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U.S. Department of Homeland Security

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U.S. Customs & Border Protection

Sabrina Burroughs
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U.S. Immigration and Customs Enforcement

Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009

Central Intelligence Agency

Information and Privacy Coordinator
Washington, D.C. 20505

Drug Enforcement Administration

Freedom of Information & Privacy Act Unit (SARF)
8701 Morrissette Drive
Springfield, VA 22152

Federal Bureau of Investigation

Attn: FOIA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Office of the Director of National Intelligence

Stephen Kelley
Acting Director, Information Management Division
Washington, D.C. 20511

Office of Management and Budget

Dionne Hardy, FOIA Officer
1800 G Street NW, Room 9026
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U.S. Department of State

Eric F. Stein
Director, Office of Information Programs and Services
Building SA-2
515 22nd Street, NW
Washington, DC 20522-8100

To whom it may concern:

On behalf of Muslim Advocates (“Requestor”), I submit this letter to the Department of Homeland Security (“DHS”), Customs and Border Protection (“CBP”), Immigration and Customs Enforcement (“ICE”), the Office of the Director of National Intelligence (“ODNI”), the Central Intelligence Agency (“CIA”), the Federal Bureau of Investigation (“FBI”), the Drug Enforcement Agency (“DEA”), Department of State (“State”), and the Office of Management and Budget (“OMB”) (collectively, “Recipients”), as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* I ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and that Muslim Advocates be granted a fee waiver. I also ask that the Recipients refer the requests contained in this letter to any other agency or component agency as appropriate.

I. Background

On February 6, 2018, the President issued the “Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise” (“Memorandum”)¹ discussing the establishment of a “National Vetting Center” (“Center”).

The Memorandum is concerning because it appears to extend a line of “vetting” practices undertaken by this administration that call for unjustified heightened surveillance and potentially discriminatory practices.

¹ The Memorandum is attached to this request as Attachment 1, and is also available online at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise/> (last accessed Feb. 11, 2018).

II. Instructions

The Requestor requests disclosure of the following records¹ that were prepared, received, transmitted, collected and/or maintained by the Recipients and any other agency components thereof.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.² It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Requestor has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.³

¹ The terms “records” is intended in the broadest possible sense and includes without limitation all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMA or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. No category of material should be omitted from search, collection, and production.

² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at *8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone.

Please also employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered the agency’s prior FOIA practices unreasonable. The government-wide requirements to manage information electronically by the end of 2016 have rendered it unreasonable to rely exclusively on custodian-driven searches.¹ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but the agency’s archiving tools would capture that email under Capstone. Accordingly, Requestor insists that the agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Requestor is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”² If it is your position that any portion of the requested records is exempt from disclosure, the Requestor requests that you provide an index of those records as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”³ Moreover, the *Vaughn* index “must describe each document or portion thereof withheld, and for each withholding

At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

¹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

² FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

³ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

it must discuss the consequences of disclosing the sought-after information.”¹ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”²

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Requestor requests that responsive electronic records be provided electronically in their native file format, if possible. In particular, electronic records are to be produced in an electronic, native format that contains the original metadata of the files. As a non-exhaustive list of examples: Microsoft Excel spreadsheets are to be produced as files that open in Excel, with all original data and formulas intact; Microsoft Word documents are to be produced in the same file format they are stored in, such that they contain all tracked changes and comments present in the documents; and emails are to be produced with all metadata fields intact, including but not limited to the date and time the email was sent, the full names and email addresses of all recipients, any data contained in the bcc: field, and all attachments. If the records cannot be produced in their native format, the Requestor asks (1) an explanation why the records cannot be so produced; and (2) that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.³ Claims of non-segregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

If this request is denied in whole or in part, the Requestor asks that you justify all deletions by reference to specific FOIA exemptions. The Requestor

¹ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

² *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

³ *Mead Data Central*, 566 F.2d at 261.

reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Additionally, in order to avoid delays in receiving records, the Requestor requests that records be produced seriatim as they become available.

