

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN
CALIFORNIA,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE; FEDERAL
BUREAU OF INVESTIGATION;
DEPARTMENT OF HOMELAND
SECURITY; U.S. CUSTOMS AND
BORDER PROTECTION; U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
DEPARTMENT OF STATE,

Defendants.

No. 19-cv-290-EMC

DECLARATION OF TERRI WHITE

1 I, TERRI WHITE, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury:

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3 1. I am the Acting Associate Center Director in the Freedom of Information
4 and Privacy Act (FOIA/PA) Unit, National Records Center (NRC), United States
5 Citizenship and Immigration Services (USCIS), within the United States
6 Department of Homeland Security (DHS), in Lee’s Summit, Missouri. I have held
7 the position of Acting Associate Center Director since January 1, 2021, and
8 previously served as the Chief of the Significant Interest Group since June 2019. I
9 am also an attorney, licensed to practice law by the State of Missouri in 2006. Prior
10 to joining DHS in 2019, I served as an attorney with the United States Bureau of
11 Prisons (BOP) under the United States Department of Justice (DOJ) for almost
12 seven years. As part of my duties with the BOP, among other things, I provided
13 legal advice to the agency on the release of information sought under the FOIA.
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15 2. As Acting FOIA Officer for USCIS, I supervise over 200 information
16 access professionals who are responsible for the orderly processing of all public,
17 congressional, judicial, and inter-/intra-agency requests or demands for access to

18 USCIS records and information pursuant to the FOIA, Privacy Act, Executive
19 Orders, departmental directives, regulations and compulsory legal process.

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3. Through the exercise of my official duties as Associate Center Director, I am familiar with USCIS's standard process for responding to FOIA requests, including search procedures for locating agency records. More specifically, I am familiar with USCIS's procedures and actions taken in response to the FOIA request at issue and the records responsive to the request, including the remaining responsive records at issue in this litigation and the redactions applied to those pages.

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4. I make this declaration in further support of the Department of Homeland Security's motion for summary judgment with respect to USCIS and in opposition to Plaintiffs' cross-motion for summary judgment, in order to clarify certain points in my original declaration and accompanying Vaughn index, and to address USCIS's reprocessing of certain records following Plaintiffs' filing of their cross-motion, including changes to some withholdings. The statements contained in this supplemental declaration are based on my review of relevant documents kept by USCIS in the course of ordinary business, and upon information provided to me by other USCIS employees in the course of my official duties.

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USCIS Properly Withheld Deliberative Process Privileged Information Pursuant to Exemption (b)(5)

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5. Pages 1267-1278: Exemption (b)(5) was previously used to withhold deliberative process privileged information in pages 1275-1278, which is part of a document that details Guidance for Use of Social Media in Field Operations Directorate Adjudication. After further review, the agency is no longer invoking Exemption (b)(5), but will continue to withhold portions of this document under (b)(7)(E), which is explained below.

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6. Pages 2344-2353: Exemption (b)(5) was previously used to withhold deliberative process privileged information in pages 2351-2353, which is part of a document written by USCIS's Refugee Affairs Division, "Guidance for Use of Social Media in Syrian Refugee Adjudications," dated September 25, 2018. After further review, the agency is removing Exemption (b)(5), but will continue to withhold portions of this document under (b)(7)(E), which is explained below.

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7. Page 1571: The information withheld under (b)(5) includes deliberative process privileged information related to a request for legal guidance regarding USCIS's authority to collect and use social media information, specifically in relation to First Amendment-protected activities. The emails are between USCIS OCC attorneys and include a summary of the legal issues and draft responses,

