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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF HOMELAND SECURITY

AND

THE NATIONAL COUNTERTERRORISM CENTER

REGARDING

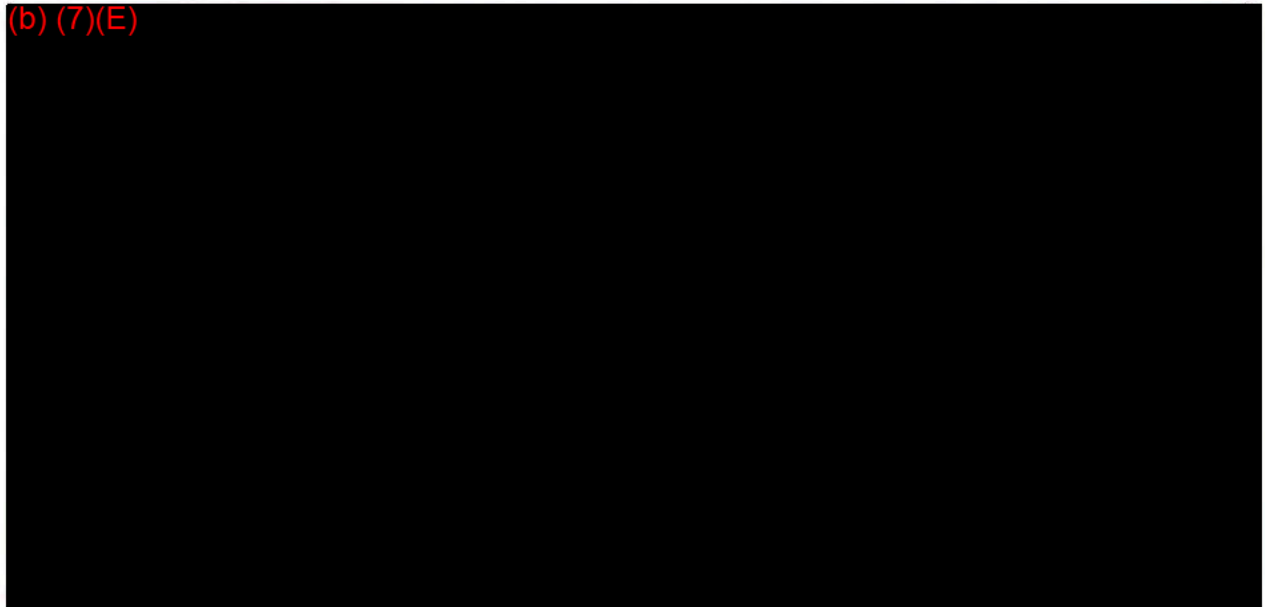
THE ARRIVAL AND DEPARTURE INFORMATION SYSTEM (U//FOUO)

1. (U) INTRODUCTION AND PURPOSE.



2. (U) BACKGROUND.

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(U//FOUO) At NCTC, the Information and Incidents Analysis Group is responsible for, among other things, identifying terrorism information from data sets that may also include non-terrorism information to facilitate the identification of known or suspected terrorists and terrorist activities. The Terrorist Travel Branch provides all-source strategic analysis on how terrorists circumvent border controls and provides analytic support to U.S. visitor screening. The Pursuit Group was stood up after the December 25th, 2009 terrorist attempt to identify and examine, as early as possible, leads that could become terrorist threats to the Homeland and US interests abroad.

(U//FOUO) ADIS is a system for the storage and use of biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States. ADIS consolidates information from various sources such as U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services, to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their immigration status by remaining in the United States beyond their authorized stays. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies.

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(U//FOUO) ADIS is described in a published Privacy Act System of Record Notice (SORN) 72 FR 47057 (August 22, 2007). Disclosure of ADIS information pursuant to this MOU is authorized by law and as contemplated under the routine uses set for that SORN; specifically ADIS Data is being provided to NCTC to facilitate NCTC's counterterrorism efforts. This information sharing also aligns with DHS's mission to prevent and deter terrorist attacks.

(U//FOUO) ADIS includes data collected by DHS pursuant to 8 U.S.C. §§ 1103-1104, 1158, 1187(a)(11), (h)(3), 1201, 1202, 1221, 1225, 1324, 1357, 1360, 1365a, 1365a note, 1365b, 1372, 1379, 1732; 8 C.F.R. Part 204, § 215.8, 217.5, 231.1, 235.1; 44 U.S.C. § 44909; 19 CFR §§ 122.49a-c; 122.75a-b. The majority of ADIS Data has no nexus to terrorism and is not terrorism information as defined in both section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, and Executive Order 13388. As described in the ADIS SORN, DHS provides visitors to the United States with certain administrative privacy protections and safeguards of the Privacy Act.

