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 8

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 RAHINAH IBRAHIM, an individual,  
 13 Plaintiff,  
 14 v.  
 15 DEPARTMENT OF HOMELAND  
 16 SECURITY; JANET NAPOLITANO, in her  
 17 official capacity as Secretary of the  
 Department of Homeland Security;  
 18 MICHAEL CHERTOFF, in his official  
 capacity as the former Secretary of the  
 Department of Homeland Security; TOM  
 19 RIDGE, in his official capacity as the former  
 Secretary of the Department of Homeland  
 Security; ERIC H. HOLDER, JR., in his  
 20 official capacity as Attorney General;  
 21 TERRORIST SCREENING CENTER;  
 22 LEONARD C. BOYLE, in his official  
 capacity as Director of the Terrorist  
 Screening Center; DONNA A. BUCELLA,  
 23 in her official capacity as former Director of  
 the Terrorist Screening Center; FEDERAL  
 24 BUREAU OF INVESTIGATION; ROBERT  
 MUELLER, in his official capacity as  
 25 Director of the Federal Bureau of  
 Investigation; ARTHUR M. CUMMINGS,  
 26 II, in his official capacity as Executive  
 Assistant Director of the FBI's National  
 27 Security Branch; NATIONAL  
 COUNTERTERRORISM CENTER;  
 28 MICHAEL E. LEITER, in his official

CASE NO. C06-0545 WHA  
**~~PROPOSED~~ PROTECTIVE ORDER  
 REGARDING SENSITIVE SECURITY  
 INFORMATION**

1 capacity as Director of the National  
2 Counterterrorism Center; DEPARTMENT  
3 OF STATE; HILARY CLINTON, in her  
4 official capacity as Secretary of State; SAN  
5 FRANCISCO AIRPORT; CITY AND  
6 COUNTY OF SAN FRANCISCO; SAN  
7 FRANCISCO POLICE DEPARTMENT;  
8 RICHARD PATE, an individual; JOHN  
9 BONDANELLA, an individual; JOHN  
10 CUNNINGHAM, an individual;  
11 ELIZABETH MARON, an individual; US  
12 INVESTIGATIONS SERVICES, INC., a  
13 Virginia Corporation; and DOES 13 through  
14 100, inclusive.

Defendants.

11 In accordance with Section 525(d) of the Department of Homeland Security  
12 Appropriations Act, 2007, Public Law No. 109-295, § 525(d), 120 Stat. 1382 (Oct. 4, 2006), as  
13 reenacted by Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 522, 121 Stat. 2069  
14 (Dec. 26, 2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act,  
15 2009, Pub. L. No. 110-329, § 510, 122 Stat. 3682 (Sept. 30, 2008); and the Legislative Branch  
16 Appropriations and Continuing Appropriations Resolution of 2010, Pub. L. 111-68, Division B,  
17 § 101, --- Stat. --- (Oct. 1, 2009) (the “Act”), the Court hereby enters this Protective Order  
18 Governing Access to, Handling of, and Disposition of Potential Sensitive Security Information  
19 (the “Order”) exchanged in the above-captioned matter (this “Litigation”).

20 **1. Scope**

21 1.1 This Order shall govern any Document, information or other material that  
22 potentially contains “Sensitive Security Information” as defined herein, including Documents  
23 potentially containing Sensitive Security Information that are produced by the Parties,  
24 Documents produced by non-parties, and Documents produced by government agencies. Any  
25 Party serving a subpoena or other document request (including a request to a government agency  
26 made pursuant to 5 U.S.C. § 301) upon a non-party or a government agency shall serve a copy of  
27 this Order along with the subpoena or other document request.

28 1.2 Nothing contained herein alters or affects in any manner a Covered Person’s

1 obligations and duties as set forth in 49 C.F.R. Part 1520.

