UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

RABINAH IBRAHIM,

Plaintiff,

v.

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DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendant.

Civil Action No. CV-06-00545 WHA

DECLARATION OF JOSEPH C. SALVATOR

I, Joseph C. Salvator, hereby declare as follows:

- 1. I am the Deputy Assistant Administrator for Intelligence, Transportation Security Administration ("TSA"), United States Department of Homeland Security. I have held this position since April 2004. From April 2002 to April 2004, I served in various intelligence positions at TSA, including as Director of Intelligence Operations. Prior to joining TSA, I served as a Captain in the United States Marine Corp. As part of my official duties in my present position, I provide guidance and advice on all intelligence matters to the Assistant Administrator of Intelligence and the Administrator.
- 2. The statements made within this Declaration are based upon my personal knowledge, information made available to me in my official capacity, and conclusions reached in accordance with such information. I make this Declaration in support of the Federal Defendants' Motion to Dismiss Plaintiff's Claims for Lack of Subject Matter Jurisdiction.
- As part of the Aviation and Transportation Security Act ("ATSA"), Pub. L. 107 (November 19, 2001), Congress created the TSA as an agency within the United States
 Department of Transportation. Under ATSA, Congress charged the Under Secretary of
 Transportation for Security, as head of TSA, with responsibility for security in all modes of

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26 27 28 Federal Aviation Administration ("FAA") for civil aviation security under Chapter 449 of Title 49. By the enactment of the Homeland Security Act of 2002, Congress transferred TSA, and all of its functions and personnel, to DHS, effective March 1, 2003. Within DHS, the Under Secretary of Transportation for Security underwent a title change to Administrator of TSA, and now is also known as the Assistant Secretary of Homeland Security for TSA.

transportation, and assumed all responsibilities previously exercised by the Administrator of the

- As part of its statutory mandates with respect to aviation security, TSA is required 4. to provide for the screening of all passengers and property that will be carried aboard a passenger aircraft for weapons, explosives and other destructive substances. TSA also prescribes regulations to protect passengers and property on an aircraft against acts of criminal piracy or aircraft piracy. To further these purposes, TSA's implementing regulations require each aircraft operator to adopt a security program, which must be approved by the agency.
- 5. When TSA determines that additional security measures (over and above those provided for in the approved security program) are necessary to respond to a specific threat against civil aviation, or a threat assessment, it issues a Security Directive to regulated aircraft operators. 49 C.F.R.§ 1544.305(a). Similarly, in the case of a foreign air carrier, TSA may issue an "Emergency Amendment" to the carrier's security program when it finds that there is an emergency requiring immediate action with respect to security in air transportation or in air commerce. 49 C.F.R. § 1546.105(d). Compliance by air carriers with Security Directives and Emergency Amendments is mandatory. See 49 U.S.C. §§ 1544.305(a) and 1546.105(d).
- As mandated by ATSA, TSA has established procedures for notifying airline 6. security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism, or a threat to airline or passenger security. See 49 U.S.C. § 114(h)(2). If one of these individuals seeks to board an aircraft, the statute requires the airlines to notify appropriate law enforcement agencies, prevent the individual from boarding the aircraft, or take

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7. TSA has implemented these requirements by issuing a series of Security Directives to regulated aircraft operators and Emergency Amendments to foreign air carriers, which I refer to collectively below as Security Directives. These Security Directives direct air carriers to implement specific security procedures and to take specific security measures with respect to individuals who are identified on one of two TSA watch lists: the "No Fly List" and the "Selectee List." Individuals on the No Fly List are prohibited from flying altogether. Individuals on the Selectee List must undergo additional security screening prior to boarding an aircraft. Both lists are updated continually, and TSA requires that air carriers monitor them closely. From time to time, TSA revises the procedures prescribed by these Security Directives and issues new Security Directives that supersede those previously issued.

them further on the public record without undermining the effectiveness of the procedures required and directly compromising the security of the traveling public. Disclosure of the specific security procedures to be followed by air carriers when they encounter an individual identified on the No Fly List or Selectee List could enable terrorists and other violent criminals to identify potential weaknesses in the current security system, and to circumvent or otherwise defeat the security measures mandated by TSA. Public disclosure of the identity of individuals on the No Fly List or Selectee List would compromise the safety and security of passengers by providing terrorists with information that may reveal which of their members have been compromised, and which of their members may board an aircraft without any form of enhanced security. For these reasons, TSA's regulations expressly prohibit the disclosure of the contents of Security Directives and Emergency Amendments, 49 C.F.R. §§ 1520.5(b)(1), (b)(2); 1544.305(f)(2), and of the selection criteria to be used in screening airline passengers, 49 C.F.R. § 1520.5(b)(9)(i).

9. The No Fly List and Selectee List are maintained at the Terrorist Screening Center ("TSC"), which was created by the Attorney General in response to the Homeland Security Presidential Directive ("HSPD-6"), dated September 16, 2003. TSC is a multi-agency organization, which is funded and administratively managed by the Federal Bureau of Investigation ("FBI"), and is charged with consolidating the federal government's approach to terrorist screening and providing for the appropriate and lawful use of terrorist information in screening processes. To accomplish this purpose, TSC maintains the Terrorist Screening Database ("TSDB"), the consolidated federal government database of known and suspected terrorists. TSC exports data from the TSDB to other screening agency databases, including the No Fly and Selectee Lists.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct.

Dated on the day of May 2006.

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