Where possible, please provide responsive material in electronic format by email to matthew@muslimadvocates.org. Please furnish any responsive material being sent by mail to:

Matthew Callahan
Muslim Advocates
P.O. Box 66408
Washington, DC 20035

III. Description of Records

1. Any and all records created on or after January 21, 2017, related to the Center, including but not limited to:
 - a. Communications (including but not limited to email) among, between, sent to, sent from, and/or copying personnel from agency personnel that contain the phrases “vetting center”, “vetting enterprise”, “national vetting”, and/or other mention of the Center.
 - b. Any and all meeting minutes, agenda items, calendar entries, or other planning records that contain the phrases “vetting center”, “vetting enterprise”, “national vetting”, and/or other mention of the Center.
 - c. Any and all records identifying the people who are or have been under consideration as members of the Board identified in section (e)(1) of the Memorandum.
 - d. Any and all policies, procedures, practices, guidelines, standards, rules, and procedures that mention how information will be gathered, shared, stored, and/or deleted by the Center.
 - e. Any and all records that describe the nature of the “biographic, biometric, or contextual information” that it is the policy of the United States to provide to the Center.
 - f. Any and all records that describe the “derogatory information” agencies are to provide to the Center.

- g. Any and all budget records, cost estimates, invoices, bills, or proposed budget records related to the Center.
2. Records describing the processing of this request, including but not limited to records sufficient to identify the search terms used; records sufficient to identify the locations and custodians searched; any tracking sheets used to track the processing of this request; and any FOIA questionnaires or certifications completed by individual custodians or components used to determine whether they possess responsive materials or to describe how they conducted searches.

IV. Application for Expedited Processing

Expedited processing of this request is warranted because: (1) there is an “urgency to inform the public about an actual or alleged Federal Government activity” by organizations, like the Requester, “primarily engaged in disseminating information,” 5 U.S.C. § 552(a)(6)(E)(i) & (v)(II); and (2) the request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence” 6 C.F.R. § 5.5(e)(l)(iv); 5 U.S.C. § 552(a)(6)(E)(ii).

The Memorandum—combined with a number of recent actions by the federal government that have been found unconstitutional by the courts—raises serious concerns about possible religious discrimination in the federal government, giving rise to “questions about the government’s integrity” and an “urgency to inform the public.” Further, attorneys and other services providers need to understand the relevant policies, procedures, and practices to effectively serve and advise the population of individuals potentially affected by this initiative. The requested records seek to inform the public about an urgent issue implicating the privacy and law enforcement prospects of thousands of people.

Given the foregoing, the Requester has satisfied the requirements for expedited processing of this Request.

V. Application for Waiver or Limitation of Fees

The Requestor requests a waiver of fees for document search, review, and duplication on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Requestor also requests a waiver of search fees on the grounds that the Requestor qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. *This request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Requestor.*

News accounts¹ underscore the substantial public interest in the records sought through this request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance.

The Requestor is not filing this Request to further its commercial interest. Any information disclosed by the Requestor as a result of this FOIA request will be made available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks omitted)).

- B. *The Requestor is a representative of the news media and the records are not sought for commercial use.*

The Requestor also requests a waiver of search fees on the grounds that the Requestor qualifies as "representative[s] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Requestor meets the statutory and regulatory definitions of "representative[s] of the news media" because they gather information, exercise editorial discretion in selecting and organizing documents, and "distribute the resulting work to the public." *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The Requestor is therefore a "representative of the news media" for the same reasons: it is "primarily engaged in [the] dissemination of information." 5 U.S.C. § 552(a)(4)(A)(ii)(II), (6)(E)(v)(II).

¹ *See, e.g.*, "Trump establishes National Vetting Center to screen immigrants, others seeking to enter US," Fox News (Feb. 6, 2018), <http://www.foxnews.com/politics/2018/02/06/trump-establishes-national-vetting-center-to-screen-immigrants-others-seeking-to-enter-us.html> (last accessed Feb. 13, 2018); Jeremy Diamond, "Trump to establish National Vetting Center focused on travelers, immigrants to US," CNN (Feb. 5, 2018), <https://www.cnn.com/2018/02/05/politics/national-vetting-center-immigration-donald-trump/index.html> (last accessed Feb. 13, 2018); Gregory Korte, "Trump stands up National Vetting Center to investigate new immigrants," USA Today (Feb. 6, 2018), <https://www.usatoday.com/story/news/politics/2018/02/06/trump-stands-up-national-vetting-center-investigate-new-immigrants/311916002/> (last accessed Feb. 13, 2018).