2 **2. Definitions**

3 2.1 Cleared Counsel. The term “Cleared Counsel” shall refer to the attorneys  
4 representing the Plaintiff in this Litigation, who are not otherwise authorized to have access to  
5 Sensitive Security Information pursuant to 49 C.F.R. Part 1520, but whom TSA has cleared for  
6 access to specific Sensitive Security Information after determining that such attorneys do not  
7 present a risk of harm to the nation based upon a criminal history records check and terrorist  
8 threat assessment as mandated by Section 525(d) of the Act. All Cleared Counsel must be  
9 signatories to this Order or agree in writing to be bound by its terms.

10 2.2 Covered Person. The term “Covered Person” shall refer to any person who is  
11 authorized to have access to specific Sensitive Security Information pursuant to 49 C.F.R §  
12 1520.7 and 1520.11.

13 2.3 Documents. The terms “Document” and “Documents” shall include, but are not  
14 limited to, all written or printed matter of any kind, formal or informal, including originals,  
15 conforming and non-conforming copies (whether different from the original by reason of  
16 notation made on such copies or otherwise). The terms further include, but are not limited to, the  
17 following:

18 a. papers, correspondence, memoranda, notes, letters, reports, summaries,  
19 photographs, maps, charts, graphs, inter-office and intra-office communications,  
20 notations of any sort concerning conversations, meetings, or other communications,  
21 bulletins, teletypes, telegrams, telefacsimiles, invoices, worksheets, transcripts of any  
22 kind (including depositions and Court proceedings), legal briefs, pleadings and papers  
23 (including those filed with the Court) and drafts, alterations, modifications, changes and  
24 amendments of any kind to the foregoing;

25 b. graphic or oral records or representations of any kind, including, but not  
26 limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound  
27 recordings of any kind, and motion pictures;

28 c. electronic, mechanical or electric records of any kind, including, but not

1 limited to, tapes, cassettes, disks, recordings, electronic mail, films, typewriter ribbons,  
2 word processing or other computer tapes or disks, and all manner of electronic data  
3 processing storage.

4 2.4 Restricted Use Document. The term “Restricted Use Document” shall refer to  
5 any Document that contains Sensitive Security Information.

6 2.5 Parties. The terms “Party” and “Parties” refer to the parties to this Litigation and  
7 their counsel, excluding TSA, as well as any and all future parties to this Litigation.

8 2.6 Sensitive Security Information. The term “Sensitive Security Information” shall  
9 have the meaning set forth in 49 U.S.C. § 114(r)(1)(C), 49 C.F.R. § 1520.1 et seq., and as  
10 designated in orders issued by TSA pursuant to 49 U.S.C. § 114(r).

11 **3. Identification and Review of Sensitive Security Information**

12 3.1 All Documents sought to be produced in connection with this Litigation that  
13 contain, or that the producing party has reason to believe contain, Sensitive Security Information,  
14 shall first be submitted to TSA for review, with an accompanying index of the submitted  
15 Documents, as required under 49 C.F.R. § 1520.9(a)(3). The indices of the Documents  
16 submitted shall be provided to TSA and the Parties by the producing entity.

17 3.2 TSA shall promptly complete a review to determine if any particular Document  
18 submitted contains Sensitive Security Information. Upon completion of this review, to the extent  
19 that a Document does not contain Sensitive Security Information, TSA shall authorize the release  
20 of the Document and the Document shall no longer be subject to this Order. Information that  
21 TSA has determined does not constitute Sensitive Security Information may be used and  
22 disclosed in any manner consistent with the disclosure of non-Sensitive Security Information  
23 documents exchanged in this Litigation.

24 3.3 Upon completion of this review, to the extent that TSA determines that a  
25 Document does contain Sensitive Security Information, TSA shall redact the specific Sensitive  
26 Security Information from the face of the Document and provide such redacted version to the  
27 entity that submitted the Document for review. TSA shall authorize the production of such  
28 Documents as redacted and such redacted Documents may be used and disclosed in any manner

1 consistent with the disclosure of non-Sensitive Security Information documents exchanged in  
2 this Litigation.

