

**UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

In the Matter of:

(b)(6)

Respondent

Docket Number:

12-TSA-0040

12-AVW-0001

**HON. BRUCE T. SMITH
Administrative Law Judge**

DECISION AND ORDER

Summary

The Transportation Security Administration (TSA or Agency) initiated this administrative proceeding against (b)(6) (Respondent) based on two separate actions. TSA issued an Initial Determination of Threat Assessment (IDTA) concerning Respondent's airman certificate and an Initial Determination of Eligibility (IDE) concerning Respondent's aviation worker credential.

On November 12, 2012, the undersigned consolidated these actions for adjudication. The Decision and Order will be issued in two versions: 1) a classified version served upon TSA and 2) unclassified version served on all parties.¹ The purpose of the two Decisions is to ensure compliance with 49 U.S.C. §§114(r), 46111(g)(a)(2); 49 C.F.R. §§1515.5(e), 1515.11(e)(1)(i – ii) - 3, 1520, 1540.117, 1572; Executive Order 12968, §1.1(d); the TSA Interim Rules (f)(1), (i)(4);² and Security Threat Assessment and Redress Procedures for Holders of Airport-Approved and/or Airport-Issued Personnel

¹ The unclassified version is identical to the classified version. The only difference is the extraction of classified material in the unclassified Decision and Order.

Identification Media (SIDA Procedures), III(g).

According to TSA guidelines a decision must be issued within 30 days of the closing of the record. The delay in issuing this decision was occasioned by the physical and legal logistics difficulties inherent to a classified hearing and the subsequent drafting and editing of this decision.

Procedural History

On February 5, 2010, TSA issued an IDTA and an IDE to Respondent. The IDTA advised Respondent that based upon materials available to TSA, it determined Respondent posed, or is suspected of posing, a security threat to the United States. The IDTA further advised Respondent that as a result of its determination, TSA was initiating the process of revoking all Respondent's Federal Aviation Administration (FAA) certificates. The IDE advised Respondent he may not be eligible to hold an airport-approved and/or airport-issued personnel identification media as the TSA will not authorize an airport-approved and/or airport-issued personnel identification media if TSA determines Respondent does not meet all Security Threat Assessment (STA) eligibility requirements.

In response to the IDTA and IDE, Respondent sent TSA requests for all releasable materials. On April 10, 2012, TSA sent Respondent the redacted releasable materials.

On May 22, 2012, the Agency issued a Final Determination of Eligibility (FDE) finding Respondent did not meet the eligibility requirements to hold airport-approved and/or airport-issued personnel identification media. In response to both the IDTA and the FDE, Respondent requested a hearing before an Administrative Law Judge (ALJ).

²TSA's Interim Rules provide that when the TSA determines that a citizen or a national of the United States, who holds or is applying for a certificate, rating, or authorization issued by the Federal Aviation

On May 22, 2012,³ and November 16, 2012,⁴ the ALJ Docketing Center assigned the above-numbered actions to the undersigned.⁵

Thereafter, the court conducted a series of telephonic prehearing conferences with the parties to discuss discovery and matters pertaining to the administrative hearing. On June 11, 2012, TSA provided heavily redacted supplementary releasable materials to Respondent.

On July 27, 2012, Respondent filed a Motion to Compel Production of Classified Documents and Witnesses (Motion to Compel). Respondent's Motion to Compel contended that without access to the unredacted materials gathered by TSA, Respondent was effectively denied due process of law. On September 18, 2012, the Court denied Respondent's Motion to Compel.

On December 18, 2012, the court convened the administrative hearing in the above-captioned matters at TSA Headquarters in Arlington, Virginia.⁶ Peter Zolper represented TSA at the hearing. Respondent and his attorneys, (b)(6) and (b)(6) appeared at the hearing telephonically. In an effort to ensure Respondent's due process rights with TSA's obligation to protect classified information, the court conducted a bifurcated hearing, to wit: an open session and closed sessions.

During the course of the open session, TSA presented the unclassified testimony of Russell Roberts and offered four items of documentary evidence into the record.

Administration, pursuant to title 14 of the Code of Federal Regulations, poses a security threat.

³ The adverse action concerning Respondent's airman certificates was assigned docket number 12-TSA-0040.

⁴ The adverse action concerning Respondent's aviation worker credential was assigned docket number 12-AVW-0001.

⁵ Of note, Respondent's attorney transmitted his appeal of the FDE directly to the undersigned requesting consolidation of the two cases. On November 12, 2012, the court, prior to receiving official assignment of AVW-0001, issued an order consolidating the matters.

⁶ A duly certified court-reporter with an appropriate security clearance transcribed the entire hearing.

Respondent testified at the open session and offered the stipulated testimony of (b)(6) (b)(6) and (b)(6). The court admitted all documents offered into evidence during the open session.

Thereafter, the court adjourned the open session of the hearing and proceeded to convene the closed session of the hearing.⁷ Accordingly, Respondent, Respondent's counsel, and the public were excluded from the remainder of the hearing as the Agency's proof consisted of classified materials and testimony. During the course of the closed sessions, TSA presented the testimony of one additional witness and offered five items of documentary evidence into the classified record.

At the conclusion of the December 18, 2012, hearing, the court requested TSA provide additional information in support of the allegations. Thereafter, Respondent filed a Motion for Additional Releasable Materials. The court deferred ruling on that motion until it had an opportunity to review the additional information, *in camera*, at TSA Headquarters.

On April 12, 2013, the court reconvened the administrative hearing at TSA Headquarters in Arlington, Virginia, for the express purpose of receiving the additional information as discussed, *supra*.⁸ Initially, the court intended to resume the hearing in two parts: an open and closed session. Robert Seasonwein, Esq. appeared on behalf of the TSA. Respondent's counsel was unable to appear due to a family emergency. Therefore, the court proceeded with the closed session only.⁹

During the closed session, the court reviewed the additional information presented

⁷ The closed session is the same *ex parte*, *in camera* review described in TSA's Interim Rules.

⁸ A duly certified court-reporter with an appropriate security clearance transcribed the entire hearing.

by TSA. Due to the classified nature of the documents offered at the April 12, 2013 closed session of the hearing, the court DENIED Respondent's Motion for Additional Releasable Materials.

On April 25, 2013, the court convened a post-hearing teleconference with the parties. The court afforded both parties an opportunity to submit proposed findings of fact and conclusions of law, together with their respective written, closing arguments. The court requested the parties make their final written submissions by May 17, 2013, at which time the Court closed the administrative record and commenced deliberations.

After a through review of the entire record including all documentary and testimonial evidence, the undersigned finds that TSA demonstrated, by more than a scintilla of evidence, that Respondent poses a security threat as defined in 49 C.F.R. §1540.117(c).

Findings of Fact

1. On February 12, 2004, Respondent was issued a SIDA badge. On December 28, 2009, Respondent renewed or received a reissuance of a SIDA badge. See Agency Ex. 2.
2. On August 29, 2000, Respondent was issued an FAA Mechanics Certificate. See Agency Ex. 2.
3. Bombardier Aerospace in Ft. Lauderdale, Florida, employed Respondent as an airplane mechanic from 2004 to 2010. See Transcript 12/18/12 pg 70-72.
4. Although Respondent was born in Trinidad and Tobago, Respondent is a U.S. Resident. See Transcript 12/18/12 pg 72.

⁹ As discussed, *supra*, Respondent, Respondent's counsel, and the public were excluded from the closed session of the hearing as the Agency's proof consisted of classified materials and testimony. Of further

5. In 2003, Respondent applied for U.S. citizenship. Id.
6. In 2005, Respondent completed his final interview in the U.S. citizenship process and was advised to expect a letter from Immigration and Naturalization Services (INS) providing him with a U.S. citizenship swear-in date within 30 days from the date of the interview. See Transcript 12/18/12 pg 72-74.
7. To date, Respondent has not received a letter from INS providing him with a U.S. citizenship swear-in date; however, Respondent did receive a letter from INS stating that he had been selected for additional screening. Id.
8. In late 2008 or early 2009, Respondent's uncle, (b)(6) offered to contact his friend, FBI Special Agent (b)(6);(b)(7)(C) for assistance with obtaining citizenship. See Transcript 12/18/12 pg 72-75.
9. Respondent's uncle, (b)(6) contacted FBI Special Agent (b)(6);(b)(7)(C) and arranged a meeting at his home in January or February 2009, between Special Agent (b)(6);(b)(7)(C) and Respondent. See Transcript 12/18/12 pg 75-76.
10. Beginning in January or February 2009, Respondent engaged in a series of meetings with various FBI Special Agents, including Special Agents (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) See Transcript 12/18/12 pg 76-78.
11. Respondent's second encounter with the FBI included Special Agents (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) At that meeting, the Special Agents showed him "a few names" on a sheet of paper and asked Respondent if he "[had] ever seen these names or heard them before or ever spoken to these people." Respondent looked through the list and advised the Special Agents "no." See Transcript 12/18/12 pg 78.
12. At the second meeting with Respondent, Special Agents (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

note, the closed session is the same *ex parte*, in camera review described in TSA's Interim Rules.

Acres also questioned Respondent about his family and his family's ties. See Transcript 12/18/12 pg 79-81.