(U//FOUO) The Parties are members of the Information Sharing Environment (ISE). Each Party will conduct its activities under this MOU in accordance with its own ISE Privacy and Civil Liberties Protection Policy.

3. (U) DEFINITIONS.

(U) As used in this Agreement, the following terms will have the following meanings:

- A. (U) ADIS Data: For the purposes of this MOU, includes biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States as defined by the specific data fields identified in Appendix A.
- B. (U) ADIS Record: ADIS Data associated with an individual.
- C. (U) Alien: Any person not a citizen or national of the United States. 8 U.S.C. § 1101(a)(3).
- D. (U) Asylum-seeker: an asylum seeker is an alien at a U.S. port of entry or who has already entered the United States who seeks protection under 8 U.S.C. §§ 1158 or 1231(b)(3) or 8 C.F.R. §§ 208.16 or 208.17. This includes individuals who have been referred to USCIS for a credible fear interview under 8 U.S.C. § 1225 or a reasonable fear interview under 8 C.F.R. § 208.31.
- E. (U) Asylee: An alien who has been granted asylum under 8 U.S.C. § 1158.
- F. (U) Lawful Permanent Resident: An alien who has obtained the status of having been lawfully accorded the privilege of residing permanently in the United States, such status not having changed. 8 U.S.C. § 1101(a)(20).
- G. (U) Personally Identifiable Information: Any information that permits the identity of an individual to be directly or indirectly inferred, including any other information which is linked or linkable to that individual. This definition applies regardless of whether the individual is a U.S. citizen, lawful permanent resident, or visitor to the U.S.
- H. (U) Refugee: An alien who has been granted refugee status under 8 U.S.C. § 1157.
- I. (U) Special Protected Classes: For the purposes of this MOU, the term special protected classes refers to classes of aliens for which there are additional statutory, regulatory, or policy protections. Data pertaining to these classes of aliens may have handling or use requirements different from U.S. Person data or other alien data. The classes of aliens covered under this definition include asylum-seekers; asylees; refugees; S, T, and U visa holders; individuals covered under the Violence Against Women Act; aliens with Temporary Protected Status; Legalization and Seasonal Agricultural Worker program applicants; and other individuals so designated by the U.S. Citizenship and Immigration Services.

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- J. (U) Terrorism Information: Refers to information within the scope of the “information sharing environment,” as that term is defined in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, § 1016(a)(3); 6 U.S.C. § 485(a)(3), as amended, and includes the definition of “terrorism information” reflected in the Memorandum of Understanding “Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing” (March 4, 2003).
- K. (U) U. S. Person: As defined in 50 U.S.C. § 1801(i), includes, for purposes of this MOU, a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8). The primary focus of U.S. Person information exchanged under this MOU will be ADIS information concerning aliens lawfully admitted for permanent residence.

4. (U) AUTHORITY.

(U) The information sharing and enhanced cooperation among the Parties to this Agreement is authorized under and complies with the provisions of:

- A. (U) Homeland Security Act of 2002, as amended;
- B. (U) 50 U.S.C. §§ 404o, 404o note, and 501 note;
- C. (U) Privacy Act of 1974, as amended (5 U.S.C. § 552a);
- D. (U) 8 U.S.C. §§ 1103-1104, 1202, 1365a, 1365a note, 1365b, and 1379;
- E. (U) The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001;
- F. (U) Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, as amended;
- G. (U) National Security Act of 1947, as amended;
- H. (U) Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007; 8 U.S.C. § 1187(a)(11), (h)(3); 8 C.F.R. § 217.5.
- I. (U) 8 U.S.C. §1367(a)(2) (Information Relating to Violence Against Women Act (VAWA) Claimants and U and T visa holders).
- J. (U) 8 U.S.C. §1255a(c)(4)-(5) and 8 C.F.R. §§ 210.2(e), 245a.2(t), 245a.3(n), and 245a.21 (Information related to Legalization/Seasonal Agricultural Worker claims);
- K. (U) 8 U.S.C. §1254a(c)(6) and 8 C.F.R. § 244.16 (Information Relating to Temporary Protected Status claims);