3           3.4     Should it come to TSA’s attention that it may have inadvertently failed to  
4 designate material as Sensitive Security Information, TSA may review any Document to re-  
5 assess whether it contains any Sensitive Security Information. To the extent that TSA  
6 determines upon re-review that the Document does not contain any Sensitive Security  
7 Information, TSA shall authorize the Document for production pursuant to Section 3.2 of this  
8 Order. To the extent TSA determines upon re-review that the Document does contain Sensitive  
9 Security Information, TSA shall apply the procedures of Section 3.3 of this Order and require  
10 that any Cleared Counsel or Covered Person, who does not otherwise have a right to access to  
11 that Sensitive Security Information independent of this Litigation, immediately certify to TSA  
12 that he or she has destroyed such Sensitive Security Information. Notwithstanding the foregoing,  
13 if the Sensitive Security Information is subject to release under this Order or Section 525(d) of  
14 the Act, the Sensitive Security Information will be re-released as provided in Sections 4 and 6 of  
15 this Order. Disputes concerning whether information designated as Sensitive Security  
16 Information is subject to release under this Order or Section 525(d) of the Act may be resolved  
17 by the district court in this action.

18 **4.     Access to Sensitive Security Information**

19           4.1     Access to the Sensitive Security Information under the terms and conditions of  
20 this Order shall be restricted to:

- 21           a.     Covered Persons;
- 22           b.     Cleared Counsel who are signatories to this Order or have agreed to be  
23 bound by its terms;
- 24           c.     Court personnel, which includes court reporters for trial, hearings, and  
25 depositions. Such persons will not be required to undergo background checks in order to  
26 participate in this litigation;
- 27           d.     Employees of a Covered Person or Cleared Counsel, including paralegals,  
28 technical support, and administrative assistants, to whom it is reasonably necessary to

1 disclose the information for this litigation, provided that such persons are Covered  
2 Persons, have undergone the background check referenced in 525(d) of the Act, or hold a  
3 clearance for access to National Security information;

4 e. Party-designated consultants and experts, provided they are Covered  
5 Persons, have undergone the background check referenced in section 525(d) of the Act,  
6 or hold a clearance for access to National Security Information;

7 f. During their depositions, witnesses in the action to whom disclosure is  
8 reasonably necessary and who are Covered Persons, have undergone the background  
9 check referenced in 525(d) of the Act, or who hold a clearance for access to National  
10 Security information;

11 g. Plaintiff, if she attends and is present at trial, has the right to hear the  
12 evidence presented in her case, whether or not it is SSI. Short of her attendance at trial,  
13 however, plaintiff cannot view SSI without being vetted by the background check  
14 process.

15 4.2 Cleared Counsel shall have access to the Sensitive Security Information contained  
16 in any Restricted Use Document as follows:

17 a. As authorized by the Court's Orders in this action issued December 17,  
18 2009, and December 24, 2009, respectively. Nothing in this Order shall prejudice the  
19 right of any party to appeal from such Order.

20 b. If Cleared Counsel seeks access to the Sensitive Security Information  
21 contained in any Restricted Use Document that is not subject to the Court's Orders of  
22 December 17, 2009 or December 24, 2009, Cleared Counsel must make a showing to  
23 TSA that Plaintiff: (a) has a substantial need for relevant Sensitive Security Information  
24 in the preparation of her case, and, (b) is unable without undue hardship to obtain the  
25 substantial equivalent of the information by other means. If TSA determines that the  
26 Cleared Counsel seeking access has successfully made such showings, TSA will grant  
27 Cleared Counsel access to the specific Sensitive Security Information pursuant to this  
28 Order, unless TSA determines that access to the Sensitive Security Information by

1 Cleared Counsel would present a risk of harm to the nation based on the sensitivity of the  
2 information. Any such determination will be made in writing within twenty calendar  
3 days of the request for disclosure of information, and will be served by electronic mail  
4 upon all Parties to this Litigation on the same business day that such determination is  
5 made. Any such determination, and any determination by TSA concerning substantial  
6 need for relevant Sensitive Security Information or inability to obtain Sensitive Security  
7 Information or its substantial equivalent by other means without undue hardship, will be  
8 reviewable by the district court in this action.

