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# Transcript of Matthew J. DeSarno, Designated Representative

**Date:** April 9, 2018

**Case:** El Hady, et al. -v- Kable, et al.

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Conducted on April 9, 2018

<p style="text-align: center;">1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF VIRGINIA</p> <p>3 ALEXANDRIA DIVISION</p> <p>4 -----X</p> <p>5 ANAS ELHADY, ET AL., :</p> <p>6 Plaintiffs, : Case No.:</p> <p>7 v. : 16-CV-00375</p> <p>8 CHARLES H. KABLE, DIRECTOR OF :</p> <p>9 THE TERRORIST SCREENING CENTER; :</p> <p>10 IN HIS OFFICIAL CAPACITY, ET AL., :</p> <p>11 Defendants. :</p> <p>12 -----X</p> <p>13 Deposition of The Federal Bureau of Investigations</p> <p>14 by and through its representative,</p> <p>15 MATTHEW J. DESARNO</p> <p>16 Washington, D.C.</p> <p>17 Monday, April 9, 2018</p> <p>18 10:06 a.m.</p> <p>19</p> <p>20 Job No.: 184986</p> <p>21 Pages: 1-399</p> <p>22 Reported by: Matthew Goldstein, RPR</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFFS, ANAS ELHADY, ET</p> <p>3 AL.:</p> <p>4 GADEIR ABBAS, ESQUIRE</p> <p>5 LENA MASRI, ESQUIRE</p> <p>6 CAROLYN HOMAN, ESQUIRE</p> <p>7 COUNCIL ON AMERICAN-ISLAMIC RELATIONS</p> <p>8 453 New Jersey Avenue, S.E.</p> <p>9 Washington, D.C. 20003</p> <p>10 202.488.0833</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANTS, CHARLES H. KABLE,</p> <p>13 DIRECTOR OF THE TERRORIST SCREENING CENTER;</p> <p>14 IN HIS OFFICIAL CAPACITY, ET AL.:</p> <p>15 AMY E. POWELL, ESQUIRE</p> <p>16 U.S. DEPARTMENT OF JUSTICE CIVIL DIVISION</p> <p>17 20 Massachusetts Avenue, NW</p> <p>18 Washington, D.C. 20530</p> <p>19 202.514.9836</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: center;">2</p> <p>1 Deposition of MATTHEW J. DESARNO, held at:</p> <p>2</p> <p>3</p> <p>4 Department of Justice</p> <p>5 20 Massachusetts Avenue, NW</p> <p>6 Washington, D.C. 20001</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to Notice, before Matthew Goldstein,</p> <p>12 RPR, Notary Public in and for the District of</p> <p>13 Columbia.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: center;">4</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 ALSO PRESENT:</p> <p>3 JAYME KANTOR, ESQ -</p> <p>4 FEDERAL BUREAU OF INVESTIGATION</p> <p>5</p> <p>6 CIPORA KLIONSKY, ESQ -</p> <p>7 FEDERAL BUREAU OF INVESTIGATION</p> <p>8</p> <p>9 KEVIN BOGUCKI, ESQ -</p> <p>10 TERRORIST SCREENING CENTER</p> <p>11</p> <p>12 JENNIFER GREENBAND, ESQ -</p> <p>13 TRANSPORTATION SECURITY ADMINISTRATION</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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5	7
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
CONTENTS	PROCEEDINGS
EXAMINATION OF MATTHEW J. DESARNO	Whereupon,
By MR. ABBAS	MATTHEW J. DESARNO,
By MS. POWELL	being first duly sworn or affirmed to testify to
By MR. ABBAS	the truth, the whole truth, and nothing but the
By MS. POWELL	truth, was examined and testified as follows:
By MR. ABBAS	EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
By MS. POWELL	BY MR. ABBAS:
By MR. ABBAS	Q. Please state your full legal name for
By MS. POWELL	the record.
By MR. ABBAS	<b>A. Matthew J. DeSarno.</b>
By MS. POWELL	Q. Mr. DeSarno, why are you here today?
By MR. ABBAS	<b>A. I'm here for a deposition related to</b>
By MS. POWELL	<b>the -- testifying on behalf of the FBI related to</b>
By MR. ABBAS	<b>15 a watchlisting suit.</b>
By MS. POWELL	Q. You understand that your testimony today
By MR. ABBAS	is binding on the agency?
By MS. POWELL	<b>A. Yes.</b>
By MR. ABBAS	Q. What is the Watchlisting Advisory
By MS. POWELL	Council?
By MR. ABBAS	<b>A. The Watchlisting Advisory Council is an</b>
By MR. ABBAS	<b>advisory council made up of the member agencies</b>
By MS. POWELL	<b>involved in the U.S. government watchlisting</b>
By MR. ABBAS	<b>process. The advisory council meets I believe</b>
EXHIBITS	<b>quarterly to discuss gaps in the watchlisting</b>
(Attached)	<b>process, improvements to the watchlisting process,</b>
DESARNO DEPOSITION EXHIBIT	<b>and to provide recommendations to the Homeland</b>
Exhibit A Notice of 30(b)(6) Deposition of Defendant FBI	<b>Security Council as part of the NCS for proposed</b>
Exhibit B Overview of the U.S. Government's Watchlisting Process and Procedures	<b>7 modifications to watchlisting guidelines.</b>
	Q. Who created the Watchlisting Advisory
	Council?
	MS. POWELL: Objection; vague.
	MR. ABBAS: I withdraw my question.
	BY MR. ABBAS:
	Q. What is the FBI's role in the
	Watchlisting Advisory Council?
	<b>A. The FBI is one of the member agencies</b>
	<b>who sits on the Council. And we send a</b>
	<b>representative to the advisory council meetings.</b>
	Q. Are all representatives to the
	Watchlisting Advisory Council coequal?
	<b>A. Meaning do they all have equal vote; is</b>
	<b>that the question?</b>
	Q. That was not the question.

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9	<p>1 MR. ABBAS: Could you read back the</p> <p>2 question?</p> <p>3 (Record read.)</p> <p>4 MS. POWELL: Objection; vagueness.</p> <p>5 THE WITNESS: I don't understand</p> <p>6 coequal.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does the FBI have any special status on</p> <p>9 the Watchlisting Advisory Council?</p> <p>10 MS. POWELL: Objection; vague.</p> <p>11 You can answer, if you can.</p> <p>12 THE WITNESS: I'm not aware of any</p> <p>13 special status that the FBI has.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. The Watchlisting Advisory Council is</p> <p>16 comprised of representatives of various federal</p> <p>17 government agencies; correct?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. How many agencies send representatives</p> <p>20 to the Watchlisting Advisory Council?</p> <p>21 MS. POWELL: Objection; potentially</p> <p>22 implicates the law enforcement privilege.</p>	11
10	<p>1 I'm going to instruct the witness not to</p> <p>2 answer.</p> <p>3 MR. ABBAS: Just to be clear, the number</p> <p>4 of agencies involved with the Watchlisting</p> <p>5 Advisory Council is being withheld on the basis of</p> <p>6 what privilege?</p> <p>7 MS. POWELL: The law enforcement</p> <p>8 privilege.</p> <p>9 MR. ABBAS: How does the number of</p> <p>10 agencies involved in the Watchlisting Advisory</p> <p>11 Council imperil law enforcement investigative</p> <p>12 techniques?</p> <p>13 MS. POWELL: We've long said a</p> <p>14 comprehensive list of the nominators to the TSDB</p> <p>15 is law enforcement privileged. Since those</p> <p>16 nominators sit on the council, we can't give a</p> <p>17 complete number without effectively identifying</p> <p>18 them.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Are there more than ten agencies that</p> <p>21 send representatives to the Watchlisting Advisory</p> <p>22 Council?</p>	12
9	<p>1 MS. POWELL: Same objection.</p> <p>2 I'm going to instruct the witness not to</p> <p>3 answer.</p> <p>4 Q. Are there more than five agencies that</p> <p>5 send representatives to the Watchlisting Advisory</p> <p>6 Council?</p> <p>7 MS. POWELL: Hang on. I'm trying to</p> <p>8 think. We have identified some of them.</p> <p>9 I think you can answer that, yes. If</p> <p>10 you know the answer, you can answer it.</p> <p>11 THE WITNESS: I don't know if there are</p> <p>12 more than five.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Okay. Is the FBI a member of the</p> <p>15 Watchlisting Advisory Council?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Is the Terrorist Screening Center a</p> <p>18 member of the Watchlisting Advisory Council?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Is the TSA a member of the Watchlisting</p> <p>21 Advisory Council?</p> <p>22 <b>A. I believe so, yes.</b></p>	11
10	<p>1 Q. Is CBP a member of the Watchlisting</p> <p>2 Advisory Council?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Is NCTC a member of the Watchlisting</p> <p>5 Advisory Council?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Is the Department of State a member of</p> <p>8 the Watchlisting Advisory Council?</p> <p>9 MS. POWELL: Objection; potentially</p> <p>10 implicates the law enforcement privilege.</p> <p>11 I'm going to instruct the witness not to</p> <p>12 answer.</p> <p>13 MR. ABBAS: Which one did I just ask?</p> <p>14 State.</p> <p>15 Just so it's clear, what is the basis</p> <p>16 for withholding whether or not the Department of</p> <p>17 State is a member of the Watchlisting Advisory</p> <p>18 Council?</p> <p>19 MS. POWELL: The law enforcement</p> <p>20 privilege.</p> <p>21 MR. ABBAS: It imperils investigative</p> <p>22 techniques whether or not the Department of State</p>	12

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13

1 participates in the Watchlisting Advisory Council  
 2 because --  
 3 MS. POWELL: You're going to burn  
 4 through your time really fast if you spend it all  
 5 arguing with me.  
 6 MR. ABBAS: That's fine.  
 7 MS. POWELL: The objection is on the  
 8 record.  
 9 BY MR. ABBAS:  
 10 Q. Is USCIS a member of the Watchlisting  
 11 Advisory Council?  
 12 MS. POWELL: Objection.  
 13 I'm going to instruct the witness not to  
 14 answer on the basis of the law enforcement  
 15 privilege.  
 16 MR. ABBAS: Are there any other  
 17 privileges that you're invoking to withhold  
 18 whether or not USCIS is a member of the  
 19 Watchlisting Advisory Council other than the law  
 20 enforcement privilege?  
 21 MS. POWELL: Not at this time.  
 22 MR. ABBAS: Okay. Now is the time.

14

1 BY MR. ABBAS:  
 2 Q. Is DHS a member of the Watchlisting  
 3 Advisory Council?  
 4 MS. POWELL: You can answer, if you  
 5 know.  
 6 THE WITNESS: Yes.  
 7 BY MR. ABBAS:  
 8 Q. Is CIA a member of the Watchlisting  
 9 Advisory Council?  
 10 MS. POWELL: I'm going to instruct the  
 11 witness not to answer on the grounds of the law  
 12 enforcement privilege and potentially the state  
 13 secrets privilege.  
 14 Q. Is NCTC a member of the Watchlisting  
 15 Advisory Council?  
 16 **A. I already answered.**  
 17 MS. POWELL: Asked and answered.  
 18 THE WITNESS: I already answered to that  
 19 one. The answer remains yes.  
 20 BY MR. ABBAS:  
 21 Q. Great. Okay. Thank you.  
 22 Who created the Watchlisting Advisory

15

1 Council?  
 2 MS. POWELL: Objection; vague.  
 3 THE WITNESS: Who? Is who a person, is  
 4 who -- I don't understand.  
 5 BY MR. ABBAS:  
 6 Q. Was the Watchlisting Advisory  
 7 Council -- let's start there with a person. Was  
 8 the Watchlisting Advisory Council a human being's  
 9 idea?  
 10 MS. POWELL: Objection; vague. I don't  
 11 know what that means.  
 12 Q. That's fine.  
 13 I mean, did someone have an idea to  
 14 create a Watchlisting Advisory Council?  
 15 **A. I'm not aware of any particular person**  
 16 **coming up with that idea.**  
 17 Q. Did an agency come up with the idea of  
 18 creating a Watchlisting Advisory Council?  
 19 MS. POWELL: Objection; vague.  
 20 You can answer, if you know.  
 21 THE WITNESS: I mean, I don't know who  
 22 came up with the idea of creating it. I know that

16

1 it exists.  
 2 BY MR. ABBAS:  
 3 Q. Why does the Watchlisting Advisory  
 4 Council exist?  
 5 MS. POWELL: Objection; vague.  
 6 Q. That's like the basic question.  
 7 Why does the Watchlisting Advisory  
 8 Council exist?  
 9 MS. POWELL: Same objection.  
 10 Go ahead.  
 11 THE WITNESS: As I answered before, it  
 12 exists exactly as it's named, an advisory council  
 13 to the National Security Council to make  
 14 recommendations for improvements in or changes to  
 15 the U.S. government watchlisting process.  
 16 BY MR. ABBAS:  
 17 Q. Who controls the Watchlisting Advisory  
 18 Council?  
 19 MS. POWELL: Objection; vague.  
 20 THE WITNESS: I mean, as it's a council,  
 21 I'm not sure that it's controlled by any specific  
 22 person. The Watchlisting Advisory Council is an

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<p style="text-align: right;">17</p> <p>1 interagency group set up to advise the National  2 Security Council --  3 BY MR. ABBAS:  4 Q. Does the National Security -- I'm sorry,  5 go ahead.  6 <b>A. -- to make changes to or recommend</b>  7 <b>changes to or improvements to the watchlisting</b>  8 <b>process.</b>  9 Q. Does the National Security Council  10 control the Watchlisting Advisory Council?  11 MS. POWELL: Objection; vague.  12 THE WITNESS: I'm not sure I understand  13 what you mean by "control."  14 BY MR. ABBAS:  15 Q. Okay. Let's try it this way. Can the  16 National Security Council tell the Watchlisting  17 Advisory Council what to do?  18 <b>A. I mean, I don't think that it's set up</b>  19 <b>that way. I think it's an advisory council, the</b>  20 <b>advisory council provides recommendations to the</b>  21 <b>National Security Council.</b>  22 Q. Does the National Security Council</p>	<p style="text-align: right;">19</p> <p>1 THE WITNESS: I don't know.  2 BY MR. ABBAS:  3 Q. Does the Watchlisting Advisory Council  4 and the National Security Council communicate with  5 each other?  6 MS. POWELL: Objection; asked and  7 answered.  8 THE WITNESS: I think I already answered  9 that. The advisory council provides  10 recommendations and I am unaware of the specific  11 mechanism by which the National Security Council  12 comes back to the advisory council.  13 BY MR. ABBAS:  14 Q. How are the Watchlisting Advisory  15 Council's recommendations communicated to the  16 National Security Council?  17 <b>A. I mean, I believe they are communicated</b>  18 <b>in writing following meetings.</b>  19 Q. Is there a particular form that this  20 writing is memorialized in?  21 <b>A. A form like a --</b>  22 Q. Do you call it something? Do you</p>
<p style="text-align: right;">18</p> <p>1 solicit the Watchlisting Advisory Council's  2 recommendations or -- that's it. I'm sorry.  3 Does the National Security Council  4 solicit the Watchlisting Advisory Council's  5 recommendations?  6 <b>A. I'm not -- I don't know.</b>  7 Q. How does the National Security Council  8 communicate with the Watchlisting Advisory  9 Council?  10 <b>A. As I understand it, the Watchlisting</b>  11 <b>Advisory Council provides recommendations to the</b>  12 <b>National Security Council. I'm not familiar with</b>  13 <b>the feedback flow from the National Security</b>  14 <b>Council to the Watchlisting Advisory Council.</b>  15 Q. You're the FBI. Who is familiar with  16 the feedback flow between the National Security  17 Council and the Watchlisting Advisory Council if  18 not the FBI?  19 MS. POWELL: Objection; vague and  20 mischaracterizes prior testimony.  21 MR. ABBAS: You can answer the question.  22 MS. POWELL: If you can.</p>	<p style="text-align: right;">20</p> <p>1 call -- do you call the communications that the  2 Watchlisting Advisory Council makes to the  3 National Security Council, do you have a name for  4 those communications?  5 <b>A. I'm not aware of the name. I haven't</b>  6 <b>read any of those communications. I haven't seen</b>  7 <b>them.</b>  8 Q. Who communicates to the National  9 Security Council on behalf of the Watchlisting  10 Advisory Council?  11 MS. POWELL: Objection; vague and  12 mischaracterizes prior testimony.  13 THE WITNESS: The advisory council  14 communicates to the National Security Council.  15 BY MR. ABBAS:  16 Q. A human being communicates on behalf of  17 the Watchlisting Advisory Council to the National  18 Security Council; correct?  19 MS. POWELL: Objection; misleading and  20 mischaracterizes prior testimony.  21 MR. ABBAS: I withdraw the question.  22</p>

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21

1 BY MR. ABBAS:  
 2 Q. Does the Watchlisting Advisory Council  
 3 communicate to other governmental bodies through  
 4 human beings acting on behalf of the Watchlisting  
 5 Advisory Council?  
 6 MS. POWELL: Objection; vague.  
 7 Answer if you can.  
 8 THE WITNESS: I mean, it requires human  
 9 interaction to communicate, yes.  
 10 BY MR. ABBAS:  
 11 Q. Which people on behalf of the  
 12 Watchlisting Advisory Council communicate to the  
 13 National Security Council?  
 14 **A. I don't know.**  
 15 MS. POWELL: Objection; misleading.  
 16 Q. How are people authorized to communicate  
 17 to the National Security Council on behalf of the  
 18 Watchlisting Advisory Council?  
 19 MS. POWELL: Objection; vague and  
 20 misleading.  
 21 THE WITNESS: What do you mean by  
 22 "authorized"?

22

1 BY MR. ABBAS:  
 2 Q. The Watchlisting Advisory Council issues  
 3 recommendations; correct?  
 4 **A. Yes.**  
 5 Q. And the member agencies of the  
 6 Watchlisting Advisory Council agree upon the  
 7 content of recommendations that the Watchlisting  
 8 Advisory Council makes to the National Security  
 9 Council; correct?  
 10 **A. Yes.**  
 11 Q. Okay. Who takes the Watchlisting  
 12 Advisory Council's recommendations -- I'm sorry.  
 13 Who or what agency takes the  
 14 Watchlisting Advisory Council's recommendations  
 15 and communicates those recommendations to the  
 16 National Security Council?  
 17 MS. POWELL: Objection; misleading.  
 18 THE WITNESS: So the answer is that I  
 19 don't know of an agency that does that. The  
 20 advisory council itself provides the  
 21 recommendations.  
 22

23

1 BY MR. ABBAS:  
 2 Q. Does the Watchlisting Advisory Council  
 3 have a logo?  
 4 MS. POWELL: What?  
 5 Q. Does it have letterhead? Does the  
 6 Watchlisting Advisory Council have letterhead?  
 7 **A. I don't know.**  
 8 Q. Does the Watchlisting Advisory Council  
 9 have a logo?  
 10 **A. I don't know.**  
 11 Q. Do the recommendations that the  
 12 Watchlisting Advisory Council issues to the  
 13 National Security Council, are they stamped or  
 14 branded or marked in any way that denotes that  
 15 they're from the Watchlisting Advisory Council and  
 16 not individual agencies that are members of the  
 17 Watchlisting Advisory Council?  
 18 **A. I have not seen those documents**  
 19 **firsthand that get pushed from the Watchlisting**  
 20 **Advisory Council to the National Security Council.**  
 21 Q. You've never looked before today, you  
 22 have not reviewed any documents that the

24

1 Watchlisting Advisory Council sends to the  
 2 National Security Council?  
 3 **A. No.**  
 4 Q. Does the FBI have access to the  
 5 documents in which the Watchlisting Advisory  
 6 Council issues recommendations to the National  
 7 Security Council?  
 8 MS. POWELL: Objection; vague.  
 9 Answer if you can.  
 10 THE WITNESS: Does the FBI have access  
 11 to those documents?  
 12 BY MR. ABBAS:  
 13 Q. Yes.  
 14 **A. Yes.**  
 15 Q. So the FBI has access to the documents  
 16 that the Watchlisting Advisory Council issues to  
 17 the National Security Council -- I'm sorry, let me  
 18 withdraw.  
 19 The Watchlisting -- it's the FBI's  
 20 testimony today that the Watchlisting Advisory  
 21 Council -- I'm sorry.  
 22 It's the FBI's testimony today that the



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25	<p>1 FBI has access to documents in which the</p> <p>2 Watchlisting Advisory Council issues</p> <p>3 recommendations to the National Security Council;</p> <p>4 correct?</p> <p>5 MS. POWELL: Asked and answered.</p> <p>6 THE WITNESS: I said yes.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Why does -- why, in the FBI's view,</p> <p>9 would it be okay -- would the FBI object if the</p> <p>10 Watchlisting Advisory Council did not share the</p> <p>11 documents -- the recommendation documents that it</p> <p>12 provides to the NSC -- let's back up. Let's do</p> <p>13 this; can we call the National Security Council</p> <p>14 NSC?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And we can call the Watchlisting</p> <p>17 Advisory Council WAC?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay.</p> <p>20 MS. POWELL: Can you call it the WAC.</p> <p>21 MR. ABBAS: That's coming. That's</p> <p>22 coming. I'm just trying to set it up.</p>	27	<p>1 Who was -- you testified that</p> <p>2 the -- that WAC meets quarterly; is that correct?</p> <p>3 I'm sorry, does WAC meet quarterly?</p> <p>4 <b>A. I believe the WAC meets quarterly and/or</b></p> <p>5 <b>as needed in addition to quarterly.</b></p> <p>6 Q. And the WAC issues recommendations at</p> <p>7 least on a quarterly basis to the National</p> <p>8 Security Council?</p> <p>9 MS. POWELL: Objection; mischaracterizes</p> <p>10 prior testimony.</p> <p>11 THE WITNESS: I don't know that they</p> <p>12 issue recommendations with each meeting.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Did the WAC -- has the WAC issued any</p> <p>15 recommendations to the NSC in 2018?</p> <p>16 MS. POWELL: You can answer, if you</p> <p>17 know, sorry.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Has the WAC issued any recommendations</p> <p>21 to the TSC in 2017?</p> <p>22 <b>A. I don't know.</b></p>
26	<p>1 BY MR. ABBAS:</p> <p>2 Q. Does the FBI review the WAC</p> <p>3 recommendations before they get issued to the NSC?</p> <p>4 MS. POWELL: Objection; vague.</p> <p>5 You can answer, if you can.</p> <p>6 THE WITNESS: The FBI is a member of the</p> <p>7 Watchlisting Advisory Council. As a member of the</p> <p>8 advisory council, the FBI participates in all</p> <p>9 aspects of that council.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. I don't think you answered the question.</p> <p>12 MR. ABBAS: Could you read back the</p> <p>13 question?</p> <p>14 (Record read.)</p> <p>15 MS. POWELL: Objection; asked and</p> <p>16 answered.</p> <p>17 MR. ABBAS: You can answer.</p> <p>18 THE WITNESS: That's my answer.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. You didn't answer the question.</p> <p>21 MS. POWELL: Yes, he did.</p> <p>22 Q. Does the FBI review -- okay.</p>	28	<p>1 Q. Has the WAC issued any recommendations</p> <p>2 to the NSC in 2016?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Are you aware of any year in which the</p> <p>5 WAC issued recommendations to the NSC?</p> <p>6 <b>A. I'm not aware of the specific years, no.</b></p> <p>7 Q. When was the last time the WAC issued</p> <p>8 recommendations to the NSC?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. And just to be clear, "I don't know" and</p> <p>11 "I don't remember" are very common answers to the</p> <p>12 deposition. So if I'm asking and you don't know,</p> <p>13 I'm just wondering whether you know or not and</p> <p>14 then we'll move on from there.</p> <p>15 Does the WAC issue statements of</p> <p>16 conclusions -- I'm sorry, withdraw.</p> <p>17 Does the WAC issue statements of</p> <p>18 conclusions following its meetings?</p> <p>19 <b>A. I don't know. I know that in the NSC</b></p> <p>20 <b>process, generally we provide conclusions of</b></p> <p>21 <b>meetings in what's called a summary of conclusions</b></p> <p>22 <b>or statement of conclusions, SOC. So I have not</b></p>

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29	<p>1 <b>seen any specific WAC SOCs, but it -- but that is</b></p> <p>2 <b>the process that the NSC uses.</b></p> <p>3 MS. POWELL: It's fair.</p> <p>4 Q. Okay. Just to be clear, you referred to</p> <p>5 SOC, S-O-C, which stands for statements of</p> <p>6 conclusions; correct?</p> <p>7 MS. POWELL: Objection; mischaracterizes</p> <p>8 prior testimony.</p> <p>9 THE WITNESS: I know it to stand for</p> <p>10 summary of conclusions.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Got it. Fair enough. We'll call</p> <p>13 summaries --</p> <p>14 <b>A. It's a SOC.</b></p> <p>15 Q. It's a SOC.</p> <p>16 Is the SOC different than the</p> <p>17 recommendation document that the Watchlisting</p> <p>18 Advisory Council issues to the NSC?</p> <p>19 <b>A. I have not seen those documents. I</b></p> <p>20 <b>don't know.</b></p> <p>21 Q. So you have not seen ever a SOC -- I'm</p> <p>22 sorry, let me withdraw.</p>	31	<p>1 Q. And that term is associated in the FBI's</p> <p>2 mind with the deliberations of the WAC; correct?</p> <p>3 <b>A. It's associated with the deliberations</b></p> <p>4 <b>of the National Security Council.</b></p> <p>5 Q. The NSC issues the SOCs? Whose</p> <p>6 summaries of -- whose conclusions are being</p> <p>7 referred to in the summary of conclusions document</p> <p>8 that you're referring to?</p> <p>9 MS. POWELL: Objection; mischaracterizes</p> <p>10 prior testimony.</p> <p>11 THE WITNESS: I know SOCs to be</p> <p>12 summaries of conclusions from NSC-related meetings</p> <p>13 in general. So your question to me was about</p> <p>14 whether or not the WAC does SOCs and I said I have</p> <p>15 not seen those SOCs, but that would make sense</p> <p>16 that they would do those. But I haven't seen them</p> <p>17 so I don't know.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. So it's the FBI's testimony today that</p> <p>20 there may or may not be WAC SOCs?</p> <p>21 MS. POWELL: Objection; mischaracterizes</p> <p>22 prior testimony and asked and answered several</p>
30	<p>1 You have not before today seen a WAC</p> <p>2 SOC?</p> <p>3 <b>A. I have not seen a WAC SOC.</b></p> <p>4 Q. Has the WAC issued any WAC SOCs in 2018?</p> <p>5 These are -- I'm not trying to be funny, it just</p> <p>6 happens to be funny.</p> <p>7 MS. POWELL: You can answer if you know.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Has the WAC issued any WAC SOCs in 2017?</p> <p>11 MS. POWELL: You can answer if you know.</p> <p>12 THE WITNESS: I have not seen any.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Has the WAC issued any WAC SOCs in 2016?</p> <p>15 <b>A. Same answer. I have not seen any.</b></p> <p>16 Q. Has the WAC issued any WAC SOCs in 2015?</p> <p>17 <b>A. I don't know.</b></p> <p>18 Q. Has the WAC ever issued any WAC SOCs?</p> <p>19 <b>A. I have not seen any so I don't know.</b></p> <p>20 Q. But there is a term "summaries of</p> <p>21 conclusion" that you're familiar with; correct?</p> <p>22 <b>A. Yes.</b></p>	32	<p>1 times now.</p> <p>2 MR. ABBAS: You can answer.</p> <p>3 THE WITNESS: I think I clearly answered</p> <p>4 it in the last response.</p> <p>5 MR. ABBAS: Could you read back the</p> <p>6 question?</p> <p>7 (Record read.)</p> <p>8 MR. ABBAS: I'll do it again.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is it the FBI's testimony today that</p> <p>11 there are WAC SOCs?</p> <p>12 MS. POWELL: Objection; mischaracterizes</p> <p>13 prior testimony.</p> <p>14 MR. ABBAS: I just want to know whether</p> <p>15 there are or are not WAC SOCs. That's all I'm</p> <p>16 trying to figure out.</p> <p>17 MS. POWELL: And he's answered that</p> <p>18 question several times now.</p> <p>19 MR. ABBAS: No, he hasn't.</p> <p>20 MS. POWELL: At some point, I'm going to</p> <p>21 instruct him not to answer. Keep it up.</p> <p>22 THE WITNESS: I have not seen WAC SOCs.</p>

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1 BY MR. ABBAS:

2 Q. Do you believe -- so you're not prepared

3 today to testify on behalf of the FBI as to

4 whether or not there are WAC SOCs; correct?

5 MS. POWELL: Objection; mischaracterizes

6 prior testimony.

7 MR. ABBAS: I'll withdraw it.

8 BY MR. ABBAS:

9 Q. Are you prepared today to testify as to

10 whether or not there are WAC SOCs?

**11 A. I have been testifying about whether or**

**12 not there are WAC SOCs for the last several**

**13 minutes.**

14 MR. ABBAS: Am I missing something?

15 BY MR. ABBAS:

16 Q. Are there WAC SOCs?

17 MS. POWELL: Objection; asked and

18 answered several times now.

19 MR. ABBAS: No, he has not. I'm really

20 not trying to be difficult, I just want to know

21 whether they exist or not.

22 MS. POWELL: I really don't think his

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1 answer is going to change the more often you ask

2 the question.

3 THE WITNESS: It's not going to change.

4 I haven't seen them.

5 BY MR. ABBAS:

6 Q. Okay. What's the relationship between

7 NSA SOCs and the Watchlisting Advisory Council?

8 MS. POWELL: Objection.

9 MR. ABBAS: I'm sorry, did I say NSA?

10 MS. POWELL: Yeah.

11 MR. ABBAS: I'm sorry, I apologize.

12 BY MR. ABBAS:

13 Q. What is the relationship between the NSC

14 and -- I'm sorry.

15 What is the relationship between the

16 NSC's SOCs and the Watchlisting Advisory Council?

**17 A. I don't know if I understand that**

**18 question. The relationship between the NSC's SOCs**

**19 and the council? I mean, I understand the**

**20 Watchlisting Advisory Council to be an interagency**

**21 council that advises the NSC. You asked me about**

**22 SOCs I said it -- you know, that's the normal**

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**1 process of communication within the NSC. So I**

**2 have not seen a Watchlisting Advisory Council's**

**3 SOC, but that's the normal standard protocol of**

**4 communication within the NSC.**

5 Q. But the SOCs -- when you -- that's fine.

6 What records exist of any work that the

7 Watchlisting Advisory Council undertakes?

8 MS. POWELL: Objection; vague.

9 THE WITNESS: I haven't seen records of

10 their work.

11 BY MR. ABBAS:

12 Q. And do you know -- does the FBI know

13 whether records of the Watchlisting Advisory

14 Council's work exist?

**15 A. I don't know that they exist. I expect**

**16 that those records exist, but I haven't seen them.**

17 Q. Who is currently the FBI's -- and you

18 can -- what is the position of the person

19 who -- well, let me back up.

20 Do you know the name of the person --

21 I'm not asking for the name -- but do you know the

22 name of the person that is the FBI representative

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1 on the Watchlisting Advisory Council?

2 MS. POWELL: Objections; misleading, but

3 answer if you can without giving the name.

4 THE WITNESS: The FBI has sent -- has a

5 representative on the council, not necessarily the

6 same person all the time, but there is a

7 representative who goes and I do know their name.

8 BY MR. ABBAS:

9 Q. What is the FBI's representative to the

10 WAC's position?

11 MS. POWELL: I think you can answer

12 that.

13 THE WITNESS: It's a unit chief.

14 BY MR. ABBAS:

15 Q. What's a unit chief in the FBI's

16 personnel hierarchy?

**17 A. A unit chief is a GS-15 senior manager.**

18 Q. What is the -- this particular unit

19 chief -- I'm sorry.

20 The unit chief who is the FBI's

21 representative to the WAC supervises who? Like

22 what is his unit or her, what is his or her unit?

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<p style="text-align: right;">37</p> <p>1 <b>A. The most recent representatives to the</b>  2 <b>WAC have supervised units who manage a region of</b>  3 <b>the country -- the international terrorism cases</b>  4 <b>in a region of the country.</b>  5 Q. Who decides -- I'm sorry.  6 Who at the FBI decides who the FBI's WAC  7 representative will be?  8 <b>A. I mean, I told my section chief who's in</b>  9 <b>charge of the entire United States --</b>  10 <b>international terrorism cases in the entire United</b>  11 <b>States to send a representative to the WAC. And</b>  12 <b>that section chief made a determination as to</b>  13 <b>which person in his section would attend. So it's</b>  14 <b>in my organization and I delegated that to one of</b>  15 <b>my subordinates.</b>  16 Q. What is your organization, what you are  17 referring to?  18 <b>A. So I manage all international terrorism</b>  19 <b>investigations and operations for the FBI. And</b>  20 <b>one of those subordinate units manages all</b>  21 <b>international terrorism investigations and cases</b>  22 <b>inside the United States. I delegate it to that</b></p>	<p style="text-align: right;">39</p> <p>1 WAC representative spends no time on WAC-related  2 work?  3 <b>A. Correct.</b>  4 Q. Is there a particular work cycle that  5 the WAC has in which agency reps are busier or  6 more engaged in WAC-related work?  7 <b>A. Yes.</b>  8 Q. What is the WAC's work cycle?  9 <b>A. As I testified previously, they meet</b>  10 <b>quarterly and as needed. So in the time leading</b>  11 <b>up to and probably immediately after the meeting,</b>  12 <b>there's more effort involved than in the periods</b>  13 <b>of time between meetings.</b>  14 Q. Who decides what the WAC's agenda will  15 be for the next meeting?  16 MS. POWELL: Objection; vague,  17 potentially misleading.  18 THE WITNESS: I expect that the council  19 does. I mean, as I testified before, the WAC is  20 an advisory council -- interagency advisory  21 council and I expect that the council creates the  22 agenda.</p>
<p style="text-align: right;">38</p> <p>1 <b>unit -- to that section.</b>  2 Q. So there's -- how long does -- how long  3 is it your expectation that that person will serve  4 as the WAC representative for the FBI?  5 MS. POWELL: Objection; misleading.  6 THE WITNESS: I didn't specify a term,  7 but my expectation is that they would serve for  8 six months to a year depending on personnel  9 turnover and the frequency of meetings.  10 BY MR. ABBAS:  11 Q. How much time does the FBI  12 representative to the WAC spend on WAC-related  13 duties?  14 <b>A. I don't know exactly how much time.</b>  15 Q. What is your understanding of the amount  16 of time that the FBI's WAC representative spends  17 on WAC-related duties?  18 <b>A. I can say I would not consider it a</b>  19 <b>particularly taxing additional duty in terms of</b>  20 <b>time. It would not be an extremely burdensome</b>  21 <b>amount of time.</b>  22 Q. So there might be weeks when the FBI's</p>	<p style="text-align: right;">40</p> <p>1 BY MR. ABBAS:  2 Q. Does the council have its own employees,  3 its own support staff?  4 <b>A. Not that I'm aware of.</b>  5 Q. Does the council have its own facility?  6 <b>A. Not that I'm aware of.</b>  7 Q. Does the council have its own office  8 space?  9 <b>A. Not that I'm aware of.</b>  10 Q. So the council is comprised completely  11 of agency personnel contributing work to this  12 Watchlisting Advisory Council; correct?  13 <b>A. Yes.</b>  14 Q. How is it determined which agency rep  15 will have the responsibility of coordinating these  16 periodic WAC meetings?  17 MS. POWELL: Objection; vague.  18 THE WITNESS: I don't know.  19 BY MR. ABBAS:  20 Q. Does the FBI rep to the WAC facilitate  21 the creation of WAC agendas for WAC's periodic  22 meetings?</p>

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1 MS. POWELL: Objection; vague.  
 2 THE WITNESS: Not that I'm aware of.  
 3 MR. ABBAS: Just for my sake can you  
 4 read back the question?  
 5 (Record read.)  
 6 BY MR. ABBAS:  
 7 Q. What do you know about how the WAC  
 8 meeting agendas are created?  
 9 **A. I think as I already testified to I**  
 10 **expect that the agendas are created by the**  
 11 **council.**  
 12 Q. What do you know about how WAC agendas  
 13 are created?  
 14 MS. POWELL: Objection; asked and  
 15 answered.  
 16 Q. Is that all? I just want to make sure.  
 17 **A. I have no further answer than that.**  
 18 Q. I just want to make sure.  
 19 The only thing you know about WAC agenda  
 20 meetings is that there are WAC agendas  
 21 meetings -- I'm sorry.  
 22 The only thing you know about agendas

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1 for WAC meetings is that there are agendas for WAC  
 2 meetings --  
 3 MS. POWELL: Objection; mischaracterizes  
 4 prior testimony.  
 5 Q. -- correct?  
 6 **A. I don't think I said that. I think**  
 7 **I -- you asked me how they're created. I've never**  
 8 **seen a WAC agenda so I don't know that they exist.**  
 9 **I expect that they exist and that they're created**  
 10 **by the council.**  
 11 Q. And you have -- the FBI has no knowledge  
 12 as to who creates WAC agendas?  
 13 MS. POWELL: Objection; mischaracterizes  
 14 prior testimony.  
 15 MR. ABBAS: I just would expect that the  
 16 FBI's deponent would be able to provide basic  
 17 testimony as to how a -- how the advisory -- how  
 18 the WAC actually has meetings. And I just want to  
 19 be clear --  
 20 MS. POWELL: And he did. The question  
 21 is asked and answered that the council creates an  
 22 agenda.

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1 BY MR. ABBAS:  
 2 Q. But the council has no staff; correct?  
 3 And -- okay. That's fine. I think I've got my  
 4 answer.  
 5 Did the FBI's representative to the WAC  
 6 always -- I'm sorry, let me start again.  
 7 Does the FBI's representative to the WAC  
 8 always receive WAC meeting agendas?  
 9 **A. I don't know.**  
 10 MR. ABBAS: I think we need to take a  
 11 five-minute break because I really don't think  
 12 that -- I think there's huge holes and I'm kind of  
 13 surprised that we're not getting any information  
 14 about the FBI's participation in the WAC. I'm  
 15 going to take -- let's take five minutes and then  
 16 we'll be back.  
 17 Is that all right?  
 18 MS. POWELL: You can take as much time  
 19 as you want.  
 20 (Recess from the record.)  
 21 (DeSarno Deposition Exhibit A was marked  
 22 for identification and attached to the

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1 transcript.)  
 2 MR. ABBAS: I've marked Plaintiff's  
 3 DeSarno Exhibit A -- I'm sorry, Deponent DeSarno  
 4 Exhibit A as the notice of 30(b)(6) deposition for  
 5 defendant FBI. Opposing counsel has a copy. The  
 6 court reporter has marked it as A.  
 7 BY MR. ABBAS:  
 8 Q. Mr. DeSarno, please take a moment to  
 9 review the document. Let me know when you've  
 10 finished reviewing it and I'll have some questions  
 11 for you.  
 12 MS. POWELL: I would also note for the  
 13 record that the court granted in part our motion  
 14 for protective order with respect to this notice  
 15 and denied in part.  
 16 (Witness peruses the exhibit.)  
 17 THE WITNESS: Okay.  
 18 BY MR. ABBAS:  
 19 Q. Have you reviewed this document before  
 20 today?  
 21 **A. I have.**  
 22 Q. And just as a reminder, I know you knew

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1 what question I was going to ask, I think I had an  
 2 idea what your answer was, but just for the court  
 3 reporter's sake, please be sure to wait until the  
 4 end of my question before answering just to make a  
 5 clean record and I'll try to do the same as well.  
 6 **A. Okay.**  
 7 Q. What is your understanding of what this  
 8 document is?  
 9 MS. POWELL: Objection; calls for a  
 10 legal conclusion.  
 11 Answer if you can.  
 12 THE WITNESS: This is the notice of  
 13 deposition to depose an FBI witness.  
 14 BY MR. ABBAS:  
 15 Q. Have you had a deposition -- have you  
 16 been in a deposition previously?  
 17 **A. I have not.**  
 18 Q. So you've never been deposed yourself?  
 19 MS. POWELL: Objection; asked and  
 20 answered.  
 21 MR. ABBAS: They're two different  
 22 questions. Have you been in a deposition and have

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1 you been deposed.  
 2 MS. POWELL: I'm pretty sure that counts  
 3 as asked and answered, but you can answer if you  
 4 like.  
 5 THE WITNESS: I have not been in a  
 6 deposition, nor have I been deposed which would  
 7 have required me to be in a deposition.  
 8 BY MR. ABBAS:  
 9 Q. Is it your understanding that there are  
 10 questions that I may ask you today that you are  
 11 not obligated to answer?  
 12 MS. POWELL: Objection; calls for a  
 13 legal conclusion.  
 14 You can answer, if you know.  
 15 THE WITNESS: Yes, there potentially  
 16 could be questions that I would not be obligated  
 17 to answer.  
 18 BY MR. ABBAS:  
 19 Q. Is it your understanding that -- well,  
 20 okay. Let's go to paragraph 10 which is on  
 21 page 2. Take a moment to review paragraph 10 and  
 22 I'm going to have a few questions about

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1 paragraph 10.  
 2 **A. Okay.**  
 3 Q. Is it your understanding that it's your  
 4 obligation today to provide testimony regarding  
 5 the Watchlisting Advisory Council?  
 6 MS. POWELL: Objection; calls for a  
 7 legal conclusion and does not take into account  
 8 the court's instructions on this issue, but you  
 9 may answer it, if you can.  
 10 THE WITNESS: The Watchlisting Advisory  
 11 Council -- just those four words, "The  
 12 Watchlisting Advisory Council," are included in  
 13 paragraph 10, yes. There are other things in  
 14 paragraph 10, but separated by commas it just  
 15 says, "The Watchlisting Advisory Council."  
 16 BY MR. ABBAS:  
 17 Q. There's information that the FBI  
 18 possesses about the Watchlisting Advisory Council  
 19 that you do not know about here today; correct?  
 20 MS. POWELL: Objection; mischaracterizes  
 21 prior testimony.  
 22 THE WITNESS: I've testified a good bit

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1 over the last hour about the Watchlisting Advisory  
 2 Council.  
 3 BY MR. ABBAS:  
 4 Q. You didn't answer the question.  
 5 MR. ABBAS: Can you read back the  
 6 question.  
 7 (Record read.)  
 8 MS. POWELL: I'm going to add objections  
 9 of vagueness and misleading in addition to my  
 10 previous objection.  
 11 BY MR. ABBAS:  
 12 Q. Do you know everything there is to know  
 13 about the Watchlisting Advisory Council?  
 14 MS. POWELL: Objection; vague and  
 15 misleading.  
 16 THE WITNESS: Clearly I do not know  
 17 everything there is to know about the Watchlisting  
 18 Advisory Council.  
 19 BY MR. ABBAS:  
 20 Q. Does someone at the FBI know more about  
 21 the Watchlisting Advisory Council than you do?  
 22 MS. POWELL: Objection; vague and

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<p>1 misleading.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Do you believe that the FBI's rep to the</p> <p>5 WAC knows more about the WAC than you do?</p> <p>6 MS. POWELL: Objection; vague.</p> <p>7 THE WITNESS: The FBI's rep to the WAC</p> <p>8 has been in meetings and has operated as part of</p> <p>9 the Council, but I don't know what that rep knows</p> <p>10 about the overall -- you know, the history of the</p> <p>11 Council or any of that so I don't know.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. You don't, Mr. DeSarno, attend any of</p> <p>14 the WAC meetings; correct?</p> <p>15 <b>A. I have not.</b></p> <p>16 Q. Are you cc'd on the WAC e-mails that</p> <p>17 regard WAC proceedings or WAC activity?</p> <p>18 <b>A. I have been cc'd on some e-mails,</b></p> <p>19 <b>scheduling-type e-mails leading up to WAC meetings</b></p> <p>20 <b>in the past. I have been one of many recipients</b></p> <p>21 <b>of WAC e-mails.</b></p> <p>22 Q. Do you know whether the FBI WAC rep has</p>	<p>1 THE WITNESS: That's my understanding it</p> <p>2 is unanimous consensus.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Has the FBI ever dissented -- withdraw</p> <p>5 that.</p> <p>6 Has the FBI ever objected to proposed</p> <p>7 activity or recommendations by the WAC?</p> <p>8 MS. POWELL: Objection; it seems to call</p> <p>9 for deliberative process privileged information.</p> <p>10 I'm going to instruct the witness not to</p> <p>11 answer.</p> <p>12 Q. Does the FBI have a mechanism by which</p> <p>13 it communicates its objections to activity</p> <p>14 regarding the WAC?</p> <p>15 MS. POWELL: Same objection and</p> <p>16 instruction I think because it assumes the answer</p> <p>17 to the previous question, unless I'm</p> <p>18 misunderstanding.</p> <p>19 Q. Is there a mechanism by which the FBI</p> <p>20 registers its disagreement with things that the</p> <p>21 WAC has done or is planning to do?</p> <p>22 MS. POWELL: Same objection as well</p>
50	52
<p>1 ever made a suggestion as to what should or should</p> <p>2 not be included on a WAC meeting agenda?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Do you know whether the FBI has agreed</p> <p>5 to all of the WAC recommendations -- I'm sorry,</p> <p>6 let me withdraw it.</p> <p>7 Do you know whether the FBI has always</p> <p>8 agreed with the recommendations that the WAC has</p> <p>9 made to the NSC regarding watchlisting?</p> <p>10 MS. POWELL: Objection; misleading and</p> <p>11 mischaracterizes prior testimony. I believe he</p> <p>12 testified that it operates by consensus.</p> <p>13 MR. ABBAS: Objection; that wasn't an</p> <p>14 objection. I think that's coaching the witness.</p> <p>15 MS. POWELL: It's asked and answered.</p> <p>16 THE WITNESS: Yeah, my prior testimony</p> <p>17 was that it operates by consensus.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Is it the FBI's testimony that the WAC</p> <p>20 operates by unanimous consensus?</p> <p>21 MS. POWELL: Objection; asked and</p> <p>22 answered.</p>	<p>1 misleading.</p> <p>2 MR. ABBAS: You can answer.</p> <p>3 THE WITNESS: As the WAC operates</p> <p>4 through consent -- unanimous consent as we</p> <p>5 discussed, I don't know of any instance where the</p> <p>6 FBI has lodged objections to that consent.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does any agency rep chair the WAC?</p> <p>9 <b>A. The WAC is cochaired by the Terrorist</b></p> <p>10 <b>Screening Center and the National Counterterrorism</b></p> <p>11 <b>Center.</b></p> <p>12 Q. Who decided that TSC and NCTC would</p> <p>13 cochair the WAC?</p> <p>14 MS. POWELL: Objection; vague.</p> <p>15 THE WITNESS: Who?</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Yeah, let's start out with who, yes.</p> <p>18 <b>A. I don't know the name of the person who</b></p> <p>19 <b>decided that or if there was a person. I don't</b></p> <p>20 <b>know how that decision was made.</b></p> <p>21 Q. At some point a person made the</p> <p>22 decision, right, at some point?</p>

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<p style="text-align: right;">53</p> <p>1 <b>A. Or the Council maybe. I don't know.</b>  2 Q. Which agency decided that the NCTC and  3 TSC would cochair the WAC?  4 MS. POWELL: Objection; vague and  5 mischaracterizes prior testimony.  6 THE WITNESS: I know that there are  7 cochairs, NCTC, TSC. I don't know who determined  8 that or when that was determined. But as the WAC  9 exists right now, that's who cochairs it.  10 BY MR. ABBAS:  11 Q. Prior to today, what did you do to  12 educate yourself about the Watchlisting Advisory  13 Council?  14 MS. POWELL: Objection. I instruct the  15 witness not to answer to the extent it calls for  16 communications between counsel, but he can answer  17 as to anything else he did.  18 THE WITNESS: So I reviewed a document  19 dated 2008 that established the original Terrorist  20 Screening Center Policy Board which evolved into  21 the Watchlisting Advisory Committee [sic], it's a  22 charter document.</p>	<p style="text-align: right;">55</p> <p>1 like the Terrorist Watchlisting Policy Board?  2 <b>A. Yes.</b>  3 Q. And that became the Watchlisting  4 Advisory Council?  5 <b>A. Yes.</b>  6 Q. Do you know when the Watchlisting -- I'm  7 sorry, when the Terrorism Watchlist Policy Board  8 was first created?  9 <b>A. This charter that I'm referring to was</b>  10 <b>signed by some incomplete number of member</b>  11 <b>agencies, I don't know how many signatures there</b>  12 <b>were, but there were signature blocks that were</b>  13 <b>completed in 2008.</b>  14 Q. When you say "Some incomplete number of  15 member agencies," why is the number incomplete?  16 <b>A. I just don't know who did or did not</b>  17 <b>sign it. I know that there were -- the copy that</b>  18 <b>I saw had signatures by some agencies and some</b>  19 <b>blank signature blocks, but I don't recall which</b>  20 <b>signature blocks were blank and whether or not</b>  21 <b>that was the final copy. It was just a copy that</b>  22 <b>was provided to me.</b></p>
<p style="text-align: right;">54</p> <p>1 I refreshed my recollection of a meeting  2 that I had with executives at the TSC where we  3 discussed the Watchlisting Advisory Council and  4 the need for the FBI to designate a  5 representative. And I refreshed my recollection  6 of designating a representative.  7 BY MR. ABBAS:  8 Q. What was the name of the document that  9 you referred to as the charter document of the WAC  10 from 2008?  11 <b>A. The document just had on the top of it</b>  12 <b>Terrorist Watchlisting Policy Board I think is</b>  13 <b>what it was called at its inception.</b>  14 Q. Terrorism Watchlisting Policy Board?  15 <b>A. It was something policy board, either</b>  16 <b>TSC Policy Board or Terrorist Watchlist Policy</b>  17 <b>Board.</b>  18 Q. Is there a Terrorist Watchlist Policy  19 Board?  20 <b>A. No, that's the board that eventually</b>  21 <b>evolved into the Watchlisting Advisory Council.</b>  22 Q. Got it. So there used to be something</p>	<p style="text-align: right;">56</p> <p>1 Q. So you don't know which agencies are a  2 party to -- I'm sorry.  3 You don't know which agencies were a  4 party to the Terrorism Watchlist Policy Board;  5 correct?  6 <b>A. To the 2008 document?</b>  7 Q. Yes.  8 <b>A. Correct.</b>  9 Q. The 2008 document did not create the  10 WAC; correct?  11 MS. POWELL: Objection; misleading.  12 THE WITNESS: The 2008 document created  13 something called the Policy Board, which is my  14 understanding at some subsequent point became the  15 Watchlisting Advisory Committee. There may be  16 another document that I haven't seen that changes  17 it, I haven't seen it.  18 BY MR. ABBAS:  19 Q. The meeting with TSC regarding the FBI  20 designating a rep to the WAC that you referred to  21 a little bit ago, when was that meeting?  22 <b>A. It's likely June or July of 2017.</b></p>



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1 Q. At the time of that meeting, were you  
 2 aware of this litigation of which your testimony  
 3 is a part of?  
 4 **A. No.**  
 5 Q. During that June 2017 meeting, who was  
 6 present? And I don't need names, just titles.  
 7 **A. The assistant director for**  
 8 **counterterrorism.**  
 9 Q. That's FBI?  
 10 **A. FBI.**  
 11 Q. Okay.  
 12 **A. Me, the deputy assistant director for**  
 13 **counterterrorism, the director of the TSC, and the**  
 14 **deputy director of the TSC.**  
 15 Q. The director of the TSC at that time was  
 16 who?  
 17 **A. Sandy Kable.**  
 18 Q. Okay.  
 19 **A. Charles Kable.**  
 20 Q. He goes by Sandy; is that --  
 21 **A. Charles Kable.**  
 22 Q. Charles Kable.