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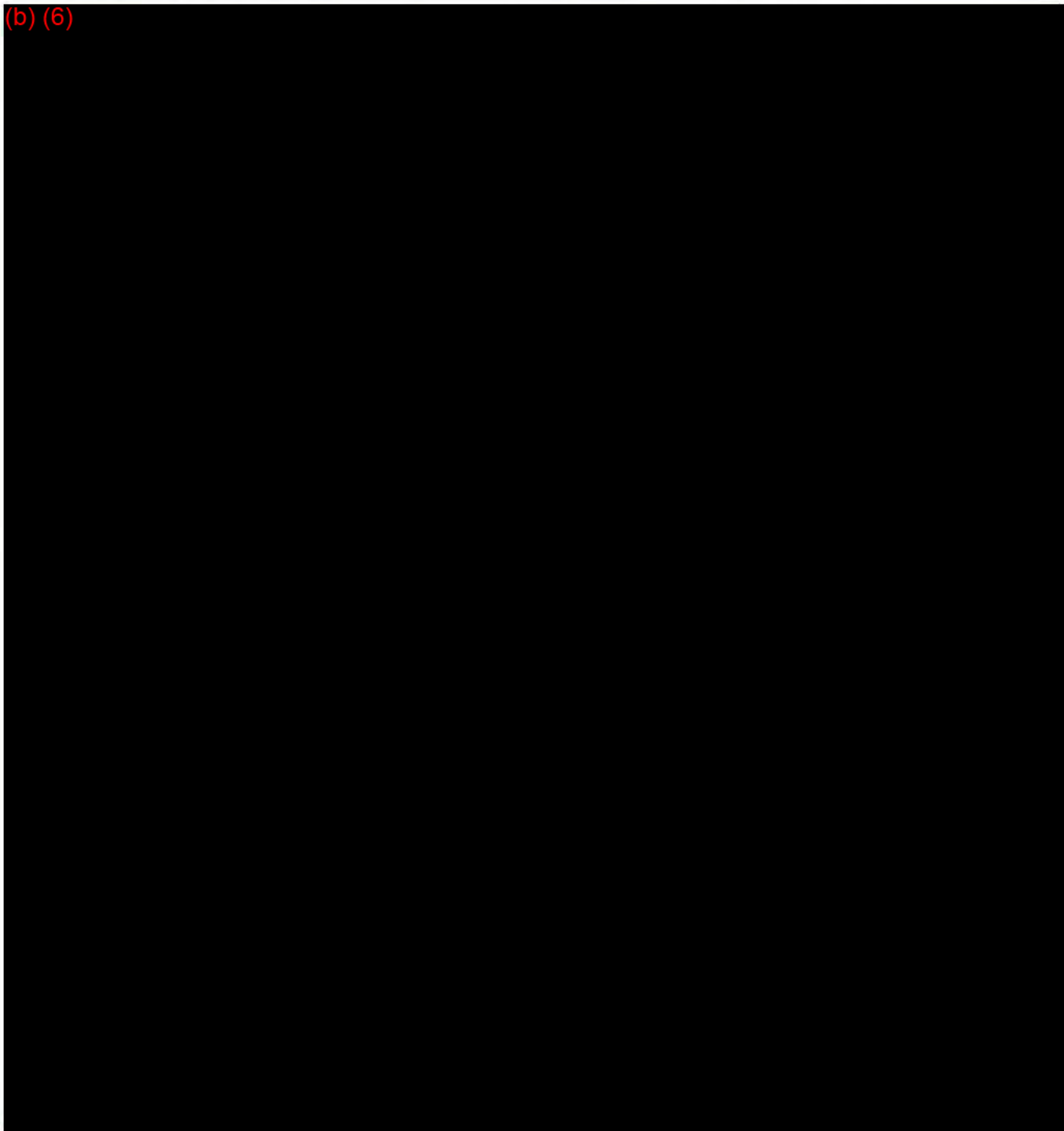
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- L. (U) Executive Order 12333, as amended;
- M. (U) Executive Order 13231, 66 Fed. Reg. 53063, Oct. 16, 2001, as amended;
- N. (U) Executive Order 13354, National Counterterrorism Center, 69 Fed. Reg. 53589, dated Aug. 27, 2004;
- O. (U) Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, 70 Fed. Reg. 62023, dated Oct. 25, 2005;
- P. (U) HSPDs-2, -6, and -11, all of which direct the strengthening of screening and analysis programs to detect, identify, and interdict individuals entering or already within the United States who pose a terrorist threat to national security;
- Q. (U) 8 C.F.R. § 208.6;
- R. (U) Memorandum of Understanding between the Intelligence Community, Federal Law Enforcement Agencies, and DHS Concerning Information Sharing, dated March 4, 2003;
- S. (U) Memorandum of Understanding on the Integration and Use of Screening Information to Protect Against Terrorism, as amended by Addendum B, effective Jan. 2007;
- T. (U) Memorandum from the Secretary of DHS, Disclosure of Asylum-Related Information to U.S. Intelligence and Counterterrorism Agencies, dated April 18, 2007;
- U. (U) Routine use "H" of the Arrival and Departure Information System (ADIS) System of Records Notice, 72 Federal Register 47057, dated August 22, 2007;
- V. (U) The DHS Federal Information Sharing Environment Privacy and Civil Liberties Protection Policy, Privacy and Civil Liberties Guidance Memorandum 2009-01;
- W. (U) The NCTC Federal Information Sharing Environment Privacy and Civil Liberties Protection Policy
- X. (U) ODNI Instruction No. 2006-3, Protection of Privacy and Civil Liberties, 22 February 2006.

