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15 **UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 RAHINAH IBRAHIM,

No. 3:06-cv-0545 (WHA)

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18 Plaintiff,

**DEFENDANTS' ASSERTION OF THE
LAW ENFORCEMENT PRIVILEGE**

19
20 v.

21 DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

22
23 Defendants.

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25 Attached is a Declaration of Maureen Dugan, Customs and Border Protection ("CBP"),
26 invoking the law enforcement privilege for the information covered by her earlier Declaration in
27 this matter, as well as her anticipated testimony on December 6, 2013. The basis for the law
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1 enforcement sensitive nature of the information is established in the attached declaration. As
2 stated therein, Ms. Dugan is the Acting Executive Director, Office of Field Operations, National
3 Targeting Center (“NTC”). She is appearing in Court in this matter on December 6, 2013. She
4 is expected to testify regarding the travel of Ms. Mustafa Kamal on Dec 1-2, 2013. In order to
5 provide the information requested by the Court, Ms. Dugan’s testimony will likely explore
6 present day processes and procedures followed by the National Targeting Center – Passenger
7 (“NTC-P”) in vetting flights before they depart a foreign place for the United States.
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9 This information is appropriately protected from public disclosure by the law
10 enforcement privilege. The law enforcement privilege is designed “to prevent disclosure of law
11 enforcement techniques and procedures . . . and otherwise to prevent interference with an
12 investigation.” *Ibrahim v. DHS*, No. 6-545, 2009 WL 5069133, at *14 (N.D. Cal. Dec. 17, 2009)
13 (quoting *In re Dep’t of Investigation of City of N.Y.*, 856 F.2d 481, 484 (2d Cir. 1988)); *see also*
14 *Bowen v. FDA*, 925 F.2d 1225, 1229 (9th Cir. 1991) (protecting from disclosure information that,
15 if revealed, would “present a serious threat to future law enforcement . . . investigations”). The
16 privilege bars disclosure of facts and is “based primarily on the harm to law enforcement efforts
17 which might arise from public disclosure of . . . investigatory files.” *Black v. Sheraton Corp. of*
18 *Am.*, 564 F.2d 531, 541 (D.C. Cir. 1977). The privilege “may [also] be asserted to protect
19 testimony about or other disclosure of the contents of law enforcement investigatory files.” *In re*
20 *Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988).
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24 While the Defendants recognize that public access to trial materials is the norm,
25 maintaining the confidentiality of the procedures CBP follows in vetting international flights and
26 CBP's partnerships with domestic and foreign entities serves a broader public interest and
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1 thereby constitutes a sufficiently important countervailing interest that would justify protecting
2 Ms. Dugan's testimony from public disclosure.

3 December 5, 2013

Respectfully submitted,

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9 */s/ Paul G. Freeborne*
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