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1 Okay. Are you a part of -- what is  
 2 your -- I'm sorry, what's your job title again?  
 3 **A. Deputy assistant director**  
 4 **counterterrorism division, FBI.**  
 5 Q. Is Charles Kable your subordinate?  
 6 **A. He's not.**  
 7 Q. Who oversees Charles Kable, the director  
 8 of TSC?  
 9 **A. The executive assistant director for**  
 10 **national security of the FBI.**  
 11 Q. Who is?  
 12 **A. Currently?**  
 13 Q. Yes.  
 14 **A. Carl Ghattas.**  
 15 Q. Can you spell that name?  
 16 **A. G-H-A-T-T-A-S. First name Carl with a**  
 17 **C.**  
 18 Q. Can Carl Ghattas tell the director of  
 19 TSC what to do?  
 20 MS. POWELL: Objection; vague and  
 21 misleading.  
 22 Q. Not a surprise question.

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1 MS. POWELL: Not a surprise objection.  
 2 THE WITNESS: So Charles Kable reports  
 3 directly to the EAD for national security, Carl  
 4 Ghattas, in his direct reporting work function.  
 5 The TSC is an interagency organization  
 6 administered by the FBI. So in an answer to the  
 7 question can Carl Ghattas tell Charles Kable what  
 8 to do, in as much as a manager can tell a  
 9 subordinate what to do in terms of administrative  
 10 policy, reporting to work, those types of things,  
 11 yes, he can.  
 12 BY MR. ABBAS:  
 13 Q. Are there things that Carl Ghattas  
 14 cannot tell the director of the TSC what to do  
 15 about?  
 16 MS. POWELL: Objection; vague.  
 17 Q. I'm sorry, let me rephrase.  
 18 Are there aspects of the director of  
 19 TSC's job that is not controlled by FBI supervisor  
 20 Carl Ghattas?  
 21 MS. POWELL: Same objection.  
 22 THE WITNESS: The TSC operates as a

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1 relatively independent interagency entity that has  
 2 the goal of executing HSPD-6 across the  
 3 interagency. So there are -- as that -- as an  
 4 interagency entity, the EAD of national security  
 5 and the FBI have administrative responsibility  
 6 over the organization, but operationally it  
 7 operates with interagency independence.  
 8 BY MR. ABBAS:  
 9 Q. Does the FBI control TSC?  
 10 MS. POWELL: Objection; asked and  
 11 answered and vague.  
 12 MR. ABBAS: Let's withdraw.  
 13 BY MR. ABBAS:  
 14 Q. The FBI pays for all of the operations  
 15 of the TSC; correct?  
 16 MS. POWELL: Objection; vague and  
 17 misleading.  
 18 THE WITNESS: Yeah, that is vague. I  
 19 don't -- I'm not certain that that's the case.  
 20 There are employees of other agencies at the TSC  
 21 that are paid by their agencies.  
 22

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<p style="text-align: right;">61</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Is anyone paid by the Terrorist</p> <p>3 Screening Center?</p> <p>4 MS. POWELL: Objection; vague.</p> <p>5 THE WITNESS: Paid by the Terrorist</p> <p>6 Screening Center?</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Yes.</p> <p>9 <b>A. I don't understand the question.</b></p> <p>10 Q. Is anyone -- does the Terrorist</p> <p>11 Screening Center pay any salaries of TSC</p> <p>12 employees?</p> <p>13 MS. POWELL: Same objection.</p> <p>14 THE WITNESS: Yeah, I mean, that's</p> <p>15 getting into complexities related to budgets and</p> <p>16 contracts and --</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. If you don't know, just say you don't</p> <p>19 know, that's fine, that's an answer.</p> <p>20 Do you know who pays the salaries of TSC</p> <p>21 employees?</p> <p>22 <b>A. I know that TSC employees are paid their</b></p>	<p style="text-align: right;">63</p> <p>1 Q. What is the FBI's responsibility for</p> <p>2 TSC's budget?</p> <p>3 <b>A. Well, the FBI certainly makes requests,</b></p> <p>4 <b>budget requests on behalf of the TSC.</b></p> <p>5 Q. To whom?</p> <p>6 <b>A. To Congress who authorizes budgets. And</b></p> <p>7 <b>then --</b></p> <p>8 Q. Does TSC have its own congressional</p> <p>9 liaison personnel?</p> <p>10 <b>A. I don't know.</b></p> <p>11 Q. Does FBI congressional liaison personnel</p> <p>12 present funding requests to Congress on TSC's</p> <p>13 behalf?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. What do you know about the financial</p> <p>16 relationship between the FBI and TSC?</p> <p>17 <b>A. I mean, I know that the FBI provides for</b></p> <p>18 <b>the administration generally of the TSC, which is</b></p> <p>19 <b>inclusive of budget. But I don't know the</b></p> <p>20 <b>complexities of how other agencies feed into that</b></p> <p>21 <b>budget, what the sharing agreements are, I don't</b></p> <p>22 <b>know those details.</b></p>
<p style="text-align: right;">62</p> <p>1 <b>salaries by their home agencies.</b></p> <p>2 Q. Does TSC pay any single person a salary?</p> <p>3 MS. POWELL: Objection; asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: That was my answer.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Does TSC pay any single employee?</p> <p>8 MS. POWELL: Objection; asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I answered that.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. You're not answering the question, but</p> <p>13 that's fine, that's your choice.</p> <p>14 As an executive of the FBI, does the FBI</p> <p>15 set TSC's budget?</p> <p>16 MS. POWELL: Objection; vague.</p> <p>17 THE WITNESS: The FBI is not solely</p> <p>18 responsible for setting the TSC's budget.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Who else -- so the FBI does have some</p> <p>21 responsibility for TSC's budget?</p> <p>22 <b>A. Yes.</b></p>	<p style="text-align: right;">64</p> <p>1 Q. Does the FBI pay for TSC's office</p> <p>2 facilities?</p> <p>3 <b>A. I believe so.</b></p> <p>4 Q. Does the FBI pay for TSC's information</p> <p>5 technology infrastructure?</p> <p>6 <b>A. I believe the FBI pays for some of that</b></p> <p>7 <b>or maybe all of that; but, yes, it is included in</b></p> <p>8 <b>the administration of the TSC.</b></p> <p>9 Q. Does the FBI pay for the salaries of TSC</p> <p>10 employees?</p> <p>11 MS. POWELL: Objection; asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: The FBI pays the salaries</p> <p>14 of FBI employees who are assigned to the TSC.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Does TSC have -- this is the FBI's</p> <p>17 testimony which should have really clear knowledge</p> <p>18 of TSC.</p> <p>19 Is the FBI aware of whether or not there</p> <p>20 is such a thing as a TSC employee?</p> <p>21 MS. POWELL: Objection; vague.</p> <p>22 THE WITNESS: I mean, I consider people</p>

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<p style="text-align: right;">65</p> <p>1 who work at the TSC as TSC employees.  2 BY MR. ABBAS:  3 Q. Even though they report to ultimately  4 the FBI?  5 MS. POWELL: Objection; vague and  6 mischaracterizes prior testimony.  7 THE WITNESS: The TSC is made up of  8 interagency personnel who are assigned to the TSC.  9 They get paid by their own agencies, they belong  10 to their own agencies, and they work at the TSC so  11 they are TSC employees.  12 BY MR. ABBAS:  13 Q. But you don't know how those  14 people -- but they're paid by their home agencies,  15 not TSC itself; correct?  <b>16 A. It's my understanding that people who</b>  <b>17 are assigned to the TSC are paid by their home</b>  <b>18 agencies.</b>  19 Q. Including the FBI; correct?  <b>20 A. Yes.</b>  21 Q. Does each member of the Watchlisting  22 Advisory Council provide personnel to the</p>	<p style="text-align: right;">67</p> <p>1 THE WITNESS: I answered about DHS which  2 is inclusive of TSA, CBP, and the others.  3 BY MR. ABBAS:  4 Q. I don't know that so that's why I'm  5 asking. I'm not sure if there's differences  6 between DHS and so I'm not asking to be difficult,  7 I'm asking because I don't know.  8 Does USCIS contribute personnel to TSC's  9 operations?  10 MS. POWELL: We're getting really far  11 afield from the topics here. The court explicitly  12 excluded anything that was TSC specific. Instead  13 you should be asking questions about FBI's role.  14 FBI does not have a role in how DHS contributes  15 personnel to TSC.  16 MR. ABBAS: The TSA -- the TSC rep to  17 the Watchlisting Advisory Council is an FBI  18 employee, gets paid by the FBI.  19 MS. POWELL: What does that have to do  20 with DHS or CBP or USCIS?  21 MR. ABBAS: Can you just read back the  22 last questions.</p>
<p style="text-align: right;">66</p> <p>1 TSC -- I'm sorry, let me withdraw.  2 Does each member of the Watchlisting  3 Advisory Council contribute personnel to TSC's  4 operations?  <b>5 A. I don't know.</b>  6 Q. Does the FBI, DHS, CBP, and TSA provide  7 personnel contributions to the operations of TSC?  8 MS. POWELL: Objection as to scope.  9 You can answer, if you know.  10 THE WITNESS: I don't know.  11 BY MR. ABBAS:  12 Q. You don't know whether -- does the FBI  13 contribute personnel to the TSC?  <b>14 A. They do, yes.</b>  15 Q. Does DHS contribute personnel to the  16 TSC?  <b>17 A. I believe so, yes. I --</b>  18 Q. Does the -- I apologize for  19 interrupting.  20 Does TSA contribute personnel to TSC's  21 operations?  22 MS. POWELL: Objection as to scope.</p>	<p style="text-align: right;">68</p> <p>1 (Record read.)  2 MS. POWELL: Same objection.  3 BY MR. ABBAS:  4 Q. If you don't know, you can just say you  5 don't know.  <b>6 A. I don't know.</b>  7 Q. Okay. Great.  8 Does the NCTC contribute personnel to  9 TSC's operations?  10 MS. POWELL: Same objection.  11 THE WITNESS: Does the NCTC contribute  12 personnel, yes.  13 BY MR. ABBAS:  14 Q. Okay. You have no knowledge at all  15 about whether other agencies, aside from the FBI,  16 contribute in ways beyond providing personnel to  17 TSC's operations to help TSC function?  18 MS. POWELL: Objection as to scope and  19 vagueness and mischaracterizing prior testimony.  20 THE WITNESS: I am not familiar with the  21 technical resourcing that other agencies bring to  22 the TSC, no.</p>

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70	<p>1 that.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. You did not answer. You said you do not</p> <p>4 know the specifics so I'm not asking for</p> <p>5 specifics.</p> <p>6 I'm asking are you aware of an agency</p> <p>7 ever in the history of the watchlisting system</p> <p>8 making a financial contribution to TSC's</p> <p>9 operations not in the form of assigning personnel</p> <p>10 to TSC?</p> <p>11 MS. POWELL: That is roughly the sixth</p> <p>12 time you've asked that question now. At some</p> <p>13 point, I'm just going to instruct him not to say</p> <p>14 anything.</p> <p>15 MR. ABBAS: Just to be clear for the</p> <p>16 record, I'm just making -- I just want to clarify</p> <p>17 that if the deponent is not answering the</p> <p>18 question -- if the deponent does not understand</p> <p>19 the question, I am eager to issue any clarifying</p> <p>20 comments, but it seems like the deponent is just</p> <p>21 refusing to answer the question because the answer</p> <p>22 is revealing.</p>	72	<p>1 MS. POWELL: All right. I'm going to</p> <p>2 instruct the witness not to answer at this point.</p> <p>3 Please ask your next question.</p> <p>4 MR. ABBAS: What's the basis of your</p> <p>5 instruction not to answer?</p> <p>6 MS. POWELL: Outside the scope, asked</p> <p>7 and answered, the court's protective order, it's</p> <p>8 vague, misleading, some other things,</p> <p>9 argumentative.</p> <p>10 MR. ABBAS: That's -- you know, I think</p> <p>11 the appropriate mechanism here is if you're not</p> <p>12 going to answer basic questions about the</p> <p>13 Watchlisting Council --</p> <p>14 MS. POWELL: You're not even asking a</p> <p>15 question about the Watchlisting Council.</p> <p>16 MR. ABBAS: -- is to end the deposition</p> <p>17 itself. I think that's --</p> <p>18 MS. POWELL: We have a protective order</p> <p>19 in place. I've instructed him not to answer.</p> <p>20 Please ask your next question.</p> <p>21 MR. ABBAS: What part of the protective</p> <p>22 order are you relying upon?</p>

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1 MS. POWELL: Well, if not nothing else,  
 2 the court at the end of the deposition explicitly  
 3 excluded TSC topics and TSC policies and  
 4 procedures. He is here only to testify about  
 5 FBI's role, which the court said was an  
 6 appropriate topic. You're not asking him a  
 7 question about FBI's roles or responsibilities.  
 8 You're asking him a question about other agencies  
 9 and their contribution to TSC. And he's already  
 10 given you the answer.  
 11 MR. ABBAS: Sure.  
 12 BY MR. ABBAS:  
 13 Q. Has the FBI ever accepted a financial  
 14 contribution made by a federal government agency  
 15 for the purposes of contributing to TSC's  
 16 operations?  
 17 MS. POWELL: Objection; scope and vague.  
 18 I'm not sure what that means.  
 19 THE WITNESS: So in reviewing this  
 20 document that you gave me, Exhibit A, in  
 21 preparation for this, I did not review the  
 22 financial arrangements between agencies that fund

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1 the TSC so I do not know the answers to the  
 2 funding questions that you're asking.  
 3 BY MR. ABBAS:  
 4 Q. You previously characterized the TSC as  
 5 relatively independent; is that correct?  
 6 **A. Is that correct?**  
 7 Q. He's not going to --  
 8 **A. I mean, it sounds like it. That's an**  
 9 **accurate characterization.**  
 10 Q. So it's not completely independent, it's  
 11 relatively independent?  
 12 **A. Well, it's an interagency entity.**  
 13 Q. Who's the most -- which agency is the  
 14 most influential in determining how TSC operates?  
 15 MS. POWELL: Objection; misleading and  
 16 vague.  
 17 THE WITNESS: I don't know that any  
 18 agency is more influential than the other.  
 19 BY MR. ABBAS:  
 20 Q. What is the FBI's understanding of the  
 21 role that chairs of the WAC play?  
 22 MS. POWELL: Objection; vague.

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1 THE WITNESS: I mean, they are the  
 2 chairpersons of the advisory council, the advisory  
 3 council is an interagency entity, they lead the  
 4 Council.  
 5 BY MR. ABBAS:  
 6 Q. Does the FBI -- how does the FBI  
 7 participate in TSC?  
 8 **A. The FBI administers TSC, the director**  
 9 **and one of the deputy directors are FBI employees.**  
 10 **When President Bush signed HSPD-6 in September of**  
 11 **2003, he designated the attorney general as the**  
 12 **lead entity to bring the watchlisting efforts of**  
 13 **the USG together. The attorney general delegated**  
 14 **that to the FBI to be the administrative hub of**  
 15 **that effort. And as a result, the TSC exists and**  
 16 **it is administered by the FBI and led**  
 17 **by -- currently led by an FBI executive.**  
 18 Q. Does the FBI have an opinion about the  
 19 effectiveness of the watchlisting system?  
 20 MS. POWELL: Objection; vague.  
 21 THE WITNESS: I don't understand  
 22 "effectiveness," what do you mean by

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1 "effectiveness"?"  
 2 BY MR. ABBAS:  
 3 Q. What does FBI believe are the purposes  
 4 of the watchlisting system?  
 5 **A. Okay. The purpose of the watchlisting**  
 6 **system is very clearly to prevent acts of**  
 7 **terrorism while safeguarding privacy and civil**  
 8 **liberties.**  
 9 Q. Does the watchlisting system -- is the  
 10 watchlisting system aimed at protecting against  
 11 all types of acts of terrorism?  
 12 MS. POWELL: Objection; vague.  
 13 THE WITNESS: The watchlisting system is  
 14 aimed at preventing terrorism, writ large, and  
 15 safeguarding privacy and civil liberties.  
 16 BY MR. ABBAS:  
 17 Q. So the watchlisting system is not aimed  
 18 only at protecting against acts of terrorism  
 19 involving commercial aviation; correct?  
 20 **A. That is correct.**  
 21 Q. The watchlisting system -- I understand  
 22 how the watchlisting system is aimed at protecting

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1 acts of terrorism against commercial aviation, but  
 2 how does the watchlisting system in the FBI's view  
 3 prevent acts of terrorism that are not related to  
 4 commercial aviation?  
 5 MS. POWELL: Objection; vague and scope,  
 6 but answer to the extent you can.  
 7 THE WITNESS: Okay. So the watchlisting  
 8 system is one of -- is one of the key resources  
 9 that the FBI has in preventing terrorism. After  
 10 9/11, our mission shifted pretty significantly  
 11 from investigating crime after its occurrence to  
 12 preventing terrorist attacks. That includes  
 13 obviously commercial aviation, but it also  
 14 includes preventing all types of terrorists  
 15 attacks and the watchlisting system -- the  
 16 existence of the TSC and the single consolidated  
 17 watchlist is a critical part of our preventive  
 18 efforts.  
 19 BY MR. ABBAS:  
 20 Q. Why does the FBI believe that the  
 21 watchlisting system is a critical part of the  
 22 federal government's efforts to prevent acts of

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1 terrorism that are not related to commercial  
 2 aviation?  
 3 MS. POWELL: Objection to the extent the  
 4 question -- a comprehensive answer to the question  
 5 would require law enforcement privilege and state  
 6 secret information, but answer to the extent you  
 7 can.  
 8 THE WITNESS: So in general, the  
 9 prevention of terrorism requires robust  
 10 partnerships, collaboration, and information  
 11 sharing among all involved agencies and entities  
 12 across the intelligence community and law  
 13 enforcement community and the international  
 14 community. What the consolidated watchlisting  
 15 process does is facilitates that type of  
 16 collaboration, cooperation, and sharing to enable  
 17 a common operating picture across those  
 18 communities to ensure that we are best positioned  
 19 collectively to prevent terrorism.  
 20 BY MR. ABBAS:  
 21 Q. What information informs the FBI's view  
 22 that the watchlisting system is an effective means

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1 of preventing acts of terrorism that are unrelated  
 2 to commercial aviation?  
 3 MS. POWELL: Was that a different  
 4 question than the one you just asked?  
 5 MR. ABBAS: Yes.  
 6 MS. POWELL: Can you clarify?  
 7 MR. ABBAS: It was a totally different  
 8 question. It was just a completely different  
 9 question.  
 10 MS. POWELL: Okay. I'm going to make  
 11 the same objections then.  
 12 MR. ABBAS: Okay.  
 13 MS. POWELL: Vagueness and scope to the  
 14 extent it's not limited to FBI and a comprehensive  
 15 answer would require state secrets and law  
 16 enforcement privileged information, but please  
 17 answer to the extent you can.  
 18 THE WITNESS: Can you repeat the  
 19 question?  
 20 (Record read.)  
 21 THE WITNESS: I think most of that is  
 22 going to be privileged. But, I mean, clearly

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1 shared awareness of the identities of known or  
 2 suspected terrorists across the intelligence and  
 3 law enforcement communities is a critical resource  
 4 for prevention.  
 5 BY MR. ABBAS:  
 6 Q. Are you withholding information on the  
 7 basis of a privilege in your answer to the last  
 8 question?  
 9 MS. POWELL: I'm sorry?  
 10 MR. ABBAS: It's a yes or no.  
 11 MS. POWELL: If that's a legal question,  
 12 the answer is --  
 13 MR. ABBAS: It's whether he's  
 14 withholding information on the basis of some  
 15 privilege assertion he referred to in his answer.  
 16 I'm unclear.  
 17 MS. POWELL: I'm pretty sure the answer  
 18 is yes.  
 19 BY MR. ABBAS:  
 20 Q. I'd like to hear the deponent.  
 21 Are you withholding information about  
 22 why the FBI believes the watchlisting system is an

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<p style="text-align: right;">81</p> <p>1 effective means of preventing acts of terrorism  2 unrelated to commercial aviation on the basis of a  3 privilege?  4 <b>A. Yes.</b>  5 Q. What privilege are you asserting that is  6 the basis of withholding information in your  7 answer?  8 MS. POWELL: That's a question for me.  9 The law enforcement privilege and the state  10 secrets privilege.  11 Q. Is the information that the government  12 relies upon to conclude that the watchlisting  13 system is an effective means of preventing acts of  14 terrorism unrelated to commercial aviation  15 memorialized in any documents?  16 <b>A. Specific to watchlisting, is that the</b>  17 <b>question? I'm not aware of any.</b>  18 Q. You're not aware of any documents that  19 memorialize -- that contain information -- never  20 mind.  21 How does the FBI assess -- let's back  22 up. Does the FBI assess the effectiveness of its</p>	<p style="text-align: right;">83</p> <p>1 about the opinion, I think I answered that  2 obviously the consolidated terrorist watchlist,  3 the TSDB, and the shared awareness among  4 communities is critical. The assessment that we  5 do on a regular basis is focused pretty heavily on  6 accuracy of information and protection of  7 safeguarding of civil liberties and privacy and  8 compliance within those areas.  9 BY MR. ABBAS:  10 Q. Has the TSDB ever prevented an act of  11 terrorism unrelated to commercial aviation?  12 MS. POWELL: Objection to the extent a  13 comprehensive answer would require law enforcement  14 information and potentially state secrets, but  15 please answer to the extent you can.  16 THE WITNESS: So as I previously  17 testified, the watchlist and watchlisting in  18 general is one of a suite of tools that we use to  19 prevent terrorism and have successfully used to  20 prevent terrorism.  21 BY MR. ABBAS:  22 Q. I don't think you answered the question.</p>
<p style="text-align: right;">82</p> <p>1 actions with regards to preventing acts of  2 terrorism?  3 <b>A. Yes.</b>  4 Q. Does the FBI assess the effectiveness of  5 its use of the TSDB?  6 MS. POWELL: Objection; vague.  7 THE WITNESS: The FBI conducts periodic  8 reviews of investigations which are inclusive of a  9 review of the use of the TSDB, the accuracy of the  10 information transmitted to TSC in nominations, the  11 accuracy of updates. So we're constantly  12 reviewing investigations and, as part of that,  13 reviewing the use of the TSDB as part of that  14 investigation.  15 BY MR. ABBAS:  16 Q. Has the FBI -- how has the FBI assessed  17 the effectiveness of the TSDB?  18 MS. POWELL: Objection; vague, possibly  19 asked and answered.  20 THE WITNESS: Yeah, I don't really  21 understand the question as you're posing it. I  22 think I answered that -- when you asked before</p>	<p style="text-align: right;">84</p> <p>1 Has the watchlisting system -- well, has  2 the FBI ever used the watchlisting system to  3 prevent a specific act of terrorism unrelated to  4 commercial revelation?  5 MS. POWELL: Objection; vague,  6 misleading, and a comprehensive answer potentially  7 calls for law enforcement or state secrets  8 information, but please answer to the extent you  9 can.  10 THE WITNESS: So watchlisting  11 information combined with other information has  12 prevented acts of terrorism.  13 BY MR. ABBAS:  14 Q. Are there specific instances that you  15 can identify in which the watchlisting system  16 itself has prevented -- let me back up.  17 Has the watchlisting system itself -- by  18 itself ever prevented an act of terrorism  19 unrelated to commercial aviation?  20 MS. POWELL: Same objections as well as  21 SSI. And to the extent you're looking for  22 specific examples, I'm going to instruct the</p>

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<p style="text-align: right;">85</p> <p>1 witness to not answer.  2 MR. ABBAS: I'm not. I'm asking -- it's  3 a yes-or-no question.  4 MS. POWELL: Answer to the extent you  5 can, yes or no only.  6 THE WITNESS: The question is  7 watchlisting -- just watchlisting all by itself?  8 Since the watchlist only includes identifiers of  9 known or suspected terrorists, by itself I'm not  10 aware of any instance where that identifying  11 information alone prevented an act of terrorism.  12 BY MR. ABBAS:  13 Q. It's the FBI's understanding that TSC  14 disseminates TSDB identifying information for use  15 by federal government agencies; correct?  16 MS. POWELL: Objections; scope and asked  17 and answered.  18 MR. ABBAS: Go ahead.  19 THE WITNESS: The TSC does disseminate  20 the information, yes.  21 BY MR. ABBAS:  22 Q. Does the FBI receive TSDB information</p>	<p style="text-align: right;">87</p> <p>1 MS. POWELL: Objection; vague,  2 potentially misleading.  3 THE WITNESS: Long before the TSC  4 existed, there was a file inside NCIC referred to  5 as VGTOF, which was the Violent Gang and  6 Terrorists Operational File. So that file has  7 been -- since the consolidated watchlisting came  8 into being after HSPD-6, there is now a file in  9 NCIC referred to as the Known or Suspected  10 Terrorist File. I don't know who a couple of  11 decades ago started the VGTOF file, but I know  12 that it has been in existence. It predates my  13 entry to the FBI.  14 BY MR. ABBAS:  15 Q. So there's no longer a VGTOF file, it's  16 just a KST file; correct?  17 <b>A. There is a KST file and I believe</b>  18 <b>there's a separate file for gang members, but I</b>  19 <b>don't know what it's called anymore.</b>  20 Q. Okay. But the KST file is the -- when  21 you say "KST file," you're referring to the subset  22 of information at NCIC that reflects TSDB</p>
<p style="text-align: right;">86</p> <p>1 from TSC?  2 MS. POWELL: Objection; vague.  3 THE WITNESS: Yes.  4 BY MR. ABBAS:  5 Q. What does the FBI do with TSDB  6 information it receives from TSC?  7 MS. POWELL: Objection; vague, a  8 comprehensive answer would require the disclosure  9 of law enforcement sensitive information, but  10 please answer to the extent you can.  11 THE WITNESS: The information received  12 by the FBI from the TSC is inclusive of the  13 information that goes to NCIC and the information  14 that comes into the FBI's case management system,  15 Sentinel. Information coming into Sentinel is  16 part of FBI investigations so that information  17 would be updating FBI investigations. And the  18 information that goes to NCIC is in NCIC for use  19 by NCIC users.  20 BY MR. ABBAS:  21 Q. Who decided to put TSDB information in  22 NCIC?</p>	<p style="text-align: right;">88</p> <p>1 information; correct?  2 <b>A. Yes.</b>  3 Q. Okay. Is it your understanding that it  4 was the FBI's decision to create the KST file and  5 make it available to NCIC users through NCIC?  6 MS. POWELL: Objection; mischaracterizes  7 prior testimony.  8 THE WITNESS: I don't know whose  9 decision it was. Similar to the TSC, NCIC and the  10 administration of NCIC belongs to the FBI, but it  11 is, you know, sort of advised by an interagency  12 policy board. So I don't know who made the  13 decision or whether it was specifically FBI's  14 decision or it was an interagency agreement that  15 to being compliant with HSPD-6 to go to one  16 consolidated terror watchlist. Clearly a decision  17 was to made to stop commingling gang members and  18 known or supported terrorists in the same file.  19 BY MR. ABBAS:  20 Q. That's a great decision.  21 So just to kind of clarify and make sure  22 that I understand, you're not -- you don't know</p>



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1 whether it was the FBI or some other agency that  
 2 decided to create a KST file within NCIC; correct?  
 3 MS. POWELL: Objection; mischaracterizes  
 4 prior testimony.  
 5 THE WITNESS: I don't know exactly who  
 6 did that.  
 7 BY MR. ABBAS:  
 8 Q. Does the FBI have any information that  
 9 the dissemination of TSDB information via NCIC has  
 10 ever prevented an act of terrorism unrelated to  
 11 commercial aviation?  
 12 MS. POWELL: Objection; vague,  
 13 misleading, and potentially calls for law  
 14 enforcement sensitive information, but please  
 15 answer to the extent you can.  
 16 THE WITNESS: The dissemination of KST  
 17 information to local law enforcement has certainly  
 18 assisted and enhanced investigations in order to  
 19 enable the prevention of terrorism.  
 20 BY MR. ABBAS:  
 21 Q. I understand your answer and I think  
 22 that's a fair answer, but I want to clarify one

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1 point.  
 2 Do you have any information that the  
 3 dissemination of TS -- I'm sorry, let me back up.  
 4 Does the FBI have any information that  
 5 the dissemination of TSDB information via NCIC has  
 6 directly prevented an act of terrorism unrelated  
 7 to commercial aviation?  
 8 MS. POWELL: Same objections and asked  
 9 and answered.  
 10 THE WITNESS: Yeah, my previous answer  
 11 is the answer to that.  
 12 BY MR. ABBAS:  
 13 Q. Is there any incident that the FBI can  
 14 point to where the dissemination of TSDB  
 15 information via NCIC has prevented an act of  
 16 terrorism unrelated to commercial aviation?  
 17 MS. POWELL: Same objection. And to the  
 18 extent you're looking for specific examples, I'm  
 19 going to instruct the witness not to answer on the  
 20 grounds of law enforcement privilege.  
 21 MR. ABBAS: I'm asking whether there are  
 22 examples, not information particular to any

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1 example.  
 2 MS. POWELL: I think he already answered  
 3 that.  
 4 MR. ABBAS: Go ahead.  
 5 THE WITNESS: I already answered that.  
 6 MR. ABBAS: You did not.  
 7 Can you read back the question.  
 8 (Record read.)  
 9 MS. POWELL: Same objection.  
 10 THE WITNESS: I did answer that in my  
 11 previous answer.  
 12 BY MR. ABBAS:  
 13 Q. How many incidents has the dissemination  
 14 of TSDB information via NCIC -- I'm sorry, let me  
 15 start again.  
 16 How many incidents of terrorism  
 17 unrelated to commercial aviation has the  
 18 dissemination of TSDB information via NCIC  
 19 prevented?  
 20 MS. POWELL: Same objections. And I  
 21 think with the addition of the number I'm going to  
 22 instruct the witness not to answer altogether.

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1 Q. Has there ever been to the FBI's  
 2 knowledge an act of terrorism unrelated to  
 3 commercial aviation that has been prevented  
 4 because TSDB information is available via NCIC?  
 5 MS. POWELL: Same objections; asked and  
 6 answered, calls for law enforcement information.  
 7 MR. ABBAS: You're not answering whether  
 8 or not there are incidents that you can --  
 9 MS. POWELL: But he did.  
 10 MR. ABBAS: -- point to.  
 11 No, he didn't.  
 12 MS. POWELL: Like four questions ago.  
 13 BY MR. ABBAS:  
 14 Q. What's your answer?  
 15 **A. I already answered that.**  
 16 Q. That's not an answer. It's up to you,  
 17 but the easier way is to actually answer the  
 18 questions. If there's a clarification you're  
 19 looking for, if you want the question read back to  
 20 you, we're happy to do that and to move it at a  
 21 pace that you're comfortable with.  
 22 **A. I'm comfortable. I completely**

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93	<p><b>1 understand the question and I answered it four</b></p> <p><b>2 questions ago.</b></p> <p>3 Q. What was your answer?</p> <p>4 MS. POWELL: Same objections.</p> <p>5 We could go back and have it read back</p> <p>6 if you'd like.</p> <p>7 MR. ABBAS: Asked and answered is not a</p> <p>8 basis for an instruction not to answer. And so if</p> <p>9 that's your objection, that's fine, that's fair,</p> <p>10 but he's refusing to answer the question.</p> <p>11 MS. POWELL: No, he did answer it and he</p> <p>12 said refer back to my previous answer, that's an</p> <p>13 answer.</p> <p>14 MR. ABBAS: That's not answer.</p> <p>15 MS. POWELL: It is an answer.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Has an act of terrorism -- and the</p> <p>18 reason I'm having to rephrase these questions is</p> <p>19 because the deponent is not answering the</p> <p>20 question.</p> <p>21 Has --</p> <p>22 MS. POWELL: If you would like to tell</p>	95	<p>1 and the common operating picture, the common</p> <p>2 awareness about known or suspected terrorist</p> <p>3 identities combined with other investigative or</p> <p>4 enforcement actions have been a successful tool in</p> <p>5 the prevention of terrorism.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. State and local authorities have access</p> <p>8 to NCIC information; correct?</p> <p><b>9 A. Yes.</b></p> <p>10 Q. Who has access -- let's just back up.</p> <p>11 Who has access to the NCIC?</p> <p><b>12 A. There are approximately 18,000 police</b></p> <p><b>13 departments who have access to the NCIC.</b></p> <p>14 Q. How many individual NCIC users are</p> <p>15 there?</p> <p><b>16 A. There are approximately 18,000</b></p> <p><b>17 departments whose members have access to it.</b></p> <p>18 Q. Does the FBI know how many individual</p> <p>19 persons have access to the NCIC?</p> <p><b>20 A. Yes, the FBI knows that.</b></p> <p>21 Q. How many individuals have access to the</p> <p>22 NCIC?</p>
94	<p>1 us how the question is different from your</p> <p>2 previous question, maybe we can get somewhere, but</p> <p>3 it sounds exactly the same to me and to the</p> <p>4 witness.</p> <p>5 Q. Has the dissemination of TSDB</p> <p>6 information via NCIC ever stopped an act of</p> <p>7 terrorism unrelated to commercial aviation?</p> <p>8 MS. POWELL: Same objections, and asked</p> <p>9 and answered, potentially calls for law</p> <p>10 enforcement and state secrets information, vague,</p> <p>11 and misleading, and asked and answered, but you</p> <p>12 can answer if you can.</p> <p>13 THE WITNESS: The dissemination</p> <p>14 alone -- the dissemination of that information</p> <p>15 through NCIC would clearly require some other</p> <p>16 action to be taken in order to prevent an act of</p> <p>17 terrorism. So the dissemination alone does not do</p> <p>18 anything to prevent, it just creates awareness on</p> <p>19 the part of the person making the query to NCIC.</p> <p>20 So the ability of a dissemination alone</p> <p>21 to prevent an act of terrorism, that doesn't</p> <p>22 exist. But the dissemination of that information</p>	96	<p><b>1 A. I think that's a fluid number changing</b></p> <p><b>2 all the time, but the FBI administers the NCIC</b></p> <p><b>3 database and, therefore, the FBI on any given day</b></p> <p><b>4 will know how many individual user accounts exist.</b></p> <p>5 Q. Generally, how many user accounts of</p> <p>6 NCIC exist?</p> <p><b>7 A. The answer is 18,000 different</b></p> <p><b>8 departments and their members have access,</b></p> <p><b>9 approximately 18,000. So the number of total</b></p> <p><b>10 users on any given day, I'm not aware of that</b></p> <p><b>11 number.</b></p> <p>12 Q. Is the number of -- but the FBI does</p> <p>13 keep track of how many individual persons have</p> <p>14 access to the NCIC; correct?</p> <p><b>15 A. I don't know how the FBI keeps track of</b></p> <p><b>16 it. What I know is that on any given day, there</b></p> <p><b>17 are a -- there's a specific number of individual</b></p> <p><b>18 user IDs or users that have access and that would</b></p> <p><b>19 be -- that would be something that potentially</b></p> <p><b>20 could be known, but I don't know how it's tracked.</b></p> <p>21 Q. Who decides whether an individual has</p> <p>22 access to NCIC or not?</p>

<p style="text-align: right;">97</p> <p>1 MS. POWELL: Objection; vague. 2 THE WITNESS: Who decides that? 3 BY MR. ABBAS: 4 Q. Yes. 5 <b>A. Well, each agency is bound by an</b> 6 <b>agreement and then there are also compliance and</b> 7 <b>audit units within the Criminal Justice</b> 8 <b>Information Services Division of the FBI who</b> 9 <b>ensure that the user agreements and rules are</b> 10 <b>followed and that there is compliance among the</b> 11 <b>member agencies. So there's not a single person</b> 12 <b>who decides whether or not an individual gets</b> 13 <b>access to NCIC.</b> 14 Q. The FBI controls NCIC; correct? 15 MS. POWELL: Objection; mischaracterizes 16 prior testimony and vague. 17 THE WITNESS: NCIC is the primary 18 criminal justice database in the country that is 19 administered and managed by the FBI through our 20 Criminal Justice Information Services Division, 21 yes. 22</p>	<p style="text-align: right;">99</p> <p>1 MS. POWELL: Objection; scope. You're 2 getting kind of weedy here when the court said we 3 should not. 4 You can answer, if you know. 5 MR. ABBAS: Go ahead. 6 THE WITNESS: All I'll say is that the 7 NCIC involves -- part of the role of that is to 8 tie together different state systems. So there's 9 information on state servers. So it's not just 10 one database basically, it is a system of law 11 enforcement information interconnected between 12 jurisdictions and states. So I would imagine 13 there are things that are not on FBI servers that 14 can be accessed through NCIC. 15 BY MR. ABBAS: 16 Q. Got it. And does the FBI create the 17 user IDs that individuals use to access the NCIC? 18 MS. POWELL: Objection; scope. 19 THE WITNESS: Yeah, I don't even know 20 the answer to that. 21 BY MR. ABBAS: 22 Q. Do you have access to the NCIC?</p>
<p style="text-align: right;">98</p> <p>1 BY MR. ABBAS: 2 Q. So the FBI decides what is or is not 3 included in NCIC; correct? 4 MS. POWELL: Objection; vague. 5 THE WITNESS: The FBI does not decide 6 what is or is not in NCIC, that's not correct. 7 BY MR. ABBAS: 8 Q. Okay. I'm asking because I don't know. 9 <b>A. It's not correct.</b> 10 Q. Okay. That's fine. 11 So does the NCIC information exist on 12 servers that are controlled by the FBI? 13 <b>A. They exist on servers, some of it does,</b> 14 <b>yes.</b> 15 Q. And there's other information that is in 16 the NCIC that does not exist on FBI servers? 17 <b>A. Yeah, I'm not familiar with the</b> 18 <b>technical landscape of the servers, but, I mean, a</b> 19 <b>good deal of it exists on FBI servers.</b> 20 Q. Okay. Is there any particular category 21 of information that you believe is in NCIC, but 22 not within FBI's control?</p>	<p style="text-align: right;">100</p> <p>1 <b>A. I currently don't, but I have in the</b> 2 <b>past and I will again soon.</b> 3 Q. Okay. When you had access -- when was 4 it that you had access to NCIC? 5 <b>A. Probably as recently as 2015.</b> 6 Q. How were you issued access to the NCIC, 7 did you apply for it? 8 <b>A. No, no, by an administrator in my field</b> 9 <b>office. And a local police department would have</b> 10 <b>a similar administrator to issue credentials to</b> 11 <b>their users.</b> 12 Q. So the FBI doesn't decide who the kind 13 of local level users are, that's decided by like 14 an agency? 15 <b>A. That's governed by policy created by the</b> 16 <b>interagency policy board that is advising NCIC.</b> 17 <b>So that policy designates that agencies ensure</b> 18 <b>that only authorized users have access.</b> 19 MS. POWELL: Gadeir, I'm hungry. 20 MR. ABBAS: It's up to you. 21 MS. POWELL: I realize you might want to 22 finish a topic or something.</p>