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5. (U) RESPONSIBILITIES.

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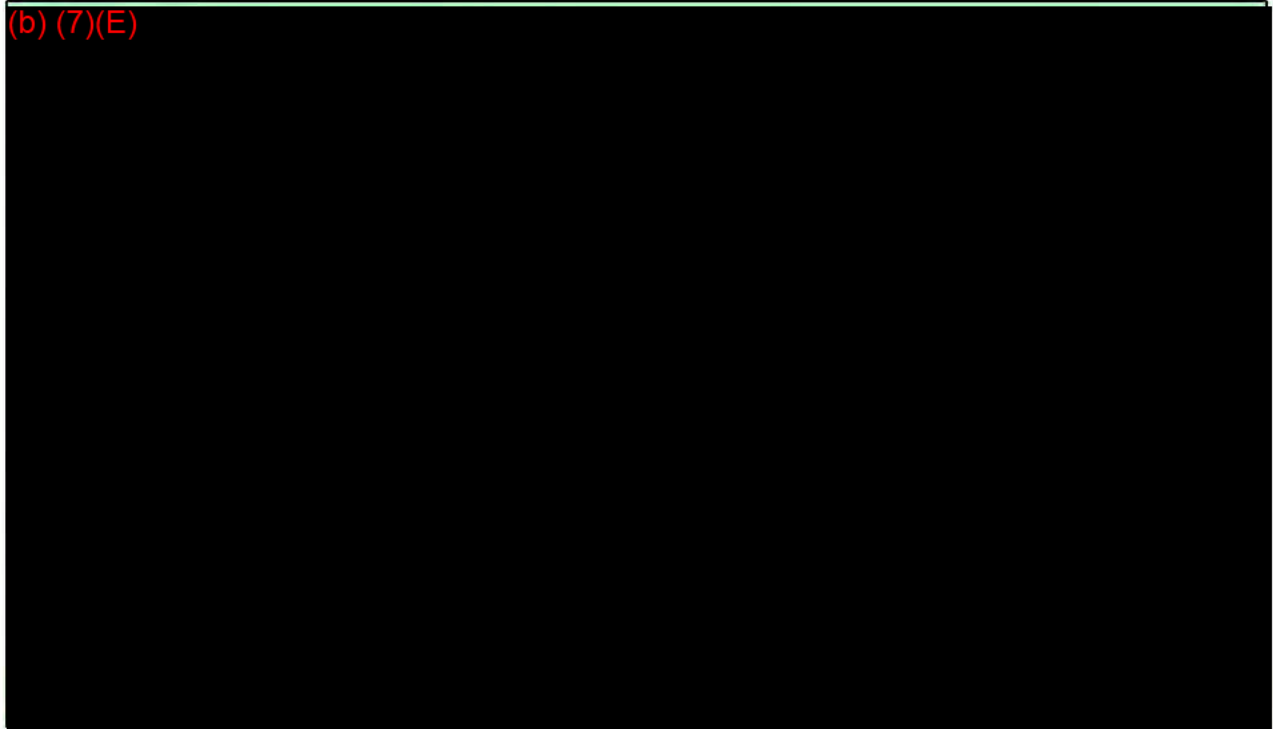


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C. (U) USE.