61 which represents part of the deliberative and pre-decisional process. While the
62 email contains a sentence indicating that this draft version had been “cleared,” the
63 subject indicates that it’s a draft, and that it had only been cleared by one
64 individual, and would be sent to another official, specifically, the Division Chief
65 for the National Security and Benefits Integrity Division of the USCIS Office of
66 Policy and Strategy, for her review and revision prior to sending to USCIS
67 leadership for review. The email discusses three options being considered as part
68 of the methods for collecting publicly available information and how the First
69 Amendment may or may not restrict those options.
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71 8. Pages 2258-2269: Exemption (b)(5) was previously used to withhold
72 deliberative process privileged information on pages 2260-2269 within Privacy
73 Threshold Analysis (PTA), version number 01-2014, “S&T Social A2356Media
74 Tool Pilot Evaluation.” After further review, the agency is no longer invoking
75 Exemption (b)(5), but will continue to withhold portions of this document under
76 (b)(7)(E), which is explained below.
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78 9. Pages 1711-1712: The information withheld under (b)(5) includes
79 deliberative process privileged information related to questions USCIS received
80 regarding DHS’s potential procurement of social media services as part of the
81 Enhanced Vetting initiative. The emails are between USCIS OCC attorneys and
82 Fraud Detection and National Security (FDNS) employees, all of whom are part
83 of USCIS’s Social Media Working Group. Upon further review of these
84 documents, USCIS has determined that additional portions can be segregated and
85 released. The remaining withheld information includes questions posed by FDNS
86 employees related to upcoming decisions that the working group was considering,
87 a statement regarding a specific technology request that ICE made for use as part
88 of DHS’s vetting and enforcement screening, and the employees’ thoughts about
89 pending process decisions.
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91 **USCIS Properly Withheld Attorney-Client Privileged**
92 **Information Pursuant to Exemption (b)(5)**
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94 10. Pages 1475-1477: This “Summary Paper” was drafted by Department of
95 Justice (DOJ) attorneys at the request of the request of their client, DHS. The
96 recipients of the email are all employees of DHS and its components, and the
97 document has not been shared outside of the government. The information
98 withheld under (b)(5) as attorney-client privileged information consists of legal
99 opinions and analysis regarding impediments to proposed expanded immigration
100 vetting of aliens in the United States. DOJ prepared this document for DHS as a
101 client, including its component USCIS, for the purpose of providing legal
102 guidance regarding potential risks that may be implicated when requesting social

103 media information on certain DHS forms. The document does not contain policy
104 advice.

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106 11. Page 1571: The information withheld under (b)(5) includes attorney-client
107 privileged information related to a request for legal guidance regarding USCIS's
108 authority to collect and use social media information, specifically in relation to First
109 Amendment protected activities. The guidance in the email focuses on specific
110 legal questions related to restrictions that would apply to expanding the
111 government's vetting of aliens in the United States, which related to three options
112 being considered as part of methods for collecting publicly available information.
113 The emails are between USCIS OCC attorneys and include a summary of the legal
114 issues and draft responses. While the email contains a sentence indicating that this
115 draft version had been "cleared," it had only been cleared by one individual, and
116 would be sent to another individual for her review and revision prior to sending to
117 USCIS leadership for review. The email sender and recipients include USCIS
118 Office of Chief Counsel attorneys, and the email was not distributed outside DHS.

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USCIS Properly Withheld Information Pursuant to Exemption (b)(7)(E)

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12. The information withheld under Exemption (b)(7)(E) in this case relates to the adjudication of applications for immigration benefits. The records at issue contain sensitive internal information about the vetting process used to protect national security, public safety, or to combat immigration fraud. Specifically, the records at issue in this case relate to DHS's and USCIS's operational use of social media and the development of DHS Delegation 15002, which authorizes USCIS to conduct law enforcement activities including but not limited to accessing internet and publicly available social media content using a fictitious account or identity. This process and the documentation related to it focuses on USCIS's anti-fraud and screening programs, and the agency's information sharing and collaboration activities with law enforcement and intelligence communities. As such, these records have been compiled for the enforcement of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

