UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, Plaintiff, -v- UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al. Defendants.	17 Civ. 7572 (ALC)

DECLARATION OF JILL A. EGGLESTON
IN FUTHER SUPPORT OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE'S
MOTION FOR SUMMARY JUDGMENT

I, Jill A. Eggleston, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury:

1. I am the Associate Center Director in the Freedom of Information and Privacy Act ("FOIA/PA") Unit, National Records Center ("NRC"), United States Citizenship and Immigration Services ("USCIS"), within the United States Department of Homeland Security ("DHS"), in Lee's Summit, Missouri. I have held the position of Associate Center Director since February 4, 2008. I am also an attorney, licensed to practice law by the State of Kansas in 1983. Prior to joining DHS, I served for 19 ½ years as Associate General Counsel for the Defense Finance and Accounting Service ("DFAS") of the U.S. Department of Defense ("DoD"). As part of my duties with the DFAS, among other things, I provided legal advice to the agency on the release of information sought under the FOIA and PA.

2. I submit this declaration in further support of USCIS's motion for summary judgment in the above-referenced matter. The statements contained in this declaration are based on my personal knowledge, my review of relevant documents kept by USCIS in the course of ordinary business, and upon information provided to me by other USCIS employees in the course of my official duties.

INFORMATION WIITHHELD PURSUANT TO EXEMPTION 5

3. FOIA Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." *Id.* To qualify for Exemption 5 protections, a document must satisfy two conditions. The document's source must be a government agency and it must fall within the ambit of a privilege against discovery recognized under Exemption 5.

4. The agency withheld information in three records, described below and in my prior declaration dated March 14, 2019 ("Eggleston Declaration"), pursuant to the deliberative process privilege, which is designed to protect the decision making processes of government

agencies. The privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm and would have a chilling effect on the ability of the government to engage in internal debate and deliberations when developing agency policy.

5. **Pages 52-56; copy of a memorandum, dated February 8, 2017, and entitled "Briefing Memo for the Acting Director: Recommendation to Eliminate the USCIS Terrorism-Related Inadmissibility Grounds (TRIG)," which included a draft copy of a proposed new USCIS policy, entitled "Policy Memorandum: Revised Guidance for Processing Cases Involving Terrorism-Related Inadmissibility Grounds and Elimination of the Hold Policy for Such Cases."**

   These five pages of records were partially withheld pursuant to Exemption 5's deliberative process privilege. As described in the Eggleston Declaration, these pages contain discussions and recommendations from USCIS staff to senior agency management regarding a proposed revision to the USCIS TRIG implementation policy. Released portions of this memo describe its purpose as follows: "[t]his paper provides information regarding cases currently being held by USCIS pursuant to the existing USCIS TRIG hold policy and a review of relevant considerations for determining whether these cases should continue to be held or released for adjudication." The withheld portions do not reflect positions that are or became binding on the agency, but rather, contain recommendations and analyses concerning revisions to TRIG exceptions and the possible application of such revisions to certain asylum applications.

6. **Pages 59-63, Senior Policy Council-Briefing Paper: TRIG Exemptions & INA § 318**

   These five pages of records were partially withheld pursuant to the deliberative process privilege of Exemption 5. As described in the Eggleston Declaration, this internal agency briefing paper was prepared by agency personnel for senior agency management and discusses specific TRIG exemptions and how they could be interpreted and applied to specific types of applicants who seek immigration benefits from USCIS. In addition, this memorandum contains a recommendation for senior agency management concerning agency policy. The withheld portions do not reflect positions that bound the agency, but rather, contain legal analysis and a recommendation regarding what the agency policy should be.

7. **Pages 64-70, Options Paper: Exercise of Authority Relating to the Terrorism-Related Inadmissibility Grounds.**

   These seven pages of records were partially withheld pursuant to the deliberative process privilege of Exemption 5. As described in the Eggleston Declaration, this internal agency memorandum was prepared by agency personnel for senior agency management and discussed options for implementing an Executive Order that directed the Secretaries of State and DHS to consider rescinding the TRIG exemptions permitted by Section 212 of the INA (EO 13780 – Protecting the Nation from Foreign Terrorist Entry into the United States, March 9, 2017). Specifically, the paper presented senior USCIS management with three

options for a final agency decision for issuing a new agency policy that implemented the Executive Order. These options did not constitute final policy guidance or imposed a binding position on the agency, but rather, contain analyses of different possible positions. In addition, while some of the withheld material is purely factual, it is inextricably intertwined with deliberative material and analysis such that it cannot reasonably be segregated and released. For example, in the "Background" and "Methodology" sections of the Options Paper, the drafters discuss specific asylum applications and the agency's various methods for analyzing those applications, thus intertwining the facts of specific cases with the agency's deliberations and analyses. Releasing those facts would result in incomplete, unintelligible and fragmented sentences.