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101	<p>1 MR. ABBAS: Sure.</p> <p>2 MS. POWELL: So I don't want to press,</p> <p>3 but when you do get to a good stopping point.</p> <p>4 MR. ABBAS: Okay. So I'm just -- can we</p> <p>5 go off the record just for a moment? Is that all</p> <p>6 right?</p> <p>7 MS. POWELL: Yeah.</p> <p>8 (Recess from the record.)</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. What are the policy documents that</p> <p>11 dictate how state and local agencies are to</p> <p>12 administer access to NCIC, what are those</p> <p>13 documents called?</p> <p><b>14 A. I haven't reviewed those documents, I</b></p> <p><b>15 don't know what they're called.</b></p> <p>16 Q. But they're FBI documents that the FBI</p> <p>17 issues to state and local and other partners --</p> <p>18 MS. POWELL: Objection.</p> <p>19 Q. -- that have access to NCIC information?</p> <p>20 MS. POWELL: Objection; mischaracterizes</p> <p>21 prior testimony.</p> <p>22 THE WITNESS: I haven't seen the</p>	103	<p>1 BY MR. ABBAS:</p> <p>2 Q. But you don't know today how many there</p> <p>3 are?</p> <p><b>4 A. No, I don't.</b></p> <p>5 Q. Do you have any information in general</p> <p>6 form about the number of individuals that have</p> <p>7 access to NCIC?</p> <p><b>8 A. No, the only information I have is</b></p> <p><b>9 18,000 individual departments and agencies who</b></p> <p><b>10 have access.</b></p> <p>11 Q. Is the number of individuals who have</p> <p>12 access to NCIC information protected by any</p> <p>13 privilege?</p> <p>14 MS. POWELL: Are you asking me?</p> <p>15 MR. ABBAS: Yes.</p> <p>16 MS. POWELL: I don't think so.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Okay. You just don't know?</p> <p><b>19 A. No.</b></p> <p>20 Q. Okay. Great.</p> <p>21 Has the FBI ever publicly identified an</p> <p>22 incident of terrorism that TSDB information helped</p>
102	<p>1 documents. I don't know what they're called or</p> <p>2 when they were authored or who authored them.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Okay. Are there more than a million</p> <p>5 individual -- let me start again.</p> <p>6 Are there more than 1 million</p> <p>7 individuals who have access to the NCIC?</p> <p><b>8 A. I would be speculating if I answered. I</b></p> <p><b>9 don't know how many individual users there are.</b></p> <p>10 Q. There are more than 18,000 individual</p> <p>11 users of NCIC; correct?</p> <p><b>12 A. There are approximately 18,000</b></p> <p><b>13 departments who use NCIC.</b></p> <p>14 Q. So each department that uses NCIC has at</p> <p>15 least one individual who has NCIC access; correct?</p> <p><b>16 A. Yes.</b></p> <p>17 Q. Do you know -- the FBI does know how</p> <p>18 many total users there are of NCIC though that</p> <p>19 fluctuates day to day; correct?</p> <p>20 MS. POWELL: Objection; asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: Correct.</p>	104	<p>1 prevent?</p> <p>2 MS. POWELL: Objection; vague.</p> <p>3 THE WITNESS: It's likely that in court</p> <p>4 proceedings, you know, in the criminal process</p> <p>5 that there's been references to -- references to</p> <p>6 watchlisting, but I don't know of any public</p> <p>7 disclosure that TSDB information specifically</p> <p>8 prevented terrorism, I'm not aware of it.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. When an individual commits an act of</p> <p>11 terrorism inside the United States, does the FBI</p> <p>12 determine whether that person was on the watchlist</p> <p>13 at the time that person committed an act of</p> <p>14 terrorism?</p> <p><b>15 A. Absolutely.</b></p> <p>16 Q. Has a person who has committed an act of</p> <p>17 terrorism inside the United States been on the</p> <p>18 watchlist at the time they committed their act of</p> <p>19 terrorism?</p> <p>20 MS. POWELL: Objection.</p> <p>21 I'm going to instruct the witness not to</p> <p>22 answer on the grounds of the law enforcement</p>

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105	<p>1 privilege.</p> <p>2 MR. ABBAS: It's totally -- I'm pretty</p> <p>3 sure it's not.</p> <p>4 Is there any other privilege that you're</p> <p>5 asserting other than the law enforcement</p> <p>6 privilege?</p> <p>7 MS. POWELL: SSI.</p> <p>8 MR. ABBAS: That would only</p> <p>9 regard -- well, that's fine. Okay. You're</p> <p>10 asserting the SSI privilege.</p> <p>11 You're asserting the SSI privilege over</p> <p>12 FBI information? I'm asking for FBI information,</p> <p>13 I'm not asking for TSA information.</p> <p>14 MS. POWELL: FBI can possess SSI, that's</p> <p>15 not news.</p> <p>16 MR. ABBAS: Can you read back the last</p> <p>17 question.</p> <p>18 (Record read.)</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. You don't need to answer again.</p> <p>21 MR. ABBAS: What are the privileges?</p> <p>22 MS. POWELL: Law enforcement privilege</p>	107	<p>1 you have to answer the question.</p> <p>2 MS. POWELL: You can give your legal</p> <p>3 opinion if you'd like.</p> <p>4 THE WITNESS: I don't have an opinion</p> <p>5 about that.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Does the answer to your</p> <p>8 question -- let's go back to the question that has</p> <p>9 the question. Does your answer about whether a</p> <p>10 person -- let me start all over.</p> <p>11 Does your answer about whether any</p> <p>12 person who has committed an act of terrorism done</p> <p>13 so while on the watchlist include any information</p> <p>14 that you've received from TSA?</p> <p>15 MS. POWELL: Objection; calls --</p> <p>16 MR. ABBAS: It doesn't, it for sure</p> <p>17 doesn't.</p> <p>18 MS. POWELL: It's confusing is the</p> <p>19 problem. I'm going to object on grounds of</p> <p>20 vagueness.</p> <p>21 But if you would like to know the legal</p> <p>22 basis for my objection, I'd be happy to share it</p>
106	<p>1 and SSI.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Is there -- I understand you're not</p> <p>4 answering that question.</p> <p>5 Do you, as the FBI's representative,</p> <p>6 have an answer to that question that you're not</p> <p>7 providing?</p> <p>8 MS. POWELL: You can answer as to</p> <p>9 whether or not you know the answer I suppose.</p> <p>10 MR. ABBAS: Yeah.</p> <p>11 THE WITNESS: I know the answer to the</p> <p>12 question.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is the answer to the question that you</p> <p>15 have, does that answer include SSI information?</p> <p>16 MS. POWELL: That's not his call, that's</p> <p>17 mine to assert --</p> <p>18 MR. ABBAS: If he knows.</p> <p>19 MS. POWELL: -- in this situation.</p> <p>20 Then it calls for a legal conclusion.</p> <p>21 MR. ABBAS: Okay. You can answer the</p> <p>22 question. She did not instruct you not to answer,</p>	108	<p>1 with you.</p> <p>2 MR. ABBAS: I just want the answer.</p> <p>3 MS. POWELL: Okay.</p> <p>4 THE WITNESS: I'm totally confused by</p> <p>5 the question because I didn't answer the question.</p> <p>6 The only question I answered was whether or not I</p> <p>7 knew the answer.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Yes. So now the question is, does your</p> <p>10 answer that you know about whether a person has</p> <p>11 ever committed an act of terrorism inside the</p> <p>12 United States while on the watchlist include</p> <p>13 information you've received from TSA?</p> <p>14 MS. POWELL: Very confusing.</p> <p>15 THE WITNESS: Yeah, it may. I don't</p> <p>16 know. I don't know if it does or not.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. So you have no idea where the basis of</p> <p>19 your answer has come from?</p> <p>20 MS. POWELL: Objection; vague,</p> <p>21 confusing, and asked and answered at this point.</p> <p>22 THE WITNESS: That's not true either.</p>

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109	<p>1 So if someone is on the watchlist, I don't know</p> <p>2 that information that put them on that watchlist,</p> <p>3 I don't know whether it did or did not come from</p> <p>4 TSA. I don't know what information may have come</p> <p>5 from TSA. There may be information from TSA in</p> <p>6 lots of investigative case files and lots of</p> <p>7 watchlisting nominations. I don't know what</p> <p>8 information did or did not come from TSA.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is it your understanding -- TSDB</p> <p>11 information is not SSI protected; correct?</p> <p>12 MS. POWELL: Objection; calls for a</p> <p>13 legal conclusions.</p> <p>14 Q. Who owns TSDB information?</p> <p>15 MS. POWELL: Objection; vague.</p> <p>16 Q. The FBI has no position as to who owns</p> <p>17 TSDB information?</p> <p>18 MS. POWELL: Objection; vague.</p> <p>19 THE WITNESS: I mean, it's my opinion</p> <p>20 that TSC owns TSDB information.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Great. Okay.</p>	111	<p>1 prior testimony. If I'm wrong, tell me I'm wrong.</p> <p>2 THE WITNESS: Yeah, I would not</p> <p>3 characterize it as the FBI -- the whole FBI has</p> <p>4 access to the whole TSDB, that is not accurate.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does the FBI have access to the</p> <p>7 identifying information of the TSDB?</p> <p>8 MS. POWELL: Objection; vague and</p> <p>9 misleading.</p> <p>10 THE WITNESS: The FBI has the access,</p> <p>11 the TSDB pushes information to the FBI in</p> <p>12 Sentinel, in the case management system, and in</p> <p>13 NCIC. That information can be viewed if queried</p> <p>14 in those systems.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. So when an act of terrorism happens</p> <p>17 inside the United States --</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. -- the FBI has the ability to determine</p> <p>20 whether the perpetrator of the act of terrorism</p> <p>21 was or was not in the TSDB at the time they commit</p> <p>22 an act of terrorism; correct?</p>
110	<p>1 <b>A. The TSC is an interagency function.</b></p> <p>2 Q. And the FBI possess TSDB information it</p> <p>3 gets from TSC; correct?</p> <p>4 MS. POWELL: Objection; vague,</p> <p>5 misleading.</p> <p>6 THE WITNESS: I think I previously</p> <p>7 testified to the ways that TSC pushes TSDB</p> <p>8 information to the FBI.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Okay. So TSDB status is shared by TSC</p> <p>11 with the FBI and other agencies; correct?</p> <p>12 MS. POWELL: Objection; vague,</p> <p>13 misleading.</p> <p>14 THE WITNESS: TSDB status?</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Yes. Whether someone is or is not in</p> <p>17 the TSDB -- I'll just withdraw it.</p> <p>18 The FBI knows -- has access to the</p> <p>19 entire contents of the TSDB; correct?</p> <p>20 MS. POWELL: Objection; mischaracterizes</p> <p>21 prior testimony.</p> <p>22 MR. ABBAS: I'm not referring to his</p>	112	<p>1 <b>A. Yes.</b></p> <p>2 Q. And the FBI could query the NCIC to</p> <p>3 determine whether the perpetrator of the act of</p> <p>4 terrorism inside the United States was or was not</p> <p>5 in the TSDB at the time they committed their act</p> <p>6 of terrorism; correct?</p> <p>7 MS. POWELL: Objection; mischaracterizes</p> <p>8 prior testimony, vague.</p> <p>9 THE WITNESS: So I previously testified</p> <p>10 that if an act of terrorism occurs, the FBI will</p> <p>11 absolutely be interested in whether or not the</p> <p>12 person was watchlisted.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. And you could query the NCIC to</p> <p>15 determine whether the person was watchlisted;</p> <p>16 correct?</p> <p>17 MS. POWELL: Objection; mischaracterizes</p> <p>18 prior testimony, vague, and misleading.</p> <p>19 THE WITNESS: That's accurate.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Okay. Is the NCIC -- does the NCIC</p> <p>22 contain SSI information?</p>

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1 MS. POWELL: Objection; calls for a  
 2 legal conclusion.  
 3 THE WITNESS: I don't know.  
 4 BY MR. ABBAS:  
 5 Q. Okay.  
 6 **A. That's a legal call. I don't know.**  
 7 Q. Fair. Okay.  
 8 Is it the FBI's position that the status  
 9 of individuals on the watchlist is SSI  
 10 information?  
 11 MS. POWELL: Objection; calls for a  
 12 legal conclusion. There is, in fact, a TSA reg on  
 13 this.  
 14 MR. ABBAS: Go ahead.  
 15 THE WITNESS: Yeah, I don't have -- I  
 16 don't know the answer to that. That's a legal  
 17 question.  
 18 BY MR. ABBAS:  
 19 Q. Who aside from law enforcement agencies  
 20 have access to NCIC?  
 21 **A. I don't know of any people that are not**  
 22 **affiliated with a law enforcement agency that have**

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1 **access to NCIC.**  
 2 Q. Do any private entities have access to  
 3 NCIC?  
 4 **A. I'm not aware of any private entities**  
 5 **that have carte blanche access to NCIC or have law**  
 6 **enforcement access to NCIC.**  
 7 Q. Does any private entity have any type of  
 8 access to NCIC?  
 9 **A. Not that I'm aware of.**  
 10 Q. Okay.  
 11 **A. I'm not aware of any.**  
 12 Q. So when you said "carte blanche," that's  
 13 where I'm -- is there some access that private  
 14 entities are given?  
 15 **A. Not that I'm aware of inside NCIC, no.**  
 16 **But as I testified previously, NCIC pulls in from**  
 17 **a lot of different systems and some of those may**  
 18 **have some private access to a specific system that**  
 19 **NCIC's pulling from, but I don't know of any**  
 20 **private entities that have access to NCIC.**  
 21 Q. Does the NCIC provide access to any  
 22 private databases?

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1 **A. Not specifically through NCIC. I know**  
 2 **that in some states, you can access through a**  
 3 **portal -- through your state portal, you can**  
 4 **access a suite of tools which include NCIC and may**  
 5 **include something like LexisNexis or some public**  
 6 **records type system in the same portal, but I**  
 7 **don't think that they're part of NCIC, though.**  
 8 Q. Does the FBI regulate in any way which  
 9 private databases are made available through NCIC?  
 10 MS. POWELL: Objection; mischaracterizes  
 11 prior testimony.  
 12 THE WITNESS: They're not made available  
 13 through NCIC.  
 14 BY MR. ABBAS:  
 15 Q. You indicated that some --  
 16 **A. Different states have different**  
 17 **interfaces to the system. Some of those**  
 18 **interfaces include a menu of -- a menu of choices**  
 19 **and some of those choices are likely public**  
 20 **records checks and private systems as well.**  
 21 Q. Who decides what private systems are  
 22 included in those menu of choices that you're

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1 referring to?  
 2 **A. The FBI does not decide that.**  
 3 Q. So state and local authorities do?  
 4 **A. Yes, likely.**  
 5 Q. Okay. Great.  
 6 MR. ABBAS: 30 minutes for lunch?  
 7 MS. POWELL: Yes.  
 8 (Luncheon recess from the record.)  
 9 A F T E R N O O N S E S S I O N  
 10 (1:00 p.m.)  
 11 THE REPORTER: So this is the court  
 12 reporter and we have been on the record for two  
 13 and hours nine minutes.  
 14 MS. POWELL: I propose asking a couple  
 15 of clarifying questions with respect to prior  
 16 testimony.  
 17 MATTHEW J. DESARNO,  
 18 having been previously sworn, resumed the  
 19 stand and testified further as follows:  
 20 EXAMINATION BY COUNSEL FOR THE DEFENDANTS  
 21 BY MS. POWELL:  
 22 Q. First, Mr. DeSarno, you previously

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1 testified that the FBI knows how many user  
 2 accounts there are for NCIC. Can you explain what  
 3 that means?  
 4 **A. So that's how many individual ORIs**  
 5 **exist, which an ORI is an originating record**  
 6 **identifier. So an ORI can belong to a department**  
 7 **or to a specific station to a terminal so the FBI**  
 8 **can track the ORIs. And then it's up to the**  
 9 **individual departments to issue access to the ORI**  
 10 **and they have a responsibility to have an**  
 11 **auditable process.**  
 12 Q. All right.  
 13 MR. ABBAS: Can I ask him a question on  
 14 that?  
 15 MS. POWELL: Sure.  
 16 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  
 17 BY MR. ABBAS:  
 18 Q. So the FBI doesn't know how many  
 19 individual persons as part of their state and  
 20 local law enforcement responsibilities query the  
 21 NCIC; correct?  
 22 **A. I guess that's correct. I mean, I would**

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1 **imagine there is some process, some probably**  
 2 **exhaustive, burdensome process that if they needed**  
 3 **to know how many individual users had accessed**  
 4 **each ORI, it's probably able to be found, but the**  
 5 **tracking exists to the ORI.**  
 6 Q. And ORI stands for what?  
 7 **A. Originating record identifier.**  
 8 Q. Does the number of -- does the FBI know  
 9 the number of NCIS -- I'm sorry --  
 10 MS. POWELL: That would be different.  
 11 Q. Does the FBI know the number of NCIC  
 12 inquiries that are made of NCIC?  
 13 MS. POWELL: Objection; vague, but --  
 14 Q. Do you know how many times the NCIC has  
 15 been queried?  
 16 MS. POWELL: Same objection.  
 17 THE WITNESS: Yeah, I don't know. I  
 18 mean, there is -- there are audit -- there's an  
 19 audit unit and there are audit -- regular audits  
 20 so I would expect that there are records of that,  
 21 but I don't know the answer to it.  
 22

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1 BY MR. ABBAS:  
 2 Q. And just -- and that's fine.  
 3 And just to clarify, does the -- I asked  
 4 you if you knew, but let me ask -- you're here as  
 5 the FBI.  
 6 Does the FBI know how many times the  
 7 NCIC database has been queried?  
 8 MS. POWELL: Objection; scope and  
 9 potentially vague.  
 10 THE WITNESS: Yeah, I don't know.  
 11 BY MR. ABBAS:  
 12 Q. Does the FBI know how many times each  
 13 individual -- I'm sorry.  
 14 Does the FBI know how many NCIC queries  
 15 are generated by each ORI?  
 16 **A. I would expect that they do, but I**  
 17 **haven't seen that audit report. But I -- I think**  
 18 **that that is -- can be audited and confirmed.**  
 19 Q. Okay. But today sitting here, you don't  
 20 know?  
 21 **A. I don't know specifically.**  
 22 Q. Okay.

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1 MR. ABBAS: Okay.  
 2 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)  
 3 BY MS. POWELL:  
 4 Q. And the second question was you  
 5 previously testified that the TSDB is a tool to  
 6 prevent terrorist attacks by providing a common  
 7 operating picture and we objected to the provision  
 8 of any specific examples. With that objection  
 9 remaining in place and without sharing any  
 10 privileged information, can you provide any other  
 11 information about how the FBI uses it to prevent  
 12 terrorist attacks?  
 13 **A. Sure. So TSDB information combined in**  
 14 **some cases with encounter information and other**  
 15 **investigative information or intelligence, that**  
 16 **body of information and evidence and intelligence**  
 17 **combined with other potentially -- with other**  
 18 **sources can inform investigative strategy,**  
 19 **disruption strategy, prevention of terrorism**  
 20 **strategy. So when taken together and combined**  
 21 **with other information, it can help us to be more**  
 22 **preventive in our work.**



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1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)

2 BY MR. ABBAS:

3 Q. In your answer, are you referring to

4 specific instances when TSDB information combined

5 with other information has prevented an act of

6 terrorism?

7 MS. POWELL: To the extent that's a

8 yes-or-no question --

9 MR. ABBAS: It is.

10 MS. POWELL: -- you can answer.

11 MR. ABBAS: It is a yes-or-no question.

12 THE WITNESS: No.

13 BY MR. ABBAS:

14 Q. Okay. Great.

15 Okay. Is the -- the FBI keeps track of

16 the number of times a person in the TSDB is

17 encountered with -- I'm sorry.

18 The FBI receives information about

19 encounters with persons on the TSDB from other

20 government agencies; correct?

21 MS. POWELL: Objection; vague.

22 THE WITNESS: In some instances, yes.

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1 BY MR. ABBAS:

2 Q. When a local police officer pulls

3 someone over and queries the TSDB -- I'm sorry.

4 When a local law enforcement pulls

5 someone over and queries NCIC, if that person that

6 was pulled over is in TSDB, does the FBI learn of

7 the local law enforcement traffic stop?

8 MS. POWELL: Objection; vague and

9 potentially misleading.

10 THE WITNESS: Not necessarily. If the

11 local law enforcement officer gets a hit to the

12 KST file, it would likely be directed to the TSC

13 to make a notification. So depending on what's in

14 that record typically the call would go to the

15 24-hour call center at the TSC. The TSC would

16 then make an assessment as to what to do with that

17 information.

18 In many instances if this occurs inside

19 the United States, there would be a notification

20 to the FBI, but there are instances where it may

21 not. The other -- I mean, the -- so that

22 basically explains a U.S. -- a continental U.S.

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1 traffic stop to the TSC for a decision, TSC would

2 push to FBI if applicable.

3 BY MR. ABBAS:

4 Q. How does the local law enforcement

5 officer know to contact the TSC if that local law

6 enforcement officer pulls over during a traffic

7 stop a TSDB listee?

8 **A. So if a local law enforcement officer**

9 **runs NCIC, the NCIC return from the KST will tell**

10 **the local law enforcement officer -- depending on**

11 **the entry would tell the local law enforcement**

12 **officer different things which would frequently**

13 **include contact the TSC. Part of that contact is**

14 **also to resolve the identity, whether or not this**

15 **person that's stopped is actually a match, an**

16 **identity match to a person on the TSDB.**

17 Q. Why is it of interest to the FBI whether

18 a local law enforcement officer has pulled over a

19 person that's listed in the TSDB?

20 MS. POWELL: Objection; vague,

21 potentially mischaracterizes prior testimony, and

22 misleading.

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1 MR. ABBAS: I'll withdraw the question.

2 BY MR. ABBAS:

3 Q. Is the FBI interested in tracking

4 encounters with TSDB listees?

5 MS. POWELL: Potentially calls for law

6 enforcement sensitive information.

7 You can answer at a level of generality.

8 THE WITNESS: I mean, as I testified

9 just previously, the encounter information when

10 combined with other investigative information can

11 inform strategies, disruption efforts, and other

12 investigative steps that are appropriate with

13 regards to specific terrorism subjects.

14 BY MR. ABBAS:

15 Q. Has an encounter with a TSDB listee ever

16 resulted in a terrorism-related arrest?

17 MS. POWELL: Objection.

18 I'm going to instruct the witness not to

19 answer on the grounds of the law enforcement

20 privilege, also vague and potentially misleading.

21 Q. Do you know whether an encounter with a

22 person in the TSDB has ever led to a

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125	<p>1 terrorism-related arrest?</p> <p>2 MS. POWELL: Do you know?</p> <p>3 MR. ABBAS: It's a yes-or-no question.</p> <p>4 MS. POWELL: Okay. Well, I'm still</p> <p>5 going to object, it's vague and misleading, but</p> <p>6 answer if you -- I guess --</p> <p>7 THE WITNESS: The inclusion in the TSDB</p> <p>8 is not what's at issue in regards to a</p> <p>9 terrorism-related arrest. If a person, which has</p> <p>10 happened before, is wanted on an arrest warrant</p> <p>11 and they're run in NCIC, their inclusion in the</p> <p>12 TSDB would be secondary to the warrant that pops</p> <p>13 up that causes the arrest. If that person was</p> <p>14 wanted on terrorism-related charges, that would be</p> <p>15 a terrorism arrest. That does happen, yes.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. It's your testimony that an encounter</p> <p>18 with a TSDB listee has resulted in a</p> <p>19 terrorism-related arrest?</p> <p>20 MS. POWELL: Objection; mischaracterizes</p> <p>21 prior testimony.</p> <p>22 MR. ABBAS: Yeah, I agree.</p>	127	<p>1 potentially calls for law enforcement sensitive</p> <p>2 information about -- if you're asking questions</p> <p>3 about specific encounters, I would instruct him</p> <p>4 not to answer.</p> <p>5 MR. ABBAS: It's a yes-or-no question.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Is the FBI aware of any time in which</p> <p>8 there was an encounter with a TSDB listee during</p> <p>9 which there was a terrorism-related arrest? The</p> <p>10 FBI keeps track of encounters with TSDB listees</p> <p>11 so --</p> <p>12 MS. POWELL: It mischaracterizes --</p> <p>13 Q. -- it certainly knows whether any of</p> <p>14 those encounters lead to terrorism-related arrests</p> <p>15 so that's what the question is about.</p> <p>16 MR. ABBAS: So let me ask it and then</p> <p>17 you can make your objections.</p> <p>18 MS. POWELL: Okay.</p> <p>19 MR. ABBAS: And then hopefully we get an</p> <p>20 answer.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Is the FBI aware of any encounters with</p>
126	<p>1 THE WITNESS: My testimony is that an</p> <p>2 encounter with a wanted person who may also be on</p> <p>3 the TSDB has resulted in that.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. I understand what you're saying, I</p> <p>6 apologize for cutting you off. I understand what</p> <p>7 you're saying about a wanted person, but I'm</p> <p>8 asking more specifically about a terrorism-related</p> <p>9 arrest whether or not there's a warrant that's</p> <p>10 terrorism related.</p> <p>11 Okay. Has a person in the TSDB ever</p> <p>12 been arrested for a terrorism-related offense</p> <p>13 during an encounter?</p> <p>14 MS. POWELL: Objection.</p> <p>15 I'm going to instruct him not to answer</p> <p>16 on the basis of the law enforcement privilege, but</p> <p>17 it's also vague and confusing.</p> <p>18 Q. Is the FBI aware of any time in which</p> <p>19 there was an encounter with a TSDB listee during</p> <p>20 which there was a terrorism-related arrest?</p> <p>21 MS. POWELL: Objection; it's vague and</p> <p>22 confusing I think is the problem, but it also</p>	128	<p>1 TSDB listees that have resulted in</p> <p>2 terrorism-related arrests? It's a yes-or-no</p> <p>3 question.</p> <p>4 <b>A. It's not a yes-or-no question.</b></p> <p>5 Q. Yes, it is.</p> <p>6 MS. POWELL: I'm going to instruct the</p> <p>7 witness not to answer on the grounds of law</p> <p>8 enforcement privilege.</p> <p>9 MR. ABBAS: The law enforcement</p> <p>10 privilege?</p> <p>11 MS. POWELL: Yes.</p> <p>12 MR. ABBAS: Okay.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Why does the FBI disseminate watchlist</p> <p>15 information to state and local authorities via</p> <p>16 NCIC?</p> <p>17 <b>A. The FBI doesn't disseminate the</b></p> <p>18 <b>information, the FBI stores the information. And</b></p> <p>19 <b>if a subject is queried at NCIC, that information</b></p> <p>20 <b>becomes available to the querying person.</b></p> <p>21 Q. Sure. And the FBI, right, administers</p> <p>22 NCIC and makes the KST file available to state and</p>

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<p style="text-align: right;">129</p> <p>1 local authorities --</p> <p>2 MS. POWELL: Objection;</p> <p>3 mischaracterizes.</p> <p>4 Q. -- via NCIC; correct?</p> <p>5 <b>A. I would not characterize it that way.</b></p> <p>6 MS. POWELL: Let me just squirrel in the</p> <p>7 objection there of vague and misleading, but go</p> <p>8 ahead.</p> <p>9 THE WITNESS: So the way you're</p> <p>10 characterizing it sounds like you are envisioning</p> <p>11 that people with access to NCIC have access to</p> <p>12 this larger list of KSTs, that is not accurate.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. That's not what my question was.</p> <p>15 Does the FBI make TSDB information</p> <p>16 available in any way to state and local</p> <p>17 authorities?</p> <p>18 MS. POWELL: Objection; vague.</p> <p>19 THE WITNESS: Yes, upon a query related</p> <p>20 to a specific person.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Got it. Did the FBI make a conscious</p>	<p style="text-align: right;">131</p> <p>1 question.</p> <p>2 Can you read back the question.</p> <p>3 (Record read.)</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. It's a yes-or-no question.</p> <p>6 MS. POWELL: Same objection.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Great. Why did the -- has -- to the</p> <p>10 FBI's knowledge, has a state or local law</p> <p>11 enforcement officer who encountered a TSDB listee</p> <p>12 ever made a terrorism-related arrest of the TSDB</p> <p>13 listee that they're querying?</p> <p>14 MS. POWELL: Objection; vague and</p> <p>15 potentially calls for law enforcement sensitive</p> <p>16 information.</p> <p>17 If you can answer at a level of</p> <p>18 generality without revealing privileged</p> <p>19 information --</p> <p>20 MR. ABBAS: I'll withdraw the question.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. If a state and local law enforcement</p>
<p style="text-align: right;">130</p> <p>1 decision to include the ability in NCIC for state</p> <p>2 and local authorities to query NCIC in a way that</p> <p>3 reveals whether the person that is the focus of a</p> <p>4 law enforcement activity is in the TSDB?</p> <p>5 MS. POWELL: Objection; vague.</p> <p>6 THE WITNESS: The HSPD-6 issued in</p> <p>7 September of 2003 specifically calls for the</p> <p>8 sharing across with state and local law</p> <p>9 enforcement, the sharing of KST information to</p> <p>10 state and local law enforcement. The mechanism by</p> <p>11 which that occurs is through the NCIC.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. So the FBI in making TSDB information</p> <p>14 available to be queried via NCIC is acting in</p> <p>15 accordance with HSPD-6's directives?</p> <p>16 MS. POWELL: Objection; calls for a</p> <p>17 legal conclusion, but you can answer.</p> <p>18 THE WITNESS: President Bush directed</p> <p>19 the government to make it available to state and</p> <p>20 local law enforcement officers. The existing</p> <p>21 system at the time and currently was the NCIC.</p> <p>22 MR. ABBAS: You're not answering the</p>	<p style="text-align: right;">132</p> <p>1 officer arrests a person in the TSDB, is it the</p> <p>2 FBI's expectation that that would be notated</p> <p>3 somehow in the TSDB?</p> <p>4 MS. POWELL: Objection; vague.</p> <p>5 THE WITNESS: No, not in the TSDB.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Where would it be notated?</p> <p>8 MS. POWELL: Objection; scope.</p> <p>9 THE WITNESS: I mean, I don't think that</p> <p>10 the TSDB is where that would be notated.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. In the Sentinel database, is that where</p> <p>13 it would be notated if a state and local law</p> <p>14 enforcement officer encountered someone that's on</p> <p>15 the TSDB and arrested that person for any reason</p> <p>16 at all?</p> <p>17 MS. POWELL: Objection; vague.</p> <p>18 THE WITNESS: Yeah, I don't know -- I</p> <p>19 mean, based on your question, I don't know where</p> <p>20 it would be notated. It would depend on a lot of</p> <p>21 factors, the circumstances of arrest, who made the</p> <p>22 arrest, what the offenses were.</p>

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<p style="text-align: right;">133</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. So the FBI has no information about how</p> <p>3 a state and local law enforcement officer who</p> <p>4 encounters a TSDB listee, how that encounter gets</p> <p>5 recorded?</p> <p>6 MS. POWELL: Objection; mischaracterizes</p> <p>7 prior testimony.</p> <p>8 Q. It's just -- I'm surprised that the</p> <p>9 deponent who's testifying on behalf of the FBI has</p> <p>10 no information about basic --</p> <p>11 MS. POWELL: He has information.</p> <p>12 MR. ABBAS: -- things.</p> <p>13 MS. POWELL: He said it depends. That's</p> <p>14 not no information.</p> <p>15 MR. ABBAS: Can you just read the last</p> <p>16 question.</p> <p>17 (Record read.)</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Do you have any information about how a</p> <p>20 state or local law enforcement officer who</p> <p>21 encounters a TSDB listee records the outcome of</p> <p>22 that encounter? It's a yes-or-no question.</p>	<p style="text-align: right;">135</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. What do you know about how state and</p> <p>3 local law enforcement officers record encounters</p> <p>4 with TSDB listees?</p> <p>5 MS. POWELL: Objection; vague, but</p> <p>6 answer to the extent you can.</p> <p>7 THE WITNESS: As I said, there are a</p> <p>8 variety of different encounters.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Let's go through all of them. Let's go</p> <p>11 through all of the variety of different</p> <p>12 encounters.</p> <p>13 Do you have a number of the variety of</p> <p>14 different encounters with TSDB listees?</p> <p><b>15 A. I would argue that every encounter is</b></p> <p><b>16 different.</b></p> <p>17 Q. So there's no broad categories of</p> <p>18 encounters with TSDB listees?</p> <p><b>19 A. Of course there are broad categories.</b></p> <p>20 Q. What are the broad categories of</p> <p>21 encounters with TSDB listees?</p> <p><b>22 A. By whom?</b></p>
<p style="text-align: right;">134</p> <p><b>1 A. It's not a yes-or-no question about</b></p> <p><b>2 whether I have information.</b></p> <p>3 Q. So I'll ask you a follow-up question</p> <p>4 about what information you have, but the first</p> <p>5 step is I want to know if you have any</p> <p>6 information. And if the answer is no, that's fine</p> <p>7 and we can just move on. But if you do have</p> <p>8 information, then I want to ask you questions</p> <p>9 about it. Okay. So that's why the first question</p> <p>10 is like a foundation question, it's a yes-or-no</p> <p>11 question.</p> <p>12 MS. POWELL: It's also vague and</p> <p>13 confusing and misleading.</p> <p>14 Q. Do you have any information about how a</p> <p>15 state or local law enforcement officer</p> <p>16 encountering a TSDB listee records the outcome of</p> <p>17 that encounter with the TSDB listee?</p> <p>18 MS. POWELL: Objection; vague and</p> <p>19 misleading.</p> <p>20 THE WITNESS: I mean, every encounter is</p> <p>21 different and every encounter may be recorded</p> <p>22 differently.</p>	<p style="text-align: right;">136</p> <p>1 Q. By the FBI.</p> <p><b>2 A. The FBI doesn't have encounters.</b></p> <p>3 Q. Okay. The FBI doesn't have encounters?</p> <p><b>4 A. Not in the sense of -- an encounter, as</b></p> <p><b>5 I understand it, is when an individual is going</b></p> <p><b>6 through some screening process to include a law</b></p> <p><b>7 enforcement stop or a TSA checkpoint or a border</b></p> <p><b>8 checkpoint or a visa application and that</b></p> <p><b>9 encounter results in a match or possible match to</b></p> <p><b>10 a record in the TSDB. That's an encounter.</b></p> <p><b>11 The FBI generally is not screening</b></p> <p><b>12 people, stopping people, encountering unknown</b></p> <p><b>13 people and running them through systems. It</b></p> <p><b>14 happens occasionally, but it's very rare. Local</b></p> <p><b>15 law enforcement do that frequently and the</b></p> <p><b>16 categories could be traffic stop, it could be</b></p> <p><b>17 arrest, it could be field interview, it could be</b></p> <p><b>18 call to a house, it could be some sort of an</b></p> <p><b>19 application for -- some sort of application, local</b></p> <p><b>20 municipal permit or something, those are all</b></p> <p><b>21 potential encounters with local law enforcement</b></p> <p><b>22 where a local law enforcement agency may run a</b></p>

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<p style="text-align: right;">137</p> <p><b>1 person's identifiers and potentially have an</b>  <b>2 encounter with a person who's on the TSDB.</b>  <b>3 And in each of those instances, if it's</b>  <b>4 a live encounter with a live person, there are</b>  <b>5 many factors informing the police officer's</b>  <b>6 actions, one of which is potentially an alert</b>  <b>7 coming back from NCIC that this person is a KST.</b>  <b>8 Other things are where is this person's hands,</b>  <b>9 what's the lighting situation, how many people are</b>  <b>10 in the car, what's -- all those types of -- all</b>  <b>11 those pieces of information are informing that</b>  <b>12 encounter between a local police officer and a</b>  <b>13 subject, one of which is potentially a</b>  <b>14 notification from NCIC about KST.</b>  15 Q. Great. Excellent.  <b>16 A. That's why it's not such a simple</b>  <b>17 question.</b>  18 Q. Okay. The answer would have been yes  19 and then the information you provided.  20 MS. POWELL: Are we testifying now,  21 Gadeir?  22 Q. Are there a standard set of alerts that</p>	<p style="text-align: right;">139</p> <p>1 Q. Well, I don't understand how those two  2 are different. So I understand the primary  3 purpose is safety. So if a person is on the TSDB  4 listee, does the NCIC issue an alert to the law  5 enforcement officer to be careful, this person is  6 in the TSDB?  7 MS. POWELL: Objection. I think the  8 specifics of the language are going to be covered  9 by the law enforcement privilege.  10 I'm going to instruct him not to provide  11 specifics.  12 Q. The primary purpose of the alerts that  13 NCIC provides to law enforcement officers who  14 encounter a TSDB listee is their safety; correct?  15 MS. POWELL: Objection; vague.  16 THE WITNESS: Correct, officer's safety.  17 BY MR. ABBAS:  18 Q. Yes. And how does -- the NCIC alert  19 that is provided to local law enforcement officers  20 who encounter a TSDB listee, how does that  21 contribute to officer safety?  22 MS. POWELL: Again, the specifics of the</p>
<p style="text-align: right;">138</p> <p>1 NCIC issues to state and local law enforcement  2 encountering TSDB listees?  3 MS. POWELL: Objection; vague,  4 potentially calls for law enforcement information.  5 To the extent you can answer at a level  6 of generality.  7 THE WITNESS: Generality only?  8 MS. POWELL: I think so.  9 MR. ABBAS: Well --  10 THE WITNESS: The answer is yes, there  11 are different notifications that accompany the  12 message from NCIC to the police officer based on  13 different circumstances related to that subject.  14 BY MR. ABBAS:  15 Q. And those alerts provide guidance to the  16 local and state law enforcement officer as to how  17 to handle the encounter with a TSDB listee?  <b>18 A. The primary purpose of those alerts are</b>  <b>19 for the safety of the officer having the</b>  <b>20 encounter. The secondary purpose may be to</b>  <b>21 provide some instruction as to how to handle the</b>  <b>22 subject.</b></p>	<p style="text-align: right;">140</p> <p>1 language are covered by the law enforcement  2 privilege and I'd instruct you not to give them.  3 If there's a level of generality answer  4 you can give, please do.  5 THE WITNESS: Okay. As I previously  6 testified, if a local law enforcement officer is  7 in contact with a subject for any variety of  8 reasons that we discussed earlier, they're taking  9 in a lot of information about that subject in a  10 very short period of time. One piece of that  11 information may be a message from NCIC about the  12 person's inclusion in the KST file. Other pieces  13 of information may be other messages from NCIC  14 and/or observations that the police officer is  15 making as the encounter occurs. So all those  16 things together create the situational awareness  17 environment for the police officer in an attempt  18 to ensure that he has a safe operating environment  19 and that he can operate within the laws and  20 policies of his department.  21 BY MR. ABBAS:  22 Q. Are there standard alerts that NCIC</p>

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1 issues to law enforcement officers encountering  
 2 TSDB listees? It's a yes-or-no question, are  
 3 there standard alerts?  
 4 MS. POWELL: I think you can answer yes  
 5 or no.  
 6 THE WITNESS: Yes.  
 7 BY MR. ABBAS:  
 8 Q. How many standard alerts are there that  
 9 NCIC issues to law enforcement officers  
 10 encountering TSDB listees?  
 11 MS. POWELL: And I'm instructing the  
 12 witness not to answer on the grounds of the law  
 13 enforcement privilege.  
 14 Q. So you're not going to tell me the  
 15 number of -- I think it's probably three, I'm not  
 16 sure, it may be more.  
 17 Are there -- how do -- how do these  
 18 alerts -- who assigns -- let me start all over.  
 19 Who decides what standardized alert NCIC  
 20 will provide to law enforcement officers  
 21 encountering TSDB listees?  
 22 MS. POWELL: Objection; vague, but

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1 answer to the extent you can.  
 2 THE WITNESS: I don't know who decides  
 3 that.  
 4 BY MR. ABBAS:  
 5 Q. What agency decides which alerts NCIC  
 6 provides to law enforcement officers encountering  
 7 TSDB listees?  
 8 MS. POWELL: I have to register a  
 9 general objection at this point. The court's  
 10 protective order specifically indicated that this  
 11 topic should be treated at a level of generality  
 12 which we are long since past.  
 13 MR. ABBAS: This is like a super basic  
 14 question. You're giving instructions so  
 15 right -- the FBI's testimony is they're giving  
 16 instructions or guidance to local law enforcement  
 17 that's encountering listees and I'm just asking  
 18 questions about where that guidance comes from or  
 19 who creates it.  
 20 MS. POWELL: And I am registering an  
 21 objection as to scope. And at some point if we  
 22 stay down in the weeds, I'm going to instruct him

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1 not to answer on the basis of the protective  
 2 order, but we're not there yet.  
 3 MR. ABBAS: Do you want the question  
 4 read back?  
 5 THE WITNESS: No, I got the question.  
 6 BY MR. ABBAS:  
 7 Q. Okay. Great. Excellent.  
 8 **A. So similar to the TSC, the NCIC is**  
 9 **administered by the FBI, but not solely controlled**  
 10 **by the user term or governed by a single agency.**  
 11 **There is a board of multiple state, local, federal**  
 12 **agencies that convene regularly to determine**  
 13 **things like the language in a specific guidance or**  
 14 **message because the FBI doesn't make traffic stops**  
 15 **as a matter of course so the FBI doesn't create**  
 16 **the language in there that says how to handle**  
 17 **different types of subjects during traffic stops.**  
 18 **Those come from a consensus among an interagency**  
 19 **group of experts in different fields who create**  
 20 **that type of guidance.**  
 21 Q. Okay. Great. See I didn't know that,  
 22 now I do. That's great.