9 4.3 If TSA determines that it is appropriate to grant Cleared Counsel access to  
10 specific Sensitive Security Information pursuant to Section 4.2(b) of this Order, it will authorize  
11 production to the requesting Cleared Counsel of a Restricted Use Document with the specific  
12 Sensitive Security Information unredacted.

13 4.4 To the extent that a Restricted Use Document contains a range of Sensitive  
14 Security Information, some of which TSA determines is appropriate for production to Covered  
15 Counsel and some of which is inappropriate for production under the criteria set forth in Section  
16 4.2(b) of this Order and Section 525(d) of the Act, TSA shall redact the Sensitive Security  
17 Information that is inappropriate for production. TSA shall then authorize the production of such  
18 Restricted Use Document to Cleared Counsel only in such redacted form.

19 4.5 Should a Cleared Counsel cease representing the Plaintiff in this Litigation, for  
20 whatever reason, such Cleared Counsel shall no longer be cleared for access to Sensitive  
21 Security Information. Should Cleared Counsel cease to be employed by a law firm or legal  
22 practice that represents the Plaintiff in this Litigation, such attorney will no longer be cleared for  
23 access to Sensitive Security Information. At any point in the litigation, the law firm representing  
24 Plaintiff may elect to have additional attorneys undergo the vetting process described in Section  
25 525(d) of the Act in order to obtain access to Sensitive Security Information in this Litigation.

26 4.6 In the event that a Cleared Counsel loses or relinquishes his or her clearance for  
27 access to Sensitive Security Information, for whatever reason, the former Cleared Counsel must  
28 promptly certify in writing to TSA that all Sensitive Security Information in his or her custody

1 has been destroyed or that all Sensitive Security Information in his or her custody has been  
2 transferred to the other Cleared Counsel in this Litigation.

3 4.7 All Restricted Use Documents subject to this Order in the possession of Cleared  
4 Counsel shall be certified in writing to have been destroyed within 60 days of termination of this  
5 Litigation, including any appellate proceedings.

6 **5. Non-Disclosure of Sensitive Security Information**

7 5.1 Except as provided in this Order, Cleared Counsel are prohibited from disclosing,  
8 in any manner, or otherwise providing access to, Sensitive Security Information, however  
9 obtained, to any individual or entity.

10 5.2 Except as permitted in this Order, Cleared Counsel are prohibited from aiding or  
11 assisting any person or entity in disclosing, in any manner, or otherwise providing access to,  
12 Sensitive Security Information.

13 5.3 Any authorized disclosure of Sensitive Security Information must be made  
14 pursuant to Sections 6, 7, and 8.

15 **6. Production of Documents**

16 6.1 Prior to production, the entity responsible for producing Restricted Use  
17 Documents shall label or stamp any such Document with the following language:

18 **SUBJECT TO SENSITIVE SECURITY**  
19 **INFORMATION PROTECTIVE ORDER**  
20 **IN IBRAHIM v. DHS ET AL.,**  
21 **3:06-CV-00545-WHA (N.D. CAL)**  
22 **SENSITIVE SECURITY INFORMATION**  
23 **WARNING: THIS RECORD MAY CONTAIN**  
24 **SENSITIVE SECURITY INFORMATION THAT IS**  
25 **CONTROLLED UNDER 49 CFR PART 1520. NO**  
26 **PART OF THIS RECORD MAY BE DISCLOSED TO**  
27 **PERSONS WITHOUT A ‘NEED TO KNOW,’ AS**  
28 **DEFINED IN 49 CFR PART 1520, EXCEPT WITH**



1 **THE WRITTEN PERMISSION OF THE**  
2 **ADMINISTRATOR OF THE TRANSPORTATION**  
3 **SECURITY ADMINISTRATION. UNAUTHORIZED**  
4 **RELEASE MAY RESULT IN CIVIL PENALTY OR**  
5 **OTHER ACTION.**

6 6.2 All Restricted Use Documents shall be produced by creating password-protected  
7 adobe pdf files of the authorized Restricted Use Documents and copying them on to a DVD-  
8 ROM and sending the DVD-ROM by mail, courier, or overnight delivery service with the  
9 password provided only via email.