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D. (U) RECORDS RETENTION.

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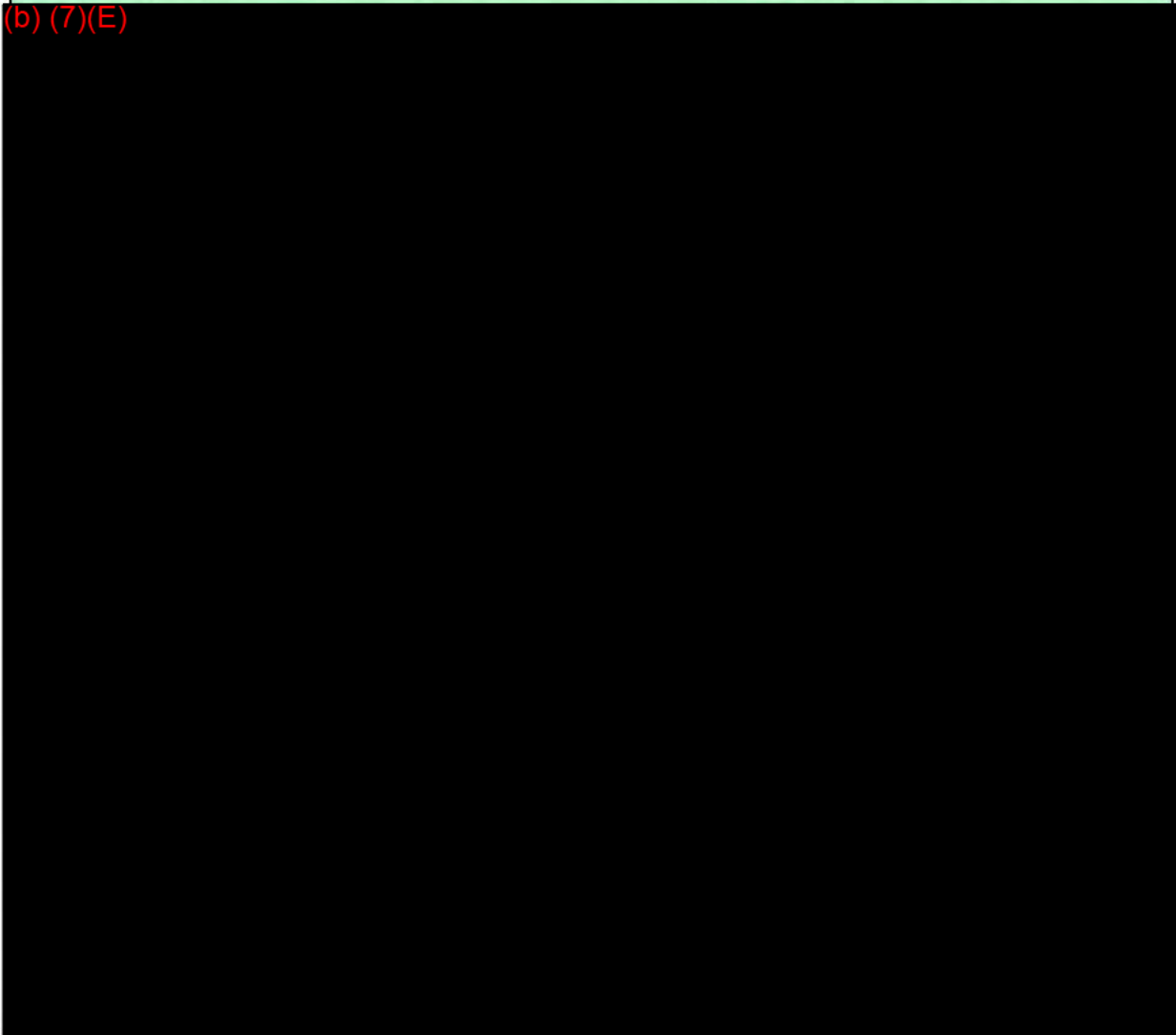


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E. (U) DISSEMINATION.