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1 MS. POWELL: We live to please.  
 2 Q. What is the board -- the interagency  
 3 board that oversees NCIC?  
 4 **A. I don't know the name of the board, but**  
 5 **I do know that it exists.**  
 6 Q. Okay.  
 7 **A. I don't know the specific name of it.**  
 8 Q. And the FBI participates in that board?  
 9 **A. Yes.**  
 10 Q. Does the FBI chair that board?  
 11 **A. I don't know who chairs it, but I would**  
 12 **imagine the FBI probably has a leadership role**  
 13 **since they administer the system.**  
 14 Q. Got it. That makes sense.  
 15 The board is not -- well, I'll ask, does  
 16 the board for each person that's in the TSDB make  
 17 a person-by-person determination as to what alert  
 18 is associated with each TSDB listee?  
 19 **A. I'm totally confused by that question.**  
 20 Q. The alerts are attaching to TSDB listees  
 21 at some point; correct? At some point, someone is  
 22 making a decision that this standardized alert is

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<p style="text-align: right;">145</p> <p>1 going to correspond with this TSDB listee?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Okay. When in the watchlisting process</p> <p>6 does an alert get paired with a TSDB listee?</p> <p>7 <b>A. Can I answer that?</b></p> <p>8 MS. POWELL: I think so, yeah.</p> <p>9 THE WITNESS: At nomination.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Okay. So if the FBI nominates a person</p> <p>12 to the TSDB, the FBI agent that's nominating that</p> <p>13 person is also determining if the nomination is</p> <p>14 accepted what alert will accompany that TSDB</p> <p>15 listee when that TSDB listee is queried in the</p> <p>16 NCIC?</p> <p>17 MS. POWELL: Objection; vague and</p> <p>18 misleading. And, again, scope. We're getting</p> <p>19 well beyond what the court said was appropriate in</p> <p>20 this area.</p> <p>21 MR. ABBAS: Go ahead.</p> <p>22 MS. POWELL: To the extent you can</p>	<p style="text-align: right;">147</p> <p>1 MS. POWELL: I'm sorry, could you ask</p> <p>2 again?</p> <p>3 MR. ABBAS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Which agency decides which, if any,</p> <p>6 handling code is assigned to a TSDB listee?</p> <p>7 MS. POWELL: Objection.</p> <p>8 I'm going to instruct the witness not to</p> <p>9 answer on the grounds of the law enforcement</p> <p>10 privilege, scope, and the court's protective</p> <p>11 order.</p> <p>12 MR. ABBAS: So it's secret law</p> <p>13 enforcement privilege about like who decides? I</p> <p>14 mean, it's your choice, but that seems like</p> <p>15 way -- like clearly not law enforcement.</p> <p>16 MS. POWELL: Well, handling codes are</p> <p>17 way outside the scope of the court's order at this</p> <p>18 point as well as the originally proposed topics.</p> <p>19 MR. ABBAS: The transcript which I</p> <p>20 read --</p> <p>21 MS. POWELL: And you're getting far</p> <p>22 enough into --</p>
<p style="text-align: right;">146</p> <p>1 answer.</p> <p>2 THE WITNESS: Upon nomination, the</p> <p>3 nominating agent, in this case if it was an FBI</p> <p>4 nomination, can request that the nomination be</p> <p>5 included and can request a specific handling code</p> <p>6 with the nomination. But the FBI does not make</p> <p>7 any decisions about inclusion on the list, which</p> <p>8 would mean the FBI is not determining that that's</p> <p>9 going on the list, that's just information that</p> <p>10 goes with the nomination.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. So like the FBI agent that nominates a</p> <p>13 person to be on the listee [sic] proposes a</p> <p>14 handling code to be assigned to each listee?</p> <p>15 <b>A. If the circumstances suggest that a</b></p> <p>16 <b>specific handling code should be applied, the</b></p> <p>17 <b>agent can request that.</b></p> <p>18 Q. Whose decision ultimately is it to</p> <p>19 attach handling codes to TSDB listees -- let me</p> <p>20 withdraw it.</p> <p>21 Which agency decides which handling</p> <p>22 codes are assigned to which TSDB listees?</p>	<p style="text-align: right;">148</p> <p>1 MR. ABBAS: -- in the morning, again, is</p> <p>2 very clear that handling codes are absolutely</p> <p>3 appropriate. They regard the FBI's use of TSDB</p> <p>4 information and this is like the easiest kind of</p> <p>5 compel issue we have. I would urge opposing</p> <p>6 counsel to allow the witness to answer something</p> <p>7 to avoid clearly additional deposition testimony</p> <p>8 at a later date. It's your choice.</p> <p>9 MS. POWELL: I'm happy to keep arguing</p> <p>10 with you about it if you like. We can burn</p> <p>11 through some deposition time that way.</p> <p>12 MR. ABBAS: That's my pitch. So I'm</p> <p>13 going to ask the question again and you guys do</p> <p>14 what you like.</p> <p>15 Can we go back to the last question?</p> <p>16 (Record read.)</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Which agency decides which, if any,</p> <p>19 handling code is assigned to a TSDB listee?</p> <p>20 MS. POWELL: And I'm instructing the</p> <p>21 witness not to answer on the grounds of the</p> <p>22 court's protective order, the scope of the topic,</p>

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<p style="text-align: right;">149</p> <p>1 and the law enforcement privilege.</p> <p>2 MR. ABBAS: Okay.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. You stated that the primary purpose of</p> <p>5 the alerts that NCIC provides to law enforcement</p> <p>6 officials that encounter TSDB listees as the</p> <p>7 safety of the law enforcement officers; correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. But it's not the only purpose; correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. You said that there's a secondary</p> <p>12 purpose; correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. What is the secondary purpose of</p> <p>15 providing alerts to local and state law</p> <p>16 enforcement officers via the NCIC?</p> <p>17 <b>A. To provide guidance to that officer as</b></p> <p>18 <b>to how to handle that subject.</b></p> <p>19 Q. Is the guidance that the NCIC alerts</p> <p>20 binding on the local or state law enforcement</p> <p>21 officer who is encountering a TSDB listee?</p> <p>22 MS. POWELL: Objection; calls for legal</p>	<p style="text-align: right;">151</p> <p>1 That's not the way that works. The NCIC message</p> <p>2 is for officer's safety first, for specific</p> <p>3 handling instructions second. And based on those</p> <p>4 instructions, it may require a reasonable officer</p> <p>5 to take certain steps, it depends on the message.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Are there any messages that local and</p> <p>8 state law enforcement officers receive via NCIC</p> <p>9 that regard TSDB listees that direct them to do</p> <p>10 particular things as they encounter a TSDB listee?</p> <p>11 MS. POWELL: Objection; vague.</p> <p>12 Q. If the answer is no, that's fine.</p> <p>13 MS. POWELL: To the extent you're asking</p> <p>14 questions about what handling codes do</p> <p>15 specifically, I'm going to instruct him not to</p> <p>16 answer.</p> <p>17 MR. ABBAS: That's not what I'm asking.</p> <p>18 MS. POWELL: Okay. What are asking?</p> <p>19 MR. ABBAS: I'm just asking whether the</p> <p>20 NCIC alerts require the local and state law</p> <p>21 enforcement officers to do anything.</p> <p>22 MS. POWELL: And, again, I'm going to</p>
<p style="text-align: right;">150</p> <p>1 conclusion I think. Either that or it's a vague</p> <p>2 question.</p> <p>3 MR. ABBAS: Go ahead.</p> <p>4 THE WITNESS: Binding?</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Yes.</p> <p>7 <b>A. I mean, I think that does call for a</b></p> <p>8 <b>legal conclusion, but I don't -- there may be some</b></p> <p>9 <b>that are binding or some that require them to do</b></p> <p>10 <b>something, there's some that don't, some that are</b></p> <p>11 <b>notifications.</b></p> <p>12 Q. So it's the FBI's testimony that some</p> <p>13 alerts require local and state law enforcement</p> <p>14 officials to do particular things during their</p> <p>15 encounter with a TSDB listee?</p> <p>16 MS. POWELL: Objection; mischaracterizes</p> <p>17 prior testimony, is vague, and calls for a legal</p> <p>18 conclusion.</p> <p>19 MR. ABBAS: Go ahead.</p> <p>20 THE WITNESS: There is no relationship</p> <p>21 where the FBI is requiring a local law enforcement</p> <p>22 agency to do something based on an NCIC message.</p>	<p style="text-align: right;">152</p> <p>1 object that it calls for a legal conclusion.</p> <p>2 MR. ABBAS: You can still answer.</p> <p>3 THE WITNESS: I don't think I can answer</p> <p>4 without getting into specifically what the</p> <p>5 differently handling codes are which has been</p> <p>6 asserted as a privilege.</p> <p>7 MS. POWELL: Then I'm going to instruct</p> <p>8 him not to answer.</p> <p>9 MR. ABBAS: That's fine.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. But there are handling codes; correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. Are local and state law</p> <p>14 enforcement officers expected to adhere to the</p> <p>15 guidance contained in handling codes assigned to</p> <p>16 TSDB listees?</p> <p>17 MS. POWELL: Objection as to scope and</p> <p>18 protective order and potentially the law</p> <p>19 enforcement privilege; but to the extent there's a</p> <p>20 yes-or-no answer, I think you can give it.</p> <p>21 THE WITNESS: Yes.</p> <p>22</p>



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<p style="text-align: right;">153</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Are you aware of any instances in which</p> <p>3 local and state law enforcement officers acted</p> <p>4 contrary to handling codes assigned to TSDB</p> <p>5 listees?</p> <p>6 MS. POWELL: I think I'm going to</p> <p>7 instruct him not to answer on the grounds of law</p> <p>8 enforcement privilege, unless you think there's a</p> <p>9 general answer you can give.</p> <p>10 THE WITNESS: No.</p> <p>11 MS. POWELL: All right. I'm instructing</p> <p>12 him not to answer then.</p> <p>13 MR. ABBAS: On what basis?</p> <p>14 MS. POWELL: Law enforcement privilege.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Are the handling codes themselves stored</p> <p>17 in the TSDB, the NCIC, or both?</p> <p>18 MS. POWELL: Objection as to scope and</p> <p>19 protective order certainly, but answer if you can.</p> <p>20 THE WITNESS: What do you mean by</p> <p>21 "stored"?</p> <p>22</p>	<p style="text-align: right;">155</p> <p>1 MR. ABBAS: If I'm wrong, tell me I'm</p> <p>2 wrong.</p> <p>3 THE WITNESS: The FBI can view TSDB</p> <p>4 status of an individual in the investigative case</p> <p>5 file of that individual.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Which would be through the Sentinel</p> <p>8 system; correct?</p> <p><b>9 A. Yes, per individual. It's not a big</b></p> <p><b>10 list of all the people on the list. It's that</b></p> <p><b>11 subject has -- is on the watchlist and that</b></p> <p><b>12 handling code would be visible if he has a</b></p> <p><b>13 handling code.</b></p> <p>14 Q. So within the Sentinel database, the FBI</p> <p>15 can determine whether a person is or is not in the</p> <p>16 TSDB; correct?</p> <p>17 MS. POWELL: Objection; vague,</p> <p>18 misleading.</p> <p>19 Answer if you can.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Are the handling codes shared with CBP's</p>
<p style="text-align: right;">154</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Contained within.</p> <p>3 If I look at the TSDB, can I see the</p> <p>4 handling codes assigned to TSDB listees?</p> <p>5 MS. POWELL: Objection as to scope and</p> <p>6 misdirected to FBI in the first place.</p> <p>7 MR. ABBAS: Go ahead.</p> <p>8 THE WITNESS: The handling codes -- the</p> <p>9 handling codes are attached to the entity and are</p> <p>10 viewable through the KST file in NCIC.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Okay. So they're viewable through NCIC,</p> <p>13 I understand that; correct -- I'm sorry, let me</p> <p>14 back up.</p> <p>15 So the handling codes assigned to TSDB</p> <p>16 listees are viewable via NCIC; correct?</p> <p><b>17 A. Yes.</b></p> <p>18 Q. Are the handling codes -- I'm sorry.</p> <p>19 The FBI has the ability to query the</p> <p>20 TSDB without using NCIC; correct?</p> <p>21 MS. POWELL: Objection; mischaracterizes</p> <p>22 prior testimony.</p>	<p style="text-align: right;">156</p> <p>1 automated targeting system, Passenger?</p> <p>2 MS. POWELL: Objection; scope, it's not</p> <p>3 FBI information, the protective order and the law</p> <p>4 enforcement privilege on that.</p> <p>5 I'm going to instruct the witness not to</p> <p>6 answer.</p> <p>7 Q. Do you know whether the handling codes</p> <p>8 are shared with CBP's automated targeting system,</p> <p>9 Passenger? Yes-or-no question.</p> <p>10 MS. POWELL: I think you can answer</p> <p>11 whether you know, although I still think it's</p> <p>12 outside the scope and limited by the protective</p> <p>13 order.</p> <p>14 THE WITNESS: If I can't answer the</p> <p>15 question why --</p> <p>16 MR. ABBAS: You can answer.</p> <p>17 MS. POWELL: If you can give a yes-or-no</p> <p>18 answer, please do.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Okay. That's an answer.</p> <p>22 Does -- I think we're fine.</p>

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158	<p>1 to handle the subject. TSDB inclusion is</p> <p>2 not -- is included in that body of information</p> <p>3 that can inform an officer as to how to conduct</p> <p>4 himself or herself in the stop.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does the alert from NCIC that local and</p> <p>7 state law enforcement officers receive when they</p> <p>8 query TSDB listees include the derogatory</p> <p>9 information that forms the basis of the TSDB</p> <p>10 nomination of that person?</p> <p>11 MS. POWELL: Object only to the extent</p> <p>12 that a comprehensive answer might require the</p> <p>13 provision of law enforcement sensitive</p> <p>14 information, but I think you can answer yes or no.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. It just includes -- I'm sorry.</p> <p>18 The alert from NCIC would just include</p> <p>19 the handling code; correct?</p> <p>20 MS. POWELL: Objection, again, to the</p> <p>21 extent we're getting into the specifics of the</p> <p>22 language given and --</p>	160	<p>1 enforcement privilege.</p> <p>2 MR. ABBAS: Okay. Great.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. How many times has a -- does the FBI</p> <p>5 monitor -- I know the answer to this question,</p> <p>6 right, so I'm not trying to be cute, but does the</p> <p>7 FBI monitor acts of terrorism inside the United</p> <p>8 States?</p> <p>9 MS. POWELL: Objection; vague.</p> <p>10 MR. ABBAS: It's foundation. It's</p> <p>11 foundation.</p> <p>12 MS. POWELL: Objection; vague.</p> <p>13 MR. ABBAS: To be clear.</p> <p>14 THE WITNESS: Monitor?</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Yes.</p> <p>17 Does the FBI keep track of acts of</p> <p>18 terrorism that occur inside the United States?</p> <p>19 MS. POWELL: Objection; vague.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Okay. Does the FBI know how many acts</p>

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<p style="text-align: right;">161</p> <p>1 of terrorism occurred in the United States in the  2 last decade?  3 MS. POWELL: Objection; vague.  4 THE WITNESS: Yes.  5 BY MR. ABBAS:  6 Q. Does the FBI know whether TSDB listees  7 have been responsible for acts of terrorism inside  8 the United States?  9 MS. POWELL: Objection; vague,  10 misleading, and a comprehensive answer potentially  11 calls for law enforcement sensitive information  12 and SSI and potentially the state secrets  13 privilege.  14 MR. ABBAS: Just looking for a yes or  15 no.  16 MS. POWELL: I'm sorry, could you repeat  17 the question?  18 MR. ABBAS: Yes.  19 BY MR. ABBAS:  20 Q. Does the FBI know whether TSDB listees  21 have been responsible for acts of terrorism inside  22 the United States?</p>	<p style="text-align: right;">163</p> <p>1 the disclosure of law enforcement sensitive SSI or  2 state secrets information or some combination of  3 the above. The question is vague and confusing,  4 but he can answer yes or no as to whether he  5 knows.  6 THE WITNESS: So is the question about  7 an attack to commercial aviation inside the United  8 States?  9 BY MR. ABBAS:  10 Q. Yeah. And I'll repeat it. I think it  11 is, but let me repeat the question just so we have  12 a clean record.  13 Can you read it back.  14 (Record read.)  15 MS. POWELL: Same objections, but you  16 can answer if you -- if you're just answering yes  17 or no as to whether or not the FBI knows.  18 THE WITNESS: Yes.  19 BY MR. ABBAS:  20 Q. Okay. I'm going to ask two numbers  21 questions that you're going to tell him not to  22 answer, but we just have to --</p>
<p style="text-align: right;">162</p> <p>1 MS. POWELL: To the extent you can give  2 a yes-or-no answer I think you can, just to  3 whether you know.  4 THE WITNESS: Do I know, I already  5 answered that, yes.  6 BY MR. ABBAS:  7 Q. Okay. How many TSDB listees have  8 committed acts of terrorism inside the United  9 States?  10 MS. POWELL: And I'm going to instruct  11 the witness not to answer on the grounds of the  12 law enforcement privilege, potentially the SSI and  13 state secrets privilege.  14 Q. Does the FBI know whether a person in  15 the TSDB has ever committed an act of terrorism  16 related to commercial aviation?  17 MS. POWELL: Objection -- wait, is the  18 question whether he knows?  19 MR. ABBAS: Yes. It's a yes-or-no  20 question.  21 MS. POWELL: Okay. Well, I'm going to  22 object that a comprehensive answer would require</p>	<p style="text-align: right;">164</p> <p>1 MS. POWELL: Just so we're --  2 MR. ABBAS: We're going to fight about  3 it later so not trying to be difficult.  4 BY MR. ABBAS:  5 Q. How many persons have committed acts of  6 terrorism inside the United States while they're  7 in the TSDB?  8 MS. POWELL: I'm going to instruct the  9 witness not to answer on the grounds of the law  10 enforcement privilege, potentially the SSI and  11 state secrets privilege, also vagueness.  12 Q. And you're not answering the question?  13 <b>A. No.</b>  14 Q. Okay. How many persons have committed  15 acts of terrorism regarding commercial aviation at  16 the time that they were in the TSDB?  17 MS. POWELL: Same set of objections; law  18 enforcement privilege, SSI, and state secrets.  19 Instructing the witness not to answer.  20 Q. Why does the FBI -- within the  21 watchlisting community, there is this term  22 "encounter information;" correct?</p>

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1 **A. Yes.**

2 Q. How does the FBI -- what does the FBI

3 mean when it refers to encounter information?

4 MS. POWELL: Objection; vague.

5 THE WITNESS: I mean, an encounter is

6 when there is a match or potential match between

7 the identity of a person being screened during

8 some screening process. That's an encounter.

9 BY MR. ABBAS:

10 Q. And it's an encounter with a TSDB

11 listee; correct?

12 **A. Potentially.**

13 Q. Is the term "encounter information"

14 specific to the TSDB?

15 MS. POWELL: Objection; vague and

16 misleading.

17 THE WITNESS: I mean, I consider

18 encounter information in the context of the TSDB

19 and watchlisting, yes.

20 BY MR. ABBAS:

21 Q. Does the FBI consider encounter

22 information to be specific to the watchlisting

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1 process?

2 MS. POWELL: Objection; vague and

3 misleading.

4 THE WITNESS: There's probably other

5 parts of the -- other places where encounters

6 means something else to other people; but from the

7 context of this conversation, I understand it to

8 mean TSDB encounters.

9 BY MR. ABBAS:

10 Q. Right. And you're here -- you're a

11 person, but you're also speaking on behalf of the

12 agency --

13 **A. Yeah.**

14 Q. -- so I just want to be clear that for

15 the purposes of FBI's deposition, when we discuss

16 encounter information during this deposition,

17 we're discussing it exclusively in regards to the

18 TSDB --

19 MS. POWELL: Objections; vague.

20 Q. -- correct?

21 **A. I mean, I understand that when we're**

22 **discussing encounters in this context, we're**

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1 **talking about encounters related to the TSDB.**

2 **There may be other definitions inside of my**

3 **organization for encounter that are not related to**

4 **this and not related to the TSDB, so I don't want**

5 **to say that any time the FBI uses the word**

6 **"encounter," they're talking about a TSDB**

7 **encounter.**

8 Q. Where are all the places that encounter

9 information regarding TSDB listees can be found?

10 MS. POWELL: Objection to the extent it

11 calls for information outside of FBI's role, also

12 vagueness.

13 MR. ABBAS: Go ahead.

14 THE WITNESS: I don't really understand

15 the question. All the places encounter

16 information can be found?

17 BY MR. ABBAS:

18 Q. Is encounter information with TSDB

19 listees included in the NCIC?

20 **A. No, I don't think so.**

21 Q. Okay. Is encounter information with the

22 TSDB listees included in the Sentinel database?

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1 MS. POWELL: Objection; vague.

2 THE WITNESS: Not always.

3 BY MR. ABBAS:

4 Q. Is there encounter information with TSDB

5 listees included in the Sentinel database?

6 **A. It would depend on the case and the**

7 **encounter. I mean, I think there could**

8 **potentially be an encounter with a subject that**

9 **resulted in a police report being written, that**

10 **police report ended up in Sentinel. But in**

11 **general, there's no large database of encounters**

12 **of all the TSDB listees in Sentinel. That doesn't**

13 **exist in Sentinel.**

14 Q. Okay. Where does the encounter -- so

15 it's not in NCIC, it's -- there is encounter

16 information that is in the Sentinel database?

17 That's a yes-or-no question.

18 MS. POWELL: Objection; vague and asked

19 and answered.

20 MR. ABBAS: Hold on. Let me try again.

21 He didn't answer it.

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<p style="text-align: right;">169</p> <p>1 BY MR. ABBAS:  2 Q. Is there any encounter information  3 contained in the Sentinel database?  4 MS. POWELL: Vague and asked and  5 answered.  6 THE WITNESS: I answered it. I said,  7 yes, there are instances --  8 BY MR. ABBAS:  9 Q. Okay. Great. There it is. That's it.  10 Is there encounter information regarding  11 TSDB listees included in the automated targeting  12 system, Passenger?  13 MS. POWELL: The what?  14 MR. ABBAS: That's what it's called.  15 MS. POWELL: Objection; vague.  16 THE WITNESS: I don't know what  17 Passenger is.  18 BY MR. ABBAS:  19 Q. Is there encounter information regarding  20 TSDB listees contained in the automated targeting  21 system?  22 MS. POWELL: Objection; vague and scope.</p>	<p style="text-align: right;">171</p> <p>1 <b>A. I don't think so, no.</b>  2 Q. You don't think. I mean --  3 <b>A. I can't remember hearing the term</b>  4 <b>"automated targeting system," no.</b>  5 Q. Okay. You said earlier that that's not  6 the term that we use. Is there a term that you  7 all use that's different than the one that I'm  8 using?  9 MS. POWELL: Objection; vague.  10 For what?  11 MR. ABBAS: I don't know. That's what  12 he said.  13 THE WITNESS: No, I don't know what the  14 automated targeting system is. I don't know whose  15 system that is. That's not my system so I don't  16 know.  17 BY MR. ABBAS:  18 Q. Are you familiar with a database that is  19 identified as TSS?  20 MS. POWELL: Objection; scope, but  21 answer if you know.  22 THE WITNESS: Yes.</p>
<p style="text-align: right;">170</p> <p>1 THE WITNESS: Yes, that's not an FBI  2 system.  3 BY MR. ABBAS:  4 Q. Are you familiar with the automated  5 targeting system?  6 MS. POWELL: Objection; scope.  7 THE WITNESS: Not by that name, no.  8 BY MR. ABBAS:  9 Q. So you know that I'm referring to  10 something, ATS, are you familiar with --  11 MS. POWELL: Objection; vague and scope.  12 Q. Are you familiar with ATS?  13 <b>A. No.</b>  14 Q. Are you familiar with the automated  15 targeting system?  16 MS. POWELL: Objection; asked and  17 answered.  18 Q. Have you ever heard the term "automated  19 targeting system" before?  20 <b>A. No.</b>  21 Q. Today you've never heard of the term  22 "automated targeting system"?</p>	<p style="text-align: right;">172</p> <p>1 BY MR. ABBAS:  2 Q. What is TSS?  3 <b>A. I think that's the TSC's encounter</b>  4 <b>database.</b>  5 Q. Okay. So there is an encounter database  6 that contains encounter information with TSDB  7 listees --  8 MS. POWELL: Objection; scope.  9 Q. -- correct?  10 MS. POWELL: Objection; scope.  11 THE WITNESS: The TSS I believe contains  12 encounter information, but I have not been in it  13 or seen it, but that's what I believe it's for,  14 encounter information.  15 BY MR. ABBAS:  16 Q. Who administers TSS?  17 MS. POWELL: Objection; scope and asked  18 and answered.  19 MR. ABBAS: Go ahead.  20 THE WITNESS: The TSC.  21 BY MR. ABBAS:  22 Q. Okay. Does the FBI have access to TSS?</p>

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1 MS. POWELL: Objection; asked and  
2 answered, but you can answer.  
3 THE WITNESS: I mean, I don't know  
4 exactly who has access to it. I know that not  
5 everyone in the FBI has access to it. But I would  
6 imagine there are people at TSC who are FBI  
7 employees who have access to it.  
8 BY MR. ABBAS:  
9 Q. Are there FBI agents that have access to  
10 TSS?  
11 MS. POWELL: Objection; vague and asked  
12 and answered.  
13 MR. ABBAS: If he would answer directly,  
14 I wouldn't have to ask it a bunch of times.  
15 MS. POWELL: If you can ask a direct  
16 question, he might be able to.  
17 BY MR. ABBAS:  
18 Q. Is there an FBI agent that has access to  
19 TSS?  
20 MS. POWELL: Objection; vague and asked  
21 and answered.  
22 Go ahead.

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1 THE WITNESS: I don't know.  
2 BY MR. ABBAS:  
3 Q. You don't know. That's fine.  
4 **A. I don't know if it's an agent, but I**  
5 **expect that there are employees at the TSC who are**  
6 **FBI employees who have access to TSS. But normal**  
7 **investigators don't have constant access to TSS.**  
8 Q. Great. Are there FBI employees who are  
9 not at TSC who have access to TSS?  
10 MS. POWELL: Objection; vague.  
11 THE WITNESS: Not that I'm aware of.  
12 BY MR. ABBAS:  
13 Q. So the only FBI employees that have  
14 access to TSS are FBI employees that work at TSC?  
15 **A. Well, I don't know that FBI employees**  
16 **are excluded from access. I mean, I think that if**  
17 **there was a need to access that system for some**  
18 **reason, then an FBI employee would be able to,**  
19 **probably other agencies that are participating in**  
20 **the TSC would also be able to. But I just don't**  
21 **know -- I'm just not familiar with persistent**  
22 **access by large bodies of FBI employees to that**

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**1 database.**  
2 Q. And when you say you're not familiar, I  
3 just kind of have to flush out what you mean. Is  
4 it your testimony -- and I could be wrong -- is it  
5 your testimony today that there are no categories  
6 of FBI agents -- I'm sorry.  
7 Is it your testimony today that there  
8 are no groups of FBI agents that are not stationed  
9 at TSC who have regular access to TSS?  
10 MS. POWELL: There were a lot of  
11 negatives in that question.  
12 Q. Is it your testimony today that there  
13 are no groups of FBI agents who are not stationed  
14 at TSC who have regular access to the TSDB? So  
15 the ones -- the FBI agents at TSC have access to  
16 TSS; correct?  
17 **A. I don't know who --**  
18 MS. POWELL: Objections; scope.  
19 THE WITNESS: -- has access to it. I  
20 just know it exists and there are people who have  
21 access to it. I don't know exactly who that is.  
22 MR. ABBAS: Yeah, so --

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1 MS. POWELL: Gadeir, my objection as to  
2 scope on this is going to stand throughout, right,  
3 the court specifically excluded TSC topics and TSC  
4 testified this is a TSC database that they  
5 administer.  
6 BY MR. ABBAS:  
7 Q. How many times has the FBI --  
8 MR. ABBAS: I'll just note for the  
9 record that the question about which FBI agents,  
10 if any, have access to TSS information is a basic  
11 question that the FBI deponent should absolutely  
12 have an answer for. And unless the FBI deponent  
13 is being deliberately evasive, the FBI deponent  
14 does not appear to know which, if any, FBI  
15 employees have access to TSS database.  
16 MS. POWELL: It's a mischaracterization  
17 of his testimony and of the topic.  
18 MR. ABBAS: That's fine, we can fight  
19 about it later.  
20 BY MR. ABBAS:  
21 Q. How many times has the FBI publicly  
22 identified a perpetrator of a U.S. act of

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1 terrorism as having been listed on the TSDB at the  
2 time of the act?  
3 MS. POWELL: I'm sorry, is the question  
4 how often they have publicly identified it?  
5 MR. ABBAS: Yes.  
6 MS. POWELL: Okay. You can answer that.  
7 THE WITNESS: Can you repeat the  
8 question?  
9 BY MR. ABBAS:  
10 Q. How many times has the FBI publicly  
11 identified a perpetrator of a U.S. act of  
12 terrorism as having been listed on the TSDB at the  
13 time of the act?  
14 **A. None that I'm aware of.**  
15 Q. Great. Okay.  
16 How many times has the FBI publicly  
17 admitted that a perpetrator of a U.S. act of  
18 terrorism has not been on the TSDB at the time of  
19 the act?  
20 MS. POWELL: Objection; misleading.  
21 THE WITNESS: Yeah, I don't know of any  
22 times.

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1 BY MR. ABBAS:  
2 Q. There's never been a time where the FBI  
3 has publicly admitted that a person who committed  
4 an act of terrorism inside the United States was  
5 not on the TSDB, that's never happened?  
6 **A. Not that I'm aware of.**  
7 Q. It definitely has so I'm, again,  
8 surprised that --  
9 MS. POWELL: It definitely has not.  
10 Q. How many FBI agents are authorized  
11 to -- I'm sorry, let me start again.  
12 How many FBI employees are able to  
13 nominate individuals to the TSDB?  
14 MS. POWELL: Objection; vague and  
15 misleading.  
16 Answer to the extent you can.  
17 THE WITNESS: So any persons working  
18 national security investigations, primarily case  
19 agents, but also analysts who are supporting those  
20 investigations, have the authority to make  
21 nominations to the TSDB.  
22

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1 BY MR. ABBAS:  
2 Q. How many FBI employees does that  
3 include?  
4 MS. POWELL: Objection; vague and  
5 misleading.  
6 Answer to the extent you can.  
7 THE WITNESS: And potentially  
8 classified.  
9 MS. POWELL: And potentially classified,  
10 potentially calls for the state secrets privilege.  
11 THE WITNESS: That number fluctuates and  
12 changes all the time, but it's a large number of  
13 investigators and analysts working not only  
14 counterterrorism, but all national security  
15 investigations. I can just broadly say it's more  
16 than -- more than 3,000 employees.  
17 BY MR. ABBAS:  
18 Q. Great. That's plenty of information.  
19 How many -- I'm sorry.  
20 So that number changes; correct?  
21 **A. Correct.**  
22 Q. And so at different -- so depending on

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1 an FBI's employee's duties, they may or may not  
2 have the authority to submit nominations of  
3 individuals to the TSDB; correct?  
4 MS. POWELL: Objection; vague.  
5 THE WITNESS: Yeah, I mean, authority is  
6 not -- I don't think the right term. It's they  
7 may or may not be in a role where that capability  
8 is either necessary or exists.  
9 BY MR. ABBAS:  
10 Q. So not all -- so the watch -- so the  
11 watchlisting nominating process is not relevant to  
12 every FBI employee's duties?  
13 **A. Correct.**  
14 Q. Okay. Some FBI employees have duties  
15 that require them to on occasion nominate  
16 individuals to the TSDB; correct?  
17 MS. POWELL: Objection; vague and asked  
18 and answered.  
19 THE WITNESS: Correct.  
20 BY MR. ABBAS:  
21 Q. Okay. Does every FBI employee receive  
22 training on how to nominate a person to the TSDB?

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<p style="text-align: right;">181</p> <p>1 MS. POWELL: Objection; vague.</p> <p>2 THE WITNESS: My interrogatory response</p> <p>3 to this was pretty clear that the TSC offers</p> <p>4 training to all 56 field offices and FBI</p> <p>5 headquarters. Agents also get -- agents and</p> <p>6 analysts also get training on the job from their</p> <p>7 training agents and their supervisors. And then</p> <p>8 new task force officers who are assigned to FBI</p> <p>9 task forces who have a watchlisting function go</p> <p>10 through a training iteration prior to -- prior to</p> <p>11 or shortly after getting on to a task force where</p> <p>12 they go through a series of training topics which</p> <p>13 includes watchlisting.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Does the FBI track which FBI employees</p> <p>16 make nominations to the TSDB?</p> <p>17 MS. POWELL: Objection; vague.</p> <p>18 THE WITNESS: It is vague. I mean, the</p> <p>19 FBI has the ability to audit everything any FBI</p> <p>20 employee does on any FBI system. So if the</p> <p>21 ability to audit is tracking, then yes.</p> <p>22</p>	<p style="text-align: right;">183</p> <p>1 producing how much or who's submitting how many</p> <p>2 nominations, that is occurring.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Has the FBI ever disciplined an FBI</p> <p>5 employee for how that FBI employee was making</p> <p>6 nominations to the TSDB?</p> <p>7 MS. POWELL: Objection; vague.</p> <p>8 Answer at a level of generality, if you</p> <p>9 can.</p> <p>10 THE WITNESS: I'm aware of many</p> <p>11 instances where the FBI has disciplined employees</p> <p>12 for violations of policies, investigative</p> <p>13 failures, shortcomings, misuse of authority. I'm</p> <p>14 not aware of any of those being specifically</p> <p>15 related to TSDB, but it's possible.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. And I -- again, because of your</p> <p>18 qualification I have to follow up.</p> <p>19 Are you aware of the FBI ever</p> <p>20 disciplining an FBI employee for how that FBI</p> <p>21 employee was making nominations to the TSDB?</p> <p>22 MS. POWELL: Objection; asked and</p>
<p style="text-align: right;">182</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does the FBI keep track of -- does the</p> <p>3 FBI assess in any way the number of nominations</p> <p>4 that individual FBI employees make to the TSDB?</p> <p>5 MS. POWELL: Objection; vague.</p> <p>6 MR. ABBAS: Go ahead.</p> <p>7 THE WITNESS: What do you mean by</p> <p>8 "assess"?</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Look at.</p> <p>11 Is it relevant to the FBI how many</p> <p>12 nominations a particular FBI employee is making to</p> <p>13 the TSDB?</p> <p>14 MS. POWELL: Objection; vague.</p> <p>15 THE WITNESS: I mean, the primary review</p> <p>16 process involves periodic reviews by supervisors</p> <p>17 of investigative files which includes reviews of</p> <p>18 watchlisting nominations. So if a supervisor -- a</p> <p>19 first-line supervisor of a squad is constantly</p> <p>20 reviewing for compliance, investigative quality,</p> <p>21 and efficiency, and effectiveness, every employee.</p> <p>22 So to the extent that that is measuring who's</p>	<p style="text-align: right;">184</p> <p>1 answered.</p> <p>2 MR. ABBAS: It was not answered.</p> <p>3 MS. POWELL: Yeah, it was.</p> <p>4 MR. ABBAS: Go ahead. It's a yes or no.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Okay. Great. That was different than</p> <p>8 the last answer.</p> <p>9 MS. POWELL: Do you want to take a break</p> <p>10 at some point soon?</p> <p>11 MR. ABBAS: We can take a break now.</p> <p>12 Five minutes, ten minutes? Let's do ten minutes.</p> <p>13 MS. POWELL: Yeah.</p> <p>14 (Recess from the record.)</p> <p>15 THE REPORTER: This is the court</p> <p>16 reporter. We have now used three hours and 20</p> <p>17 minutes?</p> <p>18 MR. ABBAS: Great. Three hours and 40</p> <p>19 minutes left.</p> <p>20 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)</p> <p>21 BY MS. POWELL:</p> <p>22 Q. I wanted to start off with one</p>



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<p style="text-align: right;">185</p> <p>1 clarifying question, Mr. DeSarno.  2 You previously testified about -- in  3 response to questions about FBI access to TSS. Do  4 you have anything to add to your prior testimony?  5 <b>A. Just that all access to TSS is</b>  6 <b>controlled by the TSC. So any access or requests</b>  7 <b>to access TSS or the information therein has to go</b>  8 <b>through the TSC and the TSC controls that.</b>  9 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  10 BY MR. ABBAS:  11 Q. Director Kable, as the head of TSC,  12 ultimately controls who has access to TSS;  13 correct?  14 MS. POWELL: Objection; vague.  15 THE WITNESS: The TSC does. If Director  16 Kable has -- the director has ultimate  17 responsibility over the TSC.  18 BY MR. ABBAS:  19 Q. And Director Kable has a supervisor.  20 What is Director Kable's supervisor's name again?  21 <b>A. His boss?</b>  22 Q. Yes.</p>	<p style="text-align: right;">187</p> <p>1 it, it could just be that I don't know. I'm  2 asking.  3 THE WITNESS: The TSC controls the  4 access. The interagency entity that is the TSC  5 that's in charge of consolidated U.S. government  6 watchlisting is administered by the FBI, but it is  7 an independent entity, they control the TSS. The  8 director of the TSC does work for an FBI  9 executive, but it does not eliminate that --  10 BY MR. ABBAS:  11 Q. I think you misunderstood the question.  12 <b>A. -- independence.</b>  13 Q. Does the FBI have access to TSS?  14 MS. POWELL: Objection; vague,  15 misleading, and asked and answered.  16 MR. ABBAS: Go ahead.  17 THE WITNESS: The FBI has the ability to  18 access TSS when a demonstrated need to access it  19 is requested and approved through the TSC.  20 BY MR. ABBAS:  21 Q. Is TSS a database? That's it, that's  22 the question.</p>
<p style="text-align: right;">186</p> <p>1 <b>A. Carl Ghattas.</b>  2 Q. And he's with the FBI; correct?  3 <b>A. He is, yes.</b>  4 Q. Can the FBI's TSC supervisor direct the  5 director of TSC to make TSS available to  6 particular agencies?  7 MS. POWELL: Objection; vague,  8 misleading.  9 THE WITNESS: Can the EAD tell the TSC  10 to make something available to someone?  11 BY MR. ABBAS:  12 Q. Yes.  13 <b>A. To make the information available to</b>  14 <b>someone?</b>  15 Q. And I'm talking specifically about TSS  16 information.  17 <b>A. I guess he could.</b>  18 Q. Great. The FBI does have access to TSS;  19 correct?  20 MS. POWELL: Objection; mischaracterizes  21 prior testimony.  22 MR. ABBAS: And if I'm misunderstanding</p>	<p style="text-align: right;">188</p> <p>1 <b>A. Yes.</b>  2 Q. Okay. Does the FBI have employees that  3 have access to TSS?  4 MS. POWELL: Objection; vague,  5 misleading, and asked and answered.  6 THE WITNESS: TSC employees, some of  7 whom may be FBI employees, do have access.  8 BY MR. ABBAS:  9 Q. Well, we don't know whether there are  10 TSC employees; right? You testified that you  11 don't know whether or not there are actually --  12 MS. POWELL: Objection; mischaracterizes  13 prior testimony.  14 MR. ABBAS: That's what you said  15 earlier.  16 THE WITNESS: Employees who are assigned  17 to the TSC from multiple different agencies --  18 BY MR. ABBAS:  19 Q. I think that's more accurate.  20 <b>A. -- they have access to TSS.</b>  21 Q. Okay. And you don't know whether or not  22 FBI employees not assigned to TSC also have access</p>

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<p style="text-align: right;">189</p> <p>1 to TSS?</p> <p>2 MS. POWELL: Objection; vague,</p> <p>3 misleading, and asked and answered.</p> <p>4 THE WITNESS: That's not what I said.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Okay. What did you say?</p> <p>7 <b>A. What I said is, if FBI employees who are</b></p> <p>8 <b>not assigned to the TSC have a need to access the</b></p> <p>9 <b>encountered database, they can request access</b></p> <p>10 <b>through the TSC and the TSC can control whether or</b></p> <p>11 <b>not they have access and what access they have.</b></p> <p>12 Q. How does the FBI employee request access</p> <p>13 to TSS?</p> <p>14 <b>A. They make a request.</b></p> <p>15 Q. I understand that in order to make a</p> <p>16 request, one must request.</p> <p>17 <b>A. I mean, I don't know if there's a</b></p> <p>18 <b>specific form or if they can send an e-mail to</b></p> <p>19 <b>someone to create a record or if they have to fill</b></p> <p>20 <b>out a form, one of those two things I would think.</b></p> <p>21 Q. And that's fair, right, it's not there</p> <p>22 are -- I'm asking about a lot of things, there</p>	<p style="text-align: right;">191</p> <p>1 Q. I just want to make sure that you're not</p> <p>2 looking at your phone for answers.</p> <p>3 <b>A. No, no.</b></p> <p>4 MS. POWELL: I think he's getting a</p> <p>5 ticktack.</p> <p>6 THE WITNESS: I put my phone over there</p> <p>7 because it buzzes all day long.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Okay. So when you said</p> <p>10 electronic -- you said that -- when you said that</p> <p>11 FBI employees make the request electronically,</p> <p>12 the -- your usage of the word "electronically" in</p> <p>13 that answer would include e-mail; correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. Your testimony is that there may</p> <p>16 or may not be some form that gets filled out</p> <p>17 electronically, correct, you don't know?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Okay. What do you know about what the</p> <p>20 FBI instructs -- let me back up.</p> <p>21 What do you know about what instructions</p> <p>22 the FBI provides FBI employees that are making</p>
<p style="text-align: right;">190</p> <p>1 might be some things that you don't know, and it's</p> <p>2 fine if you don't know. We'll fight about it</p> <p>3 later.</p> <p>4 <b>A. There would not be -- the request would</b></p> <p>5 <b>be -- there would be an electronic record of that</b></p> <p>6 <b>request made for audit purposes. So it's going to</b></p> <p>7 <b>be some type of an electronic request.</b></p> <p>8 Q. Okay. So there is a standardized way</p> <p>9 that FBI employees make requests to have access to</p> <p>10 TSS?</p> <p>11 MS. POWELL: Objection; vague and scope.</p> <p>12 MR. ABBAS: That's fine. Go ahead.</p> <p>13 THE WITNESS: That's not what I said. I</p> <p>14 just said they make a request and there was going</p> <p>15 to be some kind of electronic record of that</p> <p>16 request. That's it. Not standardized. I don't</p> <p>17 know if it is or not.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Okay. That's fair.</p> <p>20 So the electronic request might be via</p> <p>21 e-mail? Are you --</p> <p>22 <b>A. It might be.</b></p>	<p style="text-align: right;">192</p> <p>1 requests for TSS?</p> <p>2 MS. POWELL: Objection; vague.</p> <p>3 THE WITNESS: The instructions provided</p> <p>4 to FBI employees regarding searching of any</p> <p>5 database include a relevant investigation and an</p> <p>6 actual law enforcement or intelligence need to</p> <p>7 access the database. So TSS is no different than</p> <p>8 any other database that FBI employees access in</p> <p>9 terms of the guidance for usage.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does the FBI provide FBI employees with</p> <p>12 a document that memorializes its guidance to FBI</p> <p>13 employees who seek TSS access?</p> <p>14 MS. POWELL: Objection; vague.</p> <p>15 THE WITNESS: The TSS belongs to the TSC</p> <p>16 so if there's a document, it would be a TSC</p> <p>17 document outlining how to get access and the</p> <p>18 process of it.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Okay. So --</p> <p>21 <b>A. Not an FBI document.</b></p> <p>22 Q. Okay. So I'm going to kind of cabin out</p>

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193	<p>1 whether or not it's an FBI or TSC document.</p> <p>2 Does the FBI use any documents to guide</p> <p>3 FBI employees who seek access to TSS?</p> <p>4 MS. POWELL: Objection; vague and asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: The FBI has specific</p> <p>7 policies, guidelines in place regarding the access</p> <p>8 of databases for investigative purposes and the</p> <p>9 TSS falls within those guidelines.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Is there a guideline that the FBI uses</p> <p>12 that's TSS specific?</p> <p>13 MS. POWELL: Objection; vague.</p> <p>14 THE WITNESS: I'm not familiar with one.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. You're referring to policies; correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Are the policies that you're referring</p> <p>19 to TSS specific?</p> <p>20 MS. POWELL: Objection; asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No.</p>	195	<p>1 Q. Other than the Attorney General's</p> <p>2 Guidelines for Domestic Operations and the DIOG,</p> <p>3 are there any other documents that regard how</p> <p>4 TS -- how FBI employees seek TSS access?</p> <p>5 <b>A. Not that I'm aware of.</b></p> <p>6 Q. Okay. Is the Attorney General's -- what</p> <p>7 was it called again, Attorney General's?</p> <p>8 <b>A. Attorney General Guidelines.</b></p> <p>9 Q. For Domestic Operations?</p> <p>10 <b>A. For Domestic Operations.</b></p> <p>11 Q. Okay. Are the Attorney General's</p> <p>12 Guidelines for Domestic Operations classified in</p> <p>13 any way?</p> <p>14 MS. POWELL: Objection as to scope.</p> <p>15 MR. ABBAS: He brought the document up,</p> <p>16 not I.</p> <p>17 MS. POWELL: That doesn't make it within</p> <p>18 the scope, but --</p> <p>19 MR. ABBAS: Okay.</p> <p>20 MS. POWELL: -- you can answer.</p> <p>21 THE WITNESS: I think there are portions</p> <p>22 of it that are classified and portions of it that</p>
194	<p>1 BY MR. ABBAS:</p> <p>2 Q. Okay. So there are some general</p> <p>3 policies that you believe apply to requests for</p> <p>4 TSS access in the same way that they regard access</p> <p>5 to other databases; correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Okay. What are the names of the</p> <p>8 documents that you're referring to?</p> <p>9 <b>A. Of the policy documents?</b></p> <p>10 Q. Yes.</p> <p>11 <b>A. I mean, we have the Attorney General</b></p> <p>12 <b>Guidelines for Domestic Operations, the DIOG.</b></p> <p>13 Q. What does DIOG stand for?</p> <p>14 <b>A. Domestic Investigations and Operations</b></p> <p>15 <b>Guidelines.</b></p> <p>16 Q. Okay.</p> <p>17 <b>A. And then general -- I'd say those are</b></p> <p>18 <b>the two primary governing documents.</b></p> <p>19 Q. I got the DIOG. What's the other</p> <p>20 document called?</p> <p>21 <b>A. Attorney General Guidelines for Domestic</b></p> <p>22 <b>Operations.</b></p>	196	<p>1 are unclassified.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Okay. And the DIOG also contains</p> <p>4 classified portions and unclassified portions;</p> <p>5 correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Does the FBI create any reports</p> <p>8 regarding the effectiveness of its use of TSDB</p> <p>9 information?</p> <p>10 MS. POWELL: Objection; vague.</p> <p>11 THE WITNESS: What do you -- how do you</p> <p>12 mean effectiveness?</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. The FBI uses TSDB information for a</p> <p>15 purpose or purposes; correct?</p> <p>16 MS. POWELL: Objection; vague.</p> <p>17 MR. ABBAS: I mean, that's like the most</p> <p>18 general thing I can possibly ask.</p> <p>19 MS. POWELL: Agreed, that's why it's</p> <p>20 vague.</p> <p>21 THE WITNESS: It's pretty vague. I</p> <p>22 mean, the FBI uses a lot of information for a lot</p>