10 6.3 Cleared Counsel must maintain custody of the DVD-ROM containing Restricted  
11 Use Document(s), and such Cleared Counsel have a duty to safeguard the DVD-ROM, the  
12 Restricted Use Document(s), and the Sensitive Security Information contained therein, from  
13 unauthorized disclosure. When not in the physical possession of Cleared Counsel, the DVD-  
14 ROM containing the Restricted Use Document(s) shall be stored in a secured container, such as a  
15 locked desk or file cabinet.

16 6.4 Cleared Counsel and Covered Persons may create Documents containing  
17 Sensitive Security Information found in a Restricted Use Document, provided that any such  
18 Document is secured in the same or equivalent manner, to the same or equivalent extent, and  
19 with the same restrictions on access as the DVD-ROM containing the Restricted Use Document  
20 as set forth in this Section 6.

21 **7. Use of Sensitive Security Information in Depositions and Examinations**

22 7.1 Sensitive Security Information that is authorized for production pursuant to  
23 Section 4 of this Order may be used and/or elicited during the examination of a witness, provided  
24 such witness is allowed access under Section 4.1 of this Order, subject to the following  
25 restrictions:

26 7.1.1 Only the individuals identified in Section 4.1 of this Order may be present  
27 in the room when such Sensitive Security Information is used and/or elicited.

28 7.1.2 To the extent that a Cleared Counsel or a Covered Party wishes to use a

1 Restricted Use Document as an exhibit at a deposition, the Cleared Counsel or Covered  
2 Party may do so, provided that at the conclusion of the deposition, the original marked  
3 deposition exhibit and all hard copies are collected and maintained by a court reporter  
4 who is allowed access under Section 4.1(c) of this Order. The court reporter shall secure  
5 the Restricted Use Documents in the same manner, to the same extent, and with the same  
6 restrictions on access prescribed in Section 6 of this Order.

7 7.1.3 Sensitive Security Information that is not authorized for release pursuant  
8 to this Order may not be used or elicited during the examination of a witness.

9 7.2 Sensitive Security Information elicited at deposition shall be usable in this  
10 litigation as follows.

11 7.2.1 One of the purposes of this Order is to allow for testimony to be taken at  
12 depositions in this matter, without fear that giving truthful testimony will subject the  
13 witness to penalties for unauthorized release of SSI. To that end, whenever a deposition  
14 involves the possible disclosure of SSI, the deposition shall be governed by the terms of  
15 this Order, including the limitation that only persons authorized under section 4.1 may be  
16 present in the deposition ("Secure Deposition). Counsel for TSA shall receive notice of  
17 any deposition in this action and may be present at any deposition in this action. If the  
18 deposition involves the possible disclosure of SSI it shall be a Secure Deposition. If  
19 Counsel for TSA attends a deposition, he or she may raise objections and instruct not to  
20 answer on the ground that the subject matter responsive to the question is both (a) not  
21 subject to disclosure pursuant to the Court's Order of December 17, 2009, December 24,  
22 2009, or subsequent Court orders made under Section 525(d), and (b) would not be  
23 subject to disclosure pursuant to a motion brought under Section 525(d). The parties  
24 shall attempt to meet and confer at the deposition, outside the presence of the witness, to  
25 resolve any such disputes. The parties may contact the Court during the deposition for  
26 assistance in resolving any such disputes. If the deposition is a Secure Deposition, then  
27 the witness may provide truthful testimony and the transcript shall be provided for review  
28 to TSA pursuant to section 7.2.2. In this circumstance, provision of the information in

1 the Secure Deposition, with subsequent review by TSA, is not an unauthorized release of  
2 information.

