies. In addition, disclosure of a country's cooperation with the FBI could reasonably be expected to cause significant harm to national security because it would enable terrorists to avoid or employ countermeasures in countries that share information with the United States.

**INFORMATION PROTECTED FROM DISCLOSURE
BY THE NATIONAL SECURITY ACT**

44. In addition, the FBI asserts the protections of Section 102A(i)(1) of the National Security Act, which provides that the Director of National Intelligence (the "DNI") "shall protect from unauthorized disclosure intelligence sources and methods." The FBI has been delegated authority by the DNI to assert the protections of the National Security Act.

45. I am advised that as interpreted by courts, the phrase "intelligence sources and methods" in the National Security Act encompasses classified information within the aforementioned categories of information for which the law enforcement privilege is asserted. I have concluded that the discussion herein concerning the reasons for the assertion of law enforcement privilege applies equally to the FBI's assertion of the protections of the National Security Act with respect to the classified information being sought by Petitioner. The FBI therefore asserts the protection of the National Security Act over all classified information for which the law enforcement privilege is asserted.

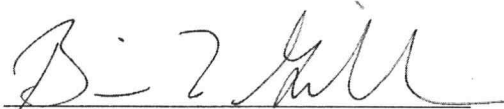
CONCLUSION

46. Accordingly, based upon my personal consideration of the matter, I have concluded that disclosure of the national security information described herein as subject to the law enforcement

privilege reasonably could be expected to cause significant harm to the national security. I have also concluded that this information is protected from disclosure under the National Security Act and that disclosure of this information, as well as certain unclassified information, could reasonably be expected to cause significant harm to the FBI's ability to effectively carry out its law enforcement mission. As such, I assert the law enforcement privilege and the protections of the National Security Act over the withheld information, as discussed more fully in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 6th, 2020



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