13. Page 221: Exemption (b)(7)(E) was used to redact portions of an email sent between USCIS OCC attorneys and USCIS employees related to the review of a draft Social Media memorandum regarding social media screening as part of adjudicating pending K-1 visa adjustments. The information at issue, if disclosed, would reveal the specific application types that may be subject to social media screening, specific guidance regarding what actions to take in certain cases, and the name and location of the specific USCIS office that conducts social media vetting procedures. The release of this information would put individuals on notice as to the fact that their application had been identified as needing additional screening if they know that this particular office is handling their application, resulting in the

146 individual potentially concealing certain information or deleting information on
147 social media accounts to avoid vetting. Disclosure of the information at issue thus
148 could impact the effectiveness of screening and vetting procedures used for the
149 enforcement of certain immigration and national security laws and directives, and
150 could render the guidelines for additional screening measures relevant to national
151 security, public safety, and fraud prevention useless.

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153 14. Pages 1954-1955: Exemption (b)(7)(E) was previously used to redact
154 portions of a memorandum from DHS Secretary Johnson to Component Heads,
155 "Social Media Use," dated February 11, 2016. After further review, the agency is
156 removing all redactions and has released these pages in full.

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158 15. Pages 2031-2032: Exemption (b)(7)(E) was previously used to withhold
159 information within a memorandum from USCIS Director to FDNS and RAIIO,
160 "Fraud Detection and National Security Use of Social Media." After further review,
161 the agency is removing all redactions and has released these pages in full.

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163 16. Pages 1267-1278 and 2344-2353: The information withheld under (b)(7)(E)
164 consists of nonpublic methods for conducting vetting and screening of certain cases
165 with a national security or public safety concern, and the particular factor(s) present
166 in a given case that triggers a national security or public safety concern, and with
167 it, additional vetting processes. This includes detailed techniques that are part of
168 the FDNS Controlled Application Review and Resolution Program (CARRP)
169 process, which is used to adjudicate applications and petitions with possible
170 national security concerns. Further, this information encompasses guidelines that
171 detail FDNS's vetting procedures as well as the areas of concern that officers should
172 be screening for, and the specific questions that can be used by immigration officers
173 to question applicants to verify social media results as part of social media vetting.
174 Public knowledge of how and when questions are asked could enable aliens to
175 conceal or misrepresent activities and associations or other information that would
176 pose a national security or public safety concern. Individuals who are aware of
177 USCIS's internal procedures for vetting cases with a national security or public
178 safety concern, and the particular factors that trigger a national security or public
179 safety concern and additional vetting processes, will have a strong incentive to
180 falsify or misrepresent information, such as encounters, activities, or associations
181 that he or she may have in order to avoid additional vetting. This could significantly
182 impact the effectiveness of screening and vetting procedures used for the
183 enforcement of certain immigration and national security laws and directives.

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185 17. Pages 277-288, 293-300, 301-318, 331-334, 335-338: Exemption (b)(7)(E)
186 was used to redact portions of these pages in order to protect information regarding
187 law enforcement techniques, procedures, and guidelines. All public information
188 within these documents, such as the names of contractors, contracting companies,

189 and the social media platforms screened, was segregated and released. The
190 information withheld consists of nonpublic methods for conducting vetting and
191 screening of certain cases with a national security or public safety concern, the
192 specific categories of cases and applicants that would be screened, the challenges
193 and limitations DHS has identified for remedial efforts to enhance its' processes,
194 the technology resources currently being used in the vetting process by law
195 enforcement and immigration officers, and specific factors that may trigger
196 additional vetting or screening. This information also reflects guidelines that, if
197 released, could risk circumvention of the law, because revealing the limitations of
198 DHS and USCIS's technology and the challenges the agency faces in using this
199 technology could lead to exploitation of those technical systems. Additionally,
200 public knowledge of which factors are looked at and which actions and information
201 may trigger concerns or additional vetting could enable aliens to conceal or
202 misrepresent activities and associations or other information that would pose a
203 national security or public safety concern. It could also cause individuals to avoid
204 filing certain benefit application types or to avoid revealing certain biographic
205 history, if individuals know that such information could lead to additional
206 screening. Thus, any such concealment or misrepresentation on the part of such
207 individuals would frustrate implementation and application of the law that was
208 enacted to deny benefits to, and bar the admission of, certain aliens into the United
209 States, and could significantly impact the effectiveness of screening and vetting
210 procedures used for the enforcement of certain immigration and national security
211 laws and directives.