3 7.2.2 The court reporter who records a deposition shall promptly submit the  
4 deposition transcript to TSA for review. TSA shall promptly complete a review to  
5 determine if a deposition transcript contains Sensitive Security Information. TSA shall  
6 designate all portions of the transcript that constitute Sensitive Security Information. To  
7 the extent that TSA determines, upon review of the deposition transcript, that the  
8 transcript contains Sensitive Security Information that is not addressed by the Court's  
9 December 17, 2009 and December 24, 2009 Orders but is appropriate for release  
10 pursuant to Section 4 of this Order, TSA shall authorize the transcript for release with all  
11 such appropriate Sensitive Security Information unredacted from the transcript. TSA  
12 must complete its review and submit the transcript with designations to counsel for all  
13 parties in this action within twenty calendar days of the date the transcript is submitted to  
14 TSA for review. To the extent TSA determines any Sensitive Security Information  
15 appearing in the transcript cannot be released pursuant to this Order or Section 525(d) of  
16 the Act, TSA may redact such material from the transcript, but this Court may review any  
17 determination by TSA concerning whether SSI may be released pursuant to this Order or  
18 Section 525(d) of the Act. For the purpose of resolving any dispute over whether SSI  
19 may be released pursuant to this Order or section 525(d) of the Act, the redacted text  
20 shall be made available only to those persons who were present at the deposition, unless  
21 the Court -- after reviewing the redacted text -- decides it should be released to Covered  
22 Persons and Cleared Counsel.

23 **8. Use of Sensitive Security Information in Motions and Court Proceedings**

24 8.1 Any Party who wishes to use a Restricted Use Document or the Sensitive Security  
25 Information contained therein in connection with a motion or other submission to this Court must  
26 file the Restricted Use Document and any pleadings, motions or other papers containing  
27 Sensitive Security Information under seal. Where possible, only the portions of the filings that  
28 contain Sensitive Security Information shall be filed under seal.

1           8.2     All court proceedings, or portions thereof, in which Sensitive Security  
2 Information may be disclosed, shall be closed to the public.

3 **9.     Dispute Resolution**

4           9.1     To the extent there is a dispute concerning whether information constitutes  
5 Sensitive Security Information, the Parties and TSA shall meet and confer in an attempt to  
6 resolve the dispute consensually. If TSA and the Parties fail to reach agreement, TSA will issue  
7 a final order pursuant to 49 U.S.C. § 114(r) designating such information as Sensitive Security  
8 Information. TSA final orders concerning the designation of information as Sensitive Security  
9 Information are reviewable in the United States Court of Appeals in accordance with 49 U.S.C. §  
10 46110.

11          9.2     To the extent there is a dispute concerning whether redacted or withheld Sensitive  
12 Security Information should be authorized for production under this Order and Section 525(d) of  
13 the Act, the Parties and TSA shall meet and confer in an attempt to resolve the dispute  
14 consensually. TSA shall state its position regarding such authorization no more than twenty  
15 calendar days after receiving a request to do so. Any dispute over the release of Sensitive  
16 Security Information pursuant to Section 525(d) of the Act or this Order is reviewable by this  
17 Court. Any order by this Court granting access to Sensitive Security Information under this  
18 Section shall be immediately appealable to the United States Court of Appeals in accordance  
19 with Section 525(d) of the Act.

20 **10.    Unauthorized Disclosures**

21          10.1    If Sensitive Security Information is disclosed other than as authorized by this  
22 Order, the Party or person responsible for the unauthorized disclosure, and any other Party,  
23 person, firm or entity who is subject to this Order and learns of the unauthorized disclosure, shall  
24 immediately bring such disclosure to the attention of TSA.

25          10.2    The Party or person responsible for the unauthorized disclosure shall make every  
26 effort to obtain the return of the Sensitive Security Information (including, without limitation,  
27 from the person to whom the unauthorized disclosure was made and from any other person to  
28 whom Sensitive Security Information was transmitted as a direct or indirect result of the

1 unauthorized disclosure) and to prevent further disclosure on its own part or on the part of any  
2 person to whom the unauthorized disclosure was made.