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<p style="text-align: right;">197</p> <p>1 of purposes. One data point of all that  2 information is watchlisting information. And the  3 FBI's role in watchlisting is more of a push than  4 a pull, a push to the list and then a pull from  5 the list.  6 BY MR. ABBAS:  7 Q. You all create a lot of TSDB  8 information; correct?  9 <b>A. The FBI is a nominator, not the largest</b>  10 <b>nominator, but a nominator of TSDB entries.</b>  11 Q. And the FBI is also a consumer of TSDB  12 information; correct?  13 <b>A. To some extent, yes.</b>  14 Q. Okay. And, again, I'm asking, this is a  15 yes-or-no question, and I'm sure I know the  16 answer, but you didn't answer it last time.  17 Does the FBI have a purpose in its use  18 of TSDB information? It's a yes-or-no question.  19 MS. POWELL: Objection as to vagueness.  20 THE WITNESS: Is there a purpose to it?  21 BY MR. ABBAS:  22 Q. Yes.</p>	<p style="text-align: right;">199</p> <p>1 there's any question in the FBI's mind about  2 whether or not watchlisting is an effective tool.  3 BY MR. ABBAS:  4 Q. I know. I know.  5 <b>A. So there's no need to measure it. What</b>  6 <b>we're more interested in measuring is compliance,</b>  7 <b>timeliness, and accuracy of watchlisting</b>  8 <b>submissions and the use of it. Now, there are</b>  9 <b>multiple agencies and entities to include agency</b>  10 <b>inspector generals, the GAO, multiple, you know,</b>  11 <b>third – Congress who are constantly auditing,</b>  12 <b>validating, and looking at the watchlisting</b>  13 <b>enterprise. So, you know, the FBI is clearly –</b>  14 <b>as part of that, we're constantly reviewing that,</b>  15 <b>but the question as to whether or not it is</b>  16 <b>effective is not significant.</b>  17 BY MR. ABBAS:  18 Q. It's not significant whether it's  19 effective? Okay. That's fine.  20 <b>A. No, it's not in question. It's not in</b>  21 <b>question. It is significant, there's no question</b>  22 <b>about it.</b></p>
<p style="text-align: right;">198</p> <p>1 <b>A. Yes, of course.</b>  2 Q. Okay. Great.  3 Does the FBI assess in reports or other  4 documents how effective the FBI's use of TSDB  5 information is in furtherance of its purposes?  6 MS. POWELL: Objection as to vagueness.  7 MR. ABBAS: It's a yes-or-no question.  8 Do you want me to repeat the question?  9 THE WITNESS: I understand the question.  10 BY MR. ABBAS:  11 Q. Okay.  12 <b>A. I think it's just vague. I don't –</b>  13 Q. I understand you don't like the  14 question.  15 <b>A. No, I like it fine. I think it's vague.</b>  16 Q. I think it's a great question to be  17 honest.  18 MS. POWELL: Very fine question and yet  19 vague.  20 MR. ABBAS: I mean, I don't know how to  21 ask it any more simply.  22 THE WITNESS: Look, I don't think</p>	<p style="text-align: right;">200</p> <p>1 Q. Okay.  2 MR. ABBAS: Can you go back up to the  3 question. He did not answer the question.  4 Q. Does the FBI assess in reports or other  5 documents how effective the FBI's use of TSDB  6 information is in the furtherance of the purposes  7 it has for using TSDB information?  8 MS. POWELL: Same objection and asked  9 and answered.  10 MR. ABBAS: It's a yes or no.  11 THE WITNESS: The answer -- I just gave  12 you the answer.  13 BY MR. ABBAS:  14 Q. No, you didn't.  15 MS. POWELL: Objection and asked and  16 answered.  17 THE WITNESS: I answered that already.  18 BY MR. ABBAS:  19 Q. You're not answering the question.  20 MR. ABBAS: Objection, the deponent is  21 not answering the question.  22 MS. POWELL: I don't think you get to</p>

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201	<p>1 make objections.</p> <p>2 MR. ABBAS: I can absolutely make the</p> <p>3 objection. I can.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Does the FBI -- let's go back up. I</p> <p>6 don't know why you're not answering this question,</p> <p>7 it should be an easy question.</p> <p>8 If the answer is no, that's fine. If</p> <p>9 the answer is yes, that's fine as well. But</p> <p>10 you're not -- you did not give me an answer to the</p> <p>11 question.</p> <p>12 MR. ABBAS: Can we go back up?</p> <p>13 Q. Does the FBI assess in reports or other</p> <p>14 documents how effective the FBI's use of TSDB</p> <p>15 information is in furtherance of the purposes it</p> <p>16 has for using TSDB information?</p> <p>17 MS. POWELL: Same objections; vagueness</p> <p>18 and asked and answered.</p> <p>19 THE WITNESS: Yeah, I -- the FBI is</p> <p>20 constantly assessing its use, accuracy, compliance</p> <p>21 in regards to watchlisting for each individual</p> <p>22 subject that it nominates and that's the focus of</p>	203	<p>1 of information between the FBI and the TSDB is</p> <p>2 from the FBI to the TSDB. The agencies having</p> <p>3 encounters and those things, they're receiving the</p> <p>4 information. For the most part our -- the</p> <p>5 majority of our activity is pushing information to</p> <p>6 the TSDB.</p> <p>7 MR. ABBAS: The deponent is not</p> <p>8 answering the question so I guess this will be a</p> <p>9 subject to briefing regarding the adequacy of the</p> <p>10 deponent's answers during the course of this</p> <p>11 deposition.</p> <p>12 MS. POWELL: Not liking the answers is</p> <p>13 not the same as not getting answers.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Are there reports that the FBI possesses</p> <p>16 that regard the accuracy of TSDB information?</p> <p>17 MS. POWELL: Objection; vagueness and</p> <p>18 potentially scope, but answer if you can.</p> <p>19 THE WITNESS: I mean, as I mentioned</p> <p>20 before, there are -- there have been several</p> <p>21 oversight audits, inspector general reports about</p> <p>22 the TSC and --</p>
202	<p>1 the assessment. The effectiveness of it is not in</p> <p>2 question.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Has the FBI ever asked the question</p> <p>5 about whether or not its use of TSDB information</p> <p>6 is effective in furtherance of the purposes it has</p> <p>7 to use TSDB information?</p> <p>8 MS. POWELL: Objection; vagueness and I</p> <p>9 think asked and answered.</p> <p>10 MR. ABBAS: No, this is different.</p> <p>11 THE WITNESS: So the -- I think the</p> <p>12 point that is being confused here is that the use</p> <p>13 of TSDB information is not -- that's not</p> <p>14 necessarily the main -- I mean, that's just</p> <p>15 not -- that's not -- the information in TSDB is</p> <p>16 merely the identifying information of the person</p> <p>17 entered into the TSDB. There are other databases</p> <p>18 that are much more fruitful for use.</p> <p>19 So the FBI's primary purpose with the</p> <p>20 TSDB is a push of information to the TSDB. There</p> <p>21 are instances where we are also using information</p> <p>22 from the TSDB, but the primary -- the primary flow</p>	204	<p>1 BY MR. ABBAS:</p> <p>2 Q. Other than inspector general reports,</p> <p>3 are there any documents that the FBI authors</p> <p>4 regarding the accuracy of TSDB information?</p> <p>5 MS. POWELL: You should probably let him</p> <p>6 finish an answer if you want to get full answers.</p> <p>7 MR. ABBAS: I -- go ahead.</p> <p>8 THE WITNESS: So the FBI is constantly</p> <p>9 reviewing each of its submissions for accuracy and</p> <p>10 compliance. And in instances where the</p> <p>11 information is not accurate, then we provide</p> <p>12 accurate information. In instances where the</p> <p>13 timeliness of the submission is not in compliance,</p> <p>14 we correct that. I mean, there are -- as far as</p> <p>15 an overall report as to the accuracy of all of the</p> <p>16 information at TSDB, I'm not aware of that report.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Okay. Are there reports that the FBI</p> <p>19 authors regarding the accuracy of subsets of</p> <p>20 information contained in the TSDB?</p> <p>21 MS. POWELL: Objection as to scope and</p> <p>22 vagueness.</p>

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205	<p>1 You can answer.</p> <p>2 THE WITNESS: Not that I'm aware of.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Okay. You say that TSC -- I'm sorry.</p> <p>5 You say that the FBI is constantly</p> <p>6 assessing the accuracy of TSDB information;</p> <p>7 correct?</p> <p>8 MS. POWELL: Objection; mischaracterizes</p> <p>9 prior testimony.</p> <p>10 THE WITNESS: Of nominations that the</p> <p>11 FBI submits to the TSDB.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Okay. So the FBI's focused just on the</p> <p>14 nominations that the FBI submits to the TSC, the</p> <p>15 accuracy of those nominations; correct?</p> <p><b>16 A. From a compliance standpoint, that would</b></p> <p><b>17 be our primary concern is our nominations and are</b></p> <p><b>18 they accurate, are they compliant, are they in</b></p> <p><b>19 accordance with our responsibilities to safeguard</b></p> <p><b>20 privacy and civil liberties.</b></p> <p>21 Q. Okay. Are there reports --</p> <p><b>22 A. I'm not sure why that's funny.</b></p>	207	<p><b>1 investigation, the supervisor will look at the</b></p> <p><b>2 nomination for accuracy, compliance, timeliness.</b></p> <p><b>3 The nomination, though, then goes through</b></p> <p><b>4 multiple -- outside of the FBI, TSC will go</b></p> <p><b>5 through and NCTC will go through multiple steps of</b></p> <p><b>6 accuracy review and also potentially additional</b></p> <p><b>7 information can be added to the nomination.</b></p> <p><b>8 So the nomination itself gets reviewed</b></p> <p><b>9 by the supervisor on a regular basis as part of an</b></p> <p><b>10 investigative file review, but the supervisor is</b></p> <p><b>11 reviewing the entire case file of which one small</b></p> <p><b>12 piece is the watchlisting status.</b></p> <p>13 Q. How is the review of an FBI -- how is</p> <p>14 the -- how is an FBI supervisor's review of an FBI</p> <p>15 employee's TSDB nomination memorialized?</p> <p><b>16 A. The FBI supervisor's review of the</b></p> <p><b>17 investigative file is memorialized --</b></p> <p>18 Q. I'm not asking about the whole</p> <p>19 investigative file.</p> <p><b>20 A. That's what they look at, the whole</b></p> <p><b>21 file.</b></p> <p>22 Q. Okay. So there's never a point in time</p>
206	<p>1 Q. Are there reports that -- are there</p> <p>2 reports that regard the accuracy of FBI</p> <p>3 nominations to the TSDB?</p> <p><b>4 A. Like reports that are inclusive of all</b></p> <p><b>5 of FBI's nominations?</b></p> <p>6 Q. Yes.</p> <p><b>7 A. Not that I'm aware of.</b></p> <p>8 Q. Are there reports that include a subset</p> <p>9 of the nominations that the FBI submits to the</p> <p>10 TSDB?</p> <p>11 MS. POWELL: Objection; vagueness.</p> <p>12 Q. What documents -- I mean, how -- so it's</p> <p>13 not a mystery that the FBI reviews nominations</p> <p>14 that FBI employees submit to TSDB; correct?</p> <p><b>15 A. Yes.</b></p> <p>16 Q. What documents memorialize the outcomes</p> <p>17 of the FBI's reviews of FBI employee nominations</p> <p>18 to TSDB?</p> <p><b>19 A. So the FBI is not reviewing big batches</b></p> <p><b>20 of nominations. When a case agent makes a</b></p> <p><b>21 nomination, through the course of his file</b></p> <p><b>22 review -- his regular file review regarding that</b></p>	208	<p>1 when the FBI supervisor is looking just at the FBI</p> <p>2 employee's TSDB nomination?</p> <p>3 MS. POWELL: Objection; mischaracterizes</p> <p>4 prior testimony.</p> <p>5 THE WITNESS: Yeah, no, the FBI -- the</p> <p>6 FBI employee will -- the supervisor will see the</p> <p>7 nomination when it first goes out as part</p> <p>8 of -- typically as part of the initial -- we're</p> <p>9 getting kind of into some law enforcement</p> <p>10 sensitive stuff.</p> <p>11 MR. ABBAS: I don't think so, but if you</p> <p>12 want to assert the law enforcement privilege go</p> <p>13 ahead.</p> <p>14 THE WITNESS: I can say this, every item</p> <p>15 that goes into an investigative file is reviewed</p> <p>16 by a supervisor.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. How do you know that?</p> <p><b>19 A. I know that because I'm an FBI agent.</b></p> <p>20 Q. Sure.</p> <p><b>21 A. Every file -- there's an electronic</b></p> <p><b>22 signature by a supervisor for everything that goes</b></p>

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209	<p>1 into a file. So the submission or whatever</p> <p>2 document the submission is attached -- the initial</p> <p>3 nomination is reviewed by a supervisor and then</p> <p>4 goes out to its external reviews at NCTC and TSC.</p> <p>5 Q. Okay. So I'm not asking about stuff</p> <p>6 that happens after the nomination leaves the FBI.</p> <p>7 A. Okay.</p> <p>8 Q. I'm only asking about the nomination at</p> <p>9 the FBI.</p> <p>10 A. Yeah.</p> <p>11 Q. Can an FBI employee submit a nomination</p> <p>12 to the TSDB without the approval of the</p> <p>13 supervisor?</p> <p>14 A. No.</p> <p>15 Q. Where is it written down that an FBI</p> <p>16 employee cannot submit a nomination of the TSDB</p> <p>17 without a supervisor's approval?</p> <p>18 A. I don't know where it's written down. I</p> <p>19 know that in order to upload the serial into the</p> <p>20 case file, the supervisor will approve it.</p> <p>21 Q. I don't know what that is.</p> <p>22 A. The system requires it.</p>	211	<p>1 that document.</p> <p>2 Q. Got it.</p> <p>3 A. And then regularly -- but all that is</p> <p>4 the nomination. But then regularly --</p> <p>5 Q. I'm sorry, I apologize for interrupting,</p> <p>6 I just want to make sure I got the -- just the</p> <p>7 process leading up to the nomination leaving the</p> <p>8 FBI's door.</p> <p>9 Okay. So the first step in a nomination</p> <p>10 is that an FBI employee fills out a form in a</p> <p>11 database; correct?</p> <p>12 A. Yes.</p> <p>13 Q. That form is contained within the</p> <p>14 Sentinel database; correct?</p> <p>15 A. Yes.</p> <p>16 Q. When an FBI employee fills out that</p> <p>17 form, in order to complete it, the FBI employee's</p> <p>18 supervisor must approve of the form?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. After the FBI employee secures a</p> <p>21 supervisor's approval for his or her TSDB</p> <p>22 nomination, it becomes a part of the Sentinel</p>
210	<p>1 Q. What system?</p> <p>2 A. Sentinel.</p> <p>3 Q. Requires what?</p> <p>4 A. Requires that supervisor's approval of</p> <p>5 the document.</p> <p>6 Q. What do you mean when you say</p> <p>7 "document"? I think I know what you mean, but</p> <p>8 just for the record.</p> <p>9 A. So the agent creates a document.</p> <p>10 Q. What is that document?</p> <p>11 A. In this case, it's a watchlisting</p> <p>12 submission form.</p> <p>13 Q. Okay.</p> <p>14 A. In order for that form --</p> <p>15 Q. Is it a standardized form?</p> <p>16 A. It is.</p> <p>17 Q. Okay.</p> <p>18 A. In order for that form to go into the</p> <p>19 case file, it has to be reviewed by a supervisor.</p> <p>20 Q. But the supervisor is reviewing the</p> <p>21 entire case file?</p> <p>22 A. No, in this case, reviewing that serial,</p>	212	<p>1 database; correct?</p> <p>2 MS. POWELL: Objection; vague.</p> <p>3 THE WITNESS: It goes into the case</p> <p>4 file.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Which is in Sentinel?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. But that -- the person -- at this</p> <p>9 time, at this stage, there's been a nomination to</p> <p>10 the TSDB, but that person that was nominated is</p> <p>11 not yet in the TSDB; correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. How does TSC know that there's</p> <p>14 been a nomination that an FBI employee has made to</p> <p>15 the TSDB?</p> <p>16 MS. POWELL: Objection; vagueness.</p> <p>17 THE WITNESS: I mean, the request goes</p> <p>18 to TREX. I think you guys talked about the TREX</p> <p>19 before. And then from there --</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. What's TREX?</p> <p>22 A. TREX is a unit inside of -- I can't</p>

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<p style="text-align: right;">213</p> <p>1 remember what it stands for, but it's a TSC unit  2 made up of FBI employees, mostly FBI employees,  3 there are probably some other agency employees in  4 there as well, and then from there the nomination  5 goes to the NCTC if it's an international  6 terrorism case or if it's a domestic terrorism  7 case, it goes straight to TSC.  8 After it goes to NCTC for identity  9 resolution, additional information, then it would  10 come back to the TSC for a decision and TSC would  11 make a decision as to whether or not the  12 nomination meets the reasonable suspicion standard  13 for watchlisting, whether or not there's enough  14 identifying information to include it on the list,  15 and whether or not -- what portion of the list the  16 nomination goes to.  17 So once it leaves the FBI, all that  18 other stuff is going on TSC -- NTTC [sic] and TSC  19 are -- NCTC's potentially adding to the nomination  20 or adding clarifying information and the TSC is  21 making the call on whether or not it meets the  22 standard.</p>	<p style="text-align: right;">215</p> <p>1 A. Correct.  2 Q. -- to TSC?  3 A. Yeah, correct.  4 Q. Okay. Great. Excellent.  5 What aggregate statistics does the FBI  6 look at to determine whether its use of TSDB  7 information furthers the purposes it has for using  8 TSDB information?  9 MS. POWELL: Objection; misleading,  10 foundation, and potentially calls for law  11 enforcement sensitive information, but I'm not  12 sure.  13 If there's an answer you can give, do.  14 THE WITNESS: So what aggregate  15 information does the FBI use to see if the TSDB  16 information is serving its purpose?  17 BY MR. ABBAS:  18 Q. Do you want me to read back the  19 question?  20 A. Yeah.  21 MR. ABBAS: Could you read back the  22 question?</p>
<p style="text-align: right;">214</p> <p>1 Q. So does the form that an FBI employee  2 uses -- I'm unclear on how the FBI employee's  3 nomination form gets to TSC.  4 A. I'm not a technical wizard, but it gets  5 there technically, electronically. No one carries  6 it.  7 Q. Got it. Okay. Is it through --  8 A. Somehow through some electronic pipe it  9 arrives at TREX.  10 Q. Okay. It arrives via TREX?  11 A. It arrives via electronic pipe into the  12 TSC and this TREX unit. TREX sits at the TSC and  13 has access to all these other places, they send it  14 to NCTC --  15 Q. Sure.  16 A. -- and then to the adjudication unit  17 which is NDIU I believe.  18 Q. Okay. And so beyond the nomination form  19 that an FBI employee gets supervisor approval on  20 and uploads into Sentinel, the FBI employee does  21 not take any additional actions to submit the  22 nomination --</p>	<p style="text-align: right;">216</p> <p>1 (Record read.)  2 MS. POWELL: Same objections.  3 THE WITNESS: Whether it furthers the  4 purpose?  5 BY MR. ABBAS:  6 Q. We can just -- the question is exactly  7 how I want it.  8 A. Our focus on TSDB information is  9 accuracy, compliance, protection of civil  10 liberties. That's the focus.  11 Q. Okay. Accuracy, compliance --  12 A. Protection of civil liberties.  13 Q. Okay. So let's just -- when you say  14 "compliance," compliance with what?  15 A. Compliance with standards, right,  16 compliance with guidelines, compliance with time  17 standards. Timely and accurate basically.  18 Q. What documents must a FBI employee's  19 nomination to the TSDB comply with?  20 MS. POWELL: I'm sorry, what was that?  21 Q. What documents must a FBI employee's  22 nomination to the TSDB comply with?</p>



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1 MS. POWELL: Objection; vagueness, but  
 2 answer.  
 3 THE WITNESS: I mean, there are the DIOG  
 4 and then the program guidelines related to  
 5 counterterrorism investigations.  
 6 BY MR. ABBAS:  
 7 Q. There are no other documents?  
 8 **A. I mean, it's pretty well laid out in the**  
 9 **program guide.**  
 10 Q. And the document's called the program  
 11 guide?  
 12 **A. Yes.**  
 13 Q. And is the program guide specific to the  
 14 TSDB?  
 15 **A. It's specific to counterterrorism**  
 16 **investigations.**  
 17 Q. Does it include a section that's  
 18 specifically related to the TSDB?  
 19 **A. To watchlisting, yes.**  
 20 Q. Okay. So the program guidelines do  
 21 include some content that refers specifically to  
 22 the TSDB?

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1 **A. Correct.**  
 2 Q. Does the FBI believe that the  
 3 nominations of its employees to the TSDB is in  
 4 compliance with the policies governing FBI  
 5 nominations to the TSDB?  
 6 MS. POWELL: Objection; vagueness.  
 7 MR. ABBAS: Go ahead.  
 8 THE WITNESS: You're asking does the FBI  
 9 believe that its employees are being compliant  
 10 with its policies?  
 11 BY MR. ABBAS:  
 12 Q. Does the FBI believe that the  
 13 nominations of its employees to the TSDB is in  
 14 compliance with FBI policies?  
 15 MS. POWELL: Same objection, but answer  
 16 to the extent you can.  
 17 THE WITNESS: Yes, and we're constantly  
 18 auditing that, identifying areas where we can  
 19 improve.  
 20 BY MR. ABBAS:  
 21 Q. What is the basis of the FBI's belief  
 22 that the nominations of FBI employees to the TSDB

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1 is in compliance with policies?  
 2 **A. Well, we have a compliance unit inside**  
 3 **the counterterrorism division and what they do is**  
 4 **audit watchlisting and other investigative areas**  
 5 **to ensure compliance. And where there are**  
 6 **instances outside of compliance, they issue**  
 7 **reports and make -- and make changes.**  
 8 Q. Has an FBI employee ever submitted a  
 9 nomination to the TSDB not in compliance with the  
 10 FBI's policies?  
 11 MS. POWELL: Objection; vagueness and  
 12 scope.  
 13 THE WITNESS: Not in compliance with  
 14 policies, I'm not aware of that. I mean, there  
 15 may have been timeliness issues, but those are not  
 16 policy. Those are program guides, those are  
 17 guidelines, not policies, so they would not be  
 18 considered policy compliance issues.  
 19 BY MR. ABBAS:  
 20 Q. So it's the FBI's testimony that there  
 21 hasn't been a nomination that an FBI employee has  
 22 made to include somebody in the TSDB that is not

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1 in compliance with --  
 2 MS. POWELL: Objection; vague and  
 3 misleading.  
 4 Q. I didn't finish that question. I'm  
 5 going to start all over.  
 6 Is it the FBI's testimony that there has  
 7 never been a noncompliant nomination that an FBI  
 8 employee has made to the TSDB?  
 9 MS. POWELL: Objection; vague and  
 10 misleading.  
 11 THE WITNESS: I would not testify that  
 12 there's never been a noncompliant issue.  
 13 BY MR. ABBAS:  
 14 Q. Are you aware of any nomination that the  
 15 FBI has determined was made not in accordance with  
 16 the FBI's policies?  
 17 MS. POWELL: Same objections; vague and  
 18 misleading.  
 19 THE WITNESS: I'm not aware of any.  
 20 BY MR. ABBAS:  
 21 Q. Okay. What role did the FBI play in  
 22 determining what the inclusion standard is of the

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<p style="text-align: right;">221</p> <p>1 TSDB?</p> <p>2 MS. POWELL: Objection, it seems to call</p> <p>3 for deliberative process information as to</p> <p>4 recommendations and advice.</p> <p>5 And I would instruct the witness not to</p> <p>6 answer unless you want to rephrase.</p> <p>7 MR. ABBAS: That's almost exactly what</p> <p>8 the court directed that I be allowed to ask so I</p> <p>9 don't know how you're going to avoid answering</p> <p>10 this question.</p> <p>11 MS. POWELL: I'm instructing him not to</p> <p>12 answer as phrased.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Did the FBI determine the inclusion</p> <p>15 standard of the TSDB?</p> <p>16 MS. POWELL: Objection; vague, but you</p> <p>17 can answer.</p> <p>18 THE WITNESS: In 2003, when the TSDB</p> <p>19 came to be?</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Whenever.</p> <p>22 <b>A. I mean, I know the inclusion standard, I</b></p>	<p style="text-align: right;">223</p> <p>1 that allows us to prevent terrorism while also</p> <p>2 safeguarding privacy and civil liberties.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. But the FBI has no testimony today about</p> <p>5 where what you call the reasonable suspicion</p> <p>6 inclusion standard has come from?</p> <p>7 MS. POWELL: Objection; vagueness and</p> <p>8 mischaracterizes prior testimony.</p> <p>9 Q. Do you have any testimony regarding why</p> <p>10 TSDB's inclusion standard is what it is?</p> <p>11 MS. POWELL: Same objections.</p> <p>12 THE WITNESS: No, it is what it is.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Right. Okay. That's fine.</p> <p>15 Has the FBI ever considered alternatives</p> <p>16 to the TSDB's inclusion standard?</p> <p>17 MS. POWELL: Objection as to vagueness,</p> <p>18 misleading, probably scope, but answer if you can.</p> <p>19 THE WITNESS: I'm not aware of any</p> <p>20 alternatives that we've pondered.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. What role did the FBI play in</p>
<p style="text-align: right;">222</p> <p><b>1 don't know who specifically was involved in it,</b></p> <p><b>2 but I'm sure the FBI was involved in that</b></p> <p><b>3 discussion.</b></p> <p>4 Q. Where did the -- how did the various --</p> <p>5 how did the FBI -- let me ask this: Does the FBI</p> <p>6 believe that the TSDB's inclusion standard is the</p> <p>7 best possible inclusion standard for the TSDB?</p> <p>8 MS. POWELL: Objection; vague. I don't</p> <p>9 know what else to add to that.</p> <p>10 THE WITNESS: I mean, I understand the</p> <p>11 inclusion standard to be reasonable suspicion and</p> <p>12 I believe that's the proper inclusion standard.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. What is the basis of the FBI's belief</p> <p>15 that what you call the reasonable suspicion</p> <p>16 standard of the TSDB is the right one?</p> <p>17 MS. POWELL: Objection as to vagueness.</p> <p>18 You can answer, if you can.</p> <p>19 THE WITNESS: I mean, that's the</p> <p>20 standard that it has been since I've been involved</p> <p>21 in this and that's the standard that the</p> <p>22 interagency has agreed on. That's the standard</p>	<p style="text-align: right;">224</p> <p>1 determining the inclusion standard for the</p> <p>2 selectee list -- I'll withdraw the question.</p> <p>3 What role, if any, did the FBI play in</p> <p>4 determining the selectee list inclusion standard?</p> <p>5 MS. POWELL: I'm going to objection to</p> <p>6 the extent that a comprehensive answer could</p> <p>7 require the disclosure of law enforcement</p> <p>8 sensitive information, SSI, deliberative process</p> <p>9 privileged information, but I think you can answer</p> <p>10 at a level of generality as to what FBI's role in</p> <p>11 the process is.</p> <p>12 THE WITNESS: So in general, the FBI has</p> <p>13 the primary responsibility with its partners to</p> <p>14 prevent terrorist attacks. As a result, over the</p> <p>15 years, we have developed subject matter expertise</p> <p>16 about terrorist tactics, techniques, and</p> <p>17 procedures, and the way known or suspected</p> <p>18 terrorists operate. So in that capacity, the FBI</p> <p>19 would advise the interagency on what types of</p> <p>20 activity would create more vulnerability.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Has the FBI ever recommended the</p>

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1 change -- I'm sorry.  
 2 Has the FBI ever recommended a change to  
 3 the selectee list inclusion standards?  
 4 MS. POWELL: Objection; definitely calls  
 5 for deliberative process privilege information and  
 6 potentially law enforcement sensitive SSI and SSI  
 7 information.  
 8 I'm instructing the witness not to  
 9 answer.  
 10 Q. Has the FBI ever assessed the  
 11 effectiveness of the selectee list inclusion  
 12 standard?  
 13 MS. POWELL: Objection as to vagueness  
 14 and to scope. And to the extent you're looking  
 15 for a detailed description of the selectee list  
 16 standard, that would call for law enforcement  
 17 sensitive and SSI information. But, otherwise,  
 18 the witness may answer, if he knows.  
 19 THE WITNESS: Can you repeat the  
 20 question?  
 21 MR. ABBAS: Can you read it back.  
 22 (Record read.)

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1 MS. POWELL: Same objections.  
 2 THE WITNESS: Not that I'm aware of.  
 3 BY MR. ABBAS:  
 4 Q. Has the selectee list inclusion standard  
 5 ever changed?  
 6 MS. POWELL: Objection; calls for law  
 7 enforcement sensitive and SSI information.  
 8 I'm instructing the witness not to  
 9 answer.  
 10 MR. ABBAS: You're not going to let him  
 11 answer whether or not the selectee list inclusion  
 12 standard has ever changed?  
 13 MS. POWELL: That's correct.  
 14 MR. ABBAS: On the basis of what?  
 15 MS. POWELL: Law enforcement sensitive  
 16 and SSI.  
 17 MR. ABBAS: It's just a yes-or-no  
 18 question.  
 19 MS. POWELL: And I'm instructing him not  
 20 to answer.  
 21 MR. ABBAS: Okay. That's fine.  
 22

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1 BY MR. ABBAS:  
 2 Q. Who is responsible for ensuring that  
 3 nominations that FBI employees make to the TSDB  
 4 satisfy the TSDB's inclusion standards?  
 5 MS. POWELL: Objection as to vagueness,  
 6 but you can answer.  
 7 THE WITNESS: Decisions about inclusion  
 8 on the list, which are -- which go to whether or  
 9 not they satisfy the inclusion standards, are made  
 10 by the TSC, not by the FBI.  
 11 BY MR. ABBAS:  
 12 Q. But the FBI does conduct its own review  
 13 of whether nominations its employees are making to  
 14 the TSDB are, in fact, resulting in inclusions to  
 15 the TSDB?  
 16 MS. POWELL: Objection; vague,  
 17 confusing.  
 18 Q. Would it be of concern to the FBI if one  
 19 of its employees kept on nominating individuals to  
 20 the TSDB and those nominations kept on being  
 21 rejected by TSC?  
 22 MS. POWELL: Objection; vague, but you

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1 can answer.  
 2 THE WITNESS: There would be several  
 3 things that would be concerning about that.  
 4 BY MR. ABBAS:  
 5 Q. Why?  
 6 **A. Well, I mean, we would be looking at the**  
 7 **quality of the nominations, the accuracy of the**  
 8 **nominations, the compliance of the nominations.**  
 9 Q. Let me jump in, when you say the quality  
 10 and the accuracy of the nomination, are you  
 11 referring to the quality and the accuracy of the  
 12 derogatory information that is the basis of the  
 13 nomination to the TSDB?  
 14 MS. POWELL: Objection; vague and  
 15 misleading, but you can answer.  
 16 THE WITNESS: The quality of the overall  
 17 nomination; the quality of the information, the  
 18 quality of the product that goes forward, the  
 19 submission form, you know, are there all kinds of  
 20 errors in it and is it accurate.  
 21 BY MR. ABBAS:  
 22 Q. Every nomination that an FBI employee

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230	<p>1 included in an FBI employee's nomination form?</p> <p>2 MS. POWELL: Objection; vagueness.</p> <p>3 MR. ABBAS: Go ahead.</p> <p>4 THE WITNESS: Typically, no, but the</p> <p>5 units at TSC have the ability to go into the case</p> <p>6 file to review.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Okay. Does TSC ever ask an FBI employee</p> <p>9 who submits a nomination to the TSDB for more</p> <p>10 information about the prospective listee?</p> <p>11 Probably not, but --</p> <p>12 MS. POWELL: Objection to the extent</p> <p>13 you're asking about sort of specific</p> <p>14 deliberations, I'd instruct him not to answer.</p> <p>15 But to the extent you're asking and answering at a</p> <p>16 level of generality about communications between</p> <p>17 TSC and FBI, you can answer.</p> <p>18 THE WITNESS: The answer is yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Does the TSC ever reject an FBI</p> <p>21 employee's nomination to the TSDB for failing to</p> <p>22 satisfy the minimum substantive derogatory</p>	232	<p>1 Q. Has the -- has an FBI nomination to the</p> <p>2 TSDB been rejected by TSC for failure to satisfy</p> <p>3 the minimum substantive derogatory criteria more</p> <p>4 than 1 million times?</p> <p>5 MS. POWELL: I'm instructing the witness</p> <p>6 not to answer --</p> <p>7 MR. ABBAS: He can't answer that one?</p> <p>8 MS. POWELL: -- on the grounds of law</p> <p>9 enforcement privilege.</p> <p>10 MR. ABBAS: Okay. That's --</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Has the FBI -- has an FBI nomination to</p> <p>13 the TSDB been rejected by TSC for failure to</p> <p>14 satisfy the minimum substantive derogatory</p> <p>15 criteria more than one time?</p> <p>16 MS. POWELL: The number is privileged.</p> <p>17 I'm -- and he has said it has happened, so we're</p> <p>18 going to go with at least one and I'm instructing</p> <p>19 him not to answer more than that.</p> <p>20 MR. ABBAS: What is the basis of the</p> <p>21 privilege?</p> <p>22 MS. POWELL: The law enforcement</p>

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1 privilege, potentially SSI.  
 2 MR. ABBAS: Anything else?  
 3 MS. POWELL: Potentially state secrets.  
 4 BY MR. ABBAS:  
 5 Q. What is the law enforcement interest in  
 6 not revealing the number of times an FBI  
 7 employee's TSDB nomination has been rejected by  
 8 TSC for a failure to satisfy the minimum  
 9 substantive derogatory criteria?  
 10 MS. POWELL: Are you asking me for the  
 11 legal basis to the question because --  
 12 MR. ABBAS: No. I mean, he's -- you're  
 13 saying the privilege. It's the FBI's -- I'm  
 14 wondering -- I'm asking him about the law  
 15 enforcement interest, about the secret information  
 16 that you're keeping.  
 17 MS. POWELL: Yes.  
 18 MR. ABBAS: So he's the FBI, surely he  
 19 can explain what the law enforcement value is to  
 20 the information that you're keeping on the basis  
 21 of an assertion of law enforcement privilege.  
 22 MS. POWELL: Well, I'm going to object

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1 as to scope and that a comprehensive answer would  
 2 require discussion of law enforcement sensitive  
 3 and potentially SSI information.  
 4 You can answer, if you can.  
 5 THE WITNESS: I can't answer any further  
 6 than that.  
 7 BY MR. ABBAS:  
 8 Q. Are you withholding SSI information as  
 9 part of your answer?  
 10 MS. POWELL: Objection; calls for a  
 11 legal conclusion.  
 12 Q. Do you believe that you're withholding  
 13 SSI information as part of your answer?  
 14 MS. POWELL: Objection; it calls for a  
 15 legal conclusion.  
 16 MR. ABBAS: Go ahead.  
 17 THE WITNESS: I have no legal opinion  
 18 about that. I don't -- that's a legal -- it's a  
 19 legal conclusion that I'm not prepared to make.  
 20 MR. ABBAS: So you don't know what his  
 21 answer is and then he doesn't know what his -- he  
 22 has an answer in his head and so you're asserting

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1 the privilege over something that you don't know  
 2 what he's going to say, which is perplexing to me.  
 3 I think that out of a desire to avoid this  
 4 dispute, which we will certainly win, it makes  
 5 sense for you all to confer and assert the SSI  
 6 privilege with more particularity. That's my  
 7 suggestion.  
 8 MS. POWELL: The number of nominations  
 9 rejected for a particular reason is protected  
 10 information, we've asserted it since sometime last  
 11 October and that answer has not changed.  
 12 BY MR. ABBAS:  
 13 Q. What about -- can the FBI -- does the  
 14 FBI know how many nominations its employees have  
 15 submitted to the TSDB that TSC has rejected for a  
 16 failure to satisfy the minimum substantive  
 17 derogatory criteria?  
 18 MS. POWELL: So, I'm sorry --  
 19 MR. ABBAS: It's a yes-or-no question.  
 20 BY MR. ABBAS:  
 21 Q. Does the FBI know?  
 22 MS. POWELL: I think you can answer

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1 whether or not you know or could figure it out.  
 2 THE WITNESS: Yeah, whether the FBI has  
 3 that number on hand, I don't know, but we  
 4 could -- we could likely figure that out. We'd  
 5 probably have to work with the TSC between our two  
 6 systems to figure out that number.  
 7 BY MR. ABBAS:  
 8 Q. How hard would that be?  
 9 MS. POWELL: Objection; scope. I'm  
 10 actually just going to with scope there in being  
 11 outside FBI's purview.  
 12 MR. ABBAS: Sure. Go ahead.  
 13 THE WITNESS: I don't have enough  
 14 familiarity with the TSC systems to know how easy  
 15 or hard that would be, but I would imagine it  
 16 could be done.  
 17 BY MR. ABBAS:  
 18 Q. So you don't know. That's fine.  
 19 MR. ABBAS: I'm going to mark the  
 20 overview document as Exhibit Plaintiff -- I'm  
 21 sorry, Deponent DeSarno Exhibit B.  
 22 (DeSarno Deposition Exhibit B was marked

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237	<p>1 for identification and attached to the</p> <p>2 transcript.)</p> <p>3 Q. So you can feel free to peruse the</p> <p>4 document. I'm going to just ask you questions</p> <p>5 about the inclusion standard as it's listed at the</p> <p>6 top of page 4. So if you like to kind of review</p> <p>7 the document, that's fine, take your time. But</p> <p>8 that top paragraph on page four is what I'm going</p> <p>9 to ask you about.</p> <p>10 <b>A. Okay.</b></p> <p>11 MS. POWELL: Take your time and look at</p> <p>12 it if you need to.</p> <p>13 MR. ABBAS: I'll eat waffle fries.</p> <p>14 (Witness peruses the exhibit.)</p> <p>15 MS. POWELL: Are you ready?</p> <p>16 THE WITNESS: Ready.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Are you familiar with this document?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What is your understanding of what this</p> <p>21 document is?</p> <p>22 <b>A. This is the overview document or also</b></p>	239	<p>1 don't know.</p> <p>2 You can answer, if you know.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Okay. What is the -- so you referred to</p> <p>6 the TSDB inclusion standard as a reasonable</p> <p>7 suspicion standard?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. What is the TSDB inclusion standard?</p> <p>10 <b>A. Reasonable suspicion. The nominator</b></p> <p>11 <b>must rely upon articulable intelligence or</b></p> <p>12 <b>information which based on the totality of the</b></p> <p>13 <b>circumstances and taken together with rational</b></p> <p>14 <b>inferences from those facts, creates a reasonable</b></p> <p>15 <b>suspicion the individual is engaged, has been</b></p> <p>16 <b>engaged, or intends to engage in conducting,</b></p> <p>17 <b>constituting, in preparation for, in aid of, or in</b></p> <p>18 <b>furtherance of or related to terrorism and/or</b></p> <p>19 <b>terrorists activities.</b></p> <p>20 Q. What is conduct related to terrorism,</p> <p>21 what does that mean?</p> <p>22 <b>A. Conduct related to terrorism?</b></p>
238	<p>1 <b>referred to sometimes I think as the transparency</b></p> <p>2 <b>document.</b></p> <p>3 Q. Why was this document created -- I'm</p> <p>4 sorry, let me withdraw that question.</p> <p>5 What is the FBI's understanding of why</p> <p>6 this document exists?</p> <p>7 <b>A. It's a public unclassified transparency</b></p> <p>8 <b>document that discusses the watchlisting process</b></p> <p>9 <b>and enterprise.</b></p> <p>10 Q. Is this document available on a federal</p> <p>11 government website somewhere?</p> <p>12 MS. POWELL: Objection; scope.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Has this document been disseminated to</p> <p>16 the public in any way?</p> <p>17 MS. POWELL: Objection; scope.</p> <p>18 THE WITNESS: I don't know that either.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Okay. Was this document prepared for</p> <p>21 the purposes of litigation?</p> <p>22 MS. POWELL: Objection; scope and I</p>	240	<p>1 Q. Yes.</p> <p>2 <b>A. That could mean -- that could mean</b></p> <p>3 <b>preparing to conduct a terrorist attack, it could</b></p> <p>4 <b>mean financing terrorism, it could mean</b></p> <p>5 <b>facilitating terrorism, it could mean</b></p> <p>6 <b>communicating with overseas terrorists. Those are</b></p> <p>7 <b>all conduct related to terrorism.</b></p> <p>8 Q. Does a person have to pose a threat to</p> <p>9 commercial aviation to satisfy the TSDB's</p> <p>10 inclusion standards?</p> <p>11 <b>A. No, it doesn't say that in here.</b></p> <p>12 Q. Okay. Does a person have to pose a</p> <p>13 threat to a U.S. land border to be included in the</p> <p>14 TSDB?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Does a person have to pose a threat of</p> <p>17 committing an act of terrorism overseas to be</p> <p>18 included in the TSDB -- I'm sorry, let me rephrase</p> <p>19 that question.</p> <p>20 Does a person have to -- does the</p> <p>21 federal government have to -- let me start all</p> <p>22 over.</p>

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<p style="text-align: right;">241</p> <p>1 Does the FBI have to include in its</p> <p>2 nominations -- I'm just going to scratch that.</p> <p>3 What is a known terrorist per the TSDB's</p> <p>4 inclusion standard, what does that mean?</p> <p>5 MS. POWELL: Objection that a</p> <p>6 comprehensive definition of those terms would</p> <p>7 require discussion of law enforcement sensitive</p> <p>8 information.</p> <p>9 MR. ABBAS: Go ahead.</p> <p>10 MS. POWELL: I don't know -- if there's</p> <p>11 a general answer you can give, do it. But the</p> <p>12 comprehensive definition is privileged.</p> <p>13 MR. ABBAS: Go ahead.</p> <p>14 THE WITNESS: I mean, I would say</p> <p>15 generally a known terrorist is someone convicted</p> <p>16 of a terrorism offense.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Now, you said "generally," so I have to</p> <p>19 ask if there's any exceptions.</p> <p><b>20 A. Yeah, there are other people who are</b></p> <p><b>21 known terrorists that blow themselves up or</b></p> <p><b>22 conduct terrorist attacks. Those are known</b></p>	<p style="text-align: right;">243</p> <p>1 terrorist could be different than TSC's definition</p> <p>2 of a known terrorist; correct?</p> <p><b>3 A. Potentially. I don't know their</b></p> <p><b>4 definition.</b></p> <p>5 Q. Okay. But it's not necessarily the same</p> <p>6 as the FBI's definition of a known terrorist;</p> <p>7 correct? Let me just --</p> <p><b>8 A. I don't know what the TSC's definition</b></p> <p><b>9 of a known terrorist is. I don't see it in this</b></p> <p><b>10 document either.</b></p> <p>11 Q. Do all the members of the Watchlisting</p> <p>12 Advisory Council share a single definition of what</p> <p>13 is a known terrorist for purposes of the TSDB's</p> <p>14 inclusion standard?</p> <p>15 MS. POWELL: Same objection that a</p> <p>16 comprehensive definition of known or suspected</p> <p>17 terrorists requires disclosure of law enforcement</p> <p>18 sensitive information.</p> <p>19 MR. ABBAS: That was a yes-or-no</p> <p>20 question. I'm not asking what the definition is,</p> <p>21 I'm asking whether the definition is the same</p> <p>22 across all WAC and member agencies.</p>
<p style="text-align: right;">242</p> <p><b>1 terrorists that you conduct an attack.</b></p> <p>2 Q. So people that have committed acts of</p> <p>3 terrorism as well as people who have been</p> <p>4 convicted of acts of terrorism?</p> <p><b>5 A. Or convicted of terrorism offenses.</b></p> <p>6 Q. Yes, let me start all over.</p> <p>7 People who have committed acts of</p> <p>8 terrorism and people who have been convicted of</p> <p>9 terrorism-related offenses are known terrorists as</p> <p>10 the TSDB inclusion standards define them?</p> <p>11 MS. POWELL: Objection that a</p> <p>12 comprehensive response requires law enforcement</p> <p>13 sensitive information, but you can answer the</p> <p>14 question as posed.</p> <p>15 THE WITNESS: And this would be the</p> <p>16 FBI's definition of a known terrorists, not</p> <p>17 necessarily the TSDB's definition of a known</p> <p>18 terrorists.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Got it.</p> <p><b>21 A. That would be a question for the TSC.</b></p> <p>22 Q. So the FBI's definition of a known</p>	<p style="text-align: right;">244</p> <p>1 MS. POWELL: Same objection.</p> <p>2 THE WITNESS: Yeah, I don't know that</p> <p>3 the agency -- member agencies all have the same</p> <p>4 definition. But for purposes of watchlisting, the</p> <p>5 WAC -- if the WAC has its own definition that it</p> <p>6 has developed among the members of the WAC for</p> <p>7 watchlisting purposes, that's -- that may be</p> <p>8 different from what I know as a known terrorist.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. You're the FBI today; right? You're</p> <p>11 testifying on behalf of the FBI?</p> <p><b>12 A. Correct.</b></p> <p>13 Q. Does the FBI have a -- use a definition</p> <p>14 of known terrorist that it shares with other</p> <p>15 members of WAC agencies?</p> <p>16 MS. POWELL: Same objection that a</p> <p>17 comprehensive definition of a known or suspected</p> <p>18 terrorist as defined for TSDB purposes is</p> <p>19 protected by the law enforcement privilege.</p> <p>20 MR. ABBAS: It's a yes-or-no question.</p> <p>21 I'm just asking whether there is a shared</p> <p>22 definition, not what that definition is.</p>

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<p style="text-align: right;">245</p> <p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. You don't know whether there's a shared</p> <p>4 definition of known terrorists for purposes of the</p> <p>5 TSDB's inclusion standard?</p> <p>6 MS. POWELL: Same objection.</p> <p>7 THE WITNESS: Correct.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Okay. That's fine. That's all.</p> <p>10 Now circling back -- but you do know of</p> <p>11 what the FBI's definition is of a known terrorist</p> <p>12 for purposes of the TSDB inclusion standard;</p> <p>13 correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. What is the definition that the FBI uses</p> <p>16 for known terrorists?</p> <p>17 MS. POWELL: Same objection that a</p> <p>18 comprehensive definition of a known or suspected</p> <p>19 terrorist is protected by the law enforcement</p> <p>20 privilege. He has already answered and thus it is</p> <p>21 asked and answered as to what he can tell you</p> <p>22 about what a known terrorist is.</p>	<p style="text-align: right;">247</p> <p>1 terrorist for purposes of the TSDB inclusion</p> <p>2 standard is what?</p> <p>3 MS. POWELL: Objection. A comprehensive</p> <p>4 definition of a known or suspected terrorist for</p> <p>5 the purposes of the TSDB is protected by the law</p> <p>6 enforcement privilege. Other than what is right</p> <p>7 here in this document, there's literally nothing</p> <p>8 else he can tell you at this point.</p> <p>9 And I'm instructing him not to provide</p> <p>10 any additional information at this point.</p> <p>11 MR. ABBAS: On the basis of?</p> <p>12 MS. POWELL: Law enforcement privilege.</p> <p>13 MR. ABBAS: What is the -- anything</p> <p>14 else? Is there any other privilege besides the</p> <p>15 law enforcement privilege?</p> <p>16 MS. POWELL: For a complete definition</p> <p>17 under the inclusion standard.</p> <p>18 MR. ABBAS: Of a known terrorist.</p> <p>19 MS. POWELL: Well, it's a known or</p> <p>20 suspected terrorist.</p> <p>21 MR. ABBAS: Well, I'm just doing known</p> <p>22 terrorist. Don't worry, I'll do suspected</p>
<p style="text-align: right;">246</p> <p>1 MR. ABBAS: Go ahead.</p> <p>2 THE WITNESS: Regarding inclusion or</p> <p>3 nomination to the TSDB, we use the reasonable</p> <p>4 suspicion standard.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. I'm not asking about the reasonable</p> <p>7 suspicion standard. I'm asking about within the</p> <p>8 reasonable suspicion standard, there's a concept</p> <p>9 of a known terrorist; correct? There's also the</p> <p>10 concept of a suspected terrorist; correct?</p> <p>11 MS. POWELL: Objection; misleading.</p> <p>12 Q. Are those two different things, a known</p> <p>13 terrorist and a suspected terrorist?</p> <p>14 MS. POWELL: Objection; misleading.</p> <p>15 Q. If I'm wrong, just tell me I'm wrong and</p> <p>16 I know it now.</p> <p>17 MS. POWELL: Same objection.</p> <p>18 THE WITNESS: Yeah, two different</p> <p>19 things, yes.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Got it. Okay.</p> <p>22 The FBI's definition of a known</p>	<p style="text-align: right;">248</p> <p>1 terrorist next.</p> <p>2 MS. POWELL: Potentially the state</p> <p>3 secrets privilege depending on the context.</p> <p>4 MR. ABBAS: Okay.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. What is the FBI's law enforcement</p> <p>7 interest in keeping secret its definition of what</p> <p>8 a known terrorist is for purposes of TSDB</p> <p>9 inclusion?</p> <p>10 MS. POWELL: Objection; misleading and</p> <p>11 vague.</p> <p>12 Q. Does the FBI have a law enforcement</p> <p>13 interest in keeping its definition of a known</p> <p>14 terrorist secret?</p> <p>15 MS. POWELL: Objection.</p> <p>16 MR. ABBAS: It's a yes-or-no question</p> <p>17 about whether there is --</p> <p>18 MS. POWELL: That doesn't mean there's a</p> <p>19 yes-or-no answer.</p> <p>20 MR. ABBAS: Okay.</p> <p>21 MS. POWELL: Actually, I think it might</p> <p>22 be useful for all of us to take a break sometime</p>



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1 soon.