INFORMATION WITHHELD PURSUANT TO EXEMPTION 7(E)

8. FOIA Exemption 7(E) protects from disclosure records or information compiled for law enforcement purposes and would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions. Exemption 7(E) applies to categorical protections of law enforcement techniques and procedures, and it does not require that the disclosure will cause harm.

9. USCIS has responsibility to enforce federal immigration law pursuant to the INA. Documents compiled by USCIS that relate to administrative immigration proceedings conducted by its staff are documents considered to be compiled for law enforcement purposes. The records produced to Plaintiff relate to USCIS's duty to properly enforce United States immigration law during adjudications of applications and petitions submitted to USCIS by individuals seeking immigration benefits from the United States government. Primarily, the records described herein are used to train USCIS immigration officers how to screen for possible terrorism ties and terrorism-related inadmissibility grounds pursuant to the INA when interviewing applicants and adjudicating petitions and applications from individuals seeking immigration benefits from USCIS. Thus the records described herein that are withheld pursuant to FOIA Exemption 7(E) were compiled for a law enforcement purpose.

10. Exemption 7(E) applies even if the law enforcement procedures or techniques are generally known, as disclosure of the specific procedures or techniques may reduce or nullify their effectiveness.

11. As described in the Eggleston Declaration, USCIS withheld information in various records relating to training USCIS immigration officers to screen applicants for possible terrorist ties. In a number of documents, *see e.g.* Eggleston Decl. at ¶¶ 22, 26-41, USCIS withheld model or sample questions for immigration officers to use when screening applicants. For example, pages 485 and 502 contain suggested questions for immigration officers to use to determine whether an applicant provides material support for terrorism, and to determine whether an applicant provides support to a terrorist organization under duress. *See id.* at ¶ 39. These questions reflect specialized methods that USCIS has refined through its decades of enforcing United States immigration laws.

12. While the fact that immigration officers screen for terrorist ties is generally known to the public, specific questions and the actual questioning techniques are not generally known to

the public. The particular information the questions and follow-ups were designed to elicit includes information that would shed light on terrorist organizations' activities and help determine whether the applicant had any ties to such terrorist organizations and activities.

13. USCIS also withheld information in certain records concerning when an applicant qualifies for a TRIG exemption. *See* Eggleston Declaration at ¶¶ 26, 36. If an applicant were to review these criteria, applicants could tailor their testimony to meet the requirements for a particular exemption. That is because the listed criteria does more than mirror the TRIG statute; the criteria provide guidance for how to interpret the statute in various factual circumstances. For example, USCIS withheld a "non-exhaustive list of appropriate factors" to evaluate in such a "discretionary analysis," Dkt. No. 109-3 at 68, noting that the factors are not "requirements" but rather "factors to be considered." Releasing those factors would enable applicants to tailor their answers to meet such criteria – criteria which is not otherwise available and known to the public.

14. The information withheld in certain records under the heading "What is reasonable lack of knowledge?" contains examples of factual scenarios where an applicant has demonstrated that he or she reasonably did not know that a certain organization was a terrorist organization. Dkt. No. 109-3 at 53. The withheld information is not definitional or a legal interpretation, and its release would provide applicants with guidance as to how to tailor their testimony.

15. USCIS released all segregable factual portions from its productions in this matter. For example, the information withheld in Chapter 13.1 in the RAIO Directorate – Officer Training Manual describes the process under the Controlled Application Review and Resolution Program, including subsections concerning: (1) the identification of a national security concern; (2) internal vetting and eligibility assessment procedures; (3) external vetting procedures; and (4) final adjudication processes. Dkt. No. 109-3 at 123, 181-87. While USCIS redacted the names of the subsections above in the text of the chapter, USCIS included them in the text of the table of contents. *See id.* In addition, the chapter contains some factual information, but it is minimal and interwoven with guidance, procedures and techniques used to process cases with national security concerns, in the context of the Controlled Application Review and Resolution Program. Moreover, the withheld information contains procedures for inter-agency coordination, techniques for reviewing internal databases, and procedures for coordinating with other agencies.

CONCLUSION

16. USCIS provided all responsive, reasonably segregable, non-exempt information. For these reasons, USCIS's actions in response to Plaintiff's FOIA request were in full compliance with FOIA.

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

Executed in Lee's Summit, Missouri, on this _14___ day of __May_____ 2019.

Jill A. Eggleston
Associate Center Director
Freedom of Information Act and Privacy Act Unit
USCIS National Records Center