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213 18. Pages 1119-1120: Exemption (b)(7)(E) was applied to information in a
214 spreadsheet that contains a report of social media screening, and the total number
215 of cases identified as matching accounts filtered by key words, languages, and other
216 search terms used to identify accounts that may contain information that indicates
217 possible fraud, public safety, or national security concerns. Previously, the redacted
218 information on page 1120 included a summary of the total accounts identified
219 during this particular search, as well as the total accounts that contained derogatory
220 information. This information has now been released. The remaining portions of
221 pages 1119-1120 that were withheld under (b)(7)(E) describe nonpublic details of
222 techniques and procedures used in the enforcement of certain immigration and
223 national security law and directives, including a list of key words, acronyms, and
224 filters used by immigration officers to search social media profiles of applicants
225 and the total number of profiles located using those terms. This information also
226 reflects guidelines that, if released, could risk circumvention of the law, because it
227 would put individuals on notice as to what information is considered as part of the
228 screening and vetting process and what terms are considered as important factors
229 by law enforcement during the vetting process.

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231 19. Pages 1541-1542: Exemption (b)(7)(E) was previously applied to withhold
232 these pages in full, which contain a draft Issue Paper (IP) related to USCIS
233 Screening and Vetting. After further review, the agency is removing the majority
234 of the redactions on page 1541 and is releasing page 1542 in full. The remaining
235 information withheld under (b)(7)(E) consists of nonpublic details of techniques
236 and procedures involved in the operational use of social media to conduct screening
237 for certain applicants, including detailed information about the technological
238 capabilities that USCIS is trying to acquire to conduct certain screening, and the
239 applicants that would be subject to this screening if technological enhancements are
240 acquired. This information, if disclosed, would reveal non-public details of the
241 methods currently being used in the vetting process by law enforcement and
242 immigration officers, the future enhancements the agency is considering, and the
243 types of applications that may be subject to screening for possible indicators of
244 fraud, public safety, or national security concerns. The release of this information
245 would also reveal guidelines, and risk circumvention of the law, because it would
246 put individuals on notice as to what information is considered as part of the
247 screening and vetting process and what types of applications are likely to be
248 considered for enhanced screening, causing them to avoid filing certain benefit
249 application types or to avoid revealing certain aspects of their biographic history in
250 order to evade additional screening.

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252 20. Pages 1878-1906: Exemption (b)(7)(E) was applied to portions of a
253 PowerPoint training presentation, "Protect the First Amendment in Social Media
254 Research," presented to FDNS by the Office for Civil Rights and Civil Liberties.
255 Information was previously withheld on pages 1886-1887 and 1890 that contained
256 general applications of the First Amendment to the agency's vetting process, and
257 after further review, this information has been released. The remaining information
258 redacted in this PowerPoint document consists of nonpublic details of methods for
259 conducting vetting and screening of certain cases with a national security or public
260 safety concern, the particular factors that trigger a national security or public safety
261 concern, and with it, additional vetting processes, detailed instructions regarding
262 what social media may or may not be searched for various immigration benefit
263 types, how the information collected may be used in the determination, specific
264 scenarios to illustrate whether information searches and collection may be
265 conducted in specific circumstances, descriptions of areas of concern that officers
266 should be screening for, and the specific questions that can be used by immigration
267 officers to question applicants to verify social media results as part of social media
268 vetting. The release of this information would also reveal guidelines that, if
269 disclosed, could risk circumvention of the law because public knowledge of how
270 and when questions are asked could enable individuals to conceal or misrepresent
271 activities and associations or other information that would pose a national security
272 or public safety concern. An individual who becomes aware of USCIS's internal
273 procedures for vetting cases with a national security or public safety concern, and

274 the particular factors that trigger a national security or public safety concern, and
275 with it, additional vetting processes, will have a strong incentive to falsify or
276 misrepresent information, such as encounters, activities, or associations that he or
277 she may have that pose a national security or public safety concern. Release of the
278 withheld information could also result in individuals hiding the use of certain social
279 media platforms when applying for certain benefit types since they know a search
280 will be conducted.