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requestor's to be "representative[s] of the news media" as well. Requestor Muslim Advocates has pursued FOIA litigation against many agencies that resulted in the disclosure of previously withheld information, including against the FBI in 2009 and multiple suits against DHS in 2017. *Cf. Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).¹

On account of these factors, fees associated with responding to FOIA requests should be waived for the Requestor as a "representative[s] of the news media."

Pursuant to applicable statutes and regulations, the Requestor expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

I would welcome the chance to discuss this matter with you. If you would like to discuss any part of this request, please contact Matthew Callahan at matthew@muslimadvocates.org or (202) 897-2622.

Thank you for your prompt attention to this matter.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Very truly yours,



Matthew Callahan
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¹ Courts have found these organizations to be "representative[s] of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

Attachment 1

Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise

Issued on: February 6, 2018

NATIONAL SECURITY PRESIDENTIAL MEMORANDUM/NSPM – 9

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF HOMELAND SECURITY
THE ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
THE DIRECTOR OF NATIONAL INTELLIGENCE
THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY
THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
THE COUNSEL TO THE PRESIDENT
THE ASSISTANT TO THE PRESIDENT FOR HOMELAND SECURITY AND COUNTERTERRORISM
THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF
THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR OF THE NATIONAL SECURITY AGENCY
THE DEPUTY ASSISTANT TO THE PRESIDENT AND NATIONAL SECURITY ADVISOR TO THE VICE PRESIDENT
THE CO-CHAIRS OF THE PRESIDENT’S INTELLIGENCE ADVISORY BOARD
THE ARCHIVIST OF THE UNITED STATES

SUBJECT: Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise

Border and immigration security are essential to ensuring the safety, security, and prosperity of the United States. The Federal Government must improve the manner in which executive departments and agencies (agencies) coordinate and use intelligence and other information to

identify individuals who present a threat to national security, border security, homeland security, or public safety. To achieve this goal, the United States Government must develop an integrated approach to use data held across national security components. I am, therefore, directing the establishment of a National Vetting Center (Center), subject to the oversight and guidance of a National Vetting Governance Board (Board), to coordinate the management and governance of the national vetting enterprise.

Section 1. Policy. (a) The United States must protect its people from terrorist attacks and other public safety threats. Vetting procedures associated with determining whether individuals pose threats to national security, border security, homeland security, or public safety play a critical role in meeting this obligation. It is the policy of the United States, as authorized and appropriate, to collect, store, share, disseminate, and use accurate and timely biographic, biometric, and contextual information in support of immigration enforcement and border security, including with respect to individuals who (i) seek a visa, a visa waiver, or other immigration benefit, or a protected status; (ii) attempt to enter the United States; or (iii) are subject to an immigration removal proceeding.

(b) Where authorized and appropriate, it is also the policy of the United States to process biographic, biometric, and contextual information, including on a recurrent basis, so as to identify activities, associations with known or suspected threat actors, and other relevant indicators that inform adjudications and determinations related to national security, border security, homeland security, or public safety. These activities should be conducted using all relevant and appropriate Federal Government information, including both intelligence and law enforcement information.

(c) The activities described in this memorandum should always be conducted in a manner that is consistent with the Constitution; Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended; other applicable law and Presidential guidance; and policies and procedures pertaining to:

(i) the appropriate handling of information about United States persons (as defined in Executive Order 12333) and other individuals protected by United States law;

(ii) the protection of sources, methods, and activities;

(iii) privacy, civil rights, and civil liberties; and

(iv) the protection of other sensitive information.

The coordinated efforts of agencies to conduct all of these activities in the manner described above constitute the national vetting enterprise.