13. At the (approximate) fifth meeting, Respondent met with Special Agent (b)(6);(b)(7)(C) and another unidentified male Special Agent. During the fifth meeting, the Special Agents asked Respondent who he knew at his Islamic Center and showed him various photographs and asked if Respondent if he recognized any of the people in those photographs. Respondent identified one person in a photo as a person he recognized from his mosque. Respondent further stated that on one occasion he stopped to provide mechanical assistance to this man. See Transcript 12/18/12 pg 84-87.

14. At the final meeting, Respondent met with Special Agent (b)(6);(b)(7)(C) and another unidentified male Special Agent. The Special Agents questioned Respondent about his religious beliefs, his religious leaders, as well as the meaning of Jihad. Respondent explained to the Special Agents, "I am not an Arab but my understanding about [J]ihad is that it's a struggle." Respondent explained his interpretation of Jihad as, "I get up in the morning. I get up at 6:00 in the morning and I have to go to work at 7:00, and that's a struggle. And I say I have to feed my family, but in order to feed my family I must do this task, and that is my understanding of it." See Transcript 12/18/12 pg 89-94.

15. Russell Roberts is the general manager of security threat assessment operations for TSA. See Transcript 12/18/12 pg 20.

Discussion

In this case, TSA seeks removal/suspension of Respondent's FAA-issued airman certificate and Respondent's SIDA badge. Both of TSA's removal/suspension actions

arise out of a singular investigation. However, the procedures for the removal/suspension of each document are covered by distinct, yet similar, instructions. Thus, for the sake of judicial economy, the court amalgamated the two sets of procedural rules.

Throughout, the undersigned held TSA to its burden to establish, by substantial evidence, that Respondent poses a security threat. As explained by the Supreme Court, “substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 229 (1938). See also Martin v. Ligon Preparation Company, 400 F. 3d 302, 305(6th Cir. 2005), citing Peabody Coal Company v. Groves, 277 F.3d 829, 833 (6th Cir. 2002). In determining whether evidence presented during a case is enough to amount to substantial evidence the reviewing authority should assess “the logical connection between the evidence and conclusions.” Kopff v. District of Columbia Alcoholic Beverages Control Board, 381 A.2d 1372, 1387 n. 26 (D.C. 1977).

Title 49 C.F.R. §1540.117(c) states a person is a “security threat” if that person is suspected of posing, or is known to pose:

- A threat to transportation or national security;
- A threat of air piracy or terrorism;
- A threat to airline or passenger security; or
- A threat to civil aviation security.

Accordingly, the court must weigh the TSA’s evidence to determine whether substantial evidence exists to believe Respondent is a security threat.

During the course of the December 18, 2012, open session, Respondent testified on his own behalf. In sum, he testified that he poses no threat to the United States. Respondent’s own testimony revealed several meetings he attended with FBI agents.

Respondent explained that the FBI Agents wanted to him to identify certain individuals by name and by photograph and also asked Respondent to reveal his connection to those individuals. When presented with a list of names Respondent stated he didn't recognize any of the names. See Transcript 12/18/12 pg 80-81.

However, when shown photographs, Respondent claimed he recognized certain individuals as persons who attended the Sunrise Mosque, the same mosque Respondent sometimes attends. See Transcript 12/18/12 pg 85-86.

Specifically, Respondent explained his connection to one individual in a particular photo was an individual he has seen praying at the mosque and that the individual also owned a Honda Civic. See Transcript 12/18/12 pg 86. Respondent testified that, on one particular occasion, he saw that individual trying to fix his Honda Civic. Respondent testified that, inasmuch as he was a mechanic, he stopped and offered the subject help with his car. See Transcript 12/18/12 pg 86-87. Respondent testified that he never actually helped the individual fix his car, but did tell the individual "here's my number, if you want to fix it, just give me a call." See Transcript 12/18/12 pg 87.

Respondent further testified that the FBI agents questioned him concerning his religion and personal beliefs. The Agents asked him what he believed in, which Prophets he followed, and any Imam lectures he had listened too or attended. Respondent testified that he was also asked about his views on certain quotes from the Quran. Finally, Respondent testified that FBI Agents asked Respondent about Jihad. Respondent testified that he responded:

I am not an Arab but my understanding about Jihad is it's a struggle, and basically, I don't know. I gave an example. Okay. I get up in the morning. I get up at 6:00 in the morning and I have to go to work at 7:00, and that's a struggle. And I say I have to feed

my family, but in order to feed my family I must do this task, and that is my understanding of it [Jihad].

See Transcript 12/18/12 pg 94.

The court finds Respondent's testimony generally credible. All of Respondent's statements concerning his meetings with FBI agents, his description of the encounters, and the subjects of the questioning seem logical. However, Respondent's statements regarding his definition of Jihad gives the court pause. Respondent's testimony in this regard seemed evasive and uncertain. Although it is not reflected in the above quote, the court heard Respondent pause during his testimony and then stated "basically, I don't know. I gave an example. Okay" prior to giving his definition. The court was left with a troubling impression that Respondent was trying to provide the court with a benign definition of Jihad. His explanation of Jihad simply lacked credibility.

Conclusions of Law

1. At all times relevant to this matter and prior to the of initiation of the Initial Determination of Threat Assessment (IDTA) and the Initial Determination of Eligibility (IDE), Respondent held a SIDA badge and a FAA Mechanics Certificate
See Agency Ex. 2.
2. Respondent poses, or is properly suspected of posing, a Security Threat as defined in 49 C.F.R. §1540.117(c).

Order

IT IS HEREBY ORDERED, that all credentials held by Respondent (b)(6) (b)(6) are **REVOKED**.

IT IS FURTHER ORDERED, that Respondent (b)(6) must surrender all credentials, certificates or any other government issued aviation identifications to the TSA immediately.

Dated this 19th day of November 2013.

/S/ Bruce T. Smith
HON. BRUCE TUCKER SMITH
United States Administrative Law Judge

Certificate of Service

I hereby certify that I have served the forgoing **Unclassified Decision and Order** upon the following parties in this proceeding at the addresses indicated below:

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Done and dated this the 20th day of November, 2013,
at Washington DC.


Lauren S. Staiti
Attorney Advisor

DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY OVERSIGHT BOARD

In Re (b)(6) 2011-TSOB-0100

FINAL DECISION

Per curiam.

This is a proceeding under the provisions of section 46111 of title 49 of the United States Code. The Honorable Parlen L. McKenna issued a decision and order on April 14, 2010. On June 2, 2011, the Docket Clerk notified the parties that the Transportation Security Oversight Board (TSOB) was in receipt of (b)(6) notice of appeal. On August 19, 2011, (b)(6) filed his brief with the TSOB Docket Clerk and on October 7, 2011, the Transportation Security Administration (TSA) filed its reply brief. On December 8, 2011, the parties appeared telephonically for oral argument before the TSOB. Pursuant to 49 U.S.C. § 46111, the TSOB has jurisdiction over this proceeding.

This final decision, dated January 30, 2012, is approved and signed by the three duly appointed members who were designated to serve as the TSOB panel to review this case consistent with 49 U.S.C. § 46111(d).

BACKGROUND

A. Facts and Procedural History

Appellant, (b)(6) born in Iran, came to the United States in 1976 to study aircraft maintenance. (Tr. at 428-29.) After completing his studies in the U.S., (b)(6) returned to Iran in 1977 and worked as a pilot for a defense contractor under contract to the Iranian government. (*Id.* at 429.) (b)(6) also worked as a translator and consultant for the defense contractor, which was in the business of providing missile parts to the Iranian Air Force. (*Id.* at 430-32.) During this time, (b)(6) assisted the U.S. military attaché. (*Id.*) In 1979, at the time of the Iranian revolution, Iran had recently purchased its fleet of F-14s and AIM-54 Phoenix missiles. (*Id.* at 434.) (b)(6) assisted the U.S. military attaché and U.S. Government contractors in efforts to sabotage the Phoenix missile guidance systems. (*Id.* at 434-39.)

Based on (b)(6) association with the U.S., during the Iranian revolution, (b)(6) felt that he and his family were in danger. (*Id.*) In 1979, given his profession as a pilot, (b)(6) was able to escape from Iran. (*Id.* at 439-40.) (b)(6) and his family lived in Milan, Italy, where he worked as a pilot and claims to have (b)(6)

(b)(6) (*Id.* at 441, 447.)

In 1993, (b)(6) immigrated to the U.S. and became a U.S. citizen a few years later. (*Id.* at 428-29.) While living in the U.S., (b)(6) held a number of Federal Aviation Administration (FAA)-issued airman certificates and among other things, worked as a (b)(6) (b)(6) (*Id.* at 47; Stipulation ¶ 4.) On June 5, 2006, (b)(6) pleaded guilty to violating the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-1705, for selling airplane parts to Iran, which has been designated by the U.S. Department of State as a state sponsor of terrorism. (Tr. at 257; U.S. DEP'T OF STATE, "State Sponsors of Terrorism," (Apr. 30,

2009), available at <http://www.state.gov/s/ct/rls/crt/2008/122436.htm>; TSA Ex. 8.) Specifically, (b)(6) admits that, on January 6, 2006, he attempted to ship items to Germany, which he believed would be forwarded to Iran. (TSA Ex. 15, at 18.) On at least two occasions, (b)(6) purchased airline tickets from the U.S. to Germany, buying separate tickets from Germany to Iran. (TSA Ex. 15, at 18; *Id.* at 28.) (b)(6) was aware of the export laws, but lied about the parts that he was shipping to avoid being caught by “customs.” (TSA Ex. 15, at 20.) During (b)(6) proffer session, he stated that he had become aware of Iranian military/government “shopping lists” for airplane parts that it needed. (Tr. at 245-47, 249-50, 252.) Authorities seized such a “parts list” from (b)(6) residence which contained handwritten notes describing the parts and listing vendors who could provide these parts. (*Id.* at 233-44) (b)(6) was primarily motivated by money when he knowingly and willfully attempted to ship aircraft parts to Iran. (*Id.* at 118-19, 307, 311-13, 393-96.)

On May 7, 2007, (b)(6) was sentenced to 24 months in prison and 3 years of supervised release. (Stipulation ¶ 11.) (b)(6) entered prison in September 2007. (Stipulation ¶ 7.) After (b)(6) was released from prison in 2009, he resumed his flying activities under the proper certification of the FAA. (b)(6) Ex. K.)

On June 24, 2009, the Transportation Security Administration (TSA) learned that (b)(6) was convicted of attempting to sell airplane parts to Iran. (Tr. at 42-43.) TSA confirmed (b)(6) conviction by using various government systems and reviewed the information regarding (b)(6) criminal activity. (*Id.* at 43-47; TSA Ex. 6-7, 31-32.) In response, on June 25, 2009, TSA issued its Initial Notification of Threat Assessment (INTA) which is the basis for (b)(6) appeal. (TSA Ex. 2, (b)(6) Ex. P.)

In the INTA, TSA stated its determination that (b)(6) poses, or is suspected of posing, a security threat, and was therefore initiating the process to revoke (b)(6) airman certificate. That same day, the Federal Aviation Administration (FAA) issued its Immediately Effective Order of Suspension to (b)(6) which suspended his airman license based on TSA's initial determination that (b)(6) poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. (TSA Ex. 4, (b)(6) Ex. Q.)

On August 5, 2009, after requesting and receiving the releasable material upon which TSA's threat assessment was based, (b)(6) requested a hearing under 49 U.S.C. § 46111. On August 20, 2009, this matter was assigned to an administrative law judge (ALJ). On November 28, 2009, (b)(6) filed his trial brief arguing that (1) TSA lacked substantial evidence to support its determination that (b)(6) was a security risk, and that (2) TSA did not provide evidence that (b)(6) committed acts of terrorism in the past or has made credible threats to commit such acts in the future.

On December 1, 2009, the hearing commenced before the Honorable Parlen McKenna. On April 14, 2010, ALJ McKenna issued his Decision and Order finding that there was a preponderance of substantial, credible and reliable evidence supporting the TSA's determination that (b)(6) poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. (ALJ Decision & Order 52-53.) Accordingly, the ALJ's decision constituted TSA's Final Notice of Threat Assessment which required the FAA to revoke (b)(6) airman certificate. (b)(6) timely filed his notice of appeal of the ALJ's decision before the TSOB.

B. The Administrative Law Judge (ALJ) Opinion

The issue before the ALJ was whether TSA sufficiently established that (b)(6) poses, or can be suspected of posing, a risk of air piracy, terrorism, or a threat to airline or passenger

safety so that the action taken against his airman certificates is warranted. (ALJ Decision & Order 36.) To answer this question, the ALJ first examined the text of Section 46111 and concluded that it is “a broad statute, encompassing a range of risks and threats that must be construed to encompass not only direct acts of air piracy and terrorism and threats to the aviation system generally, but also reasonable suspicions of the same, and the activities of those who would provide material support and/or aid and abet in the commission of the same.” (ALJ Decision & Order 49). As the statute itself does not define the terms used, the ALJ interpreted the terms in light of Congress’ intent in responding to the September 11th terrorist attacks. In other words, the ALJ concluded that the undefined terms must be construed broadly to encompass threats to air transportation or national security in accordance with Congress’ intent in passing Section 46111. (*Id.* at 9.)

The ALJ defined “air piracy” as “any seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force or violence, threat of force or violence, or by any form of intimidation, and with wrongful intent.” (ALJ Decision & Order 10.) “Terrorism” was defined as “any activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States . . . and appears to be intended to intimate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnapping. This definition encompasses a security risk/threat to transportation and/or national security.” (*Id.* at 12.) The ALJ determined that TSA need only prove that there is a risk of involvement in an act of terrorism, either by providing material support for such a terrorist act or by aiding and abetting such an act of terrorism. (*Id.* at 15.) The definition of “threat to airline or passenger safety” included “any activity within the special aircraft jurisdiction of the United States that involves a

violent act or threatened act of violence directed at any air transportation system, including its equipment, routes, operating personnel and management, or any activity dangerous to those traveling by such air transportation system, in violation of the laws of the United States or of any State.” (*Id.*)

Finally, the ALJ defined “pose” and “suspected of posing” a risk. The ALJ found that the standard of “posing a risk” is a broad standard encompassing the idea that TSA must show that Tabib offers or represents a possibility of danger. The ALJ decided that “suspected of posing” a risk is an even broader standard, but TSA must have some “grounding in articulable and reasonable facts on the record” and cannot be baseless under general principles of due process. (*Id.* at 20.)

Under a substantial evidence standard, the ALJ’s analysis focused on two main issues: (1) the extent to which Tabib’s past criminal conduct indicated a risk of air piracy, terrorism, or a threat to airline or passenger safety; and (2) the risk or threat that (b)(6) poses, or can be suspected of posing, under the terms of Section 46111. As for (b)(6) past criminal conduct in knowingly selling aircraft parts to Iran, the ALJ found that (b)(6) “demonstrated willingness to violate the laws of the United States” were “in direct opposition to U.S. security interests.” (*Id.* at 39.) The ALJ pointed out that the issue is not whether (b)(6) will commit another criminal offense by selling aircraft parts to Iran, but whether (b)(6) behavior demonstrates or reveals a risk or threat to security. (*Id.* at 45.) The ALJ found it important that (b)(6) was highly motivated by money and was willing to take risks to knowingly support a state sponsor of terrorism for financial gain. The ALJ recognized that TSA’s “concerns are not so much that (b)(6) would commit an act of terror directly (i.e., fly a plane into a building or commit an act of air piracy or otherwise use a plane himself in the commission of a terrorist act), but rather that

he represents a significant “insider threat” or would aid another in committing an act contemplated by Section 46111.” (*Id.* at 40.)

In analyzing the risk or threat that (b)(6) poses, or can be suspected of posing, the ALJ looked to (b)(6) “insider” connections as a licensed pilot and flight instructor, both of which provided (b)(6) with “extraordinary access” to aircraft parts and many student pilots who may intend to commit terrorist acts against the U.S. (*Id.* at 47, quoting Agency Acting Deputy Administrator Keith Kauffman.) The ALJ found that this tremendous access, coupled with (b)(6) demonstrated willingness to harm the U.S. for monetary gain presented sufficient evidence that (b)(6) poses, or can be suspected of posing a risk. (*Id.* at 47-48.)

Based on an in-depth analysis, the ALJ concluded that “there is more than enough substantial, credible and reliable evidence in the record for the undersigned to independently find that (b)(6) poses, or can be suspected of posing, a risk of air piracy, terrorism, or a threat to airline or passenger safety.” (*Id.* at 49-50.)

STANDARD OF REVIEW

The TSOB Panel must affirm the ALJ’s findings of facts if they are supported by substantial evidence.¹ The U.S. Supreme Court has long established that substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); see *Jifry v. F.A.A.*, 370 F.3d 1174, 1181 (D.C. Cir. 2004) (evaluating whether revocation of an airman certificate is supported by substantial evidence on

¹ The applicable standard of review is identified in the May 2011 PROCESS AND PROCEDURES FOR REVIEW BY THE TRANSPORTATION SECURITY OVERSIGHT BOARD PANEL – FAA CERTIFICATE HOLDERS WHO ARE U.S. CITIZENS (TSOB PROCESS & PROCEDURES). This panel must “determine whether the decision of the ALJ reasonably supports the conclusion that the individual either does or does not pose, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.” This “reasonably supports” standard means that the TSOB panel should review the ALJ’s decision based on consideration of the record and “supported by and in accordance with the reliable, probative, and substantial evidence.” Administrative Procedure Act, 5 U.S.C. § 556 (d). This is more commonly referred to as the “substantial evidence” standard.

the record). Evidence that reasonably or adequately supports a conclusion can be “more than a scintilla but can be satisfied by something less than a preponderance of the evidence.” *Fla. Gas Transmission Co. v. F.E.R.C.*, 604 F.3d 636, 645 (D.C. Cir. 2010). This means that in reviewing the ALJ decision, the panel “‘must carefully scrutinize the entire record’ but may not reweigh the evidence or supplant the [agency’s] judgment of the weight of the evidence with its own, only reviewing whether the ALJ’s findings are based on substantial evidence.” *Rothe v. Astrue*, 766 F. Supp. 2d 5, 11 (D.D.C. 2000) (quoting *Butler v. Barnhart*, 353 F.3d 992, 999 (D.C. Cir. 1987)). The substantial evidence standard will be met by the government even if the record supports a conclusion contrary to that reached by the ALJ, so long as there is adequate evidence to support the ALJ’s decision. *Dickson v. NTSB*, 639 F.3d 539, 542 (D.C. Cir. 2011).²

STATUTORY INTERPRETATION

This panel recognizes that TSA is given wide latitude in interpreting its statutes. However, a reviewing court, such as this panel, retains an important role in determining whether the agency has engaged in reasoned decision-making. *Judulang v. Holder*, No. 10-694, 2011 WL 6141311, at *7 (U.S. Dec. 12, 2011).