2 MR. ABBAS: I'd like to finish this line

3 of questioning; but, yes, after this line of

4 questioning, I would like a break as well.

5 BY MR. ABBAS:

6 Q. Do you need me to repeat the question?

7 A. **You asked me if there's a privilege to**

8 **the definition.**

9 Q. I did not ask you that.

10 Does the FBI have a law enforcement

11 interest in keeping its definition of a known

12 terrorist secret?

13 MS. POWELL: Objection; misleading,

14 vague, lacks foundation, and calls for a legal

15 conclusion, but you can answer to the extent you

16 can.

17 THE WITNESS: Yes.

18 BY MR. ABBAS:

19 Q. What is the FBI's law enforcement

20 interest in keeping secret its definition of a

21 known terrorist?

22 MS. POWELL: Objection; misleading,

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1 vague, a comprehensive answer would require law

2 enforcement sensitive information, but you can

3 answer to the extent you can.

4 THE WITNESS: I already provided some

5 examples of known terrorists. I think

6 that's -- those examples were pretty sufficient.

7 I don't know have anything to add to that.

8 BY MR. ABBAS:

9 Q. You didn't answer the question.

10 What is the -- so I understand you

11 referred back, you identified as examples of known

12 terrorists people that have actually committed

13 acts of terrorism, you also identified people that

14 were convicted as terrorists. So I understand

15 from your testimony that those two categories of

16 people would satisfy the FBI's definition of a

17 known terrorist; is that correct?

18 MS. POWELL: Objection; vague, and

19 misleading, and mischaracterizes prior testimony.

20 THE WITNESS: Those are two -- those are

21 two examples of known terrorists.

22 MR. ABBAS: Got it.

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1 MS. POWELL: All right. We have a

2 question answered, we're going to take a break.

3 MR. ABBAS: That's fine.

4 (Recess from the record.)

5 THE REPORTER: This is the court

6 reporter. And we've used four and a half hours.

7 BY MR. ABBAS:

8 Q. Does the FBI have a definition of

9 suspected terrorist that it uses with regards to

10 the TSDB inclusion standard?

11 A. **Yes.**

12 Q. What is the FBI's definition of a

13 suspected terrorist with regard to the TSDB

14 inclusion standard?

15 MS. POWELL: Objection to the extent a

16 comprehensive answer would require the disclosure

17 of law enforcement sensitive information and

18 potentially state secrets, but you can answer.

19 THE WITNESS: That definition is

20 privileged information that the disclosure of

21 which could affect national security and ongoing

22 investigations.

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1 BY MR. ABBAS:

2 Q. How could the definition of -- obviously

3 it's something we might -- you know, Amy and I

4 might fight about later so that's why I'm asking

5 you about it, but it's fine if you can't answer,

6 that's how this works but I still ask.

7 How would the disclosure of the FBI's

8 definition of a suspected terrorist have any

9 impact on the FBI's law enforcement interests?

10 MS. POWELL: Objection to the extent

11 that a comprehensive explanation would require the

12 disclosure of law enforcement sensitive

13 information and potentially state secrets, but you

14 can answer at a level of generality.

15 THE WITNESS: So the definitions of both

16 known and suspected terrorist potentially could

17 endanger national security or ongoing

18 investigations in a variety of ways. And really

19 any definition that exceeds the published

20 inclusion standard potentially could harm national

21 security.

22

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1 BY MR. ABBAS:  
 2 Q. I understand that it's the FBI's opinion  
 3 that the disclosure of its definition of what is a  
 4 known terrorist and what is a suspected terrorist  
 5 could imperil its law enforcement interests, but I  
 6 need to understand how that disclosure imperils  
 7 FBI's lawsuit interests.  
 8 So you said that there are a variety of  
 9 ways that the disclosure of the definitions of a  
 10 known terrorist and a suspected terrorist imperil  
 11 the FBI's law enforcement privileges. What are  
 12 the ways in which the disclosure of a known  
 13 terrorist, the definition of that, and the  
 14 definition of a suspected terrorist have on the  
 15 FBI?  
 16 MS. POWELL: Objection; vague, compound,  
 17 and misleading. Also a comprehensive explanation  
 18 of the harms to national security and law  
 19 enforcement investigations would themselves  
 20 require discussion or disclosure of law  
 21 enforcement privileged and potentially state  
 22 secrets information, but you can answer at a level

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1 of generality if you have anything further to say.  
 2 THE WITNESS: No, I don't have anything  
 3 further to say.  
 4 BY MR. ABBAS:  
 5 Q. Can a suspected terrorist include  
 6 someone who was acquitted of a terrorism-related  
 7 offense?  
 8 MS. POWELL: Objection.  
 9 I'm instructing the witness not to  
 10 answer to the extent it calls for law enforcement  
 11 sensitive information.  
 12 If there is a general answer you can  
 13 give, you may.  
 14 THE WITNESS: I think it's a pretty  
 15 specific question. I don't know if there's a  
 16 general answer I can give.  
 17 BY MR. ABBAS:  
 18 Q. What's the basis of you not answering  
 19 whether --  
 20 MS. POWELL: The law enforcement --  
 21 Q. -- a person acquitted of a terrorism  
 22 related offense.

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1 **A. There is a general answer.**  
 2 Q. Okay. What's that general answer?  
 3 **A. Okay. So the standard for conviction is**  
 4 **beyond a reasonable doubt. The standard for**  
 5 **inclusion in the TSDB is reasonable suspicion,**  
 6 **which is a lower standard than beyond a reasonable**  
 7 **doubt. So it is feasible that that could be the**  
 8 **case.**  
 9 Q. Does a person who has actually committed  
 10 a terrorism-related offense fall within the  
 11 definition of a suspected terrorist?  
 12 MS. POWELL: Objection to the extent a  
 13 comprehensive answer would require disclosure of  
 14 the full explanation of the standard which is  
 15 protected by the law enforcement privilege and  
 16 potentially the state secrets privilege, but I  
 17 think you can answer at a level of generality.  
 18 MR. ABBAS: It's a yes-or-no question.  
 19 MS. POWELL: If you don't think you can  
 20 answer on the other hand, don't.  
 21 THE WITNESS: I mean, generally it would  
 22 fall within either the known or suspected

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1 terrorist.  
 2 BY MR. ABBAS:  
 3 Q. Well, so I'm trying to learn as much as  
 4 I can about the separate -- there are two separate  
 5 definitions; correct? One for known terrorists;  
 6 right?  
 7 **A. Yes.**  
 8 Q. And there's a separate definition for  
 9 suspected terrorists; correct?  
 10 **A. For watchlisting purposes, yes.**  
 11 Q. Yes. And the FBI has two separate  
 12 definitions for those two separate things;  
 13 correct?  
 14 MS. POWELL: Objection; vague and  
 15 misleading.  
 16 THE WITNESS: The WAC agencies have  
 17 agreed on definitions, yes. All of them.  
 18 BY MR. ABBAS:  
 19 Q. Sure.  
 20 **A. For watchlisting purposes.**  
 21 Q. Does a person who -- I'm going to ask  
 22 this question again, I don't think you answered it

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1 last time.  
 2 Does a person who's actually committed  
 3 an act of terrorism fall within the definition of  
 4 a suspected terrorist for TSDB inclusion standard  
 5 purposes?  
 6 MS. POWELL: Objection because  
 7 misleading and a comprehensive answer would  
 8 require disclosure of law enforcement sensitive  
 9 information at least.  
 10 THE WITNESS: It also would require  
 11 someone to know that they committed that act of  
 12 terrorism. Do we know that they committed an act  
 13 of terrorism?  
 14 BY MR. ABBAS:  
 15 Q. Yeah, right.  
 16 Does a person who's committed an act of  
 17 terrorism in the FBI's perspective fall within the  
 18 definition of a suspected terrorist or a known  
 19 terrorist?  
 20 MS. POWELL: Objection; misleading and  
 21 same.  
 22 THE WITNESS: That's privileged.

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1 MS. POWELL: -- privilege assertions as  
 2 previous.  
 3 THE WITNESS: They definitely fall  
 4 within the inclusion standard.  
 5 BY MR. ABBAS:  
 6 Q. But you can't tell me whether a person  
 7 who's actually committed an act of terrorism in  
 8 the FBI's perspective falls within the definition  
 9 of a suspected terrorist, you can't tell me that?  
 10 MS. POWELL: Objection; it's misleading  
 11 in addition to the privilege assertion.  
 12 MR. ABBAS: Go ahead.  
 13 THE WITNESS: Those definitions are  
 14 contained in a privileged document.  
 15 BY MR. ABBAS:  
 16 Q. What document contains the definitions  
 17 of known terrorist and suspected terrorist?  
 18 **A. Watchlisting guidance.**  
 19 MR. ABBAS: Do you want to -- is this  
 20 what you were going to say to begin with about the  
 21 shared definition?  
 22 MS. POWELL: More or less.

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1 MR. ABBAS: All right. Why don't you  
 2 say it now since it's coming up.  
 3 MS. POWELL: You can ask the question if  
 4 you'd like.  
 5 MR. ABBAS: Well, you had something to  
 6 say and I imagine it's about this.  
 7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)  
 8 BY MS. POWELL:  
 9 Q. I was merely going to ask him whether  
 10 there is a standard definition of a known or  
 11 suspected terrorist for the purpose of  
 12 watchlisting?  
 13 **A. Yes, there are standard definitions for**  
 14 **both known terrorists and suspected terrorists for**  
 15 **the purpose of watchlisting found in the**  
 16 **watchlisting guidance.**  
 17 Q. And where do those standards come from?  
 18 **A. They are developed by the**  
 19 **agencies -- member agencies in the WAC and then**  
 20 **approved beside the NSC.**  
 21  
 22

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1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  
 2 BY MR. ABBAS:  
 3 Q. Did WAC propose that the NSC adopt  
 4 specific definitions of known terrorist and of  
 5 suspected terrorist for TSDB inclusion standard  
 6 purposes?  
 7 **A. It's my understanding the WAC created**  
 8 **the entire document that was then sent to the NSC**  
 9 **for approval.**  
 10 Q. And did the NSC -- by the document,  
 11 you're referring to the watchlisting guidance?  
 12 **A. Yes.**  
 13 Q. And NSC has approved the watchlisting  
 14 guidance that the WAC proposed to the NSC?  
 15 **A. Yes.**  
 16 Q. Did the NSC ever make any changes to the  
 17 watchlisting guidance that the WAC proposed to the  
 18 NSC?  
 19 MS. POWELL: Objection, I think  
 20 answering the question calls for deliberative  
 21 information necessarily.  
 22 I'm instructing the witness not to

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<p style="text-align: right;">261</p> <p>1 answer.</p> <p>2 Q. What does it mean to have reasonable</p> <p>3 suspicion that a person is a suspected terrorist?</p> <p>4 MS. POWELL: Objection; misleading and a</p> <p>5 comprehensive answer would require disclosure of</p> <p>6 law enforcement sensitive information.</p> <p>7 MR. ABBAS: I'll withdraw the question.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does a suspected terrorist as defined by</p> <p>10 the watchlisting guidance have to be engaged in</p> <p>11 criminal conduct?</p> <p>12 MS. POWELL: Objection; vague, and</p> <p>13 misleading, and a comprehensive answer would</p> <p>14 require disclosure of law enforcement sensitive</p> <p>15 information, but I do think there's a general</p> <p>16 answer you can give.</p> <p>17 THE WITNESS: I mean, the inclusion</p> <p>18 standard as stated in this paragraph on page 4 of</p> <p>19 Exhibit B clearly indicates that there's no</p> <p>20 requirement for criminal activity to be included</p> <p>21 in the watchlisting.</p> <p>22</p>	<p style="text-align: right;">263</p> <p>1 is engaged, has been engaged, or intends to engage</p> <p>2 in conduct constituting in preparation for, in</p> <p>3 aid, or in furtherance of related to terrorism</p> <p>4 and/or terrorist activities.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does being related to a person -- let me</p> <p>7 ask this: Does a person who is nominated to the</p> <p>8 TSDB -- let me try again.</p> <p>9 Must individuals who the FBI nominates</p> <p>10 to the TSDB be under investigation?</p> <p>11 MS. POWELL: Objection; calls for law</p> <p>12 enforcement privileged information.</p> <p>13 I'm instructing the witness not to</p> <p>14 answer.</p> <p>15 Q. Must an individual --</p> <p>16 MR. ABBAS: On what basis?</p> <p>17 MS. POWELL: The law enforcement</p> <p>18 privilege.</p> <p>19 MR. ABBAS: Okay.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. In order to nominate an individual to</p> <p>22 the TSDB, must the FBI have conducted an</p>
<p style="text-align: right;">262</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. So it's not reasonable for suspected</p> <p>3 terrorists that are nominated to the TSDB, the</p> <p>4 reasonable suspicion is not that they're engaged</p> <p>5 in criminal conduct; correct?</p> <p>6 MS. POWELL: Objection; misleading, and</p> <p>7 mischaracterizes prior testimony.</p> <p>8 Q. If I'm wrong, tell me I'm wrong. That's</p> <p>9 fine.</p> <p>10 MS. POWELL: You're using different</p> <p>11 definitions of the words.</p> <p>12 MR. ABBAS: I'm using just the</p> <p>13 government's words. I'll ask it again.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. In order to be included in the TSDB,</p> <p>16 there must be reasonable suspicion that a person</p> <p>17 is either a known terrorist or a suspected</p> <p>18 terrorist; correct?</p> <p>19 MS. POWELL: Objection; misleading and</p> <p>20 mischaracterizes prior testimony.</p> <p>21 THE WITNESS: In order to be included,</p> <p>22 there must be reasonable suspicion the individual</p>	<p style="text-align: right;">264</p> <p>1 assessment of that individual?</p> <p>2 MS. POWELL: Objection; calls for law</p> <p>3 enforcement information.</p> <p>4 I'm instructing the witness not to</p> <p>5 answer.</p> <p>6 I do want to withdraw my blanket</p> <p>7 instruction to the previous question, though. To</p> <p>8 the extent there is any non-privileged information</p> <p>9 you can give about whether there's always an</p> <p>10 investigation connected to a nomination, you may.</p> <p>11 If you're not sure, we can consult later, but...</p> <p>12 Q. I'll go back to that question. I'll ask</p> <p>13 it again.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. In order for the FBI to nominate an</p> <p>16 individual to the TSDB, must there be an</p> <p>17 investigation regarding the prospective listee?</p> <p>18 <b>A. No.</b></p> <p>19 THE WITNESS: Sorry.</p> <p>20 MS. POWELL: Let me sneak in the</p> <p>21 objection that a comprehensive explanation of the</p> <p>22 answer would require the disclosure of law</p>

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1 enforcement privileged information. That answer  
 2 was not privileged.  
 3 BY MR. ABBAS:  
 4 Q. Why would the FBI try to place people in  
 5 the TSDB that are not being investigated?  
 6 MS. POWELL: Same objection that a  
 7 comprehensive explanation of the answer would  
 8 require disclosure of law enforcement privileged  
 9 information. To the extent there is a  
 10 non-privileged answer you can give, you can. If  
 11 not, we can come back to it at a later time.  
 12 THE WITNESS: If during the course of an  
 13 investigation or during the course of either a  
 14 foreign partner engagement or other agency  
 15 engagement, the FBI developed information about  
 16 someone who was overseas who met this inclusion  
 17 standard, but did not -- did not -- the FBI  
 18 decided that it was not going to open an  
 19 investigation on that person, in that instance,  
 20 the FBI could make a nomination if it met this  
 21 standard on that overseas person.  
 22

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1 BY MR. ABBAS:  
 2 Q. Why would the FBI place someone in the  
 3 TSDB and not investigate that person?  
 4 MS. POWELL: Objection, I think any  
 5 further answer other than the example he has given  
 6 you would require disclosure of law enforcement  
 7 privileged information.  
 8 MR. ABBAS: Sure.  
 9 BY MR. ABBAS:  
 10 Q. When the FBI nominates a person to the  
 11 TSDB, the FBI is expressing its opinion that that  
 12 person is a known or suspected terrorist; correct?  
 13 **A. The FBI is indicating that it meets this**  
 14 **inclusion standard here that there's reasonable**  
 15 **suspicion that the individual is engaged, has been**  
 16 **engaged, or intends to engage in preparation, aid,**  
 17 **or furtherance of terrorism activities.**  
 18 Q. Is it the FBI's testimony today that  
 19 there are individuals known to it that are  
 20 reasonably suspected of engaging or having been  
 21 engaged or intending to engage in conduct  
 22 constituting in preparation for, in aid, or in

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1 furtherance of or related to terrorism and/or  
 2 terrorists activities who are not under  
 3 investigation -- I'm sorry, I'm just going to  
 4 start all over and we'll get it this time now that  
 5 I know what the question is.  
 6 Is it the FBI's testimony today that  
 7 there are individuals known to the FBI who are  
 8 reasonably suspected of engaging in or having been  
 9 engaged or intending to engage in conduct  
 10 constituting in preparation for, in aid of, or in  
 11 furtherance of, or related to terrorism or  
 12 terrorist activities who the FBI chooses not to  
 13 investigate?  
 14 MS. POWELL: Again, a comprehensive  
 15 answer would require law enforcement privileged  
 16 information, but you can answer yes or no.  
 17 MR. ABBAS: Yes, that's all I'm looking  
 18 for.  
 19 THE WITNESS: Overseas there are people  
 20 who fit that category who are not subjects of  
 21 current FBI investigations.  
 22

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1 BY MR. ABBAS:  
 2 Q. When you say "overseas," is the -- so  
 3 there are individuals that satisfy the TSDB  
 4 inclusion standard who are known to the FBI that  
 5 the FBI chooses not to investigate; correct?  
 6 MS. POWELL: Asked and answered.  
 7 MR. ABBAS: I'm making sure --  
 8 MS. POWELL: As well as same objections.  
 9 MR. ABBAS: I'm making sure that I have  
 10 this.  
 11 MS. POWELL: And misleading.  
 12 THE WITNESS: Yeah, my previous answer  
 13 was pretty clear. That there are people overseas  
 14 who fit into this category who are not subject  
 15 currently of FBI investigations.  
 16 BY MR. ABBAS:  
 17 Q. Are there U.S. persons overseas that the  
 18 FBI has nominated to the TSDB who are not subject  
 19 to an investigation?  
 20 MS. POWELL: I'm instructing the witness  
 21 not to answer on the grounds of law enforcement  
 22 privilege to that question.

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<p style="text-align: right;">269</p> <p>1 Q. Why would the FBI not investigate people 2 that satisfy the TSDB inclusion standard? 3 MS. POWELL: I'm instructing the witness 4 not to answer on the grounds of the law 5 enforcement privilege. 6 Q. What is the law enforcement interest in 7 placing people in the TSDB but not investigating 8 them? 9 MS. POWELL: Objection; misleading at 10 the very least, but also a comprehensive answer 11 would require disclosure of law enforcement 12 sensitive information and -- 13 MR. ABBAS: I think he can answer. 14 MS. POWELL: He can answer whether or 15 not there's a law enforcement interest. 16 BY MR. ABBAS: 17 Q. It was a what, not an if. 18 What is the law enforcement interest in 19 placing people on the TSDB but not investigating 20 them? 21 MS. POWELL: Same objections. 22 You can answer, if there's a general</p>	<p style="text-align: right;">271</p> <p>1 BY MR. ABBAS: 2 Q. What is your understanding of what the 3 term "non-investigative subjects" refers to? 4 MS. POWELL: I'm instructing the witness 5 not to answer on the grounds of law enforcement 6 privilege. 7 Q. Are there non-investigative subjects 8 that the FBI nominates to the TSDB? 9 MS. POWELL: Objection; calls for law 10 enforcement privileged information. 11 I'm instructing the witness not to 12 answer. 13 Q. The FBI conducts assessments; correct? 14 <b>A. Yes.</b> 15 Q. What is an FBI assessment? 16 <b>A. Generally, an assessment is a</b> 17 <b>pre-investigative assessment of a threat to</b> 18 <b>determine the nature of the threat and to either</b> 19 <b>mitigate the threat or develop it to the level of</b> 20 <b>an investigation.</b> 21 Q. How many assessments did the FBI conduct 22 in 2017?</p>
<p style="text-align: right;">270</p> <p>1 answer. 2 THE WITNESS: Generally, I mean, the FBI 3 may not be investigating them, but someone else 4 may be investigating them if they're in another 5 country and posing -- and fit into this category 6 but are in another country, then it's likely that 7 someone is investigating them, but possibly not 8 the FBI. 9 BY MR. ABBAS: 10 Q. Are there any persons inside the United 11 States who the FBI has nominated to be in the 12 TSDB, but the FBI is not investigating? 13 MS. POWELL: Objection. 14 I'm instructing the witness not to 15 answer on the grounds of the law enforcement 16 privilege. 17 MR. ABBAS: It's a yes-or-no question. 18 BY MR. ABBAS: 19 Q. Are you familiar with the term 20 "non-investigative subjects"? 21 MS. POWELL: You can answer yes or no. 22 THE WITNESS: Yes.</p>	<p style="text-align: right;">272</p> <p>1 MS. POWELL: Objection; calls for law 2 enforcement privileged information. 3 I'm instructing the witness not to 4 answer. 5 Q. How many -- we're just going to repeat 6 this a couple of times. 7 MS. POWELL: I'm good. 8 Q. How many FBI assessments -- how many 9 assessments did the FBI conduct so far in 2018? 10 MS. POWELL: Objection. 11 I'm instructing the witness not to 12 answer on the grounds of law enforcement 13 privilege. 14 Q. How many assessments did the FBI conduct 15 in 2016? 16 MS. POWELL: Same objection. 17 I'm instructing the witness not to 18 answer. 19 Q. How many assessments did the FBI conduct 20 in 2015? 21 MS. POWELL: Same objection. 22 I'm instructing the witness not to</p>

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273	<p>1 answer on the grounds of the law enforcement 2 privilege. 3 MR. ABBAS: I got like three more years. 4 MS. POWELL: We're just going to -- 5 BY MR. ABBAS: 6 Q. How many -- I'm going to do them one by 7 one. 8 How many assessments did the FBI conduct 9 in 2015? 10 MS. POWELL: I'm instructing the witness 11 not to answer on the grounds of law enforcement 12 privilege. 13 Q. How many assessments did the FBI conduct 14 in 2014? 15 MS. POWELL: I'm instructing the witness 16 not to answer on the grounds of law enforcement 17 privilege. 18 Q. How many assessments did the FBI conduct 19 in 2013? 20 MS. POWELL: I'm instructing the witness 21 not to answer on the grounds of the law 22 enforcement privilege.</p>	275	<p>1 Q. Okay. How does the FBI determine which 2 people are subject -- I'm sorry. 3 How does the FBI determine which people 4 it looks at to determine whether they satisfy the 5 TSDB's inclusion standard? 6 MS. POWELL: I'm sure a comprehensive 7 description of the FBI's activity would require 8 disclosure of law enforcement or state secrets 9 information, but you can answer at a level of 10 generality. 11 THE WITNESS: The FBI doesn't make 12 determinations about which people or groups of 13 people to look at. Information -- we receive 14 information through the course of our 15 investigative activities that could potentially 16 cause us to collect additional information about 17 specific people and then that process would then 18 potentially rise to the standard of inclusion in 19 the TSDB. 20 BY MR. ABBAS: 21 Q. So the FBI only measures people against 22 the TSDB's inclusion standard that it has</p>
274	<p>1 Q. How many assessments did the FBI conduct 2 that resulted in a watchlist nomination? 3 MS. POWELL: I'm instructing the witness 4 not to answer on the grounds of the law 5 enforcement privilege. 6 Q. Has an FBI assessment ever resulted in a 7 watchlist nomination? 8 Let's get really metaphysical here. 9 Does the FBI determine whether every single person 10 in the world -- I'm sorry, let's do it this way. 11 Does the FBI -- for every person in the 12 world, does the FBI assess whether every person in 13 the world satisfies the TSDB's inclusion 14 standards? 15 MS. POWELL: I think you can answer that 16 question. 17 THE WITNESS: No. 18 BY MR. ABBAS: 19 Q. So the FBI only applies the TSDB 20 inclusion standard to a subset of people in the 21 world; correct? 22 A. Yes.</p>	276	<p>1 information about; correct? 2 MS. POWELL: Objection; misleading. 3 THE WITNESS: The FBI in submitting its 4 nominations reviews its information about people 5 and determines if it fits in this standard. So 6 it's not -- we're not collecting information about 7 everyone and then seeing who fits there and then 8 nominating people to the TSDB. We are only 9 collecting information about people for whom we 10 have an investigative -- an investigative interest 11 in collecting that information. 12 BY MR. ABBAS: 13 Q. But some people are included in the TSDB 14 that are not under investigation; correct? 15 That's -- I just want to make sure that I have 16 that. 17 A. There are people included in the TSDB 18 that are not under FBI investigation. 19 Q. Great. Okay. 20 One source of -- so you've testified 21 that the FBI only nominates people to the TSDB 22 that it has information about; correct?</p>

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1 **A. Yes.**

2 Q. Okay. And some information the FBI just

3 receives, maybe calls, tips, things like that;

4 correct?

5 **A. Yes.**

6 Q. But the FBI is also engaged in proactive

7 efforts to collect information that's relevant to

8 the FBI's counterterrorism purposes; correct?

9 **A. The FBI conducts investigative activity**

10 **across a broad spectrum of activity in order to**

11 **prevent terrorist attacks, yes.**

12 Q. So out of those two broad categories of

13 information, information that the FBI receives as

14 well as information that the FBI collects, that's

15 the information that the FBI utilizes as a basis

16 of deciding who among those people gets included

17 or gets nominated to the watchlist; correct?

18 **A. The FBI does not decide who gets**

19 **included on the watchlist. That's very clear.**

20 Q. The FBI decides who they nominate to the

21 watchlist. So let's try that question again.

22 **A. If the FBI collects information that**

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1 **meets this reasonable suspicion standard, we will**

2 **make a nomination to the TSC for inclusion on the**

3 **watchlist.**

4 Q. Does the FBI have a list of all the

5 people that it has information about?

6 MS. POWELL: Objection; vague and

7 misleading.

8 Q. Do you have a list of all the people

9 that the FBI has conducted an assessment of?

10 MS. POWELL: Objection; vague and

11 misleading.

12 THE WITNESS: No.

13 BY MR. ABBAS:

14 Q. Does the FBI know who it has conducted

15 assessments of?

16 **A. Only insofar as we are allowed to keep**

17 **that information based on our records management**

18 **policies. We don't keep every bit of information**

19 **forever. So, no, we don't have a record of every**

20 **assessment we've ever done.**

21 Q. When does the FBI delete assessments

22 that it's made in the past?

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1 MS. POWELL: Wow, objection, scope.

2 You can answer, if you know.

3 THE WITNESS: Law enforcement sensitive.

4 MS. POWELL: And law enforcement

5 sensitive for privacy policies. Okay.

6 If you know a non-privileged answer, go

7 ahead.

8 THE WITNESS: I don't know a

9 non-privileged answer, but we do not keep all the

10 information we've ever collected.

11 BY MR. ABBAS:

12 Q. Do you keep the names of the people that

13 you've conducted assessments of?

14 **A. Forever?**

15 Q. Yeah.

16 **A. No.**

17 Q. Do you keep the names of people that

18 you've conducted an assessment of in the last five

19 years?

20 MS. POWELL: Objection; scope, and

21 vagueness, and law enforcement sensitive.

22 Is there a non-privileged answer you can

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1 give?

2 THE WITNESS: No.

3 BY MR. ABBAS:

4 Q. What's the law enforcement interest in

5 not telling me how long you keep records regarding

6 the names of people the FBI has done assessment

7 of?

8 MS. POWELL: Are you asking me?

9 MR. ABBAS: No, I'm asking Mr. DeSarno.

10 MS. POWELL: I'm definitely objecting as

11 to scope and I think there are sort of statutes

12 and regs governing privacy policies that would

13 call for a legal conclusion, but to the extent

14 there is also a privilege covering specific

15 policies I think he is --

16 MR. ABBAS: What is the privilege

17 covering policies regarding the destruction of

18 information that's relevant to this lawsuit? What

19 is that policy?

20 MS. POWELL: There's nothing remotely

21 relevant to this lawsuit that you're asking about,

22 the lengths to which FBI keeps assessment records.



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1 BY MR. ABBAS:  
2 Q. Assessments are one source of the FBI's  
3 TSDB nominations; correct?  
4 MS. POWELL: Objection; vague,  
5 misleading, and mischaracterizes prior testimony.  
6 MR. ABBAS: Go ahead.  
7 MS. POWELL: Can you give a  
8 non-privileged answer to that?  
9 THE WITNESS: I don't think I can. I  
10 don't know that I can.  
11 BY MR. ABBAS:  
12 Q. What is the privilege assertion  
13 that's -- do you have an answer that you're not  
14 providing?  
15 **A. Yes.**  
16 Q. Okay. Great.  
17 So --  
18 MS. POWELL: There's an applicable  
19 privilege and potentially the state secrets  
20 privilege for a comprehensive answer as well.  
21 MR. ABBAS: I'm not looking for a  
22 comprehensive answer.

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1 BY MR. ABBAS:  
2 Q. Some people that are subject to FBI's  
3 assessments end up getting nominated to the TSDB;  
4 correct?  
5 **A. Eventually, yes. Potentially.**  
6 Q. Okay. Does the FBI keep track of the  
7 number of people that it did assessments of who  
8 ended up in the TSDB?  
9 MS. POWELL: Certainly a comprehensive  
10 answer to that question would require disclosure  
11 of law enforcement sensitive information. Does it  
12 keep -- and I'm also just a little confused.  
13 Could you repeat the question?  
14 Q. Does the FBI keep track of the number of  
15 people that it did assessments of who ended up in  
16 the TSDB?  
17 MS. POWELL: I think this also might go  
18 back in part to the previous question about  
19 whether or not FBI can track all its nomination to  
20 which there was a fairly complicated answer, but  
21 it was asked and answered to that extent.  
22 MR. ABBAS: Go ahead.

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1 THE WITNESS: We certainly can resolve  
2 to that number, yes.  
3 BY MR. ABBAS:  
4 Q. When you say "can resolve to that  
5 number," do you mean that the number that I ask  
6 for is knowable by the FBI?  
7 **A. It is knowable, yes.**  
8 Q. Great. Do you know what that number is?  
9 **A. I do not.**  
10 Q. Okay. Would it be difficult for the FBI  
11 to determine that number?  
12 **A. Not too difficult, no.**  
13 Q. Great. Must U.S. persons be under  
14 investigation to be added to the TSDB -- I'm  
15 sorry, let me withdraw the question.  
16 Must U.S. persons be under investigation  
17 to be nominated to the TSDB?  
18 MS. POWELL: Objection to the extent a  
19 comprehensive answer would require law enforcement  
20 privileged information.  
21 And I think I'm going to instruct him  
22 not to answer beyond what he's already said on the

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1 subject of investigations and nominations.  
2 MR. ABBAS: Go ahead.  
3 THE WITNESS: Yeah, I think I've already  
4 answered that.  
5 BY MR. ABBAS:  
6 Q. I don't know what answer you're  
7 referring to or what answer she's referring to.  
8 MS. POWELL: Well, I'm instructing him  
9 not to answer.  
10 MR. ABBAS: So if he wants to provide  
11 the same answer that you're saying he provided,  
12 that's fine. But I'm asking a question and he  
13 should answer it and I think it's a different  
14 question than I've asked before.  
15 MS. POWELL: Well, I am thoroughly  
16 confused if so and I suspect the witness is as  
17 well.  
18 MR. ABBAS: Sure. I'm going to try  
19 rewording my question.  
20 BY MR. ABBAS:  
21 Q. For the FBI to nominate a U.S. person to  
22 the TSDB, must that U.S. person be under

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<p style="text-align: right;">285</p> <p>1 investigation?</p> <p>2 MS. POWELL: A comprehensive answer</p> <p>3 would require disclosure of law enforcement</p> <p>4 privileged information. I think the witness may</p> <p>5 provide a general -- fairly general answer to the</p> <p>6 extent possible without revealing privileged</p> <p>7 information. If you disagree, don't answer.</p> <p>8 THE WITNESS: The answer is no.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. For the FBI to nominate a U.S. person</p> <p>11 who is inside the United States -- I'm sorry, let</p> <p>12 me start again.</p> <p>13 For the FBI to nominate a U.S. person to</p> <p>14 the TSDB while that U.S. person is inside the</p> <p>15 United States, must that U.S. person be under</p> <p>16 investigation?</p> <p>17 MS. POWELL: Objection.</p> <p>18 I'm instructing him not to answer beyond</p> <p>19 the answers already given.</p> <p>20 MR. ABBAS: Go ahead.</p> <p>21 MS. POWELL: I'm instructing him not to</p> <p>22 answer.</p>	<p style="text-align: right;">287</p> <p>1 but if you can describe the interest in general</p> <p>2 terms --</p> <p>3 THE WITNESS: So, generally, defining a</p> <p>4 clear relationship between FBI investigation and</p> <p>5 watchlisting status, that would generally</p> <p>6 compromise law enforcement and potentially state</p> <p>7 secrets information.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Why? Why does the relationship between</p> <p>10 FBI investigations and whether targets of FBI</p> <p>11 investigations at a general level imperil the</p> <p>12 FBI's law enforcement interests? You told me that</p> <p>13 it did, I would like an explanation as to why.</p> <p>14 MS. POWELL: Objection; calls for a</p> <p>15 legal conclusion, calls for law enforcement</p> <p>16 privilege and potentially state secrets</p> <p>17 information, and vague, and misleading.</p> <p>18 But you may answer if there's a general</p> <p>19 answer you can give.</p> <p>20 THE WITNESS: I think my answer was</p> <p>21 sufficient.</p> <p>22</p>
<p style="text-align: right;">286</p> <p>1 THE WITNESS: I don't have an answer.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. So you can answer whether or not U.S.</p> <p>4 persons must be under investigation to be</p> <p>5 nominated to TSDB, but you can't answer whether</p> <p>6 U.S. persons, while they're in the United States,</p> <p>7 must be under investigation to be nominated to the</p> <p>8 TSDB?</p> <p>9 MS. POWELL: I'm instructing him not to</p> <p>10 answer further.</p> <p>11 MR. ABBAS: I just want to -- on the</p> <p>12 basis?</p> <p>13 MS. POWELL: Law enforcement privilege.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. What is the law enforcement -- what is</p> <p>16 the FBI's law enforcement interest in not</p> <p>17 disclosing whether U.S. persons while they're</p> <p>18 inside the United States may or may not be added</p> <p>19 to the TSDB?</p> <p>20 MS. POWELL: Objection; vague,</p> <p>21 misleading, and a comprehensive answer would</p> <p>22 require law enforcement privileged information,</p>	<p style="text-align: right;">288</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. That's not an answer.</p> <p>3 Why does the relationship between FBI</p> <p>4 investigations and whether targets of FBI</p> <p>5 investigations at a general level imperil the</p> <p>6 FBI's law enforcement interests?</p> <p>7 MS. POWELL: Same objections and asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: You asked a pretty</p> <p>10 specific question about U.S. persons in the U.S.,</p> <p>11 that's where the privilege is asserted.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Why? But the privilege is asserted</p> <p>14 regarding whether, now I'm asking why. What is</p> <p>15 the law enforcement interest in not disclosing the</p> <p>16 relationship between TSDB watchlist status of U.S.</p> <p>17 persons inside the United States and</p> <p>18 investigations regarding such U.S. persons inside</p> <p>19 the United States?</p> <p>20 MS. POWELL: Same objections. A</p> <p>21 comprehensive discussion would require disclosure</p> <p>22 of law enforcement privilege and state secrets</p>

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1 information, calls for a legal conclusion, it's  
 2 vague, and misleading, outside the scope, and  
 3 asked and answered at this point.  
 4 MR. ABBAS: You can go ahead.  
 5 THE WITNESS: I mean, like I said,  
 6 discussion of the relationship between  
 7 watchlisting status and whether or not someone is  
 8 a subject of investigation, both of those  
 9 independently are matters of law enforcement and  
 10 state secrets privilege, both of them together are  
 11 even more revealing about both of those  
 12 privileges. So I'm not going to discuss them any  
 13 further.  
 14 BY MR. ABBAS:  
 15 Q. Do you -- yes or no, do you know what  
 16 the relationship is between a person's TSDB  
 17 status -- I'm sorry.  
 18 Do you know, as the FBI's deponent  
 19 today, what the relationship is between a U.S.  
 20 person who is in the United States' TSDB status  
 21 and whether there is an investigation of that U.S.  
 22 person who is in the United States?