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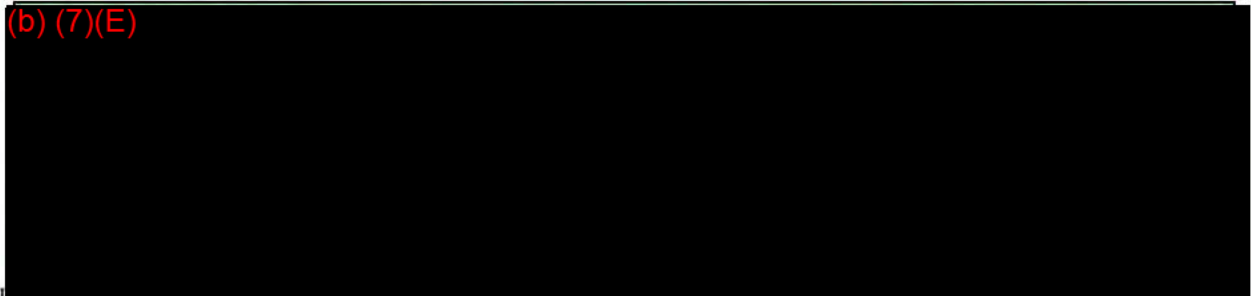
F. (U) SUPPORT.

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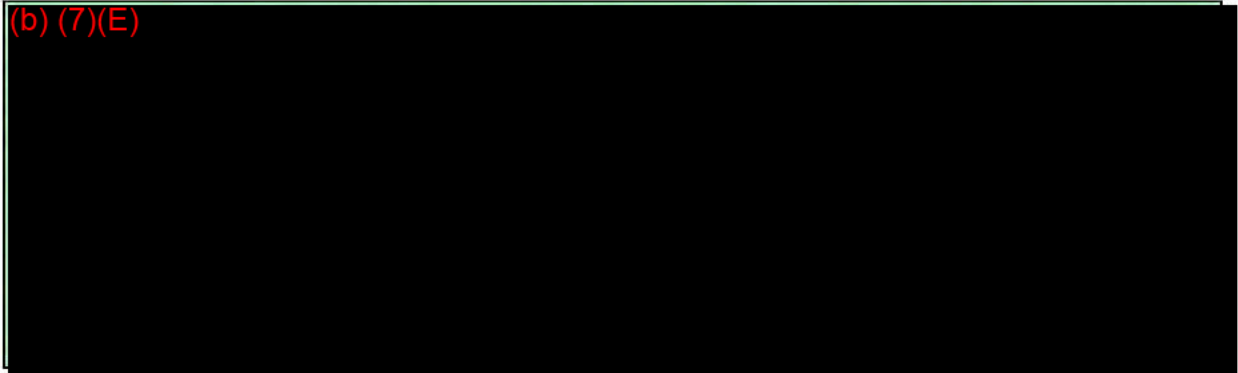
G. (U) SAFEGUARDS.

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H. (U) TRAINING.

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I. (U) PRIVACY.

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J. (U) CORRECTION AND REDRESS.

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K. (U) COOPERATION/DECONFLICTION.

(U) The Parties shall work together to the greatest extent possible to achieve the maximum preventative, preemptive, and disruptive effect on potential threats, including coordinating simultaneous and complementary activities when appropriate. The parties further agree to coordinate operational activities to the greatest possible extent when based upon the information exchanged pursuant to this MOU. Specifically, each party shall take all reasonable steps to ensure coordination and de-confliction of homeland security-related law enforcement or intelligence, or other activities under its authority, with such activities of the other party.

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L. (U) REPORTING AND COMPLIANCE.

(U) Each organization will report privacy or security incidents in accordance with their own privacy or security procedures. However, the Parties must notify each other immediately by telephone and e-mail once a Party becomes aware of any breach in security, especially those that result in unauthorized use or disclosure of any PII or other information shared under this MOU.

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(U) NCTC must perform system audits to identify any security breaches and ensure that any PII is shared consistent with applicable laws, regulations, and guidelines. Where a privacy or security incident, including the unauthorized disclosure of information specifically involves data related to asylum seekers, refugee applicants, Asylees, or Refugees, NCTC must notify USCIS, ICE, and the Chief Privacy Officer, within 24 hours after becoming aware of the incident.

(U) To further safeguard the privacy, security, confidentiality, integrity and availability of the connected systems and the information they store, process and transmit, the Parties agree to maintain records of information provided to each other under the terms of this Agreement consistent with applicable law, as well as established records retention policies and guidance of the respective Parties.

(U) The Parties shall designate responsible officials to meet annually, or at the request of any Party, to discuss and review the implementation of this MOU. Any disagreement over the implementation of this MOU shall be resolved in accordance with Section 10 Issue Resolution, below.

(U) NCTC must develop methods to track and report results from the use of ADIS data to DHS on a quarterly basis. The content of these reports will be detailed in this MOU's Appendix C.