Sec. 2. Implementation. The policy described in section 1 above shall be implemented as follows:

(a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall establish the Center to support the national vetting enterprise.

(i) The Center shall coordinate agency vetting efforts to identify individuals who present a threat to national security, border security, homeland security, or public safety. Agencies may conduct any authorized border or immigration vetting activities through or with the Center. Agencies may support these additional activities, provided that such support is consistent with applicable law and the policies and procedures described in subsections (b) and (d) of this section.

(ii) The Secretary of Homeland Security shall designate a full-time senior officer or employee of the Department of Homeland Security to serve as the director of the Center. The Secretary of State and the Attorney General shall detail or assign senior officials from their respective agencies to serve as deputy directors of the Center.

(iii) The director shall lead the day-to-day operations of the Center, communicate vetting needs and priorities to other agencies engaged in the national vetting enterprise, and make resourcing recommendations to the Board established pursuant to subsection (e) of this section.

(iv) Agencies shall provide to the Center access to relevant biographic, biometric, and related derogatory information for its use to the extent permitted by and consistent with applicable law and policy, including the responsibility to protect sources and methods. Agencies and the Center shall, on a consensus basis, determine the most appropriate means or methods to provide access to this information to the Center.

(v) The Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Central Intelligence Agency shall, on a continuing basis, work together to ensure, consistent with the authorities and available resources of each official's respective agency, that the daily operations and functions of the Center, as determined by the Board, are supported, including through the assignment of legal and other appropriate personnel, and the provision of other necessary resources, consistent with applicable law, including the Economy Act (31 U.S.C. 1535). To the extent permitted by law, details or assignments to the Center should be without reimbursement.

(vi) The day-to-day operations of the Center shall be executed by appropriate personnel from agencies participating in the national vetting enterprise, to the extent permitted by law, in a manner that adequately facilitates active and timely coordination and collaboration in the execution of the Center's functions. Agencies shall participate in the Center and shall provide adequate physical presence to enable the Center to effectively accomplish its mission. To the

extent appropriate, additional agency co-location may be virtual rather than physical. Each agency shall fund its participation in the Center, consistent with the agency's mission and applicable law. There shall be no interagency financing of the Center.

(vii) The Center shall not commence operations until the President has approved the implementation plan described in subsection (g) of this section.

(b) The Center shall enable and facilitate the appropriate use and interagency deconfliction of all relevant information provided to it to inform the adjudication decisions of the national vetting enterprise.

(i) Databases, data sets, knowledge bases, systems, and technical architectures controlled by the Federal Government, including those established pursuant to Presidential guidance or other Federal policies, may be used to support the activities of the Center to the extent permitted by and consistent with the legal and policy frameworks governing their use.

(ii) Information provided to and used by the Center shall be managed and maintained consistent with applicable information security and cybersecurity laws, standards, practices, and procedures.

(c) The Director of National Intelligence, in coordination with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the heads of relevant Intelligence Community (IC) elements, shall establish a support element to facilitate, guide, and coordinate all IC efforts to use classified intelligence and other relevant information within IC holdings in direct support of the Center.

(i) The Director of National Intelligence shall assign a senior official from the Office of the Director of National Intelligence or from another IC element (with the concurrence of the head of that IC element), and in accordance with applicable law, to serve as the head of the support element. This official shall provide day-to-day direction and guidance for the support element's operations in support of and in consultation with the director of the Center. The official shall report to the Director of National Intelligence through an Identity Intelligence Executive.

(ii) The support element shall provide focused, dedicated support to the Center, responding to the Center's needs by ensuring it receives appropriate, standardized, and timely access to biographic, biometric, and related derogatory information relevant to the national vetting enterprise, to the extent permitted by law and consistent with applicable policy, including section 1 of this memorandum, and in accordance with the operational considerations of both the Center and the IC elements supporting it.

(iii) Where appropriate, the personnel and other resources of the support element may be virtually rather than physically co-located at the Center, with such virtual support facilitated on a

day-to-day basis by assigned personnel from agencies that are physically present at the Center, as determined in the implementation plan described in subsection (g) of this section.