In interpreting the language of a statute, this panel must apply a *Chevron* analysis and interpret the statute consistent with its plain language. In *Chevron*, the U.S. Supreme Court articulated a two step process for interpreting a statute. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). First, the panel must determine “‘whether Congress has directly spoken to the precise question at issue.’ If it has, we ‘give effect to the unambiguously

²(b)(6) raised the issue on appeal of whether suspending or revoking an airman certificate constitutes a “taking” requiring a due process analysis. (b)(6) Br. at 3.). Because this panel’s scope of review “shall not extend to the constitutionality of any statute, provision, regulation or executive order,” (b)(6) constitutional issue raised on appeal is precluded from review by this panel. TSOB PROCESS & PROCEDURES 2; see generally *Marbury v. Madison*, 5 U.S. 137, 146-47 (1803) (standing for the proposition that only Article III courts may decide cases involving life, liberty, and private property rights, with some exceptions.)

expressed intent of Congress.” *Cablevision Systems Corp. v. FCC.*, 649 F.3d 695, 704 (D.C. Cir. 2011) (quoting *Chevron*, 467 U.S. at 842-42). *Northeast Hosp. Corp. v. Sebelius*, 657 F.3d 1, 5 (D.C. Cir. 2011) (citing *Chevron*, 467 U.S. at 843). Second, “if the statute is ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on permissible construction of the statute.” *USPS v. Postal Regulatory Com’n*, 640 F.3d 1263, 1266 (D.C. Cir. 2011) (quoting *Chevron*, 467 U.S. at 843). This means that this panel must determine whether the statute is ambiguous and if so, defer to the agency’s interpretation of the statute.

The applicable statute titled “Certificate Actions in Response to a Security Threat” states that the “Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing a risk of air piracy or terrorism or a threat to airline or passenger safety.” 49 U.S.C. § 46111. TSA has promulgated regulations implementing its statutory authority. 49 C.F.R. § 1540.117. Within these regulations, TSA defined “security threat” as (1) a threat to transportation or national security; (2) a threat of air piracy or terrorism; (3) a threat to airline or passenger security; or (4) a threat to civil aviation security. 49 C.F.R. § 1540.117(c).³

An act of terrorism, as defined in Title 49 regarding airman certificates, means “an activity that involves a violent act or an act dangerous to human life that is a violation of the

³ This panel recognizes that 49 C.F.R. § 1540.117 applies to aliens while Section 1540.115 applies to U.S. citizens. Because (b)(6) is a U.S. citizen, Section 1540.115 would be the applicable regulation. However, in *Coalition of Airline Pilots Ass’n v. FAA*, TSA explicitly pledged to abandon its regulations in Section 1540.115 due to the more robust procedural protections provided to citizen airmen through 49 U.S.C. § 46111. 370 F.3d 1184, 1190 (D.C. Cir. 2004). Therefore, (b)(6) statutory procedural rights are being properly applied through Section 46111, while TSA relies on the definition of “security threat” provided in its regulations in Section 1540.117.

criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnapping.”⁴ 49 U.S.C. § 44703(3). This is a narrower definition of terrorism than that adopted by the ALJ in his Decision & Order. The ALJ, relying on TSA’s argument, added to the definition contained in Title 49 to include “national security.”⁵ This is an overly broad definition of terrorism that is unsupported by the statutory language. Therefore, this panel will use the definition enunciated in Title 49 as Congress intended. *See Ali v. FBP*, 552 U.S. 214, 227-28 (2008) (noting that the court is “not at liberty to rewrite the statute to reflect a meaning [the court] deems more desirable.”); *Nguyen v. United States*, 556 F.3d 1244, 1256 (11th Cir. 2009) (“We are not authorized to rewrite, revise, modify, or amend statutory language in the guise of interpreting it, especially when doing so would defeat the clear purpose behind the provision.”). Based on the narrower interpretation, we disregard the ALJ’s conclusions and supporting evidence that (b)(6) poses a “national security” risk, since this is a different standard than that required by the statute. Instead, we hold the ALJ’s decision to the stricter interpretation of

⁴ The statute limits the definition of acts of terrorism “for purposes of this section.” 49 U.S.C. § 44703. The panel has reviewed other statutory definitions of terrorism contained in FISA, the criminal code, and immigration law, but has applied the definition in Title 49 because the definition is contained within the same title in the US Code and this applies to airman certificates.

⁵ The ALJ defined terrorism as follows:

For the purposes of this Decision and Order, “terrorism” is defined as:

An activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within in the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnapping. *This definition encompasses a security risk/threat to transportation and/or national security.* See 49 U.S.C. § 44703(g) (the Federal Aviation Act definition, which in turn, defines its reference to “terrorism” by referring to 18 U.S.C. § 3077. See 49 U.S.C. § 44941(a)).

ALJ Decision & Order at 12 (emphasis added).

“terrorism,” examining the evidence on the record that supports TSA’s assessment of (b)(6) as posing a risk of terrorism.

In this case, the statute is clear. The panel only needs to look to step one of *Chevron*: whether the statute is ambiguous. The panel finds that the statute is unambiguous based on the plain language: the statute states that TSA is charged with assessing whether individuals pose or are suspected of posing a risk of *air piracy or terrorism or a threat to airline or passenger safety*. 49 U.S.C. § 46111. Congress has clearly and unambiguously enumerated the three types of risks in which TSA may assess an individual as a threat.

ANALYSIS

Using this legal framework, we now look to whether the ALJ’s conclusion is supported by reliable, substantial evidence on the record that (b)(6) poses, or is suspected of posing, a risk of *air piracy or terrorism or a threat to airline or passenger safety*. If this panel was the initial reviewer of the evidence, we likely would not have been persuaded by TSA’s justification for classifying (b)(6) as a security threat. However, this panel is not permitted to reweigh the facts presented to the ALJ but instead is restricted to examine the evidence on the record to determine whether the ALJ’s decision is based on a review of substantial, reliable evidence.⁶ Although we would have found otherwise, we hold that the ALJ’s conclusion was based on substantial, reliable evidence when viewed as a whole.

This case came about due to the TSA’s knowledge of (b)(6) criminal conviction.⁷ (b)(6) pleaded guilty to violating the International Emergency Economic Powers Act, 50 U.S.C.

⁶ The TSA is the only agency granted the broad authority for assessing security threats for transportation. (b)(6) claim that “all of the criminal system professionals” found that (b)(6) was not a security threat is irrelevant, as it is not the responsibility of those professionals to make such a determination. (b)(6) Brief, at 27.

⁷ (b)(6) has repeatedly argued that TSA’s motivation for initiating the threat assessment was the threat to reputation by the New York Times (b)(6) Brief, at 23-24. However, TSA’s motivation for assessing (b)(6) as a security risk is

§§ 1701, et seq. To be guilty of violating IEEPA, a defendant must (1) intentionally export or attempt to export to an embargoed country, (2) fail to obtain an OFAC license for the export, (3) know that what he or she was doing or trying to do was illegal, and (4) know that the export was destined for Iran, a country to which the U.S. controls exports and requires a license for such exports. (*See* TSA Ex. 15, at 2; IEEPA, 50 U.S.C. § 1705.) (b)(6) pleaded guilty to this offense. In his signed plea agreement, (b)(6) admitted that he once got 24 airplane filters out of the U.S. to Iran without being detected. (TSA Ex. 15, at 18.) (b)(6) admitted that he discussed a method of avoiding detection when sending parts from the U.S. to Iran. (*Id.*) He admitted that he was going to “FedEx” F-14 maintenance kits and have them delivered to Iran by way of Germany. (*Id.*) (b)(6) admitted that prior to attempting to ship the F-14 parts to Iran he stated that “I know you cannot ship to Iran.” (*Id.* at 18-19.) After attempting to ship the parts to Iran, (b)(6) again stated that “you can’t send nothing” and that “it is prohibited.” (*Id.* at 20.) Additionally, in a recorded conversation, (b)(6) stated, “the law is clear if you, for example, sell a piece to, you know it’s going to another country, you are responsible.” (*Id.*) All these facts were stipulated by (b)(6) in his plea agreement and cannot be refuted.

While violating IEEPA is certainly a crime for which (b)(6) deserved punishment, his conviction alone is insufficient for TSA to label (b)(6) a security threat. In fact, TSA has conceded that a mere violation of IEEPA will not warrant the suspension or revocation of one’s airman license.⁸ Based on the record below, the panel is aware that there is at least one other person who violated an economic crime by attempting to sell F-14 parts to Iran without any

irrelevant; TSA is charged with assessing risks to transportation security and was therefore within its authority in initiating the assessment of (b)(6) regardless of the source of its knowledge.

⁸ “Appellant further argues that TSA would view any export of goods to Iran and subsequent conviction under the International Emergency Economic Powers Act as sufficient to revoke an individual’s airman certificates. *This is nonsense.*” TSA Brief, at 28 (emphasis added).

evidence of his airman certificates being suspended or revoked.⁹ (Tr. at 359-363, 384-390.) We do not have the appropriate facts before us to consider any other case besides (b)(6) but it is crucial that, to the extent practicable, TSA consistently and equally applies their regulations and conducts threat assessments uniformly across the airman certificate holder populations. Due to our limited jurisdiction in this case, however, our review must be limited to the suspension of (b)(6) certificate only. Because merely violating IEEPA does not merit action by TSA against an airman's certificate, TSA must have relied upon additional facts when making its threat assessment.

The ALJ's decision is based on two facts surrounding (b)(6) criminal conviction: (1) (b)(6) status as an "insider" combined with his "lack of scruples," and (2) the fact that the parts being shipped were F-14 parts. These considerations developed by the evidence and arguments, demonstrate that the ALJ did consider reliable and substantial evidence. Therefore, even if this panel would not have arrived at the same conclusion, this panel is forced to uphold the ALJ's decision.

The ALJ found that (b)(6) was an "insider within the aviation industry." Given his status as a holder of the FAA-issued airman certificates and his connections and contacts to Iran and its military, the ALJ determined that this renders (b)(6) an "insider." ALJ Decision & Order, at 52-53. The ALJ noted that prior to TSA taking action against (b)(6) he held four FAA-issued airman certificates. (ALJ Decision & Order, at 24.) The ALJ also noted that for ten years, (b)(6) was a "Gold Seal Flight Instructor," a title only given to those who maintained a high level of successful flight training activity and met special training criteria. (*Id.*) Based on these considerations, the ALJ concluded that (b)(6) status as an airman in connection with Iran's

⁹ (b)(6) signed plea agreement referenced a confidential informant who also holds an airman certificate. According to the plea agreement, the confidential informant conspired with (b)(6) to violate IEEPA.

well-documented support of terrorism “evidences that Respondent is a ‘security threat (i.e., a threat to transportation or national security, or a risk of terrorism.)” *Id.* at 38. There can be no doubt that there is substantial evidence to support that (b)(6) is an “insider” within the aviation industry; the question turns on whether there is substantial evidence to support that (b)(6) is an “insider threat.”

As guidance, we turn to the only case reviewing whether TSA’s threat assessment resulting in the revocation of certificates was supported by substantial evidence. *Jifry v. FAA*, 370 F.3d 1174, 1181-1182 (D.C. Cir. 2004). In that case, the court relied upon affidavits to provide “additional explanation of the reasons for the agency decision.” *Id.* at 1181 (*quoting Camp v. Pitts*, 411 U.S. 138 (1973)). TSA Deputy Administrator McHale testified in that case that the threat assessment considered “the case with which an individual may obtain access to aircraft in the United States once he or she has a pilot license.” *Id.* at 1181. “Because it would be very difficult to avert harm once a terrorist had control of an aircraft, [McHale] concluded that it was important to *err on the side of caution* in determining whether the two pilots pose a security threat.” *Id.* (emphasis added). Similarly, in this case, the ALJ relied on the TSA Assistant Administrator’s declaration articulating that he “considered the case with which an individual may obtain access to aircraft and/or aircraft parts in the United States if he or she holds an Airline Transport Pilot license, thereby placing such an individual in an extraordinary harm to transportation systems and national security.” (TSA Ex. 31) (b)(6) lengthy history as a pilot and his knowledge of the aviation industry supports the fact that (b)(6) is an insider. Many FAA certificate holders, by this description, could be considered insiders; therefore, this designation alone is not sufficient for an airman to be assessed as a threat.

In conjunction with (b)(6) status as an insider, the ALJ relied on substantial evidence in affirming TSA's assessment of (b)(6) as a security threat based on his motivation for violating U.S. laws. The ALJ found that (b)(6) lack of scruples supported TSA's determination to suspend his certificate. (b)(6) lack of scruples is evidenced by his willingness to knowingly violate U.S. laws for his financial benefit. The record reflects that (b)(6) did not have a lot of money saved and was lured by his love of money. (Tr. 116, 118.) The ALJ points out that "the overwhelming record evidence supports a finding that Respondent was primarily motivated by money, not ideological concerns." *Id.* at 48. As the Acting TSA Deputy Administrator stated, he "considered the particular harm an individual flight instructor without scruples might pose in training student pilots who may intend to commit terrorist acts against the United States." (TSA Ex. 32.) (b)(6) argument that his actions were the result of the bad economy is simply inadequate. (Tr. at 424) (b)(6) witness, (b)(6) stated that "if you dangle enough carrot in front of someone, you know, they're going to go ahead and try to bite in a bad economy."). This panel certainly recognizes that considering monetary motivation for criminal violations a criterion in threat assessments would likely cause a vast expansion of the population that may be deemed security threats. The panel could conceive many cases in which individuals would be financially motivated when violating U.S. laws (such as airmen convicted of robbery, extortion, etc), and we therefore warn TSA that it must rely on something more when making its threat assessments. However, in this case, (b)(6) motivation, together with his easy access to the aviation industry provides the ALJ with substantial evidence to uphold TSA's determination of (b)(6) a security threat.

The other factor that elevates this case from a mere criminal violation to a security threat is the fact that (b)(6) was shipping F-14 parts to Iran. Not only is Iran an embargoed country but

it also designated as a state sponsor of terrorism. U.S. DEP'T OF STATE, "State Sponsors of Terrorism," (Apr. 30, 2009). One could violate IEEPA by selling a myriad of items to embargoed countries. *See* 50 U.S.C. §§ 1701, et seq. Many goods lack a nexus to terrorism and therefore would not warrant the revocation of one's airmen certificate. However, the ALJ relied on substantial evidence when determining that F-14 parts can be linked to a terrorist purpose. In considering the significance of the F-14, the ALJ found the following:

The F-14 is a fighter aircraft developed for the United States Navy, primarily as an air-to-air fighter, outfitted with air-to-air missiles, but can also be used for air-to-ground support. The Iranian Air Force currently has a number of F-14s in its inventory and uses these F-14s for air-to-air defense, electronic radar, and air-to-ground missions. Iran purchased its F-14s from the United States in the late 1970s and early 1980s, and Iran was the only country to which the United States sold the F-14 aircraft. Iran is unable to obtain spare parts or maintenance kits for its F-14s through legitimate means since the United States has embargoed such military technologies. ALJ Decision & Order, at 41 (internal citations omitted).

The F-14 aircraft was designed for use in nation-state military actions and has not, to date, been used as a terrorist weapon. Though we may have found differently than TSA and the ALJ, it is possible that the F-14 aircraft, which relies on the types of parts (b)(6) was convicted of attempting to sell, could be used for terrorism. Again, we look to the D.C. Circuit Court's decision for guidance. The court relied on the Deputy Administrator McHale's testimony when he stated that "aircraft would continue to be used as weapons of terrorism." *Jifry*, at 1181. The panel assumes that the court in *Jifry* focused on commercial aircraft rather than military aircraft.

The panel finds the nexus between the sale of F-14 parts to Iran and terrorism to be weak at best; however, because there is a possibility that F-14s could be directly related to terrorism, we are compelled to find that the ALJ relied on substantial, reliable evidence when upholding TSA's determination.

This panel reviewed the totality of the evidence presented during the ALJ's proceedings. (b)(6) pled guilty to attempting to ship F-14 parts to Iran, a state sponsor of terrorism. He is motivated by money and has demonstrated a willingness to violate U.S. laws for his own financial gain. He has extensive work experience and knowledge in the aviation industry. Viewing as a whole the record evidence before the ALJ, we hold that the ALJ made the determination that (b)(6) poses or is suspected of posing a security risk, based upon reliable and substantial evidence, even though this panel would have weighed that evidence differently. Accordingly, with the authority granted by 49 U.S.C. § 46111(d), the ALJ's decision is affirmed.

Although this panel has upheld the ALJ's determination, we have significant concerns regarding two specific facets of this case: (1) TSA's suspected inconsistent application of threat assessments among the FAA airman certificate population, and (2) TSA's broad interpretation of its authority to request suspension/revocation of certificates based on national security threats writ large.

Regarding TSA's execution of threat assessments, the evidence presented below suggests that the confidential informant identified in (b)(6) plea agreement also violated IEEPA but has maintained his airman certificates. Because review of the confidential informant's actions is not within our scope, this panel does not know whether TSA assessed the potential security risk that the confidential informant presents and, if so, why TSA has not requested revocation of his certificates. Therefore, the panel is concerned that if TSA does not assess potential security risks

consistently against similarly situated airmen, the agency may not appear to be engaged in reasoned decision-making. *See Judulang v. Holder*, No. 10-694, 2011 WL 6141311, at *7 (U.S. Dec. 12, 2011). We would expect that, if possible, TSA would assess all violators of IEEPA or similar laws, regardless of how these violators came to the attention of TSA. Due to a lack of evidence and limitation in scope, this panel is not in a position to evaluate TSA's security assessments of other violators of IEEPA on the facts of this case, but warns TSA that uneven application of assessment practice is unacceptable. We implore TSA to review their practices and ensure consistent and fair application across airmen populations. In future cases, the ALJs should inquire more fully into TSA's threat assessment practices.

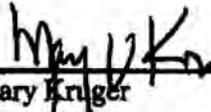
On the issue of interpretation, this panel unanimously rejects TSA's broad interpretation to request suspension or revocation of an airman's certificate based on a risk to "national security." National security encompasses not only terrorism but threats to national sovereignty, nation-state military threats, espionage, and cyber threats to name a few. It is not at all clear to this panel that Congress intended for TSA to assess the threat presented by airmen based on the full complement of national security risks. As evidenced by the clear, express language used in the statute, Congress has delegated to TSA the ability to take action when an airman poses or is suspected of posing a risk of air piracy or terrorism or a threat to airline or passenger safety." 49 U.S.C. § 46111. We remain troubled that TSA uses the terms "terrorism" and "national security" risk almost interchangeably throughout the proceedings. All terrorist threats are national security threats, but not all national security threats are terrorism. We strongly urge TSA to reconsider this broad interpretation, clarify the distinction between national security threats and terrorist threats and to specify which type of threat TSA believes an airman poses or is suspected of posing. Despite our concerns with the programmatic application of TSA's threat

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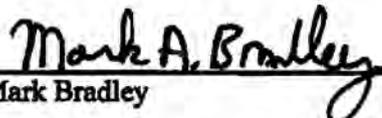
assessments, we nevertheless find substantial evidence on the record to support the ALJ's decision.

ORDER

For the foregoing reasons, the Honorable Parlen L. McKenna's decision is affirmed.



Mary Kruger



Mark Bradley



Angela Stubblefield

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION

IN THE MATTER OF:

(b)(6)

Respondent.

Docket Number:

09-TSA-0050

DECISION AND ORDER

Issued:

April 14, 2010

Issued By:

Hon. Parlen L. McKenna
Presiding

APPEARANCES:

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FOR THE RESPONDENT

(b)(6)

(b)(6)

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I. PRELIMINARY STATEMENT

A. Procedural Background

On June 25, 2009, the Transportation Security Administration (“TSA” or “Agency”) sent its Initial Notification of Threat Assessment (“INTA”) to (b)(6) (“Respondent”).¹ The INTA stated that the Agency had determined that Respondent poses, or is suspected of posing, a security threat and that pursuant to Section 1540.117 of Title 49, Code of Federal Regulations, the Agency was initiating the process by which Respondent’s airman certificates, rating or authorization may be revoked.

That same day, the Federal Aviation Administration (“FAA”) sent its Immediately Effective Order of Suspension to Respondent (“Order of Suspension”). The Order of Suspension stated: (1) Respondent holds Private Pilot Certificate No. (b)(6) Airline Transport Pilot Certificate No. (b)(6) Flight Instructor Certificate No. (b)(6) and Ground Instructor Certificate No. (b)(6) (collectively, “Airman Certificates”); (2) the FAA was informed by the TSA that the Agency had made an initial determination that Respondent poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety; and (3) the TSA had requested the Administrator of the FAA to issue an order suspending Respondent’s Airman Certificates, effectively immediately.

On July 14, 2009, the Agency sent a letter in response to Respondent’s request for releasable information upon which the Agency’s threat assessment was based and enclosed information the Agency was authorized to release. The Agency’s July 14, 2009 letter also corrected the reference in the INTA from 49 C.F.R. 1540.117(d) (referring to

¹ Apparently, Respondent goes by both (b)(6) and “Re” (b)(6). To avoid any confusion on the issue, it is hereby noted that references in the record to either (b)(6) or (b)(6) refer to Respondent.

alien holders of airman certificates) to 49 C.F.R. § 1540.115(e), which it claimed applied to United States citizens like Respondent.

On July 31, 2009, the Agency sent Respondent a letter clarifying that the applicable statutory/regulatory procedures to the Agency's actions were governed not by 49 C.F.R. § 1540.115(e), but rather the statutory requirements of 49 U.S.C. § 46111.²

On August 5, 2009, Respondent (1) made a Request for Hearing under Section 46111 and (2) requested a summary of classified materials and the basis for TSA's charges.

On August 11, 2009, the Agency responded to the Request for Hearing by submitting a letter to the United States Coast Guard's ("Coast Guard") ALJ Docketing Center.³ This response asserted that the matter was not ripe for review by an administrative law judge until such time as the Agency issued its Final Determination of Threat Assessment and claimed that a Coast Guard administrative law judge thus did not yet have jurisdiction.

On August 20, 2009, this matter was assigned to the undersigned by the Coast Guard's Chief Administrative Law Judge via the Notice of Assignment of Administrative Law Judge ("Notice of Assignment"). The Notice of Assignment highlighted the provisions of Section 46111 that call for a hearing on the record should a United States citizen be adversely affected by an order of the FAA Administrator under that statute.

² The Agency effectively repealed its regulations dealing with security threat assessments against FAA certificate holders in light of the passage of 49 U.S.C. § 46111. See Coalition of Airline Pilots Associations v. F.A.A., 370 F.3d 1184 (D.C. Cir. 2004).

³ The United States Coast Guard Office of Administrative Law Judges performs administrative law judge functions for the TSA under an Interagency Agreement within the Department of Homeland Security. To the extent Respondent argues that "there remains a question as to whether [the] hearing is Constitutional" because the Coast Guard is part of the Department of Homeland Security (see Closing Brief at 11, fn. 7), such an argument is noted and preserved for appeal to a court of competent jurisdiction.

See 49 U.S.C. § 46111(b). The Notice of Assignment determined that the immediate suspension of Respondent's Airman Certificates triggered a right to a hearing before an administrative law judge if so requested. The triggering of the hearing requirement emanates from the involuntary taking of a property right (i.e., the Airman Certificates) pursuant to the Administrative Procedure Act ("APA"). See 5 U.S.C. § 554 et seq.; Bennett v. N.T.S.B., 66 F.3d 1130, 1137 (10th Cir. 1995) (finding that Fifth Amendment due process protections apply to revocation of a pilot's license); see also Bell v. Burson, 402 U.S. 535, 539 (1971) (holding that due process is required for revocation of a driver's license).⁴

On August 25, 2009, Respondent filed a Motion for Return of Temporarily Suspended Airman Certificates. The undersigned reviewed Respondent's motion and the Agency's response and determined that Respondent was not entitled under either due process concerns or Section 46111 to a return of his Airman Certificates pending a hearing in this matter. See Order on Motion for Return of Temporarily Suspended Airman Certificated (September 14, 2009).

On September 24, 2009, the undersigned set the matter for hearing on December 1, 2009 in Long Beach, California. On November 25, 2009, the Agency filed its Memorandum of Law Regarding 49 U.S.C. § 46111. On November 28, 2009, Respondent filed his Trial Brief.

⁴ To date, the Agency has not issued a Final Notice of Threat Assessment (1) determining whether Respondent poses, or is suspected of posing, a risk of air piracy or terrorism, or a threat to airline or passenger safety; and (2) if affirmative, what is the appropriate sanction. Accordingly, as a result of this proceeding, the undersigned will make the final threat assessment for the Agency and determine the appropriate sanction.

On December 1, 2009, the hearing in this matter commenced as scheduled and concluded on December 2, 2009. The list of witnesses who testified at the hearing and the exhibits admitted into evidence is found in Appendix A.

On February 3, 2010, the parties submitted Stipulated Findings of Fact. On February 4, 2010, the Agency filed its Post-Hearing Brief, Proposed Findings of Fact, and Conclusions of Law. On February 5, 2010, Respondent filed his Closing Brief and Proposed Findings of Fact. Rulings on the parties' proposed findings of fact and conclusions of law are found in Appendix B. On February 26, 2010, the Agency filed its Reply Brief, and on that same day, Respondent filed a Response to the TSA's Closing Brief.

II. APPLICABLE LAW AND REGULATIONS

A. Proceedings Under 49 U.S.C. § 46111

This matter was brought pursuant to the requirements of 49 U.S.C. § 46111, which states that:

The Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the Under Secretary, the order shall be effective immediately.

49 U.S.C. § 46111(a) (emphasis added). The statute provides that a United States citizen who is adversely affected by an order of the FAA Administrator under Section 46111(a) is entitled to a hearing on the record by an administrative law judge. See 49 U.S.C. §§ 46111(b) and (c). In such a hearing, the administrative law judge is not "bound by findings of fact or interpretations of laws and regulations of the [FAA] Administrator or

the Under Secretary [for Border and Transportation Security of the Department of Homeland Security].” 49 U.S.C. § 46111(c).

1. Statutory Background Of Section 46111

Congress created the TSA through the Aviation and Transportation Security Act (“ATSA”), Pub. L. 107-71, 115 Stat. 597 (November 19, 2001). At that time, the TSA was given responsibility to improve security in the nation’s transportation system. H.R. CONF. REP. NO. 107-296, at 53 (2001).⁵ The ATSA transferred civil aviation security responsibilities from the FAA to the TSA. This transfer of responsibility included the requirement to establish procedures for individuals known to pose, or suspected of posing, a threat of air piracy or terrorism or threat to airline or passenger safety. See 49 U.S.C. § 114(h)(2).

In March of 2003, the TSA was transferred to the newly created Department of Homeland Security. Homeland Security Act of 2002, Pub. L. No. 107-296, § 424, 116 Stat. 2135, 2185 (codified at 6 U.S.C. § 234 (Supp. IV 2004)). At that time, the TSA had established rules regarding threat assessments for citizen airman certificates issued by the FAA. See Threat Assessments Regarding Citizens of the United States Who Hold or Apply for FAA Certificates, 69 Fed Reg. 3756 (Jan. 24, 2003) (codified at 49 C.F.R. § 1540.115) (repealed). On December 12, 2003, Congress enacted the Vision 100 -- Century of Aviation Reauthorization Act (“Vision 100 Act”), Pub. L. 108-176, 117 Stat. 2490 (December 12, 2003).

The Vision 100 Act is important for several reasons: (1) it nullified the TSA’s then present rules of practice (49 C.F.R. § 1540.115) used in proceedings against citizens

⁵ The United States Court of Appeals for the District of Columbia Circuit considered the historical development of Section 46111 in some detail. See Coalition of Airline Pilots Associations v. F.A.A., 370 F.3d 1184 (D.C. Cir. 2004).

or nationals of the United States holding or applying for FAA issued certificates, ratings or authorizations; (2) it created a right to a formal hearing process before an administrative law judge that was not previously provided; and (3) it established the foundation and statutory framework for the conduct of the present proceeding. See 49 U.S.C. § 46111. Indeed, the Coalition of Airline Pilot Associations decision explicitly recognized the enhanced procedural protections occasioned by Section 46111's passage when compared with the pre-existing procedural regulations the statute rendered inapplicable. See 370 F.3d at 1190 (D.C. Cir. 2004) (recognizing that Section 46111 "requires far more robust procedural protections than are available under the [then-existing] rule").

In March of 2004, the TSA published a formal rulemaking stating that the rules of practice formally found at 49 C.F.R. § 1540.115 would no longer be used and that new procedures would be created to address actions against citizens or nationals of the United States holding or applying for FAA issued certificates, ratings or authorizations. See Coalition of Airline Pilots Associations, 370 F.3d at 1188-1189. The TSA has still not published any formal rules of practice governing the conduct of this proceeding.⁶

2. Processes By Which Federal Agencies Implement And Interpret The Law

Generally, under the Administrative Procedure Act (see 5 U.S.C. § 553 et seq.), an agency is statutorily authorized to use its delegated authority from Congress to interpret and implement the terms of a statute (1) so long as such interpretation is not inconsistent with the plain terms of the statute itself and (2) the agency's position is a permissible one under the statute. See Chevron U.S.A. Inc. v. Natural Resources Defense

⁶ The adoption of such rules would obviate the need to delve into unresolved procedural questions and appeal procedures in proceedings brought under Section 46111.

Council, Inc., 467 U.S. 837, 842-845 (1984). Where Congress has clearly spoken on an issue in a statute, such intent controls and limits the ability of an agency to act contrary to such clear statutory language. Id.

An agency may interpret and implement such statutes through (1) formal rulemaking under the APA (see 5 U.S.C. § 553; Paralyzed Veterans of America v. Secretary of Veteran Affairs, 345 F.3d 1334, 1340 (Fed. Cir. 2003) (observing the maxim that the power of an agency to administer a congressionally created program necessarily requires formulation of policy and making of rules to fill any gap left, implicitly or explicitly, by Congress); (2) publication of formal policy statements and guidelines (see, e.g., Christensen v. Harris County, 529 U.S. 576, 587 (2000) (even an agency's informal opinion letters, policy statements, manuals, and enforcement guidelines interpreting a statute are entitled to some respect as persuasive authority, if not full Chevron deference); and (3) through development of agency case law precedent (see, e.g., Puerto Rico Aqueduct & Sewer Authority v. E.P.A., 35 F.3d 600, 607 (1st Cir. 1994) (an agency may implement policy and announce rules through adjudication and may modify its precedent through such decisions)).⁷

Importantly, this case differs from administrative procedures set forth in the APA in two important respects: (1) the TSA does not have extant rules or policies and has not issued any case law precedent that interprets and implements Section 46111; and (2)

⁷ See also, Dillmon v. N.T.S.B., 588 F.3d 1085, 1089-1090 (D.C. Cir. 2009) (agency free to establish new policy and depart from precedent through adjudication but must do so on “reasoned analysis” and “acknowledge and provide an adequate explanation for its departure from established precedent” to avoid acting in an arbitrary and capricious fashion).

Section 46111 clearly reflects a Congressional effort to impose a level of independent review upon the Agency's actions.⁸

Section 46111 does not abrogate the establishment of agency law through case precedent. In this regard, the statute only modified the appeal route and who will be the "decider" for the Agency. Thus, there can be no question that this proceeding: (1) is conducted in accordance with the APA; (2) that the administrative law judge's decision and order is subject to appeal and review by the Transportation Security Oversight Board ("TSOB")⁹ established by 49 U.S.C. § 115; (3) the Undersecretary for Border and Transportation Security can appeal any decision by the TSOB panel to the appropriate court of appeal under 49 U.S.C. § 46110 if the Undersecretary decides that the action of the panel "will have a significant adverse impact on carrying out this part" (49 U.S.C. § 46111(e)); and (4) as a result of this process, Agency law will be established through case law precedent, including, the traditional agency regulatory process of fleshing out the intent of Congress, the meaning of undefined statutory terms, and filling in the implementing regulations based on Agency's experience and expertise.

⁸ With respect to this second point, the statute clearly mandates such independence. First, Section 46111 mandates that the presiding administrative law judge give no deference to Agency interpretations of law and regulations and findings of fact. See 49 U.S.C. § 46111(c) (emphasis added). The proceeding before the undersigned is thus de novo. Second, the Agency does not review this Decision and Order on appeal. Rather, a panel established by the TSOB (which panel cannot have as one of its members a TSA employee) will conduct such review. See 49 U.S.C. § 46111(d). The direct appeal to a non-Agency panel takes these proceedings out of the norm of administrative procedure and practice, but the general principles of the APA remain in effect.

⁹ Under 49 U.S.C. § 115, the TSOB is composed of the following individuals: (1) the Secretary of Homeland Security (or the Secretary's designee); (2) the Secretary of Transportation (or the Secretary's designee); (3) the Attorney General (or the Attorney General's designee); (4) the Secretary of Defense (or the Secretary's designee); (5) the Secretary of the Treasury (or the Secretary's designee); (6) the Director of the Central Intelligence Agency (or the Director's designee; and (7) one member appointed by the President to represent the National Security Council.

3. Section 46111's Meaning

Under 49 U.S.C. § 46111, the Agency must demonstrate that Respondent poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. These terms were not defined by Congress in the statute and were left to the Agency to flesh out based on its subject matter expertise and knowledge.

One must conclude that given the context (i.e., passage following the September 11th terrorist attacks on the country), Congress was concerned with a broad concept of what the terms used in Section 46111 meant. See also 49 U.S.C. § 40101(d)(1) (directing the administrator to consider “assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce”). As such, these undefined terms must be construed broadly to encompass threats to air transportation and/or national security in accordance with Congress’ intent in passing Section 46111. See, e.g., Ortega v. Holder, 592 F.3d 738, 743-744 (7th Cir. 2010) (recognizing that a statute should be interpreted according to its clear terms, and also according to the structure, context and intent of Congress).

There can be no doubt that Congress was concerned with a broad notion of “security risk” in crafting Section 46111 within the areas of “air piracy” “terrorism” and “threats to airline or passenger safety”. Indeed, Congress characterized Section 46111 broadly as: “Requir[ing] [the] FAA to revoke a pilot’s certificate if the Department of Homeland Security notifies the FAA that the pilot is a security risk.” H.R. Conf. Report No. 108-240 at 155 (July 25, 2003) (emphasis added); see also, Jiffry v. F.A.A., 370 F.3d 1174, 1179 (D.C. Cir. 2004) (characterizing Section 46111 as “formaliz[ing] the

requirement that the FAA shall suspend, modify, or revoke a certificate if notified by the TSA that an individual posed a security risk.”) (emphasis added).¹⁰

Fleshing out Section 46111’s terms in such a manner was clearly contemplated by Congress for agency decisions under general principles of the APA, as discussed above. Therefore, according to the authority delegated to the undersigned pursuant to the APA and 49 U.S.C. § 46111(b) and (c), the following definitions are hereby proposed for Section 46111.

a. Definition Of “Air Piracy”¹¹

For the purposes of this Decision and Order, “aircraft piracy” means:

Any seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force or violence, threat of force or violence, or by any form of intimidation, and with wrongful intent.¹² This definition encompasses a security risk/threat to transportation and/or national security.