M. (U) AUDITING.

(U) Both Parties shall work together to develop review standards to conduct audits of their compliance with the privacy, redress, and security requirements set forth in this Agreement. When these review standards are developed, they will be incorporated as an appendix to this agreement.

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6. (U) POINTS OF CONTACT.

(U) The individuals responsible for overseeing implementation of this MOU and the identification and resolution of issues hereunder shall be:

Director, Information Sharing and Intelligence Enterprise Management Division
Department of Homeland Security
245 Murray Lane SW, Bldg 14,
Washington DC 20528

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Assistant Director for Program Integration and Mission Services
National Protection and Programs Directorate/US-VISIT Program
Department of Homeland Security
1616 N. Fort Myer Drive
Arlington, VA 22209

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Chief, Information Sharing Program Office
National Counterterrorism Center

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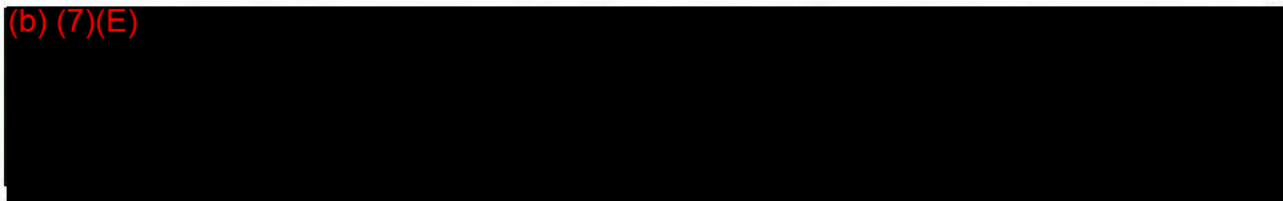


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7. (U) SEVERABILITY.

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8. (U) NO PRIVATE RIGHT.

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9. (U) FUNDING.

(U) This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Unless otherwise agreed to in writing, each Party shall bear its own costs in relation to this MOU. Expenditures by each Party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The Parties expressly acknowledge that this in no way implies that Congress will appropriate funds for such expenditures.

10. (U) ISSUE RESOLUTION.

(U) Throughout the course of this agreement, issues such as scope of the agreement, interpretation of its provisions, unanticipated technical matters, including improvements, and other proposed modifications can be expected. Both parties agree to appoint their respective points of contact to work in good faith towards resolution.

11. (U) EFFECTIVE DATE.

(U) The terms of this agreement will become effective upon the signature of the second party to this MOU.

12. (U) MODIFICATION.

(U) This agreement or any appendices thereto may be modified upon the mutual written consent of the parties, which shall be recorded and incorporated into this MOU as a separate appendix.

13. (U) TERMINATION.

(U) The terms of this agreement, as modified with the consent of both Parties, will remain in effect for three (3) years from the EFFECTIVE DATE. The agreement may be extended by mutual written agreement of the parties. Either Party upon thirty (30) days' written notice to the other Party may terminate this agreement.

14. (U) ENTIRE AGREEMENT.

(U) This MOU, and any concurrently or subsequently approved appendices, constitutes the entire agreement between the parties.

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(U) APPROVED BY:

(U) This MOU represents the understanding reached between DHS and NCTC. By signing below, the Parties have caused their duly authorized representatives to execute this MOU.

FOR THE U.S. DEPARTMENT OF HOMELAND SECURITY

(b) (6)
[Redacted Signature]

8/26/10
[Date]

Deputy Under Secretary for Intelligence & Analysis
(Plans, Policy, and Performance Management)

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[Redacted Signature]

AUG 27 2010
[Date]

Director
US-VISIT Program

FOR THE NATIONAL COUNTERTERRORISM CENTER

[Signature]

Russell E. Travers
Deputy Director, Information Sharing and Knowledge Development

27 Aug 2010
[Date]

[Signature]

Andrew M. Liepman
Deputy Director for Intelligence

27 Aug 2010
[Date]

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APPENDIX B (U)