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1 MS. POWELL: You can answer solely as to  
 2 whether or not you know.  
 3 THE WITNESS: I'm confused by the  
 4 question. Is it a specific person you're talking  
 5 about?  
 6 BY MR. ABBAS:  
 7 Q. In general, do you know what the  
 8 relationship is between a person's TSDB status --  
 9 I'm sorry.  
 10 MR. ABBAS: Can you go back up to the  
 11 question.  
 12 Q. Do you know, as the FBI's deponent  
 13 today, what the relationship is between a U.S.  
 14 person who is in the United States' TSDB status  
 15 and whether there is an investigation of that U.S.  
 16 person who is in the United States?  
 17 MS. POWELL: Objection; vague,  
 18 misleading, potentially calls for law enforcement  
 19 privileged information, but I think you can answer  
 20 yes or no as to whether or not you know if you  
 21 understand the question.  
 22 THE WITNESS: I mean, if you're talking

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1 about a specific person or are you talking  
 2 about --  
 3 BY MR. ABBAS:  
 4 Q. In general.  
 5 **A. -- every U.S. person in the United**  
 6 **States in the TSDB?**  
 7 Q. In general.  
 8 **A. I'm confused by that question.**  
 9 Q. We'll ask it again.  
 10 MS. POWELL: It might not help.  
 11 THE WITNESS: I don't really understand  
 12 the question.  
 13 BY MR. ABBAS:  
 14 Q. Does the FBI have policy  
 15 documents -- I'm sorry.  
 16 Does the FBI have any policies or  
 17 practices that regard whether U.S. persons who are  
 18 in the United States, whether their watchlist  
 19 status and whether they're under investigation are  
 20 related in any way?  
 21 MS. POWELL: Objection; vague, and  
 22 misleading, and a comprehensive answer would

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1 require the disclosure of law enforcement  
 2 sensitive information.  
 3 THE WITNESS: And the FBI does not make  
 4 decisions about watchlisting.  
 5 BY MR. ABBAS:  
 6 Q. The FBI makes nominations to the  
 7 watchlist; correct?  
 8 **A. Yes.**  
 9 Q. So the FBI decides at least who the FBI  
 10 nominates to the watchlist; right?  
 11 MS. POWELL: Objection; vague, and  
 12 mischaracterizes prior testimony.  
 13 THE WITNESS: Not at least, that's what  
 14 the FBI does.  
 15 BY MR. ABBAS:  
 16 Q. Right. Does the -- whether the FBI has  
 17 an investigation of a U.S. person who is in the  
 18 United States have any bearing on whether the FBI  
 19 chooses to nominate that person to the TSDB?  
 20 MS. POWELL: Objection.  
 21 I'm instructing the witness not to  
 22 answer on the grounds of a law enforcement

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293	<p>1 privilege. I'm the instructing the witness not to</p> <p>2 answer.</p> <p>3 Q. Do you have an answer?</p> <p>4 MS. POWELL: I'm instructing the witness</p> <p>5 not to answer.</p> <p>6 MR. ABBAS: So I don't know whether he</p> <p>7 has an answer or not. Like if something is being</p> <p>8 withheld on the basis of the law enforcement</p> <p>9 privilege, then he has an answer and he's</p> <p>10 withholding it on the basis of the law enforcement</p> <p>11 privilege. But if he just doesn't know, then he</p> <p>12 can't assert the law enforcement privilege if he</p> <p>13 just doesn't know. I don't know which one it is.</p> <p>14 MS. POWELL: I am instructing him not to</p> <p>15 answer.</p> <p>16 MR. ABBAS: Okay. Which question are</p> <p>17 you instructing him not to answer?</p> <p>18 MS. POWELL: The one you just asked.</p> <p>19 MR. ABBAS: Can you go back up to my</p> <p>20 last question.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Do you know whether the FBI has any</p>	295	<p>1 investigation and whether the FBI nominates such</p> <p>2 persons to the TSDB?</p> <p>3 MS. POWELL: Objection; a comprehensive</p> <p>4 answer requires disclosure of law enforcement</p> <p>5 privileged information.</p> <p>6 I think you can answer yes or no as to</p> <p>7 whether or not you know which was the question;</p> <p>8 right?</p> <p>9 MR. ABBAS: Yeah.</p> <p>10 THE WITNESS: Whether or not there's</p> <p>11 policy about it; right?</p> <p>12 MS. POWELL: Right.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. All right. So there is policy regarding</p> <p>16 whether persons -- U.S. persons who are in the</p> <p>17 U.S., who are under investigation should be</p> <p>18 nominated by the FBI to the TSDB; correct?</p> <p>19 MS. POWELL: Objection; misleading, and</p> <p>20 a comprehensive answer would require disclosure of</p> <p>21 law enforcement privileged information, and asked</p> <p>22 and answered.</p>
294	<p>1 policies or practices regarding the investigation</p> <p>2 of U.S. persons who are in the United States and</p> <p>3 such person's status in the TSDB?</p> <p>4 MS. POWELL: Objection; vague,</p> <p>5 misleading, and a comprehensive answer requires</p> <p>6 the disclosure of law enforcement sensitive</p> <p>7 information.</p> <p>8 If there is a general answer you can</p> <p>9 give about what you know --</p> <p>10 THE WITNESS: Again, the FBI does not</p> <p>11 determine -- the FBI does not determine the status</p> <p>12 of an individual in the TSDB.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Okay. We'll ask it with the word</p> <p>15 "nominate" instead.</p> <p>16 Does the FBI have any policies or</p> <p>17 practices regarding U.S. persons in the U.S. --</p> <p>18 let me start --</p> <p>19 MR. ABBAS: Can you go back up.</p> <p>20 Q. Do you know whether the FBI has any</p> <p>21 policies or practices regarding whether U.S.</p> <p>22 persons who are in the United States who are under</p>	296	<p>1 MR. ABBAS: Go ahead.</p> <p>2 THE WITNESS: I answered that already,</p> <p>3 yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Yes. Okay.</p> <p>6 What are the policies and practices</p> <p>7 regarding whether U.S. persons who are in the</p> <p>8 United States who are under investigation and</p> <p>9 whether the FBI should nominate such persons?</p> <p>10 MS. POWELL: I'm instructing the witness</p> <p>11 not to answer on the grounds of law enforcement</p> <p>12 privilege.</p> <p>13 Q. Do you know an answer to that question?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What are the -- are there</p> <p>16 documents that memorialized the FBI's policies</p> <p>17 regarding whether individuals who are U.S. persons</p> <p>18 in the United States who are under investigation</p> <p>19 should be nominated by the FBI to the TSDB?</p> <p>20 MS. POWELL: Objection; vague, but I</p> <p>21 think you can answer whether or not those</p> <p>22 documents exist.</p>

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<p style="text-align: right;">297</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. What are the names of those documents?</p> <p>4 <b>A. The -- I already talked about it.</b></p> <p>5 MS. POWELL: Okay.</p> <p>6 THE WITNESS: Counterterrorism Program</p> <p>7 Guide. It's chapter 11 of that guide is the</p> <p>8 watchlisting section.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. What is the counterterrorism programming</p> <p>11 guide -- I'm sorry, Counterterrorism Program</p> <p>12 Guide?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. What is the Counterterrorism</p> <p>15 Program Guide?</p> <p>16 <b>A. It's the investigative guidance for the</b></p> <p>17 <b>entire counterterrorism program. Investigative</b></p> <p>18 <b>guidance, operational guidance, administrative</b></p> <p>19 <b>guidance. And a significant portion of that is</b></p> <p>20 <b>dedicated to the watchlist.</b></p> <p>21 Q. What is -- it's chapter 11?</p> <p>22 <b>A. Chapter 11.</b></p>	<p style="text-align: right;">299</p> <p>1 the Counterterrorism Program Guide?</p> <p>2 MS. POWELL: Objection; vague, and</p> <p>3 misleading.</p> <p>4 THE WITNESS: I don't know that they're</p> <p>5 required to read it, but they receive training on</p> <p>6 the content of it.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Is there any assessment that the FBI</p> <p>9 makes of FBI agents whose duties include</p> <p>10 nominating individuals to the TSDB that they do in</p> <p>11 fact understand the contents of the</p> <p>12 Counterterrorism Program Guide?</p> <p>13 MS. POWELL: Objection; vague.</p> <p>14 THE WITNESS: The nomination process is</p> <p>15 part of the routine investigative process that is</p> <p>16 reviewed at the time of nomination and</p> <p>17 periodically throughout an investigation. So</p> <p>18 there's always supervisory review and mentoring as</p> <p>19 to the standards of how to do that properly and</p> <p>20 what the standards are for it.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Is there any formal assessment of FBI</p>
<p style="text-align: right;">298</p> <p>1 Q. Chapter 11.</p> <p>2 <b>A. Like bankruptcy.</b></p> <p>3 Q. Like bankruptcy. Definitely.</p> <p>4 What are the -- I'm -- you're not going</p> <p>5 to answer this one so wait for her objection.</p> <p>6 What does chapter 11 of the</p> <p>7 Counterterrorism Program Guide include?</p> <p>8 MS. POWELL: I'm instructing the witness</p> <p>9 not to answer on the grounds of law enforcement</p> <p>10 privilege and potentially the state secrets</p> <p>11 privilege and potentially SSI, I'm not sure.</p> <p>12 MR. ABBAS: SSI.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Are you familiar with chapter 11 of the</p> <p>15 Counterterrorism Program Guide?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Have you read the chapter 11 of the</p> <p>18 Counterterrorism Program Guide?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Okay. Have all FBI employees who</p> <p>21 are -- whose duties include making nominations to</p> <p>22 the TSDB, are they required to read chapter 11 of</p>	<p style="text-align: right;">300</p> <p>1 agents who nominate individuals to the TSDB as</p> <p>2 part of their duties?</p> <p>3 MS. POWELL: Objection; vague,</p> <p>4 misleading, and asked and answered.</p> <p>5 THE WITNESS: All employees receive</p> <p>6 regular performance assessments that include their</p> <p>7 investigative activity of which part of that is</p> <p>8 watchlist nominations. So it's part of the</p> <p>9 standard duties of FBI investigative personnel.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Has an FBI employee ever received a</p> <p>12 negative performance evaluation as a result of</p> <p>13 that employee's nomination practices?</p> <p>14 MS. POWELL: Objection; vague and</p> <p>15 misleading.</p> <p>16 THE WITNESS: I'm not aware of any.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. You're not aware of any employee that's</p> <p>19 ever been -- or let me ask -- I apologize if I've</p> <p>20 asked the question like this before.</p> <p>21 Has an FBI employee ever been</p> <p>22 reprimanded in any manner about a watchlist</p>

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301	<p>1 nomination?</p> <p>2 MS. POWELL: Objection; vague and</p> <p>3 potentially misleading.</p> <p>4 THE WITNESS: I don't have any specific</p> <p>5 knowledge about a reprimand like that.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. And just to clarify to make sure that I</p> <p>8 understood your answer, it's the FBI's testimony</p> <p>9 today that you're not aware of an FBI employee</p> <p>10 ever being reprimanded for a watchlist nomination</p> <p>11 issue?</p> <p>12 MS. POWELL: Same objections.</p> <p>13 THE WITNESS: Same answer.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Same answer is not the answer. So if</p> <p>16 you feel the question is the same, you can just</p> <p>17 give me the same answer, but same answer is not an</p> <p>18 answer to that question.</p> <p>19 MS. POWELL: It is an answer, it's just</p> <p>20 not one you like.</p> <p>21 THE WITNESS: I'm not aware of any</p> <p>22 specific instance where an employee was</p>	303	<p>1 MS. POWELL: Objection; vague.</p> <p>2 MR. ABBAS: I'm going to withdraw it.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Has an FBI employee ever made a</p> <p>5 nomination to the TSDB that relies upon the</p> <p>6 reporting of suspicious activity alone?</p> <p>7 MS. POWELL: Objection, vague.</p> <p>8 THE WITNESS: Yeah, I'm not aware of</p> <p>9 that.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Okay. Is the reporting of suspicious</p> <p>12 activity a factor that FBI employees can use as a</p> <p>13 basis of watchlisting someone?</p> <p>14 MS. POWELL: Objection; vague.</p> <p>15 THE WITNESS: So if in the totality of</p> <p>16 the circumstances taken together with rational</p> <p>17 inferences, those facts include suspicious</p> <p>18 activity, then yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. And this is a little bit different</p> <p>21 because I'm going to use the word "alone." Has an</p> <p>22 FBI employee made a nomination to the TSDB that</p>
302	<p>1 disciplined or reprimanded for misconduct related</p> <p>2 to a nomination.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Great. So you're still on page 4 of the</p> <p>5 overview document; right?</p> <p>6 A. Yes.</p> <p>7 Q. So do you see that second little</p> <p>8 paragraph that says, "Mere guesses or hunches or</p> <p>9 the reporting of suspicious activity alone are not</p> <p>10 sufficient to establish reasonable suspicion"?</p> <p>11 A. Yes.</p> <p>12 Q. Has any FBI employee ever made a</p> <p>13 nomination to the TSDB that relied upon mere</p> <p>14 guesses or hunches?</p> <p>15 MS. POWELL: Objection; vague.</p> <p>16 THE WITNESS: I'm not aware of any</p> <p>17 instance like that.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Okay. Has of the FBI -- I'm sorry.</p> <p>20 Has an FBI employee ever made</p> <p>21 nominations to the TSDB that regard only the</p> <p>22 reporting of suspicious activity?</p>	304	<p>1 relies upon mere guesses or hunches only?</p> <p>2 MS. POWELL: Objection; vague.</p> <p>3 THE WITNESS: Not that I'm aware of.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Has the FBI -- I'm sorry.</p> <p>6 Has an FBI employee ever made a</p> <p>7 nomination to the TSDB based on a person's race?</p> <p>8 MS. POWELL: Objection; vague.</p> <p>9 THE WITNESS: Not that I'm aware of.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Has an FBI employee ever made a</p> <p>12 nomination to the TSDB based on a person's</p> <p>13 religious affiliation?</p> <p>14 MS. POWELL: Objection; vague.</p> <p>15 THE WITNESS: Not that I'm aware of.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. A person's religious affiliation has</p> <p>18 never played any role in a FBI employee's</p> <p>19 nomination to the TSDB?</p> <p>20 MS. POWELL: Objection; misleading and</p> <p>21 vague.</p> <p>22 MR. ABBAS: Go ahead.</p>

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<p style="text-align: right;">305</p> <p>1 THE WITNESS: Your question was whether</p> <p>2 or not the nomination was made based on that and</p> <p>3 I'm not aware of that.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. So has a person's religious affiliation</p> <p>6 ever been a factor in a FBI employee's nomination</p> <p>7 of a person to the TSDB?</p> <p>8 MS. POWELL: Objection; vague and</p> <p>9 misleading.</p> <p>10 THE WITNESS: I don't know that</p> <p>11 religious affiliation would be considered a</p> <p>12 factor. I mean, certainly no nominations are</p> <p>13 based solely on any of those things. But if any</p> <p>14 of those things also go to totality of</p> <p>15 circumstances taken together with rational</p> <p>16 inferences, they potentially could be factors, but</p> <p>17 they're not -- but no nominations is based solely</p> <p>18 on any of those elements.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Got it. So the FBI's testimony today is</p> <p>21 that it does not use religious affiliation solely</p> <p>22 as a basis for nominating a person to the TSDB;</p>	<p style="text-align: right;">307</p> <p>1 is a person's religious affiliation ever</p> <p>2 relevant -- I'm sorry.</p> <p>3 Is a person's religious affiliation ever</p> <p>4 part of the totality of circumstances an FBI</p> <p>5 employee would look at in determining whether or</p> <p>6 not to nominate such a person?</p> <p>7 MS. POWELL: Objection; vague and</p> <p>8 misleading.</p> <p>9 THE WITNESS: So specifically religious</p> <p>10 affiliation, no. But if there were -- if there</p> <p>11 were associations with extremists, that could be</p> <p>12 construed as religious affiliation when it's</p> <p>13 actually an extremist association, that would be</p> <p>14 considered as a factor.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. So associations -- so FBI employees who</p> <p>17 nominate individuals to the TSDB look at the</p> <p>18 associations of individuals that they're</p> <p>19 considering to nominate to the TSDB; correct?</p> <p>20 MS. POWELL: Objection; mischaracterizes</p> <p>21 prior testimony, vague, and misleading, and a</p> <p>22 comprehensive explanation in application of the</p>
<p style="text-align: right;">306</p> <p>1 correct?</p> <p>2 MS. POWELL: Objection; vague and asked</p> <p>3 and answered.</p> <p>4 MR. ABBAS: Go ahead.</p> <p>5 THE WITNESS: I think I answered that.</p> <p>6 Based on the totality of circumstances taken</p> <p>7 together with rational inferences, all of the</p> <p>8 information together is what the decision is based</p> <p>9 on. It's not based on hunches, not based solely</p> <p>10 on suspicious activity, not based solely on any</p> <p>11 race, ethnicity, or religious affiliation or First</p> <p>12 Amendment rights.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is a person's religious affiliation part</p> <p>15 of the totality of circumstances that an FBI</p> <p>16 employee would look at in determining whether or</p> <p>17 not to nominate a person to the TSDB?</p> <p>18 MS. POWELL: Objection; vague and</p> <p>19 misleading.</p> <p>20 THE WITNESS: Generally not.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. So you say "generally" so I have to ask,</p>	<p style="text-align: right;">308</p> <p>1 inclusion standard requires disclosure of law</p> <p>2 enforcement sensitive information.</p> <p>3 MR. ABBAS: I'm sorry.</p> <p>4 MS. POWELL: I think the general answer</p> <p>5 that has been given about the standard and the</p> <p>6 totality is the one that can be given. If there's</p> <p>7 some further non-privileged information you can</p> <p>8 add here, please do. If not, you should say so.</p> <p>9 THE WITNESS: I don't know if there's</p> <p>10 anything further non-privileged that I can add.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. So it's law enforcement privileged</p> <p>13 information whether the FBI considers the</p> <p>14 associations of individuals it's determining might</p> <p>15 be nominated to the watchlist? You can't tell me</p> <p>16 that the FBI looks at a person's associations</p> <p>17 because of law enforcement privilege?</p> <p>18 MS. POWELL: I'm telling you that a</p> <p>19 comprehensive discussion of all the things --</p> <p>20 MR. ABBAS: I'm not asking for a --</p> <p>21 MS. POWELL: -- that could be part of</p> <p>22 the totality of the circumstances. Right. But</p>

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309	<p>1 you can't ask one by one by all the things that</p> <p>2 you think could theoretically be taken into</p> <p>3 account either because that also --</p> <p>4 MR. ABBAS: I can ask one by one and</p> <p>5 then you can tell me no at some point and then we</p> <p>6 can litigate this later.</p> <p>7 MS. POWELL: I'm telling you no now and</p> <p>8 instructing the witness not to answer on the</p> <p>9 grounds of the law enforcement privilege.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Okay. What is the FBI's law enforcement</p> <p>12 interest in not disclosing whether or not a</p> <p>13 person's associations are relevant to determining</p> <p>14 whether or not the FBI nominates that person to</p> <p>15 the TSDB?</p> <p>16 MS. POWELL: Objection; mischaracterizes</p> <p>17 prior testimony, is vague, and misleading, and a</p> <p>18 comprehensive discussion would require disclosure</p> <p>19 of law enforcement sensitive information.</p> <p>20 MR. ABBAS: Go ahead.</p> <p>21 THE WITNESS: So clearly the nominator's</p> <p>22 relying on totality of circumstances based on all</p>	311	<p>1 specific applications of the reasonable suspicion</p> <p>2 standard.</p> <p>3 Q. As part of the FBI's nomination</p> <p>4 paperwork, must the FBI employee submitting the</p> <p>5 nomination know the date of birth of the person</p> <p>6 that's nominated?</p> <p>7 MS. POWELL: Hold on. Nobody knows.</p> <p>8 I'm --</p> <p>9 MR. ABBAS: It's not SSI because it's</p> <p>10 FBI information.</p> <p>11 MS. POWELL: I think he can answer if he</p> <p>12 knows.</p> <p>13 THE WITNESS: We must have enough</p> <p>14 identifying information to distinguish between</p> <p>15 whether or not the person is a match to someone</p> <p>16 already on the watchlist.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. That's not an answer to the question.</p> <p>19 The answer was related to the date of birth.</p> <p>20 MR. ABBAS: Can we go back up to the</p> <p>21 question and read it again?</p> <p>22 (Record read.)</p>
310	<p>1 articulable intelligence and information available</p> <p>2 when taken together with rational inferences that</p> <p>3 either does or does not meet the reasonable</p> <p>4 suspicion standard. All of the relevant</p> <p>5 information, that's what's used.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Is a person's associations relevant to</p> <p>8 whether or not an FBI employee nominates such a</p> <p>9 person to the TSDB?</p> <p>10 MS. POWELL: Objection; calls for law</p> <p>11 enforcement privileged information and potentially</p> <p>12 SSI as well.</p> <p>13 I'm instructing the witness not to</p> <p>14 answer further as to the content of the reasonable</p> <p>15 suspicion standard.</p> <p>16 Q. If a person is related to a person</p> <p>17 subject to a terrorism-related investigation, can</p> <p>18 that be a basis for the FBI nominating such a</p> <p>19 person to the TSDB?</p> <p>20 MS. POWELL: I'm instructing the witness</p> <p>21 not to answer on the grounds of the law</p> <p>22 enforcement privilege and potentially SSI as to</p>	312	<p>1 MS. POWELL: Objection; vague, but you</p> <p>2 can answer if you know.</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. ABBAS: Can you go back up to the</p> <p>5 question.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. So the FBI knows how old people it</p> <p>8 nominates to the TSDB are; correct?</p> <p>9 MS. POWELL: Objection; vague and</p> <p>10 misleading.</p> <p>11 MR. ABBAS: Go ahead.</p> <p>12 THE WITNESS: I'm not sure that those</p> <p>13 two things necessarily are accurate. I mean, we</p> <p>14 have -- there are a lot of people who use dates of</p> <p>15 birth on official documents that are not accurate</p> <p>16 and do not indicate the age of that person. So</p> <p>17 the knowledge of the date of birth being used on a</p> <p>18 travel document or other official document is not</p> <p>19 definitely indicative of that person's age.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Got it. It could be a fake document; is</p> <p>22 that what you're saying?</p>



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1 **A. It could just be a 1/1/82. There are a**  
 2 **lot of people who use dates of birth 1/1, pick a**  
 3 **year and that's their date of birth.**  
 4 Q. That does happen in some countries.  
 5 **A. That happens a lot.**  
 6 Q. In Iraq, like 50 percent of the country  
 7 is born on July 1st or the other half is  
 8 December 1st.  
 9 **A. So it may not be indicative of age.**  
 10 Q. Fair. But for U.S. persons, their date  
 11 of birth is accurate generally in the FBI's view?  
 12 MS. POWELL: Objection; mischaracterizes  
 13 prior testimony and vague.  
 14 MR. ABBAS: Fine.  
 15 MS. POWELL: And potentially calls for  
 16 law enforcement information.  
 17 MR. ABBAS: I'll withdraw.  
 18 BY MR. ABBAS:  
 19 Q. Has the FBI ever nominated a baby to the  
 20 TSDB?  
 21 MS. POWELL: Objection; calls for law  
 22 enforcement privileged information.

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1 I'm instructing the witness not to  
 2 answer.  
 3 Q. You're not going to answer that  
 4 question?  
 5 MS. POWELL: I'm instructing the witness  
 6 not to answer.  
 7 Q. Has the FBI ever nominated an adult to  
 8 the Terrorist Screening Center Database?  
 9 **A. Can I answer that?**  
 10 MS. POWELL: Sure.  
 11 THE WITNESS: Yes.  
 12 BY MR. ABBAS:  
 13 Q. Has the FBI ever nominated a minor to  
 14 the TSDB?  
 15 MS. POWELL: I'm instructing the witness  
 16 not to answer on the grounds of the law  
 17 enforcement privilege.  
 18 Q. Has the FBI ever entered -- I'm sorry.  
 19 Has the FBI ever nominated a child under  
 20 the age of five to the TSDB?  
 21 MS. POWELL: I'm instructing the witness  
 22 not to answer on the grounds of the law

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1 enforcement privilege.  
 2 MR. ABBAS: We have a few more.  
 3 MS. POWELL: And potentially the SSI.  
 4 MR. ABBAS: We have a few more.  
 5 BY MR. ABBAS:  
 6 Q. Has the FBI ever nominated someone who  
 7 is younger than ten years old to the TSDB?  
 8 MS. POWELL: I'm instructing the witness  
 9 not to answer on the grounds of the law  
 10 enforcement privilege and potentially SSI.  
 11 Q. Has the FBI ever nominated to the TSDB a  
 12 person who is under the age of 15?  
 13 MS. POWELL: I'm instructing the witness  
 14 not to answer on the grounds of the law  
 15 enforcement privilege and potentially SSI.  
 16 MR. ABBAS: You know, James Comey many  
 17 years ago commented on babies on the watchlist  
 18 publicly and he commented about it. So, I mean,  
 19 it's your choice, but I guess we'll fight about  
 20 this later.  
 21 BY MR. ABBAS:  
 22 Q. What is the law enforcement interest of

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1 the FBI in not disclosing whether it has nominated  
 2 babies to the Terrorist Screening Database?  
 3 MS. POWELL: Objection, a comprehensive  
 4 answer would require disclosure of law enforcement  
 5 privileged information and potentially SSI.  
 6 If you can give a general answer, do.  
 7 THE WITNESS: Generally there's a law  
 8 enforcement interest in not disclosing information  
 9 either way about anyone's inclusion on the  
 10 watchlist.  
 11 BY MR. ABBAS:  
 12 Q. I'm not asking about anyone  
 13 specifically, I'm asking in general.  
 14 What is, in general, the FBI's interest  
 15 in not disclosing whether or not it's nominated  
 16 babies to the Terrorist Screening Database?  
 17 MS. POWELL: Objection; asked and  
 18 answered. His answer included babies.  
 19 MR. ABBAS: Go ahead.  
 20 THE WITNESS: I said anyone. Anyone.  
 21 There's no -- there's a law enforcement purpose to  
 22 not disclose information about the inclusion or

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1 non-inclusion of anyone on the watchlist.  
 2 BY MR. ABBAS:  
 3 Q. You told me that there are adults that  
 4 the FBI has nominated to the TSDB; correct?  
 5 A. Yes.  
 6 Q. Okay. And that tells me something about  
 7 the age of some of the people that the FBI has  
 8 nominated to the TSDB; correct?  
 9 A. Yes.  
 10 Q. And when -- so why is it that there is  
 11 not a law enforcement interest in withholding  
 12 whether or not there are adults in the TSDB, but  
 13 there is a law enforcement interest in withholding  
 14 whether or not there are babies in the TSDB?  
 15 MS. POWELL: Objection, the answer  
 16 requires the disclosure of law enforcement  
 17 sensitive information. I don't think there's a  
 18 general answer that can be given.  
 19 THE WITNESS: No.  
 20 MS. POWELL: I'm instructing the witness  
 21 not to answer.  
 22

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1 BY MR. ABBAS:  
 2 Q. How many babies has the FBI nominated to  
 3 the TSDB?  
 4 MS. POWELL: I'm instructing the witness  
 5 not to answer on the grounds of the law  
 6 enforcement privilege and SSI.  
 7 Q. How many babies -- I'm sorry.  
 8 How many U.S. persons under the age of  
 9 five -- how many persons has the FBI nominated to  
 10 the TSDB that are under the age of five?  
 11 MS. POWELL: I'm instructing the witness  
 12 not to answer on the grounds of the law  
 13 enforcement privilege and SSI.  
 14 Q. How many persons has the FBI nominated  
 15 to the TSDB that are under the age of ten?  
 16 MS. POWELL: I'm instructing the witness  
 17 not to answer on the grounds of the law  
 18 enforcement privilege and SSI.  
 19 Q. How many individuals has the FBI  
 20 nominated to the TSDB under the age of 15?  
 21 MS. POWELL: I'm instructing the witness  
 22 not to answer on the grounds of the law

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1 enforcement privilege and SSI.  
 2 Q. How many individuals has the FBI  
 3 nominated to the TSDB who are minors?  
 4 MS. POWELL: I'm instructing the witness  
 5 not to answer on the grounds of the law  
 6 enforcement officer privilege and SSI.  
 7 Q. How many individuals has the FBI  
 8 nominated to the TSDB that are adults?  
 9 MS. POWELL: We asserted privilege over  
 10 that. I'm instructing the witness not to answer  
 11 on the grounds of the law enforcement privilege.  
 12 Q. How many nominations has the FBI made to  
 13 the TSDB --  
 14 MS. POWELL: I'm instructing --  
 15 Q. -- in the last five years?  
 16 MS. POWELL: I'm instructing the witness  
 17 not to answer on the grounds of the law  
 18 enforcement privilege.  
 19 Q. What is the -- is there a law  
 20 enforcement interest in the FBI including babies  
 21 in the TSDB?  
 22 MS. POWELL: Objection. There's no way

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1 to answer the question without answering the prior  
 2 question so I'm instructing the witness not to  
 3 answer on the grounds of the law enforcement  
 4 privilege and SSI.  
 5 Q. You said that the date of birth that's  
 6 recorded in a FBI submitted TSDB nomination is not  
 7 an indication of the prospective listee's age; is  
 8 that correct?  
 9 MS. POWELL: Objection; mischaracterizes  
 10 prior testimony.  
 11 THE WITNESS: You asked me about date of  
 12 birth and then you made an inference that that  
 13 meant that the FBI knew the ages and what I said  
 14 is the date of birth may not actually match the  
 15 age.  
 16 BY MR. ABBAS:  
 17 Q. So the FBI definitely is responsible for  
 18 ensuring the accuracy of information it includes  
 19 in nominations that it submits to the TSC;  
 20 correct?  
 21 MS. POWELL: Objection; misleading and  
 22 mischaracterizes prior testimony.

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<p style="text-align: right;">321</p> <p>1 MR. ABBAS: That's totally a fair 2 question. 3 THE WITNESS: So someone's official date 4 of birth or date of birth on some official 5 document that's accurate may not actually be their 6 date of birth, but it is their record identifier 7 date of birth. 8 BY MR. ABBAS: 9 Q. So what do you do -- so you're 10 responsible as the FBI for ensuring the accuracy 11 of information that you cause to be included in 12 the TSDB, what do you do to confirm that the date 13 of birth accurately reflects the person's age? 14 MS. POWELL: Objection; mischaracterizes 15 prior testimony and asked and answered I think. 16 MR. ABBAS: Definitely not. 17 THE WITNESS: If someone has a date of 18 birth that is on official records, we consider 19 that their official date of birth. The ability to 20 verify that is contingent on a lot of factors, 21 sometimes it is true to their age, usually it's 22 true to their age, but sometimes it may not be.</p>	<p style="text-align: right;">323</p> <p>1 reporter. We have used five hours and 42 minutes. 2 One hour and 18 minutes left. 3 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D) 4 BY MS. POWELL: 5 Q. We had one correction and one 6 clarification for the record. 7 First, Mr. DeSarno, you previously 8 testified that you have to have a date of birth to 9 make a nomination; is that correct? 10 <b>A. That's not correct. My first answer was</b> 11 <b>more accurate which was there must be enough</b> 12 <b>identifying information about the person to</b> 13 <b>distinguish it from someone who's on the</b> 14 <b>watchlist.</b> 15 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D) 16 BY MR. ABBAS: 17 Q. When it comes to U.S. persons, does a 18 FBI nomination to TSDB, must it include a date of 19 birth? 20 <b>A. I think the answer is the same that you</b> 21 <b>must have enough identifying information about the</b> 22 <b>subject to distinguish it from another person on</b></p>
<p style="text-align: right;">322</p> <p>1 BY MR. ABBAS: 2 Q. Does the FBI as part of its watchlisting 3 processes include dates of births in nomination 4 forms it believes for whatever reason are 5 inaccurate? 6 MS. POWELL: Objection; vague, 7 misleading, and asked and answered. 8 THE WITNESS: I have seen records with 9 multiple dates of birth, multiple Social Security 10 numbers, and a single name. So that's not 11 including dates of birth that it believes are 12 inaccurate, those are actual dates of birth used 13 by a person in different documents. 14 MS. POWELL: I'm going to ask to take a 15 break here soon. 16 MR. ABBAS: Sure. That's fine. 17 MS. POWELL: It could be now if you 18 like. 19 MR. ABBAS: Yeah. Ten minutes? 20 MS. POWELL: Yeah. 21 (Recess from the record.) 22 THE REPORTER: This is the court</p>	<p style="text-align: right;">324</p> <p>1 <b>the watchlist.</b> 2 Q. So there's no special identifying 3 information requirements for U.S. persons on the 4 TSDB as opposed to non-U.S. persons? 5 <b>A. Not that I'm aware of.</b> 6 Q. Okay. 7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D) 8 BY MS. POWELL: 9 Q. And, yeah, I have one more. 10 You previously testified about the law 11 enforcement interest in nondisclosure of the 12 comprehensive reasonable suspicion standard. 13 <b>A. Uh-huh.</b> 14 Q. And I instructed you not to give further 15 information on the basis of the law enforcement 16 privilege and potentially SSI. 17 Is there additional non-privileged 18 information you can give without the nature of the 19 law enforcement interest in the reasonable 20 suspicion statement? 21 <b>A. Yeah, so any -- any explanation of the</b> 22 <b>reasonable suspicion standard beyond what's in the</b></p>

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<p style="text-align: right;">325</p> <p>1 overview document could potentially give an  2 advantage to adversaries of the United States in  3 terms of providing them ways to avoid detection or  4 otherwise create an environment that is less  5 secure inside the United States.  6 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  7 BY MR. ABBAS:  8 Q. So you don't want -- so the FBI's view  9 is that you don't want to let would-be terrorists  10 know who may or may not be included in the TSDB?  11 MS. POWELL: Objection; mischaracterizes  12 prior testimony, but you could answer that.  13 THE WITNESS: That's true and we also  14 would not want any adversaries of the United  15 States to know the specific criteria used to  16 determine inclusion on the watchlist.  17 BY MR. ABBAS:  18 Q. Does the FBI believe that people on the  19 TSDB like being in the TSDB?  20 MS. POWELL: Objection; calls for  21 speculation.  22 MR. ABBAS: Go ahead.</p>	<p style="text-align: right;">327</p> <p>1 understands that -- what is the FBI's  2 understanding of what happens to individuals that  3 it nominates to the TSDB?  4 MS. POWELL: Objection; vague, also a  5 comprehensive answer would require disclosure of  6 law enforcement sensitive information and SSI.  7 MR. ABBAS: Go ahead.  8 THE WITNESS: That question was  9 extremely vague. I think you'd have to be more  10 specific about that.  11 MR. ABBAS: The deponent did not answer  12 the question.  13 BY MR. ABBAS:  14 Q. What is the FBI's understanding of what  15 happens to individuals that it nominates to the  16 TSDB?  17 MS. POWELL: Same objections; still  18 vague and still calls for privileged information.  19 BY MR. ABBAS:  20 Q. Okay. Fine. Let's take it in really,  21 really, and really, really small pieces.  22 Is the FBI aware that individuals that</p>
<p style="text-align: right;">326</p> <p>1 THE WITNESS: I'm unaware of  2 notifications outside no-fly redress process where  3 people on the TSDB would have an awareness that  4 they're on the TSDB.  5 BY MR. ABBAS:  6 Q. So it's the FBI's testimony that there's  7 no way for a person on the TSDB, other than those  8 on the no-fly list, to infer their watchlist  9 status?  10 <b>A. There are ways where they can make</b>  11 <b>assumptions about their watchlist status, but I'm</b>  12 <b>not aware of a way that would definitively inform</b>  13 <b>them that they are on the watchlist.</b>  14 Q. Does the FBI ever not nominate a person  15 to the TSDB to make sure that its investigative  16 interests in that person is not disclosed to that  17 person?  18 MS. POWELL: Objection.  19 I'm instructing the witness not to  20 answer on the grounds of the law enforcement  21 privilege.  22 Q. People in the TSDB -- the FBI</p>	<p style="text-align: right;">328</p> <p>1 it nominates to the TSDB become included in the  2 TSDB?  3 MS. POWELL: Objection; misleading, but  4 you can answer.  5 THE WITNESS: The FBI makes nominations,  6 the TSC makes determinations about inclusion on  7 the watchlist, and sometimes the nominations  8 become inclusions, yes.  9 BY MR. ABBAS:  10 Q. How often do those nominations that the  11 FBI submits become -- are accepted by the TSC for  12 TSDB inclusion?  13 MS. POWELL: I'm instructing the witness  14 not to answer on the grounds of the law  15 enforcement privilege.  16 Q. Does the FBI keep track of the number of  17 nominations that it makes to the TSDB that TSC  18 accepts?  19 <b>A. I think we've already done this; right?</b>  20 Q. No.  21 MS. POWELL: I thought we had too.  22 MR. ABBAS: We have not done this. We</p>

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1 did this in other depositions, but we have not done this  
2 today.  
3 MS. POWELL: I'm pretty sure we did.  
4 But you can answer, I think, to the extent you  
5 can.  
6 THE WITNESS: Does the FBI keep track --  
7 BY MR. ABBAS:  
8 Q. Of the number of nominations -- does the  
9 FBI keep track of the number of nominations that  
10 it makes to the TSDB that TSC accepts?  
11 MS. POWELL: Objection; vague, but you  
12 can answer if you know.  
13 THE WITNESS: Yes.  
14 BY MR. ABBAS:  
15 Q. Does the FBI keep track of the number of  
16 nominations that FBI employees make that TSC  
17 rejects?  
18 MS. POWELL: Objection; vague, but I  
19 think you can answer if you know.  
20 THE WITNESS: I don't know.  
21 BY MR. ABBAS:  
22 Q. Does the FBI know the total number of

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1 nominations it's submitted to the TSC?  
2 MS. POWELL: I think you can answer as  
3 to whether or not FBI knows.  
4 THE WITNESS: I think we could get that  
5 number.  
6 BY MR. ABBAS:  
7 Q. How hard would it be for the FBI to  
8 determine the total number of nominations that the  
9 FBI has submitted to the TSC?  
10 MS. POWELL: Objection; scope.  
11 THE WITNESS: I don't have enough  
12 familiarity with the IT systems to know how much  
13 of a burden that would be.  
14 BY MR. ABBAS:  
15 Q. Would it be hard for the FBI to  
16 determine the number of FBI nominations to the  
17 TSDB that TSC rejected?  
18 MS. POWELL: Hard -- objection; vague.  
19 THE WITNESS: I don't know enough about  
20 the TSC systems to know if that would be hard or  
21 not.  
22

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1 BY MR. ABBAS:  
2 Q. You said that some people in the TSDB  
3 are informed of their watchlist status; correct?  
4 MS. POWELL: Objection; mischaracterizes  
5 prior testimony.  
6 THE WITNESS: What I said is that no-fly  
7 subjects who go through a redress process may have  
8 a clear understanding that they are on the TSDB  
9 no-fly list.  
10 BY MR. ABBAS:  
11 Q. Because why?  
12 MS. POWELL: Objection; vague.  
13 Q. Why might those people have an  
14 understanding of their watchlist status?  
15 MS. POWELL: Objection; vague and scope.  
16 THE WITNESS: So they may have been  
17 denied boarding. They may have been told at the  
18 point of denial of boarding why they were denied  
19 boarding. They may go through a redress process  
20 where they're told that they were denied boarding  
21 because of their inclusion on the no-fly list.  
22

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1 BY MR. ABBAS:  
2 Q. My understanding is that persons on the  
3 selectee list, even if they apply for redress  
4 through DHS TRIP, are not told whether or not  
5 they're on the selectee list; is that the FBI's  
6 understanding as well?  
7 MS. POWELL: Objection; scope.  
8 THE WITNESS: Yes.  
9 BY MR. ABBAS:  
10 Q. Why -- does the FBI agree that -- does  
11 the FBI agree with DHS TRIP's policy of not  
12 disclosing the status of persons on the selectee  
13 list?  
14 MS. POWELL: Objection; vague.  
15 You can answer.  
16 THE WITNESS: Yes.  
17 BY MR. ABBAS:  
18 Q. Why does the FBI agree with DHS TRIP's  
19 policy of not disclosing the status of individuals  
20 on the selectee list?  
21 MS. POWELL: Objection as to scope and  
22 vagueness and also a comprehensive answer would

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<p style="text-align: right;">333</p> <p>1 require disclosure of law enforcement sensitive 2 and SSI information. 3 To the extent you can give a general 4 answer, you may. 5 THE WITNESS: So why does the FBI agree? 6 For the same reason I mentioned before that any 7 specific information about inclusion or not 8 inclusion on the TSDB watchlist could enable 9 adversaries to take countermeasures that could 10 endanger the United States national security. And 11 I don't believe that people who are on the 12 selectee list know that they're on the selectee 13 list. 14 BY MR. ABBAS: 15 Q. They do. But -- 16 MS. POWELL: Objection, that's not a 17 question. 18 MR. ABBAS: Fair enough. I withdraw my 19 unsolicited commentary. I apologize. 20 BY MR. ABBAS: 21 Q. There was a period of time during which 22 persons on the no-fly list were not told that they</p>	<p style="text-align: right;">335</p> <p>1 the DHS TRIP and TSC depositions. Also -- I think 2 I said vague and misleading. 3 I think you can answer, if you can. 4 THE WITNESS: The question is prior to 5 2014 were people treated differently? 6 BY MR. ABBAS: 7 Q. Were all people on the TSDB who applied 8 for redress via DHS TRIP treated the same way? 9 MS. POWELL: Objection; scope and 10 misleading. You're asking about information 11 uniquely within the purview of DHS TRIP. I 12 realize you're getting at a different question 13 than you're asking, but -- 14 THE WITNESS: I don't know the details 15 of the pre-2014 redress process. 16 BY MR. ABBAS: 17 Q. The FBI doesn't know the details of the 18 pre -- the prior iteration of the DHS TRIP redress 19 process? The FBI doesn't know that? 20 MS. POWELL: Objection as to scope. To 21 the extent you're asking specifically about the 22 no-fly list process, he is not --</p>
<p style="text-align: right;">334</p> <p>1 were on the no-fly list; correct? 2 MS. POWELL: Objection. 3 I'm actually going to instruct the 4 witness not to answer any questions about the 5 no-fly list, that's explicitly covered by the 6 court's protective order. 7 MR. ABBAS: It's not, it's about the 8 redress process. 9 MS. POWELL: It's about the no-fly list 10 and it's explicitly covered by the court's 11 protective order. 12 I'm instructing the witness not to 13 answer. 14 BY MR. ABBAS: 15 Q. Prior to 2014, was there any difference 16 in the watchlisting system's position on whether 17 individuals in the TSDB -- let me start all over. 18 Prior to 2014, were all individuals in 19 the TSDB who sought redress via DHS TRIP treated 20 the same way? 21 MS. POWELL: Objection; vague, and 22 misleading, and outside the scope covered by both</p>	<p style="text-align: right;">336</p> <p>1 MR. ABBAS: I'm not asking -- 2 MS. POWELL: -- prepared on that, that's 3 correct. 4 MR. ABBAS: I'm not asking about the 5 no-fly list process. 6 BY MR. ABBAS: 7 Q. There was a period of time in which no 8 person in the TSDB was informed by DHS TRIP of 9 their watchlist status; correct? 10 MS. POWELL: Objection as to scope. The 11 witness is not prepared to answer questions about 12 the differences between the no-fly and selectee 13 list because the court explicitly excluded that 14 topic from the deposition. 15 MR. ABBAS: You can answer. 16 MS. POWELL: If you can. 17 THE WITNESS: I'm not prepared to answer 18 that question. 19 BY MR. ABBAS: 20 Q. Do you not know the answer to that 21 question or you're just not answering the 22 question?</p>

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<p style="text-align: right;">337</p> <p><b>1 A. I don't know the answer to the question.</b></p> <p><b>2 I didn't prepare for pre-2014 redress process.</b></p> <p>3 Q. Again, I'm not asking whether or not you</p> <p>4 prepared. I'm asking whether you know the answer.</p> <p>5 If the answer is you don't know the answer, that</p> <p>6 is a perfectly fine answer, I'll just move on.</p> <p><b>7 A. I don't know the answer.</b></p> <p>8 Q. Okay. Let me just make sure that it's</p> <p>9 clear.</p> <p>10 Does the FBI know whether prior to the</p> <p>11 2015 DHS TRIP revisions --</p> <p><b>12 A. Right.</b></p> <p>13 Q. -- all persons who applied for redress</p> <p>14 via DHS TRIP were treated the same way?</p> <p>15 MS. POWELL: Objection; vague, and</p> <p>16 misleading. Not quite the same question you asked</p> <p>17 before actually, but potentially asks for law</p> <p>18 enforcement sensitive and SSI information and</p> <p>19 outside the scope to the extent you're asking</p> <p>20 specifically about changes to the no-fly process.</p> <p>21 THE WITNESS: I mean, you're making a</p> <p>22 generalization about all people being treated the</p>	<p style="text-align: right;">339</p> <p>1 people are told that they're on the selectee list,</p> <p>2 why would that be damaging to national security?</p> <p>3 MS. POWELL: A comprehensive answer</p> <p>4 would require disclosure of law enforcement</p> <p>5 sensitive and SSI, potentially state secrets</p> <p>6 information, but you can answer at a level of</p> <p>7 generality I think.</p> <p>8 THE WITNESS: For the same reason that</p> <p>9 if people are told that they're on the selectee</p> <p>10 list, that could potentially provide information</p> <p>11 to adversaries that could compromise national</p> <p>12 security.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. If people are able somehow to determine</p> <p>15 they have been designated on to the TSDB, would</p> <p>16 you agree that that would undermine the</p> <p>17 effectiveness of the TSDB?</p> <p>18 MS. POWELL: Objection; vague and</p> <p>19 misleading.</p> <p>20 MR. ABBAS: Go ahead.</p> <p>21 THE WITNESS: If people were able to</p> <p>22 determine that they were on the TSDB, that</p>
<p style="text-align: right;">338</p> <p>1 same way. I think each -- prior to 2015 -- and</p> <p>2 you're intentionally avoiding the distinction</p> <p>3 between no-fly and selectee or no-fly and other,</p> <p>4 but the redress process -- I don't think the</p> <p>5 redress process ever treated everyone the same</p> <p>6 way. I think the redress process individually</p> <p>7 evaluates redress requests and then responds to</p> <p>8 those requests. And that's been the case prior to</p> <p>9 and after 2015.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Subsequent to the DHS TRIP revisions in</p> <p>12 2015 which required disclosure of watchlist status</p> <p>13 to the subset of TSDB listees, has the FBI</p> <p>14 assessed the damage done to national security</p> <p>15 caused by the disclosure of the TSDB status of</p> <p>16 some persons?</p> <p>17 MS. POWELL: I'm instructing the witness</p> <p>18 not to answer on the grounds of scope as well as</p> <p>19 the deliberative process privilege and potentially</p> <p>20 others. The court explicitly excluded the no-fly</p> <p>21 list as a topic, that definitely includes this.</p> <p>22 Q. If people are able to determine -- if</p>	<p style="text-align: right;">340</p> <p>1 potentially could undermine it, but I'm not aware</p> <p>2 of a way in which people could determine that</p> <p>3 they're on the TSDB.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Has an FBI employee ever told a person</p> <p>6 that is on the TSDB that they are on the TSDB?</p> <p>7 MS. POWELL: Objection; misleading.</p> <p>8 You can answer to the extent you can.</p> <p>9 THE WITNESS: No, I'm not aware of that.</p> <p>10 That would be outside of normal procedure, but I'm</p> <p>11 not aware of it.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. And I'm not asking you, I'm asking the</p> <p>14 FBI. Does the FBI have any information that any</p> <p>15 FBI employee has told a TSDB listee of their TSDB</p> <p>16 status?</p> <p>17 MS. POWELL: Same objections.</p> <p>18 THE WITNESS: I'm not aware of a</p> <p>19 specific instance where that happened.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Does the FBI keep track of incidents</p> <p>22 like that?</p>

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342	<p>1 sorry. 2 Does the FBI screen prospective 3 employees against the TSDB? 4 <b>A. The FBI screens prospective employees 5 against law enforcement and intelligence community 6 databases, which would include databases that 7 are -- that have probably larger sets of 8 information then what's in the TSDB. So if 9 someone -- if someone was a prospective employee 10 and also in the TSDB, that would definitely come 11 up in a background investigation, yes. Whether 12 that's hitting off of the TSDB itself or hitting 13 off some other database.</b> 14 Q. But it's TSDB information somewhere in 15 some database that would come up in a prospective 16 employee's background check? 17 <b>A. Yes.</b> 18 Q. Would the FBI look upon a person's 19 inclusion in the TSDB who is a prospective 20 employee negatively? 21 MS. POWELL: Objection; misleading. 22 I think you can answer.</p>	344	<p>1 THE WITNESS: It's the underlying 2 derogatory information that resulted in the TSDB 3 submission that would be the negative. 4 BY MR. ABBAS: 5 Q. The FBI does -- the FBI works with USCIS 6 to conduct background checks; is that right? 7 MS. POWELL: Objection, it potentially 8 calls for law enforcement sensitive information 9 and is certainly outside the scope to the extent 10 you're asking about USCIS investigations. 11 MR. ABBAS: I'm going to back up to a 12 different question just to finish up. 13 BY MR. ABBAS: 14 Q. Have people been terminated from the FBI 15 after being added to the TSDB? 16 <b>A. I don't know the answer to that. I'm 17 not aware of any instances where an FBI employee 18 was added to the TSDB and then terminated.</b> 19 Q. Okay. Are you familiar with the FBI 20 name check process? 21 <b>A. Yes.</b> 22 Q. What is the FBI name check process?</p>