(d) Consistent with section 1(c) of this memorandum, all activities of the Center and the support element shall be, at all times, conducted in a manner consistent with the Constitution; Executive Order 12333, as amended; other applicable law and Presidential guidance; and policies and procedures pertaining to:

(i) the appropriate handling of information about United States persons (as defined in Executive Order 12333) and other individuals who may have rights under United States law;

(ii) the protection of sources, methods, and activities;

(iii) privacy, civil rights, and civil liberties; and

(iv) the protection of other sensitive information.

(e) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Secretary of Defense, the Director of National Intelligence, and the Director of the Central Intelligence Agency shall establish the Board.

(i) The national vetting enterprise shall act under the guidance of the Board, which shall serve as the senior interagency forum for considering issues that affect the national vetting enterprise and the activities of the Center and its support element. The Board shall adopt appropriate guidance for agencies to enable the successful execution of the national vetting enterprise and make related resource recommendations to agencies providing direct support to the Center. The Board shall also advise the Director of National Intelligence, through the Identity Intelligence Executive, on the IC resources necessary to support the mission of the Center.

(ii) The Board shall consist of six senior executives, one designated by each of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Central Intelligence Agency.

(iii) The Board may invite other relevant agencies engaged in the national vetting enterprise to participate as required to achieve the national security objectives of the national vetting enterprise.

(iv) The chair of the Board shall rotate annually among the individuals designated from the Department of State, the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence. The director of the Center shall serve as an observer at Board meetings.

(v) The Board shall endeavor to reach consensus on all matters presented to it, including the scope of the Center's activities. If issues cannot be resolved by consensus, the Board shall refer them to the staff of the National Security Council for consideration, consistent with National Security Presidential Memorandum-4 of April 4, 2017 (Organization of the National Security Council, the Homeland Security Council, and Subcommittees)(NSPM-4), or any successor document.

(vi) To ensure that the activities of the Board and the Center comply with applicable law and appropriately protect individuals' privacy, civil rights, and civil liberties, the Board shall establish a standing Legal Working Group and a separate standing Privacy, Civil Rights, and Civil Liberties Working Group, both of which shall routinely review the activities of the Center and advise the Board. These working groups shall also review the implementation plan described in subsection (g) of this section prior to its submission to the President.

(f) The heads of agencies engaged in the national vetting enterprise shall prioritize, as a vital national security mission, the provision of necessary and appropriate resources to support the national vetting enterprise, including the Center, consistent with their agency's respective authorities and appropriations.

(g) Within 180 days of the date of this memorandum, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Central Intelligence Agency, in coordination with the Director of the Office of Management and Budget, shall, through the Assistant to the President for Homeland Security and Counterterrorism and using the NSPM-4 process, jointly submit to the President for approval a plan to implement this memorandum. The implementation plan shall, at a minimum, address the following:

- (i) the initial scope of the Center's vetting activities;
- (ii) the roles and responsibilities of agencies participating in the Center;
- (iii) the roles and responsibilities of IC elements participating in the Center's support element;
- (iv) the initial categories of information to be used in support of the Center's activities;
- (v) a resourcing strategy for both the Center and its support element, which shall include the initial projected cost and staff required to operate the Center;
- (vi) the relationship between the Center and other relevant United States Government entities and initiatives, including the National Targeting Center and Terrorist Screening Center;

(vii) the development or adoption, as appropriate, of relevant processes, procedures, and practices needed to ensure compliance with applicable law and policy and to appropriately protect privacy, civil rights, and civil liberties, as well as sources and methods; and

(viii) a projected schedule to reach both initial and full operational capability.

(h) Within 180 days of approval by the President of this implementation plan and every 180 days thereafter until its execution is complete, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Central Intelligence Agency, in coordination with the Director of the Office of Management and Budget, shall, through the Assistant to the President for Homeland Security and Counterterrorism and using the NSPM-4 process, jointly submit to the President a report detailing the efforts made to execute this memorandum and the implementation plan.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP