

## **Exhibit B**



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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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**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

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Transcript of Matthew J. DeSarno, Designated Representative  
Conducted on April 9, 2018

1 (1 to 4)

1	3
1 UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 EASTERN DISTRICT OF VIRGINIA	2 ON BEHALF OF THE PLAINTIFFS, ANAS ELHADY, ET
3 ALEXANDRIA DIVISION	3 AL.:
4 -----X	4 GADEIR ABBAS, ESQUIRE
5 ANAS ELHADY, ET AL., :	5 LENA MASRI, ESQUIRE
6 Plaintiffs, :	6 CAROLYN HOMAN, ESQUIRE
7 v. :	7 COUNCIL ON AMERICAN-ISLAMIC RELATIONS
8 CHARLES H. KABLE, DIRECTOR OF :	8 453 New Jersey Avenue, S.E.
9 THE TERRORIST SCREENING CENTER; :	9 Washington, D.C. 20003
10 IN HIS OFFICIAL CAPACITY, ET AL., :	10 202.488.0833
11 Defendants. :	11
12 -----X	12 ON BEHALF OF THE DEFENDANTS, CHARLES H. KABLE,
13 Deposition of The Federal Bureau of Investigations	13 DIRECTOR OF THE TERRORIST SCREENING CENTER;
14 by and through its representative,	14 IN HIS OFFICIAL CAPACITY, ET AL.:
15 MATTHEW J. DESARNO	15 AMY E. POWELL, ESQUIRE
16 Washington, D.C.	16 U.S. DEPARTMENT OF JUSTICE CIVIL DIVISION
17 Monday, April 9, 2018	17 20 Massachusetts Avenue, NW
18 10:06 a.m.	18 Washington, D.C. 20530
19	19 202.514.9836
20 Job No.: 184986	20
21 Pages: 1-399	21
22 Reported by: Matthew Goldstein, RPR	22
2	4
1 Deposition of MATTHEW J. DESARNO, held at:	1 A P P E A R A N C E S C O N T I N U E D
2	2 ALSO PRESENT:
3	3 JAYME KANTOR, ESQ -
4 Department of Justice	4 FEDERAL BUREAU OF INVESTIGATION
5 20 Massachusetts Avenue, NW	5
6 Washington, D.C. 20001	6 CIPORA KLIONSKY, ESQ -
7	7 FEDERAL BUREAU OF INVESTIGATION
8	8
9	9 KEVIN BOGUCKI, ESQ -
10	10 TERRORIST SCREENING CENTER
11 Pursuant to Notice, before Matthew Goldstein,	11
12 RPR, Notary Public in and for the District of	12 JENNIFER GREENBAND, ESQ -
13 Columbia.	13 TRANSPORTATION SECURITY ADMINISTRATION
14	14
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Transcript of Matthew J. DeSarno, Designated Representative 2 (5 to 8)  
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5	7
C O N T E N T S	P R O C E E D I N G S
EXAMINATION OF MATTHEW J. DESARNO	Whereupon,
	MATTHEW J. DESARNO,
By MR. ABBAS	being first duly sworn or affirmed to testify to
By MS. POWELL	the truth, the whole truth, and nothing but the
By MR. ABBAS	truth, was examined and testified as follows:
By MS. POWELL	EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
By MR. ABBAS	BY MR. ABBAS:
By MS. POWELL	Q. Please state your full legal name for
By MR. ABBAS	the record.
By MS. POWELL	A. Matthew J. DeSarno.
By MR. ABBAS	Q. Mr. DeSarno, why are you here today?
By MS. POWELL	A. I'm here for a deposition related to
By MR. ABBAS	the -- testifying on behalf of the FBI related to
By MS. POWELL	a watchlisting suit.
By MR. ABBAS	Q. You understand that your testimony today
By MS. POWELL	is binding on the agency?
By MR. ABBAS	A. Yes.
By MS. POWELL	Q. What is the Watchlisting Advisory
By MR. ABBAS	Council?
By MS. POWELL	A. The Watchlisting Advisory Council is an
By MR. ABBAS	advisory council made up of the member agencies
6	8
By MS. POWELL	involved in the U.S. government watchlisting
By MR. ABBAS	process. The advisory council meets I believe
	quarterly to discuss gaps in the watchlisting
	process, improvements to the watchlisting process,
	and to provide recommendations to the Homeland
	Security Council as part of the NCS for proposed
	modifications to watchlisting guidelines.
	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?
	A. The FBI is one of the member agencies
	who sits on the Council. And we send a
	representative to the advisory council meetings.
	Q. Are all representatives to the
	Watchlisting Advisory Council coequal?
	A. Meaning do they all have equal vote; is
	that the question?
	Q. That was not the question.

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

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<p>113</p> <p>1 MS. POWELL: Objection; calls for a</p> <p>2 legal conclusion.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Okay.</p> <p>6 <b>A. That's a legal call. I don't know.</b></p> <p>7 Q. Fair. Okay.</p> <p>8 Is it the FBI's position that the status</p> <p>9 of individuals on the watchlist is SSI</p> <p>10 information?</p> <p>11 MS. POWELL: Objection; calls for a</p> <p>12 legal conclusion. There is, in fact, a TSA reg on</p> <p>13 this.</p> <p>14 MR. ABBAS: Go ahead.</p> <p>15 THE WITNESS: Yeah, I don't have -- I</p> <p>16 don't know the answer to that. That's a legal</p> <p>17 question.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Who aside from law enforcement agencies</p> <p>20 have access to NCIC?</p> <p>21 <b>A. I don't know of any people that are not</b></p> <p>22 <b>affiliated with a law enforcement agency that have</b></p>	<p>115</p> <p>1 <b>A. Not specifically through NCIC. I know</b></p> <p>2 <b>that in some states, you can access through a</b></p> <p>3 <b>portal -- through your state portal, you can</b></p> <p>4 <b>access a suite of tools which include NCIC and may</b></p> <p>5 <b>include something like LexisNexis or some public</b></p> <p>6 <b>records type system in the same portal, but I</b></p> <p>7 <b>don't think that they're part of NCIC, though.</b></p> <p>8 Q. Does the FBI regulate in any way which</p> <p>9 private databases are made available through NCIC?</p> <p>10 MS. POWELL: Objection; mischaracterizes</p> <p>11 prior testimony.</p> <p>12 THE WITNESS: They're not made available</p> <p>13 through NCIC.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. You indicated that some --</p> <p>16 <b>A. Different states have different</b></p> <p>17 <b>interfaces to the system. Some of those</b></p> <p>18 <b>interfaces include a menu of -- a menu of choices</b></p> <p>19 <b>and some of those choices are likely public</b></p> <p>20 <b>records checks and private systems as well.</b></p> <p>21 Q. Who decides what private systems are</p> <p>22 included in those menu of choices that you're</p>
<p>114</p> <p>1 <b>access to NCIC.</b></p> <p>2 Q. Do any private entities have access to</p> <p>3 NCIC?</p> <p>4 <b>A. I'm not aware of any private entities</b></p> <p>5 <b>that have carte blanche access to NCIC or have law</b></p> <p>6 <b>enforcement access to NCIC.</b></p> <p>7 Q. Does any private entity have any type of</p> <p>8 access to NCIC?</p> <p>9 <b>A. Not that I'm aware of.</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. I'm not aware of any.</b></p> <p>12 Q. So when you said "carte blanche," that's</p> <p>13 where I'm -- is there some access that private</p> <p>14 entities are given?</p> <p>15 <b>A. Not that I'm aware of inside NCIC, no.</b></p> <p>16 <b>But as I testified previously, NCIC pulls in from</b></p> <p>17 <b>a lot of different systems and some of those may</b></p> <p>18 <b>have some private access to a specific system that</b></p> <p>19 <b>NCIC's pulling from, but I don't know of any</b></p> <p>20 <b>private entities that have access to NCIC.</b></p> <p>21 Q. Does the NCIC provide access to any</p> <p>22 private databases?</p>	<p>116</p> <p>1 referring to?</p> <p>2 <b>A. The FBI does not decide that.</b></p> <p>3 Q. So state and local authorities do?</p> <p>4 <b>A. Yes, likely.</b></p> <p>5 Q. Okay. Great.</p> <p>6 MR. ABBAS: 30 minutes for lunch?</p> <p>7 MS. POWELL: Yes.</p> <p>8 (Luncheon recess from the record.)</p> <p>9 AFTERNOON SESSION</p> <p>10 (1:00 p.m.)</p> <p>11 THE REPORTER: So this is the court</p> <p>12 reporter and we have been on the record for two</p> <p>13 and hours nine minutes.</p> <p>14 MS. POWELL: I propose asking a couple</p> <p>15 of clarifying questions with respect to prior</p> <p>16 testimony.</p> <p>17 MATTHEW J. DESARNO,</p> <p>18 having been previously sworn, resumed the</p> <p>19 stand and testified further as follows:</p> <p>20 EXAMINATION BY COUNSEL FOR THE DEFENDANTS</p> <p>21 BY MS. POWELL:</p> <p>22 Q. First, Mr. DeSarno, you previously</p>

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<p style="text-align: right;">117</p> <p>1 testified that the FBI knows how many user 2 accounts there are for NCIC. Can you explain what 3 that means? 4 <b>A. So that's how many individual ORIs</b> 5 <b>exist, which an ORI is an originating record</b> 6 <b>identifier. So an ORI can belong to a department</b> 7 <b>or to a specific station to a terminal so the FBI</b> 8 <b>can track the ORIs. And then it's up to the</b> 9 <b>individual departments to issue access to the ORI</b> 10 <b>and they have a responsibility to have an</b> 11 <b>auditable process.</b> 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 <b>A. I guess that's correct. I mean, I would</b></p>	<p style="text-align: right;">119</p> <p>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 <b>A. I would expect that they do, but I</b> 17 <b>haven't seen that audit report. But I -- I think</b> 18 <b>that that is -- can be audited and confirmed.</b> 19 Q. Okay. But today sitting here, you don't 20 know? 21 <b>A. I don't know specifically.</b> 22 Q. Okay.</p>
<p style="text-align: right;">118</p> <p>1 <b>imagine there is some process, some probably</b> 2 <b>exhaustive, burdensome process that if they needed</b> 3 <b>to know how many individual users had accessed</b> 4 <b>each ORI, it's probably able to be found, but the</b> 5 <b>tracking exists to the ORI.</b> 6 Q. And ORI stands for what? 7 <b>A. Originating record identifier.</b> 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</p>	<p style="text-align: right;">120</p> <p>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 <b>A. Sure. So TSDB information combined in</b> 14 <b>some cases with encounter information and other</b> 15 <b>investigative information or intelligence, that</b> 16 <b>body of information and evidence and intelligence</b> 17 <b>combined with other potentially -- with other</b> 18 <b>sources can inform investigative strategy,</b> 19 <b>disruption strategy, prevention of terrorism</b> 20 <b>strategy. So when taken together and combined</b> 21 <b>with other information, it can help us to be more</b> 22 <b>preventive in our work.</b></p>

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<p style="text-align: right;">121</p> <p>1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS (CONT'D)</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. In your answer, are you referring to</p> <p>4 specific instances when TSDB information combined</p> <p>5 with other information has prevented an act of</p> <p>6 terrorism?</p> <p>7 MS. POWELL: To the extent that's a</p> <p>8 yes-or-no question --</p> <p>9 MR. ABBAS: It is.</p> <p>10 MS. POWELL: -- you can answer.</p> <p>11 MR. ABBAS: It is a yes-or-no question.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Okay. Great.</p> <p>15 Okay. Is the -- the FBI keeps track of</p> <p>16 the number of times a person in the TSDB is</p> <p>17 encountered with -- I'm sorry.</p> <p>18 The FBI receives information about</p> <p>19 encounters with persons on the TSDB from other</p> <p>20 government agencies; correct?</p> <p>21 MS. POWELL: Objection; vague.</p> <p>22 THE WITNESS: In some instances, yes.</p>	<p style="text-align: right;">123</p> <p>1 traffic stop to the TSC for a decision, TSC would</p> <p>2 push to FBI if applicable.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. How does the local law enforcement</p> <p>5 officer know to contact the TSC if that local law</p> <p>6 enforcement officer pulls over during a traffic</p> <p>7 stop a TSDB listee?</p> <p>8 <b>A. So if a local law enforcement officer</b></p> <p>9 <b>runs NCIC, the NCIC return from the KST will tell</b></p> <p>10 <b>the local law enforcement officer -- depending on</b></p> <p>11 <b>the entry would tell the local law enforcement</b></p> <p>12 <b>officer different things which would frequently</b></p> <p>13 <b>include contact the TSC. Part of that contact is</b></p> <p>14 <b>also to resolve the identity, whether or not this</b></p> <p>15 <b>person that's stopped is actually a match, an</b></p> <p>16 <b>identity match to a person on the TSDB.</b></p> <p>17 Q. Why is it of interest to the FBI whether</p> <p>18 a local law enforcement officer has pulled over a</p> <p>19 person that's listed in the TSDB?</p> <p>20 MS. POWELL: Objection; vague,</p> <p>21 potentially mischaracterizes prior testimony, and</p> <p>22 misleading.</p>
<p style="text-align: right;">122</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. When a local police officer pulls</p> <p>3 someone over and queries the TSDB -- I'm sorry.</p> <p>4 When a local law enforcement pulls</p> <p>5 someone over and queries NCIC, if that person that</p> <p>6 was pulled over is in TSDB, does the FBI learn of</p> <p>7 the local law enforcement traffic stop?</p> <p>8 MS. POWELL: Objection; vague and</p> <p>9 potentially misleading.</p> <p>10 THE WITNESS: Not necessarily. If the</p> <p>11 local law enforcement officer gets a hit to the</p> <p>12 KST file, it would likely be directed to the TSC</p> <p>13 to make a notification. So depending on what's in</p> <p>14 that record typically the call would go to the</p> <p>15 24-hour call center at the TSC. The TSC would</p> <p>16 then make an assessment as to what to do with that</p> <p>17 information.</p> <p>18 In many instances if this occurs inside</p> <p>19 the United States, there would be a notification</p> <p>20 to the FBI, but there are instances where it may</p> <p>21 not. The other -- I mean, the -- so that</p> <p>22 basically explains a U.S. -- a continental U.S.</p>	<p style="text-align: right;">124</p> <p>1 MR. ABBAS: I'll withdraw the question.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Is the FBI interested in tracking</p> <p>4 encounters with TSDB listees?</p> <p>5 MS. POWELL: Potentially calls for law</p> <p>6 enforcement sensitive information.</p> <p>7 You can answer at a level of generality.</p> <p>8 THE WITNESS: I mean, as I testified</p> <p>9 just previously, the encounter information when</p> <p>10 combined with other investigative information can</p> <p>11 inform strategies, disruption efforts, and other</p> <p>12 investigative steps that are appropriate with</p> <p>13 regards to specific terrorism subjects.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Has an encounter with a TSDB listee ever</p> <p>16 resulted in a terrorism-related arrest?</p> <p>17 MS. POWELL: Objection.</p> <p>18 I'm going to instruct the witness not to</p> <p>19 answer on the grounds of the law enforcement</p> <p>20 privilege, also vague and potentially misleading.</p> <p>21 Q. Do you know whether an encounter with a</p> <p>22 person in the TSDB has ever led to a</p>