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282 21. Pages 1308-1321: After reviewing these pages, the agency has determined
283 to fully release pages 1311-1312, and 1315-1321, which were previously withheld
284 in full, as well as portions of previously withheld information on pages 1313-1314.
285 The remaining information withheld under (b)(7)(E) in this document, DHS
286 Operational Use of Social Media, Privacy Compliance memorandum, dated
287 January 25, includes nonpublic details of methods for conducting vetting and
288 screening of certain cases with a national security or public safety concern,
289 particular factors that trigger additional vetting processes, areas of concern that
290 officers should be screening for, and specific methods that should be used to
291 conduct vetting, including technological capabilities, such as how to access and use
292 DHS's databases to conduct social media screening. The release of this information
293 would also reveal guidelines that, if disclosed, could risk circumvention of the law
294 by putting individuals on notice as to what information is considered as part of the
295 screening and vetting process and what the limitations of access are and how to
296 exploit the capabilities used during screening, and could result in individuals hiding
297 the use of certain information on social media platforms or engaging in behavior to
298 avoid proper vetting, which would impact the effectiveness of screening and vetting
299 procedures used for the enforcement of certain immigration and national security
300 laws and directives.

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302 22. Pages 2258-2269: After reviewing these pages, the agency has determined
303 to fully release pages 2261-2262 and 2265-2269, which were previously withheld
304 in full, as well as portions of previously withheld information on pages 2260, and
305 2263-2264. The remaining information withheld under (b)(7)(E) in this document,
306 which is a copy of Privacy Threshold Analysis (PTA), version number 01-2014,
307 "S&T Social A2356Media Tool Pilot Evaluation," includes of nonpublic details of
308 methods for conducting vetting and screening of certain cases with a national
309 security or public safety concern, particular factors that trigger additional vetting
310 processes, descriptions of areas of concern that officers should be screening for,
311 and the specific questions that can be used by immigration officers to question
312 applicants to verify social media results as part of social media vetting. The release
313 of this information would also reveal guidelines that, if disclosed, could risk
314 circumvention of the law, because public knowledge of this information would
315 enable individuals to conceal or misrepresent activities and associations or other
316 information that would pose a national security or public safety concern. An

317 individual who becomes aware of USCIS's internal procedures for vetting cases
318 with a national security or public safety concern, and the particular factors that
319 trigger a national security or public safety concern, and with it, additional vetting
320 processes, will have a strong incentive to falsify or misrepresent information, such
321 as encounters, activities, or associations that he or she may have that pose a national
322 security or public safety concern. Release of the withheld information could also
323 result in individuals hiding the use of certain social media platforms when applying
324 for certain benefit types since they know a search will be conducted.

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326 23. During the preparation of this Supplemental Declaration, the FOIA office
327 reviewed the pages contested by Plaintiffs and undertook another segregability
328 analysis of the withheld information, and identified additional portions of
329 information within 78 of the contested pages that could be segregated and released.
330 Those pages have been released to Plaintiffs as a supplemental production. As a
331 result of this second segregability review, it was determined that all segregable non-
332 exempt information in the pages at issue has been released.

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334 I declare under the penalty of perjury that the foregoing is true and accurate to the
335 best of my knowledge and belief.

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337 Executed in Kansas City, Missouri, on this 20th day of May 2021.

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Terri White

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TERRI WHITE

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Acting Associate Center Director

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Freedom of Information Act & Privacy Act Unit

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USCIS National Records Center