3 10.3 In addition to any other remedies that are available under law, any Party, person,  
4 firm or entity responsible for an unauthorized disclosure of Sensitive Security Information  
5 protected by this Order may be subject to a civil penalty of up to \$50,000, and all other remedies  
6 provided under 49 C.F.R. § 1520.17.

7 10.4 In the event that TSA determines that a Cleared Counsel has intentionally,  
8 willfully or recklessly disclosed Sensitive Security Information in violation of this Order, TSA  
9 may revoke such Cleared Counsel's clearance for access to Sensitive Security Information. If  
10 TSA does revoke access to Sensitive Security Information, the TSA's determination may be  
11 reviewed by this Court.

## 12 **11. Reservation of Rights**

13 11.1 As to Documents not covered by this Court's December 17, 2009 and December  
14 24, 2009 Orders, if TSA determines that it may have inadvertently failed to designate material as  
15 Sensitive Security Information, TSA may remove the Document containing that SSI from the  
16 Litigation as provided in Section 3.4, provided that if the Sensitive Security Information is  
17 subject to release under this Order or Section 525(d) of the Act, the Sensitive Security  
18 Information will be re-released as provided in Sections 4 and 6 of this Order. Disputes  
19 concerning whether information designated as Sensitive Security Information is subject to  
20 release under this Order or Section 525(d) of the Act may be resolved by the district court in this  
21 action as follows:

22 11.1.1 Any party who received an inadvertently produced document removed  
23 under this section may challenge the removal. A party that elects to challenge a removal  
24 must do so in good faith and must begin the process by meeting and conferring with  
25 counsel for TSA. In conferring, the challenging party must explain the basis for its belief  
26 that the removal was not proper and must give TSA an opportunity to reconsider the  
27 circumstances, and, if no change in TSA's position is offered, to explain the basis for the  
28 removal. A challenging party may proceed to the next stage of the challenge process

1 only if it has engaged in this meet and confer process first.

2 11.1.2 A party that elects to press a challenge to a removal after considering the  
3 justification offered by TSA may file and serve a motion under Civil Local Rule 7 (and in  
4 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged  
5 material and sets forth in detail the basis for the challenge. Each such motion must be  
6 accompanied by a competent declaration that affirms that the movant has complied with  
7 the meet and confer requirements imposed in the preceding paragraph and that sets forth  
8 with specificity the justification for the removal that was given by TSA in the meet and  
9 confer dialogue. Until a court rules on the challenge, no party shall make use of the  
10 removed document.

11 11.2 TSA reserves the right to revoke a Cleared Counsel's clearance in the event TSA  
12 obtains information that leads TSA to determine that granting such Cleared Counsel access to  
13 Sensitive Security Information presents a risk of harm to the nation. Such revocation will be  
14 subject to review by the Court in this action.

15 11.3 If it comes to TSA's attention that information or items that it designated as SSI  
16 do not qualify as SSI or have ceased to qualify as SSI, TSA must promptly notify all other  
17 parties that it is withdrawing its SSI designation.

18 11.4 This Order is without prejudice to the rights of any party or government agency to  
19 make any claim of privilege or to make any objection to discovery or use of Sensitive Security  
20 Information, or documents that may contain Sensitive Security Information, permitted by the  
21 Federal Rules of Civil Procedure, or any other statute, regulation, or authority.

22 11.5 Nothing in this Order abridges the right of any person to seek its modification by  
23 the Court.

24 **12. Applicability of Provisions.**

25 12.1 With regard to Sensitive Security Information already addressed in this Court's  
26 December 17, 2009 Order for Production of Items Despite the Assertion of Various Privileges, or  
27 the Court's December 24, 2009 Clarification of Order Dated December 17, 2009, the following  
28 provisions shall not apply: Sections 1 (Scope), 3 (Identification and Review of Sensitive Security

1 Information), 4.3, 4.4, and 9 (Dispute Resolution).

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3 **SO ORDERED.**

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5 Dated: January 13, 2010.

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