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345	<p>1 MS. POWELL: Objection; scope.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: The FBI name check process</p> <p>4 is what I described before where other agencies</p> <p>5 can query the FBI in the course of vetting</p> <p>6 individuals to determine if the FBI or any</p> <p>7 database that the FBI has access to has</p> <p>8 negative -- derogatory information about a</p> <p>9 specific person.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does USCIS -- let's back up.</p> <p>12 Can only federal government agencies</p> <p>13 utilize this FBI name check process?</p> <p>14 MS. POWELL: Objection; scope. We seem</p> <p>15 to be going well beyond even TSDB status here.</p> <p>16 MR. ABBAS: This is a use of TSDB</p> <p>17 information.</p> <p>18 MS. POWELL: Well, it's a use of all</p> <p>19 sorts of information that goes --</p> <p>20 MR. ABBAS: Including TSDB information.</p> <p>21 MS. POWELL: -- well beyond TSDB</p> <p>22 information. It is by definition way beyond TSDB</p>	347	<p>1 not disclosing whether the FBI name check process</p> <p>2 uses TSDB information?</p> <p>3 MS. POWELL: I think he actually already</p> <p>4 answered that.</p> <p>5 THE WITNESS: Yeah.</p> <p>6 MR. ABBAS: No, he didn't. What</p> <p>7 is -- I'll ask it again.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. What is the law enforcement interest in</p> <p>10 not disclosing whether the FBI name check process</p> <p>11 uses TSDB information?</p> <p>12 MS. POWELL: Objection; mischaracterizes</p> <p>13 prior testimony and the objection.</p> <p>14 THE WITNESS: The FBI name check process</p> <p>15 checks FBI holdings for derogatory information.</p> <p>16 If it returns derogatory information, then it goes</p> <p>17 back to the requester. Based on who the requester</p> <p>18 is will determine what they get back.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Does the FBI name check process include</p> <p>21 a review of TSDB information?</p> <p>22 MS. POWELL: I think you can answer</p>
346	<p>1 information.</p> <p>2 MR. ABBAS: Go ahead.</p> <p>3 MS. POWELL: He can answer if he knows,</p> <p>4 but I don't really necessarily expect the witness</p> <p>5 to know the answer to questions beyond TSDB</p> <p>6 information.</p> <p>7 MR. ABBAS: Yeah, that's fine. He can</p> <p>8 answer just with regards to TSDB information.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. But the FBI name check process includes</p> <p>11 a querying of TSDB information; correct?</p> <p>12 MS. POWELL: I'm actually going to</p> <p>13 instruct the witness not to answer on the grounds</p> <p>14 of the law enforcement privilege.</p> <p>15 Q. What is the law enforcement interest in</p> <p>16 not sharing whether the FBI name check process</p> <p>17 includes TSDB information?</p> <p>18 MS. POWELL: Are you asking me?</p> <p>19 MR. ABBAS: No, I'm asking him. Let me</p> <p>20 rephrase the question.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. What is the law enforcement interest in</p>	348	<p>1 that.</p> <p>2 THE WITNESS: Only as much as it's a</p> <p>3 review of FBI systems and the TSDB information</p> <p>4 that is in FBI systems would create a hit, a</p> <p>5 return.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Okay. So the FBI name check process</p> <p>8 does include a review of TSDB information;</p> <p>9 correct?</p> <p>10 MS. POWELL: Objection; mischaracterizes</p> <p>11 prior testimony.</p> <p>12 MR. ABBAS: I know that's not what he</p> <p>13 said. I'm asking if what I said is correct or</p> <p>14 not.</p> <p>15 THE WITNESS: No, that's not correct as</p> <p>16 I know it.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Okay. Great.</p> <p>19 What is not correct about the statement?</p> <p><b>20 A. I don't know that the FBI name check</b></p> <p><b>21 system goes against the entire TSDB database, the</b></p> <p><b>22 entire list. I don't know that that happens.</b></p>

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349	<p><b>1 What I know that happens is it checks FBI systems</b></p> <p><b>2 and if there is TSDB information or other</b></p> <p><b>3 derogatory information in FBI systems, that will</b></p> <p><b>4 create a record.</b></p> <p>5 Q. Great. Okay. That's fair.</p> <p>6 What is the outcome of the FBI's name</p> <p>7 check process?</p> <p>8 MS. POWELL: Objection; vague and beyond</p> <p>9 the scope, and potentially misleading, maybe asked</p> <p>10 and answered depending on what you mean.</p> <p>11 THE WITNESS: As it relates to the TSDB?</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Just period.</p> <p>14 MS. POWELL: Objection; vague and scope.</p> <p>15 Q. You said that there's a name check</p> <p>16 system? Is there something called a name check</p> <p>17 system?</p> <p><b>18 A. Yes.</b></p> <p>19 Q. Okay. Does the FBI control the name</p> <p>20 check system?</p> <p>21 MS. POWELL: Objection; vague,</p> <p>22 misleading, mischaracterizes his prior testimony.</p>	351	<p>1 is within the systems that the FBI controls so</p> <p>2 TSDB status is being communicated to other</p> <p>3 agencies as a result of the name check process.</p> <p>4 MS. POWELL: That is misleading and</p> <p>5 inaccurate. You didn't say any of those things.</p> <p>6 MR. ABBAS: So if he wants to say that,</p> <p>7 then that's -- he can say that, but the --</p> <p>8 MS. POWELL: He already told you what</p> <p>9 the name check system is and you're</p> <p>10 mischaracterizing it, that is the objection.</p> <p>11 MR. ABBAS: Okay.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. What -- the name check system -- the</p> <p>14 name check system is a service that the FBI</p> <p>15 provides to other agencies; correct?</p> <p><b>16 A. Yes.</b></p> <p>17 Q. Okay. What other agencies -- what --</p> <p>18 let me -- what agencies does the FBI provide this</p> <p>19 name check system service to?</p> <p>20 MS. POWELL: Objection as to scope and a</p> <p>21 comprehensive answer would require disclosure of</p> <p>22 law enforcement sensitive information at least.</p>
350	<p>1 Q. I don't know what it is, I'm just</p> <p>2 asking. What is the name check system?</p> <p><b>3 A. It's basically a service provided to</b></p> <p><b>4 partners to vet people for employment or other</b></p> <p><b>5 positions of trust or other -- it's basically a</b></p> <p><b>6 background check of the FBI systems.</b></p> <p>7 Q. Okay. So the FBI provides this service?</p> <p><b>8 A. It's a service, yes.</b></p> <p>9 Q. Okay. Does the FBI provide this service</p> <p>10 to other federal government agencies?</p> <p>11 MS. POWELL: Objection. We're clearly</p> <p>12 well beyond the scope here. He actually testified</p> <p>13 they check derogatory information and that's what</p> <p>14 it's for.</p> <p>15 MR. ABBAS: That is TSDB information.</p> <p>16 MS. POWELL: No, it's not.</p> <p>17 MR. ABBAS: That includes TSDB</p> <p>18 information.</p> <p>19 MS. POWELL: It's in their systems along</p> <p>20 with derogatory information. That's what it's</p> <p>21 for.</p> <p>22 MR. ABBAS: Right. The TSDB information</p>	352	<p>1 Is there a general answer, no. No, I'm</p> <p>2 sorry, no further answer can be given I don't</p> <p>3 think.</p> <p>4 MR. ABBAS: The identity of the agencies</p> <p>5 that use the name check process is being withheld</p> <p>6 on the basis of law enforcement privilege?</p> <p>7 MS. POWELL: I think that's right, yes.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Okay. Well, what is the law</p> <p>10 enforcement --</p> <p>11 MS. POWELL: It's also beyond the scope</p> <p>12 to be clear.</p> <p>13 Q. What is the law enforcement interest in</p> <p>14 not disclosing the names of the agencies that</p> <p>15 utilize FBI's name check system?</p> <p>16 MS. POWELL: Objection; scope, vague,</p> <p>17 potentially calls for law enforcement sensitive</p> <p>18 information itself.</p> <p>19 To the extent you can answer at a level</p> <p>20 of generality, please do.</p> <p>21 THE WITNESS: I mean, again, any</p> <p>22 information about -- specific information about</p>

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1 who uses the name check system would provide  
2 potential advantage to adversaries and allow them  
3 to develop countermeasures to detection.  
4 BY MR. ABBAS:  
5 Q. Have the names of agencies that utilize  
6 the FBI's name check process been publicly  
7 disclosed by the FBI?  
8 MS. POWELL: You can answer, if you  
9 know.  
10 THE WITNESS: I don't know.  
11 MS. POWELL: And scope objection while  
12 I'm at it. I think we've well established this is  
13 outside the scope of the use of TSDB information.  
14 BY MR. ABBAS:  
15 Q. Aside from -- how does the FBI receive  
16 requests to conduct name checks?  
17 MS. POWELL: Objection; scope for sure.  
18 You can answer to the extent you know.  
19 THE WITNESS: The requests come from  
20 other agencies who submit the requests for a name  
21 check.  
22

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1 BY MR. ABBAS:  
2 Q. How do they submit the request, pigeon?  
3 A. **Yeah, pigeon.**  
4 Q. But like is there like a terminal  
5 that -- is there a database that everybody has  
6 access to?  
7 MS. POWELL: Objection; scope. We're  
8 way outside the delineated topics here. I mean,  
9 if he knows, he can answer as far as I'm  
10 concerned.  
11 THE WITNESS: I mean, it's some  
12 electronic request. I don't know the system name  
13 or the actual mechanics of how the request comes  
14 in, but it's an electronic request.  
15 BY MR. ABBAS:  
16 Q. But the FBI itself performs the name  
17 check query, it's not other agencies that are  
18 doing the querying themselves; correct?  
19 A. **Yes.**  
20 Q. So like -- okay. Great.  
21 Does the FBI participate in encounters  
22 with TSDB listees at U.S. land borders and points

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1 of entry?  
2 MS. POWELL: Objection; vague, and  
3 misleading, but you can answer to the extent you  
4 know.  
5 THE WITNESS: So the FBI will  
6 participate in encounters at border crossings  
7 pretty frequently. The reasons for those  
8 encounters could be a variety of reasons, one of  
9 which -- one factor may be TSDB inclusion, but  
10 there are a variety of reasons why the FBI would  
11 be involved in a border encounter with a subject.  
12 BY MR. ABBAS:  
13 Q. What are the variety of reasons why the  
14 FBI would be involved in a border encounter with a  
15 TSDB subject?  
16 MS. POWELL: Objection, a comprehensive  
17 answer would certainly call for the disclosure of  
18 law enforcement sensitive information and  
19 potentially state secrets information. I suspect  
20 there's an answer that can be given at a level of  
21 generality.  
22 THE WITNESS: Generally, if a CBP

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1 officer is conducting an interview with someone at  
2 a border crossing or is reviewing material on that  
3 person at a border crossing pursuant to border  
4 search authorities and they find something that's  
5 related to terrorism, they would likely call an  
6 FBI agent. Or in many cases at ports of entry, at  
7 international airports, FBI agents are on scene  
8 all the time anyway. So it's pretty standard for  
9 them to contact an FBI agent if there's any  
10 indication of terrorist activity by a subject  
11 encountered at a border crossing.  
12 BY MR. ABBAS:  
13 Q. Has the FBI ever made a  
14 terrorism-related arrest of a TSDB listee during a  
15 border encounter?  
16 MS. POWELL: Objection, the way the  
17 question is phrased calls for law enforcement  
18 privileged information.  
19 I think I have to instruct the witness  
20 not to answer as phrased.  
21 Q. Does the FBI know whether it has ever  
22 made a terrorism-related arrest of a TSDB listee

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1 during a border encounter with a TSDB listee?  
 2 MS. POWELL: I think you can answer  
 3 whether you know.  
 4 THE WITNESS: Yes, I know.  
 5 BY MR. ABBAS:  
 6 Q. But you're withholding the information  
 7 based on the law enforcement privilege; correct?  
 8 MS. POWELL: I am instructing him not to  
 9 answer, correct.  
 10 MR. ABBAS: On the basis of the law  
 11 enforcement privilege?  
 12 MS. POWELL: Correct.  
 13 MR. ABBAS: Is there any other  
 14 privilege?  
 15 MS. POWELL: Potentially state secrets  
 16 depending on the context, but definitely the law  
 17 enforcement.  
 18 BY MR. ABBAS:  
 19 Q. How many arrests has -- how many  
 20 terrorism-related arrests has the FBI undertaken  
 21 of TSDB listees during border encounters with TSDB  
 22 listees?

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1 MS. POWELL: I'm instructing the witness  
 2 not to answer on the grounds of the law  
 3 enforcement privilege and potentially state  
 4 secrets.  
 5 Q. Has the FBI undertaken more than ten  
 6 terrorism-related arrests of TSDB listees at the  
 7 border? That's it.  
 8 MS. POWELL: I'm instructing the witness  
 9 not to answer on the grounds of the law  
 10 enforcement privilege and potentially state  
 11 secrets.  
 12 Q. Has the FBI undertaken more than 10,000  
 13 terrorism-related arrests of TSDB listees at the  
 14 border during encounters with those TSDB listees?  
 15 MS. POWELL: I'm instructing the witness  
 16 not to answer.  
 17 MR. ABBAS: On the basis of?  
 18 THE WITNESS: The law enforcement  
 19 privilege and potentially state secrets.  
 20 The number of TSDB status people leading  
 21 to terrorism arrests is itself privileged to be  
 22 clear.

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1 MR. ABBAS: It's probably zero.  
 2 BY MR. ABBAS:  
 3 Q. What is the FBI's role in the redress  
 4 process for persons listed in the TSDB?  
 5 **A. So when the -- when a redress request is**  
 6 **made to DHS, if the FBI was a nominator, they will**  
 7 **receive a tasking to provide the underlying**  
 8 **information that led to the nomination. They**  
 9 **also -- at that point, the nominator would confirm**  
 10 **that all the information in the record is accurate**  
 11 **and up to date and then pass that back to the DHS**  
 12 **TRIP.**  
 13 Q. I'm just going to back up to the prior  
 14 topic. Has the FBI ever publicly disclosed an  
 15 arrest it made of a TSDB listee at the border?  
 16 MS. POWELL: I think you can answer  
 17 that.  
 18 THE WITNESS: Yeah, the FBI publicly  
 19 discloses the terrorism-related arrests it makes,  
 20 but does not generally publicly disclose inclusion  
 21 on the TSDB watchlist.  
 22

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1 BY MR. ABBAS:  
 2 Q. But the FBI has publicly disclosed, for  
 3 instance -- what's that guy's name, the Times  
 4 Square bomber. The FBI has publicly disclosed the  
 5 watchlist status of the Times Square bomber, for  
 6 instance; correct?  
 7 **A. Of Rahimi, the Times Square bomber?**  
 8 Q. The Times Square bomber.  
 9 **A. You're talking about the Chelsea bomber.**  
 10 MS. POWELL: The Christmas Day?  
 11 MR. ABBAS: No, that's different. Okay.  
 12 Can you Google the Times Square bomber and see  
 13 what his name is? I think it's Faisal, yeah.  
 14 THE WITNESS: It's not Faisal.  
 15 MR. ABBAS: We'll see. Google with tell  
 16 us. Depositions tend to kind of wind down in this  
 17 way.  
 18 MS. POWELL: Get a little punchy. It  
 19 happens.  
 20 BY MR. ABBAS:  
 21 Q. Are you familiar with Omar Mateen?  
 22 **A. Yes.**

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<p style="text-align: right;">361</p> <p>1 Q. Omar Mateen's watchlist status at the 2 time he committed his act of terrorism became 3 public; correct? 4 <b>A. No.</b> 5 MS. POWELL: Objection; misleading. 6 THE WITNESS: I don't think that's the 7 case. 8 BY MR. ABBAS: 9 Q. Faisal Shahzad -- 10 <b>A. Shahzad.</b> 11 Q. -- was the Times Square boomer. 12 Faisal Shahzad's watchlist status was 13 disclosed by the FBI after his attempted act of 14 terrorism; correct? 15 <b>A. I don't know that to be the case.</b> 16 Q. The Boston bombers' watchlist status, 17 subsequent to their act of terrorism, their 18 watchlist status was disclosed publicly; correct? 19 MS. POWELL: Objection; misleading. 20 THE WITNESS: Yeah, I don't know that 21 the FBI was disclosing watchlist status in any of 22 those cases. I think the FBI was discussing the</p>	<p style="text-align: right;">363</p> <p>1 MS. POWELL: Objection; vague. 2 I think you can answer to the extent you 3 can. 4 THE WITNESS: The FBI primarily 5 disseminates TSDB information through NCIC. 6 BY MR. ABBAS: 7 Q. There are other ways that the FBI 8 disseminates TSDB information other than the NCIC? 9 <b>A. I don't know that there are other ways.</b> 10 <b>The FBI may share TSDB information with partners</b> 11 <b>in specific cases if there's a need for that</b> 12 <b>partner to know that, but generally it's through</b> 13 <b>NCIC.</b> 14 Q. When a TSDB listee attempts to purchase 15 a gun, does the FBI learn of that attempted 16 purchase? 17 MS. POWELL: Objection; vague and scope. 18 You can answer if you know. 19 THE WITNESS: Gun purchases are specific 20 to -- there are a lot of ways guns can be 21 purchased and there are different state laws 22 governing gun purchases in different states.</p>
<p style="text-align: right;">362</p> <p>1 existence of an investigation, which reporters may 2 have translated to watchlist status, but I don't 3 know that we disclosed watchlist status in those 4 cases. I'm not aware of it. 5 BY MR. ABBAS: 6 Q. Are you familiar with the underwear 7 bomber? 8 <b>A. Yes, Abdulmutallab.</b> 9 Q. Yes, you got it. 10 The underwear bomber's watchlist status 11 was disclosed publicly after his attempted act of 12 terrorism; correct? 13 MS. POWELL: Objection; misleading. 14 THE WITNESS: Yeah, I don't know that 15 the FBI disclosed his watchlist status. 16 BY MR. ABBAS: 17 Q. How does the FBI disseminate TSDB 18 information? 19 <b>A. Didn't we start the deposition with this</b> 20 <b>question?</b> 21 Q. No. 22 <b>A. Right after we got done with the WAC?</b></p>	<p style="text-align: right;">364</p> <p>1 BY MR. ABBAS: 2 Q. Does the FBI maintain any practices 3 regarding situations in which a TSDB listee 4 attempts to buy a gun? 5 MS. POWELL: Objection; vague. 6 THE WITNESS: I don't really understand 7 the question. 8 MS. POWELL: Internal FBI practices 9 might also be subject to the law enforcement 10 privilege. 11 BY MR. ABBAS: 12 Q. Are there any internal FBI practices 13 regarding TSDB listees attempting to acquire 14 firearms? 15 MS. POWELL: Objection; scope and 16 definitely calls for privileged information. 17 MR. ABBAS: It's a yes-or-no question. 18 MS. POWELL: Yeah, I'm instructing the 19 witness not to answer. 20 BY MR. ABBAS: 21 Q. Does the FBI interfere with the ability 22 of TSDB listees to purchase firearms in any way?</p>

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<p style="text-align: right;">365</p> <p>1 MS. POWELL: Argumentative, misleading, 2 and potentially calls for law enforcement 3 sensitive information. 4 THE WITNESS: Yeah, I can't answer that 5 without law enforcement sensitive information. 6 MS. POWELL: How are we doing on time? 7 MR. ABBAS: Yes, let's go off the record 8 and take a break. 9 (Recess from the record.) 10 THE REPORTER: This is the court 11 reporter and we have 32 minutes left. 12 BY MR. ABBAS: 13 Q. Does the TSDB include persons who are 14 FBI informants? 15 MS. POWELL: Objection. 16 I'm instructing the witness not to 17 answer on the grounds of the law enforcement 18 privilege. 19 Q. Do FBI employees place people in the 20 TSDB for the purposes of assisting their efforts 21 to recruit those perspective listees as 22 informants?</p>	<p style="text-align: right;">367</p> <p>1 THE WITNESS: The FBI, again, doesn't 2 make decisions about whether or not the submission 3 meets the standard. So I don't know of an 4 instance where someone would be included that 5 doesn't meet that standard. 6 BY MR. ABBAS: 7 Q. Does the FBI have the ability to 8 place -- does the FBI have the ability to 9 circumvent TSDB's inclusion standard to place 10 people who do not meet the inclusion standard on 11 the TSDB? 12 MS. POWELL: Objection; vague, 13 misleading, scope, mischaracterizes -- 14 THE WITNESS: No. 15 MS. POWELL: -- prior testimony and some 16 other things. 17 THE WITNESS: The answer is no. 18 BY MR. ABBAS: 19 Q. Okay. Is the FBI aware of any instance 20 in which an FBI employee utilized a person's TSDB 21 status as a way of encouraging that person to 22 become an FBI informant?</p>
<p style="text-align: right;">366</p> <p>1 MS. POWELL: Objection; vague, and 2 misleading, a comprehensive answer could require 3 the disclosure of law enforcement information, but 4 I think you can answer at a level of generality. 5 THE WITNESS: No, the FBI just places 6 people in the TSDB who meet this published 7 reasonable suspicion standard that we've discussed 8 at lengths multiple times. 9 BY MR. ABBAS: 10 Q. Are there any persons that are included 11 in the TSDB that do not satisfy the TSDB's 12 inclusion standard? 13 MS. POWELL: Objection; scope, vague, 14 and misleading. 15 You can answer to the extent you know 16 yes or no. 17 THE WITNESS: No. 18 BY MR. ABBAS: 19 Q. So every person in the TSDB satisfies 20 the TSDB's inclusion standard? 21 MS. POWELL: Same objections, including 22 scope.</p>	<p style="text-align: right;">368</p> <p>1 MS. POWELL: Objection; vague, and 2 misleading, a comprehensive answer would require 3 the disclosure of law enforcement sensitive 4 information, but you can answer to the extent you 5 can. 6 THE WITNESS: Generally the recruitment 7 of sources involves identifying motivations on the 8 part of the person being recruited, those 9 motivations could be a variety of different things 10 and may include a motivation by that person 11 to -- maybe they think they are on the no-fly list 12 and they think they want to be removed from it. 13 So there may be discussions about that in a 14 recruitment process, but that's not to say that 15 the FBI is using that specifically as a 16 recruitment tool. 17 BY MR. ABBAS: 18 Q. Has an FBI employee ever promised to 19 remove a person from the TSDB in exchange for that 20 person becoming an FBI informant? 21 MS. POWELL: Objection; vague, and 22 misleading, a complete answer could require the</p>

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<p style="text-align: right;">369</p> <p>1 disclosure of law enforcement sensitive 2 information, but you can answer. 3 THE WITNESS: So that would not 4 be -- that would not be within policy to make a 5 promise like that. What is more likely is that 6 during the course of an informant relationship 7 development, an agent may learn more information 8 about the subject, some of that information may be 9 exculpatory and that agent would have an 10 obligation to update the TSDB nomination with that 11 exculpatory information, which may result in a 12 change in status on the TSDB or potentially 13 removal from the TSDB. That would require that 14 agent to start to collect from that individual 15 information and develop a more fulsome 16 understanding of that individual. 17 BY MR. ABBAS: 18 Q. Are FBI employees required to include in 19 their TSDB nominations exculpatory information? 20 MS. POWELL: Objection; misleading, and 21 a comprehensive explanation would require law 22 enforcement sensitive information, but I think you</p>	<p style="text-align: right;">371</p> <p>1 THE WITNESS: That's a different 2 question. Your first question was has a FBI 3 employee been disciplined or reprimanded for -- 4 BY MR. ABBAS: 5 Q. You're right, that is a totally 6 different question. That's fair, it is a 7 different question. So I'm asking if that's right 8 or not and if I'm wrong, tell me I'm wrong. 9 <b>A. I was focused on the differences.</b> 10 <b>Can you repeat the question?</b> 11 Q. I'll read it back. 12 Is it the FBI's testimony today that the 13 FBI has no specific awareness of any incident in 14 which the FBI has identified a FBI employee's 15 nomination to the TSDB that did not but should 16 have included exculpatory information? 17 MS. POWELL: Objection; vague, and 18 misleading, potentially calls for law enforcement 19 information, but you can answer if you know. 20 THE WITNESS: The answer to that 21 question is that is not my testimony. 22</p>
<p style="text-align: right;">370</p> <p>1 can answer at a level of generality. 2 THE WITNESS: Generally, it is the 3 obligation of nominating agencies to maintain 4 complete and accurate information regarding the 5 people that they nominate which would include 6 inculpatory and exculpatory information. 7 BY MR. ABBAS: 8 Q. Has an FBI employee ever been 9 disciplined or reprimanded for not including 10 exculpatory information in that FBI employee's 11 nomination to the TSDB? 12 MS. POWELL: Objection; vague, and 13 misleading, potentially calls for law enforcement 14 information, but answer if you can. 15 THE WITNESS: I don't have any specific 16 awareness of that. 17 BY MR. ABBAS: 18 Q. The FBI has no specific awareness of any 19 incident in which the FBI has identified an FBI 20 employee's nomination that did not, but should 21 have included exculpatory information? 22 MS. POWELL: Same objections.</p>	<p style="text-align: right;">372</p> <p>1 BY MR. ABBAS: 2 Q. Can TSDB status trigger a specific line 3 of questioning at ports of entry that regard 4 religion? 5 MS. POWELL: Objection. 6 MR. ABBAS: Like six plaintiffs were 7 questioned by the FBI about their religious 8 practices at ports of entry and borders so... 9 MS. POWELL: I'm going to object as to 10 scope, especially if you're asking about CBP 11 questions and also as to the law enforcement 12 privilege. I think that's probably it. I don't 13 know if there's any additional answer that could 14 be given. Do you think there's any additional 15 answer that could be given? 16 THE WITNESS: I don't think so. 17 MS. POWELL: I'm instructing witness not 18 to answer. 19 MR. ABBAS: On the basis? 20 MS. POWELL: Of law enforcement 21 privilege. 22</p>

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<p style="text-align: right;">373</p> <p>1 BY MR. ABBAS:  2 Q. We talked a little bit about land  3 borders, I just want to make sure that our use of  4 borders includes ports of entries so I'm going to  5 ask about ports of entry specifically.  6 Does FBI question TSDB listees at ports  7 of entry in addition to land border crossings?  8 MS. POWELL: Objection; vague, and  9 misleading, potentially calls for law enforcement  10 privileged information. Is there an answer that  11 could be given -- and SSI potentially.  12 Is there an answer that can be given?  13 THE WITNESS: I mean, the FBI generally  14 conducts interviews at ports of entry when  15 required based on different factors, not specific  16 to TSDB's status.  17 BY MR. ABBAS:  18 Q. TSDB listees -- the FBI is aware that  19 TSDB listees are routinely detained at ports of  20 entry per their TSDB status?  21 MS. POWELL: Objection.  22 I'm instructing the witness not to</p>	<p style="text-align: right;">375</p> <p>1 comprehensive answer would require disclosure of  2 law enforcement privileged information and  3 information outside of FBI's purview in any case  4 couldn't bind some other agency.  5 THE WITNESS: Any discussion of the way  6 TSDB listees are treated at ports of entry is  7 privileged law enforcement information. It could  8 potentially disclose inclusion or lack thereof on  9 the TSDB list so it's not going to be discussed.  10 BY MR. ABBAS:  11 Q. Does the FBI know that TSDB listees  12 receive boarding passes with four S's printed on  13 them?  14 MS. POWELL: Objection, I'm sorry,  15 objection, vagueness and misleading, but you can  16 answer.  17 THE WITNESS: So my last two  18 international trips traveling on a red official  19 passport in my official capacity as an FBI  20 executive on the U.S. bound flights from two  21 different ports, I received four S's on my  22 passport -- on my boarding pass.</p>
<p style="text-align: right;">374</p> <p>1 answer on the grounds of law enforcement  2 privilege, also objecting on the grounds of  3 vagueness and scope and misleading.  4 MR. ABBAS: Go ahead.  5 MS. POWELL: I just instructed the  6 witness not to answer.  7 MR. ABBAS: I'm sorry.  8 BY MR. ABBAS:  9 Q. Does the FBI know what happens to TSDB  10 listees as they go through ports of entry?  11 MS. POWELL: Objection; vague.  12 You can answer to the extent you know  13 whether you know, if that makes sense.  14 THE WITNESS: I mean, people -- people  15 have different experiences at ports of entry for a  16 variety of reasons, not necessarily specific to  17 TSDB -- to TSDB status.  18 BY MR. ABBAS:  19 Q. What is the FBI's knowledge of what  20 happens to TSDB listees as they cross through  21 ports of entry?  22 MS. POWELL: Objection; scope and a</p>	<p style="text-align: right;">376</p> <p>1 BY MR. ABBAS:  2 Q. That wasn't an answer to the question.  3 Does the FBI know that TSDB listees  4 receive boarding passes with four S's printed on  5 them?  6 MS. POWELL: Objection; vagueness,  7 leading, and potentially calls for SSI  8 information.  9 THE WITNESS: What the FBI knows is that  10 a subset of passengers on U.S. bound flights and  11 domestic U.S. flights receive secondary security  12 screening for a variety of reasons. One of those  13 reasons is that the person is a selectee, other  14 reasons may be airline selection, random  15 selection, travel rules or ticketing  16 abnormalities are all reasons.  17 MS. POWELL: And I'm instructing the  18 witness that he -- that a comprehensive answer  19 would require discussion of SSI.  20 BY MR. ABBAS:  21 Q. When you say a person that is a  22 selectee, do you mean to refer to a person that is</p>



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1 in the TSDB?

2 **A. Potentially. There are a variety of**

3 **reasons why and there are a large number of people**

4 **who get the four S's. So four S's are not**

5 **indicative of that.**

6 Q. Again, I understand that there are

7 multiple reasons why a person can see four S's on

8 their boarding pass and you've listed many of

9 them; correct?

10 **A. Correct.**

11 Q. Okay. Do TSDB listees -- is it the

12 FBI's understanding that TSDB listees pursuant to

13 their status on the TSDB receive boarding passes

14 that have four S's stamped on them?

15 MS. POWELL: Objection because you're

16 specifically asking the FBI, the deponent, about

17 TSA security procedures. That's well --

18 MR. ABBAS: I'm asking about --

19 MS. POWELL: -- outside his purview. A

20 comprehensive answer requires disclosure of SSI as

21 well as law enforcement sensitive information.

22 He's already given you his analysis of what that

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1 SSSS might mean from FBI's perspective.

2 MR. ABBAS: I'm asking about the FBI's

3 understanding of what happens to TSDB listees in

4 the context of air travel.

5 MS. POWELL: And I'm making the same

6 objections. He's already given you the FBI's

7 understanding.

8 MR. ABBAS: Can you go back up to the

9 question, I've lost track of the question.

10 BY MR. ABBAS:

11 Q. Is it the FBI's understanding that TSDB

12 listees pursuant to their status on the TSDB

13 receive boarding passes that have four S's stamped

14 on them?

15 MS. POWELL: And I'm objecting for the

16 reasons stated before including SSI, law

17 enforcement privilege, scope, purview, vague, and

18 misleading, whatever else I said before as well as

19 asked and answered.

20 MR. ABBAS: Lena has to take off.

21 MS. POWELL: I don't know if there's any

22 additional answer you can give. If so, please do.

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1 MR. ABBAS: Go ahead.

2 THE WITNESS: There's no additional

3 answer I can give.

4 BY MR. ABBAS:

5 Q. Are you withholding information on the

6 basis of the privileges that your attorney

7 asserted?

8 **A. Can I answer that?**

9 MS. POWELL: If you know the answer, but

10 it calls for -- yes, you can answer that.

11 THE WITNESS: Yes, yes, on the basis of

12 privilege.

13 BY MR. ABBAS:

14 Q. Okay.

15 MR. ABBAS: So go back up to the

16 question.

17 Q. The FBI has an understanding -- is it

18 correct that the FBI has an understanding of what

19 happens to TSDB listees pursuant to their status

20 on the TSDB as they receive boarding passes to

21 board commercial aviation to, from, or through the

22 United States?

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1 MS. POWELL: Objection; mischaracterizes

2 prior testimony in part because this question,

3 like the previous question, calls for information

4 outside the scope and outside the FBI's purview.

5 He already testified as to FBI's understanding of

6 those procedures.

7 MR. ABBAS: Go ahead.

8 THE WITNESS: I think I already answered

9 that.

10 BY MR. ABBAS:

11 Q. The question was like a yes-or-no

12 question.

13 **A. Of which I already answered yes to.**

14 Q. Okay. So that -- sometimes -- and I'm

15 not trying to be difficult, sometimes I don't know

16 because that's not my understanding of how you

17 answered the question. So I'm asking in good

18 faith to get an answer. And if I'm being

19 repetitive, I apologize, I'm not doing that

20 deliberately.

21 MR. ABBAS: Can you go back to the

22 question. We'll just do the question and then if

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1 the answer is, yes, the answer could be yes.  
 2 Q. Is it correct that the FBI has an  
 3 understanding of what happens to TSDB listees  
 4 pursuant to their status on the TSDB as they  
 5 receive boarding passes to board commercial  
 6 aviation to, from, or through the United States?  
 7 MS. POWELL: Same objection to the  
 8 scope, purview, vagueness, and misleading  
 9 particularly because this question requires the  
 10 FBI deponent to testify about TSA security  
 11 procedures, a comprehensive discussion of which  
 12 would be SSI as well as law enforcement privilege.  
 13 But you can answer yes or no to the extent you  
 14 think you can.  
 15 THE WITNESS: Yes.  
 16 BY MR. ABBAS:  
 17 Q. Okay. Do TSDB listees -- is it the  
 18 FBI's understanding that each time a TSDB listee  
 19 gets a boarding pass to go to, from, or through  
 20 the U.S., that their boarding pass is stamped with  
 21 four S's?  
 22 MS. POWELL: Objection; SSI and -- I'm

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1 getting conflicting advice. I'm just going to  
 2 object on my own that it's vague and misleading  
 3 and requires disclosure of SSI and law enforcement  
 4 information and also is outside the purview of  
 5 FBI. You're asking for information about TSA  
 6 security procedures well outside this deponent's  
 7 purview.  
 8 THE WITNESS: Yeah, no further answer.  
 9 MR. ABBAS: Did you instruct him not to  
 10 answer?  
 11 MS. POWELL: I was not sure whether  
 12 there was any answer that could be given that was  
 13 not privileged. I think there's not.  
 14 Yeah, I'm instructing the witness not to  
 15 answer.  
 16 MR. ABBAS: On the basis of?  
 17 MS. POWELL: SSI, law enforcement  
 18 privilege, and on context potentially the state  
 19 secrets privilege.  
 20 MR. ABBAS: Go back up to the question.  
 21 And Mr. DeSarno is right, it was yes.  
 22 Okay. Do you want to take a break? I

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1 think we're done.  
 2 MS. POWELL: Okay.  
 3 MR. ABBAS: But I'll sign off that we're  
 4 done. I think that we are and then --  
 5 MS. POWELL: I'll have a few follow-up  
 6 questions. I just want to touch base.  
 7 MR. ABBAS: Thank you, Mr. DeSarno.  
 8 (Recess from the record.)  
 9 THE REPORTER: This is the court  
 10 reporter and we have 13 minutes left.  
 11 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)  
 12 BY MS. POWELL:  
 13 Q. I have a few follow-up and clarification  
 14 questions. The first is I previously over  
 15 asserted privilege in response to the question,  
 16 has the selectee list standard ever changed. Can  
 17 you answer that question to some extent?  
 18 **A. The answer is over a period of many**  
 19 **years, the standard has changed.**  
 20 MS. POWELL: And we're going to assert  
 21 privilege over basically any details of those  
 22 changes, but if you want to ask any follow-up

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1 questions?  
 2 MR. ABBAS: Yes.  
 3 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  
 4 BY MR. ABBAS:  
 5 Q. When was the last time the selectee  
 6 inclusion standard was changed in any way?  
 7 MS. POWELL: And I'm instructing the  
 8 witness not to answer on the grounds of law  
 9 enforcement and SSI privilege.  
 10 Q. Why is -- who decides what the -- who  
 11 decides whether the selectee list standard changes  
 12 or stays the same?  
 13 MS. POWELL: I think you can answer  
 14 that.  
 15 THE WITNESS: The Watchlisting Advisory  
 16 Committee can make recommendations to the NSC to  
 17 change the standards of watchlisting in general so  
 18 that would include the selectee list.  
 19 BY MR. ABBAS:  
 20 Q. And by the Watchlisting Advisory  
 21 Committee, are you referring to the WAC?  
 22 **A. Yes, the Watchlisting Advisory, the WAC.**

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386	<p>1 the WAC drafted the most current set of</p> <p>2 watchlisting guidelines which includes criteria</p> <p>3 for selectee designation. So I would say that</p> <p>4 that's the WAC defining -- defining that area.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. And did the WAC at some point in time</p> <p>7 propose to the NSC that the selectee list</p> <p>8 inclusion standard should be changed?</p> <p>9 MS. POWELL: Objection.</p> <p>10 I'm instructing the witness not to</p> <p>11 answer on the grounds of the deliberative process</p> <p>12 privilege as well as the law enforcement and SSI.</p> <p>13 MR. ABBAS: I'm confused.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. So the selectee list standard has</p> <p>16 changed at some point in the past; correct?</p> <p>17 <b>A. That's what I said, yes.</b></p> <p>18 Q. Who decided that the watch -- I'm sorry.</p> <p>19 Who decided that the selectee list</p> <p>20 inclusion standards would change?</p> <p>21 MS. POWELL: Actually, I think you can</p> <p>22 answer that at the level of generality without</p>	388	<p>1 To the extent you can answer at a level</p> <p>2 of generality, I think you can describe the law</p> <p>3 enforcement interest in the changes in the</p> <p>4 selectee list standards.</p> <p>5 THE WITNESS: So specific timelines</p> <p>6 regarding changes could inform adversaries as to</p> <p>7 when they observe changes and could clearly</p> <p>8 endanger national security.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Why?</p> <p>11 MS. POWELL: I'm instructing the witness</p> <p>12 not to answer further on the grounds of law</p> <p>13 enforcement privilege, SSI.</p> <p>14 Q. Are there any plans for a new</p> <p>15 watchlisting guidance document coming out this</p> <p>16 year in 2018?</p> <p>17 MS. POWELL: I'm instructing the witness</p> <p>18 not to answer on grounds of deliberative process</p> <p>19 privilege.</p> <p>20 Q. Is the FBI aware of any plans that the</p> <p>21 WAC has to promulgate a new version of the</p> <p>22 watchlisting guidance in the future?</p>

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1 MS. POWELL: Same objection.  
 2 I'm instructing the witness not to  
 3 answer on the grounds of deliberative process  
 4 privilege.  
 5 Q. Does the FBI distribute a copy of the  
 6 currently operative watchlisting guidance to all  
 7 FBI employees who as part of their duties nominate  
 8 individuals to the TSDB?  
 9 MS. POWELL: I think you can answer, if  
 10 you know.  
 11 THE WITNESS: The watchlisting guidance  
 12 is available, I don't know that it's actively  
 13 distributed to all individuals who have a role in  
 14 watchlisting, but it is available.  
 15 BY MR. ABBAS:  
 16 Q. Does the FBI know whether all FBI  
 17 employees who as per their FBI duties nominate  
 18 individuals to the TSDB, does the FBI know whether  
 19 all those individuals have read the watchlisting  
 20 guidance --  
 21 MS. POWELL: Objection; vague.  
 22 Q. -- that's currently operating?

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1 MS. POWELL: Objection, vague,  
 2 misleading, and asked and answered.  
 3 MR. ABBAS: Go ahead.  
 4 THE WITNESS: I don't expect that all of  
 5 those employees have read the entire watchlisting  
 6 guidance document, no.  
 7 BY MR. ABBAS:  
 8 Q. So there are FBI employees who nominate  
 9 individuals to the watchlist who have not read the  
 10 watchlisting guidance?  
 11 MS. POWELL: Objection; mischaracterizes  
 12 prior testimony.  
 13 THE WITNESS: I don't believe that all  
 14 employees who have a role in watchlisting have  
 15 read the entire watchlisting guidance document.  
 16 MR. ABBAS: Okay. So I'm done with my  
 17 little piece.  
 18 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)  
 19 BY MS. POWELL:  
 20 Q. I'm not sure how some of those were  
 21 follow-ups, but that's okay.  
 22 Is TSDB's status alone a prohibiter for

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1 purchasing a firearm to the best of your  
 2 understanding?  
 3 A. No, it's not.  
 4 MS. POWELL: Any follow-up questions?  
 5 (No verbal response.)  
 6 BY MS. POWELL:  
 7 Q. I continue to think this question is  
 8 outside the scope of this deposition properly, but  
 9 has FBI disclosed the names of some of the  
 10 agencies that participate in the name check  
 11 service?  
 12 A. Yes.  
 13 MS. POWELL: Do you have any follow-up  
 14 questions?  
 15 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)  
 16 BY MR. ABBAS:  
 17 Q. What are the names that the FBI has  
 18 disclosed that avail themselves of the FBI name  
 19 check service?  
 20 MS. POWELL: And I continue to object as  
 21 to scope, but you can answer to the extent you  
 22 know.

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1 THE WITNESS: USCIS, OPM, there are  
 2 other federal agencies, other various federal  
 3 agencies.  
 4 BY MR. ABBAS:  
 5 Q. Are there any others that you know of by  
 6 name besides OPM and USCIS?  
 7 MS. POWELL: Same objection as to scope.  
 8 THE WITNESS: There are others listed on  
 9 this website, but I don't know what they are.  
 10 BY MR. ABBAS:  
 11 Q. You don't know the names of -- and it's  
 12 fine if you don't, I just want to make sure.  
 13 Do you know of any other agencies that  
 14 utilize FBI name check service other than OPM and  
 15 UCSIS?  
 16 A. Yes.  
 17 Q. What are the names of other agencies  
 18 aside from OPM and USCIS that use the FBI name  
 19 check system?  
 20 MS. POWELL: Objection as to scope and  
 21 that a comprehensive answer to the question of all  
 22 of the agencies that use it is protected by the

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394	<p>1 MS. POWELL: Objection that a</p> <p>2 comprehensive answer would require disclosure of</p> <p>3 law enforcement sensitive information, but you can</p> <p>4 answer at a level of generality to the extent you</p> <p>5 can.</p> <p>6 THE WITNESS: Specific criminal</p> <p>7 activity, drug activity, other national security</p> <p>8 reasons why FBI may have an encounter at a port of</p> <p>9 entry.</p> <p>10 MR. ABBAS: Okay.</p> <p>11 EXAMINATION BY COUNSEL FOR THE DEFENDANTS (CONT'D)</p> <p>12 BY MS. POWELL:</p> <p>13 Q. And finally, to your knowledge and</p> <p>14 understanding, are there exceptions to the</p> <p>15 reasonable suspicion standard in the TSDB?</p> <p>16 <b>A. Yes, there are.</b></p> <p>17 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. What are all the exceptions to the</p> <p>20 reasonable suspicion standard at TSDB?</p> <p>21 We've done this a few times.</p> <p>22 MS. POWELL: I'm instructing the witness</p>	396	<p>1 MR. ABBAS: Okay.</p> <p>2 MS. POWELL: I'm just checking to make</p> <p>3 sure I didn't miss any notes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Do the exceptions to the TSDB inclusion</p> <p>6 standards apply only to non-U.S. persons?</p> <p>7 MS. POWELL: Objection.</p> <p>8 I'm going to instruct the witness not to</p> <p>9 answer on the grounds of the law enforcement</p> <p>10 privilege.</p> <p>11 Q. Do the exceptions to the TSDB inclusion</p> <p>12 standard apply only to U.S. persons?</p> <p>13 MS. POWELL: What?</p> <p>14 MR. ABBAS: It's the opposite of what I</p> <p>15 asked.</p> <p>16 MS. POWELL: I'm instructing the witness</p> <p>17 not to answer on the grounds of the law</p> <p>18 enforcement privilege, yeah.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. How many -- did I --</p> <p>21 MS. POWELL: You asked. I objected.</p> <p>22 MR. ABBAS: Okay. Thank you very much,</p>

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1 Mr. DeSarno. I understand that you have a very  
 2 important job and I appreciate you taking the time  
 3 today to speak with us. Thank you very much.  
 4 THE WITNESS: Thank you.  
 5 MR. ABBAS: Read and sign, electronic.  
 6 MS. POWELL: Yeah, all that.  
 7 (Off the record at 6:59 p.m.)  
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1 DISTRICT OF COLUMBIA )  
 2  
 3 I, Matthew Goldstein, RPR, Notary Public  
 4 within and for the District of Columbia, do hereby  
 5 certify:  
 6  
 7 That I reported the proceedings in the  
 8 within entitled matter, and that the within  
 9 transcript is a true record of said proceedings.  
 10 Reading was requested.  
 11  
 12 I further certify that I am not related  
 13 to any of the parties to the action by blood or  
 14 marriage, and that I am in no way interested in  
 15 the outcome of this matter.  
 16  
 17 IN WITNESS WHEREOF, I have hereunto set  
 18 my hand this 15th day of April, 2018.  
 19  
  
 20  
 21 Matthew Goldstein, RPR  
 22

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1 A C K N O W L E D G E M E N T  
 2  
 3 DISTRICT OF COLUMBIA )  
 4  
 5 I, MATTHEW J. DESARNO, hereby  
 6 certify, I have read the transcript of my  
 7 testimony taken under oath in my deposition of  
 8 April 9, 2018; that the transcript is a true,  
 9 complete and correct record of what was asked,  
 10 answered and said during this deposition, and that  
 11 the answers on the record as given by me are true  
 12 and correct.  
 13  
 14  
 15  
 16  
 17 Sworn and subscribed to before me  
 18 this \_\_\_\_ day of \_\_\_\_\_, 2018.  
 19  
 20  
 21 Notary Public  
 22

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