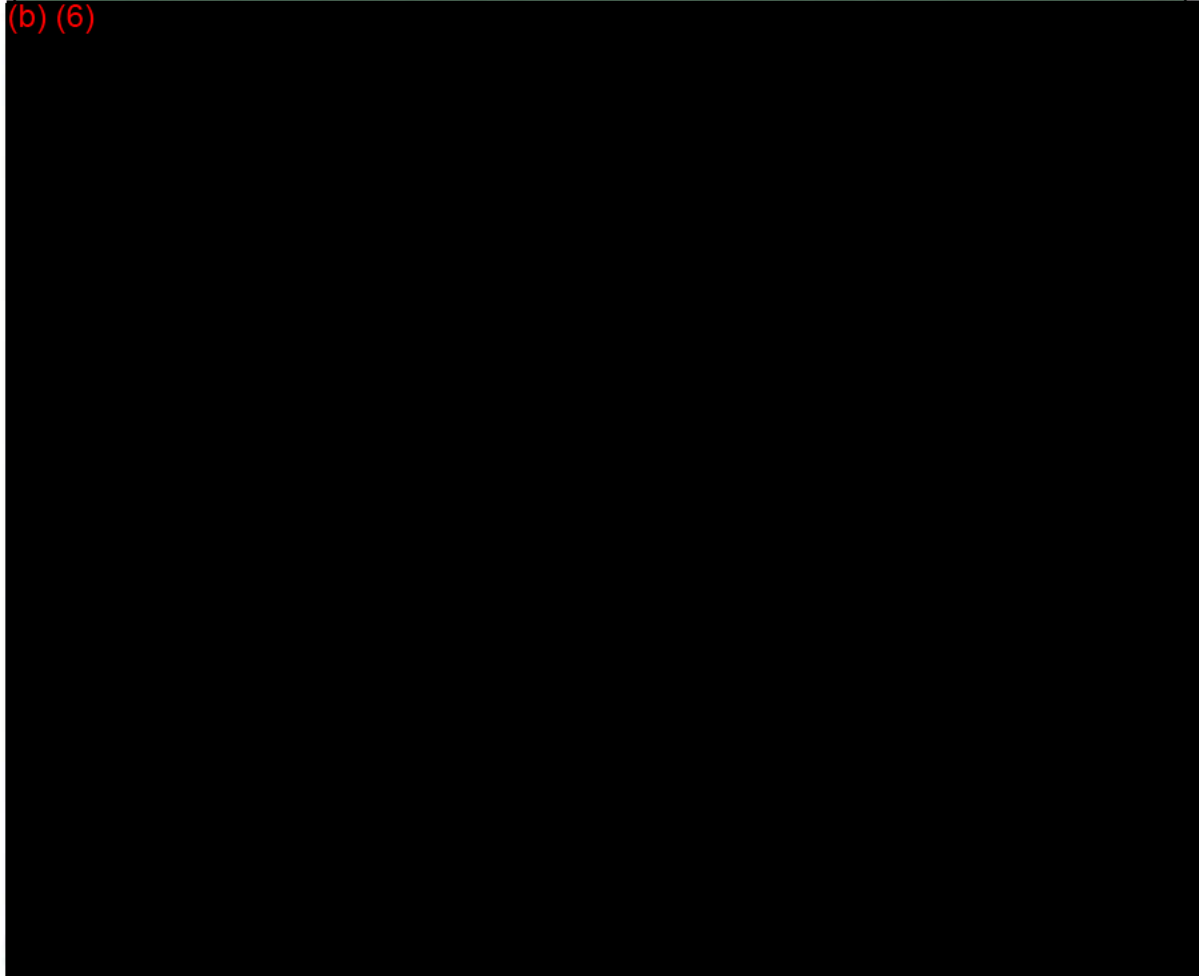
(U) APPENDIX B: ADIS Data Transfer, Processing and Handling Procedures

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(U) DELIVERY OF DATA.

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APPENDIX C (U)

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APPENDIX D (U)

(U) APPENDIX D: NCTC AG Guidelines Implementing Instructions

(U) APPENDIX D: NCTC Implementing Instructions for the MOA between the AG and the DNI on Guidelines for Access, Retention, Use and Dissemination by the NCTC of Terrorism Information Contained within Datasets Identified as Including Non-terrorism Information and Information pertaining Exclusively to Domestic Terrorism, November 2008

(U) With respect to the Department of Homeland Security's provision of United States person, refugee, or asylee information from their Arrival and Departure Information System, NCTC will review and process all the provided information within 30 calendar days of receipt from DHS to determine whether the information, in whole or in part, constitutes terrorism information. Records determined to be terrorism information will be retained, used and disseminated according to the conditions set forth in the underlying agreement. Records determined not to constitute terrorism information will be immediately deleted within 30 days of receipt.