¹⁰ Agency counsel asserts that general terms like “national security” “security risk” or “security threat” must be read into the statute. Congress clearly intended the statute to be read broadly in terms of the Agency’s security risk assessments. Agency counsel argued this case asserting that Respondent’s attempt to sell F-14 maintenance kits to Iran, a state sponsor of terrorism, makes Respondent a “security threat (i.e., a threat to transportation or national security, or a risk of terrorism).” Agency Post-Hearing Brief at 5. A threat to airline or passenger safety under Section 46111 is clearly a threat to transportation, and the undersigned will not eliminate such considerations from the analysis. See also Tr. at 414 (b)(6). It’s my understanding that TSA is not alleging that (b)(6) is a terrorist, an air pirate or a threat to airline or passenger safety. THE COURT: Well, the threat to airline or passenger safety was not taken off the table. MR. WHEATON: Exactly; just the first two”). Therefore, while the parties agreed that Respondent would not directly commit an act of air piracy and/or terrorism, the issue of acts by Respondent that aid and abet or provide material support to those involved in “air piracy” or “terrorism” or a “threat to airline or passenger safety” are clearly extant. Of course, these pending issues are in addition to Respondent being a direct threat to “airline or passenger safety.”

¹¹ The Agency did not seem overly concerned that Respondent is a direct risk of air piracy. See, e.g., Tr. at 393 (Agency counsel acknowledging that Respondent is not a threat or risk of engaging in air piracy). Rather, Agency counsel litigated this case on a theory that Respondent’s attempt to sell F-14 maintenance kits to Iran, a state sponsor of terrorism, makes Respondent a “security threat (i.e., a threat to transportation or national security, or a risk of terrorism).” Agency Post-Hearing Brief at 5.

¹² “Special aircraft jurisdiction of the United States” is broadly defined in 49 U.S.C. § 46501(2) and includes a civil aircraft of the United States (wherever located); an aircraft of the armed forces of the United States; another aircraft in the United States under certain conditions; or certain leased aircraft.

See 49 U.S.C. § 46502(a)(1)(A). The elements of proof under Section 46502(a)(1)(A) include: (1) seizure or exercise of control over an aircraft; (2) by force, violence, or intimidation, or the threat thereof; (3) with wrongful intent; and (4) while the aircraft is in the special aircraft jurisdiction of United States. See United States v. Calloway, 116 F.3d 1129 (6th Cir. 1997); United States v. Mena, 933 F.2d 19 (1st Cir. 1991); United States v. Dixon, 592 F.2d 329 (6th Cir. 1979). One can be convicted of aiding and abetting the crime of air piracy by participating in a range of activities leading to the actual commission of the offense by others.¹³ See, e.g., United States v. Peichey, 500 F.2d 917 (9th Cir. 1974) (evidence that defendant was involved in planning aircraft hijacking and at time of hijacking in San Francisco was in Canada en route to air strip pursuant to plan to assist perpetrators in their escape supported conviction of aiding and abetting aircraft piracy).

Given Section 46111's placement in Chapter 49 of the United States Code, it is reasonable to use the definition of "aircraft piracy" in the same chapter for the present proceedings. See, e.g., Smith v. City of Jackson, Miss., 544 U.S. 228, 233 (2005) (plurality opinion) ("[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."); see also United States v. Novak, 476 F.3d 1041, 1051 (9th Cir. 2007) (en banc) ("courts generally interpret similar language in different statutes in a like manner when the two statutes address a similar subject matter").

¹³ Section 46502 explicitly provides punishment for an individual committing, or attempting to commit, or conspiring to commit aircraft piracy. See 49 U.S.C. § 46502(a)(2).

b. Definition Of “Terrorism”

For the purposes of this Decision and Order, “terrorism” is defined as:

An activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within in the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnapping. This definition encompasses a security risk/threat to transportation and/or national security.

See 49 U.S.C. § 44703(g) (the Federal Aviation Act definition, which in turn, defines its reference to “terrorism” by referring to 18 U.S.C. § 3077. See 49 U.S.C. § 44941(a)).

Several other statutes define “terrorism” or “acts of terrorism.” See, e.g., 18 U.S.C. § 2331 (defining domestic and international terrorism); 18 U.S.C. § 2332b(g)(5) (defining federal crime of terrorism); see also 18 U.S.C. § 3077 (defining “act of terrorism” as an act of international or domestic terrorism as defined in 18 U.S.C. § 2331). Section 2331 defines “international terrorism” as:

activities that –

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended –

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

“Domestic terrorism” is defined as:

activities that--

- (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) appear to be intended –
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily within the territorial jurisdiction of the United States.

Id. The “Federal crime of terrorism” under 18 U.S.C. § 2332b(g)(5) means an offense “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct” and is a violation of a long list of wide-ranging federal criminal statutes.

Another relevant definition for the current proceedings is found in the Homeland Security Act, which defines terrorism as any activity that involves an act that is dangerous to human life or potentially destructive of critical infrastructure or key resources and is a violation of the criminal laws of the United States or of any state or other subdivision of the United States and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping. See 6 U.S.C. 101(16).

Using these definitions to interpret the intent of Congress helps to highlight the scope of activities triggering liability for such acts. See, e.g., Boim v. Holy Land Foundation for Relief and Development, 549 F.3d 685 (7th Cir. 2008) (finding that donation to a terrorist group that targets Americans abroad is within scope of 18 U.S.C. § 2333, which provides civil liability for acts of international terrorism (as defined by

Section 2331), provided donor knew that organization engages in such acts or was deliberately indifferent, i.e. reckless, to whether it does or not).

The other definitions of “terrorism” discussed here are functionally equivalent to the one proposed herein from the Federal Aviation Act at 49 U.S.C. § 44703(g). These definitions differ only in minor, insignificant respects for the purposes of determining what the term “terrorism” means under Section 46111. Using Federal Aviation Act’s definition is appropriate given Section 46111’s context (i.e., as an outgrowth of the security responses following the September 11th terrorist attacks on the United States, and the explicit references in the Federal Aviation Act to provisions of the criminal code defining “terrorism”). See United States v. Novak, 476 F.3d at 1051.

Given that the Agency is not so much asserting that Respondent poses a risk of committing a direct act of terrorism (see, e.g., Tr. at 393-395 (Agency counsel stating that the issue is more akin to supporting terrorism or providing material support to terrorists))¹⁴ – the question arises about the scope of liability for “terrorism” against one who either provides material support to terrorists, or aids and abets such terrorist acts. Congress has specifically provided that those who provide material support to terrorists are criminally liable. See 18 U.S.C. § 2339A (providing material support to various terrorist acts); 18 U.S.C. § 2339B (providing material support to foreign terrorist organizations).

¹⁴ As Agency counsel formulated the argument at the hearing, Section 46111 “doesn’t require [the Agency] to prove that he’s a terrorist. It doesn’t require [the Agency] to prove that he’s ideologically motivated” but rather a risk of terrorism or more broadly a “risk to transportation or national security.” Tr. at 395. Respondent acknowledged that Respondent’s “risk of terrorism” remained at issue despite the discussion in the record questioning whether the Agency believed he was a “terrorist.” See Respondent’s Closing Brief at 12.

Furthermore, under general principles of criminal law, one who aids and abets the commission of an offense is liable for such criminal act. See 18 U.S.C. § 2 (criminalizing the aiding and abetting of any federal crime); see also Gonzales v. Duenas-Alvarez, 549 U.S. 183, 189-190 (2007) (observing the universal treatment under both state and federal criminal law of principals and categories of aiders and abettors of criminal acts).

Given this background and the broad purposes of the statute, limiting Section 46111's scope to the risk of an actual commission of a direct act of "terrorism" by Respondent would be nonsensical. The Agency thus need only prove that there is a risk of Respondent's involvement in an act of terrorism, either by his providing material support for such a terrorist act or by aiding and abetting such an act of terrorism. To the extent Respondent is arguing that the Agency must prove that Respondent will commit such an act directly (see Respondent's Closing Brief at 15), such argument is rejected as matter of law.

c. Definition Of "Threat To Airline Or Passenger Safety"

For the purposes of this Decision and Order, a "threat to airline or passenger safety" means:

Any activity within the special aircraft jurisdiction of the United States that involves a violent act or threatened act of violence directed at any air transportation system, including its equipment, routes, operating personnel and management, or any activity dangerous to those traveling by such air transportation system, in violation of the laws of the United States or of any State. This definition encompasses a security risk/threat to transportation and/or national security.

This definition is adopted under the plain meaning of the terms used in the statute because, in contrast to the terms "air piracy" and "terrorism," there is no statutory definition for "threat to airline or passenger safety" to use as a touchstone for interpreting what that phrase means in the context of Section 46111. The only other reference to the

phrase in the United States Code was found under the Agency's statutory duty to establish procedures for notifying "airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of ... terrorism or a threat to airline or passenger safety." 49 U.S.C. § 114(h)(2) (emphasis added). No definition is provided as to what a "threat to airline or passenger safety" means under Section 114(h)(2), and nothing was found in the Congressional record to offer any substantive aids in interpreting this phrase.

In the absence of a statutory definition, the common meaning of such terms control. See BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006). Dictionaries are a fundamental tool for ascertaining the plain meaning of common terms used in statutes that are not otherwise defined. See Lachman v. United States, 387 F.3d 42, 51 (1st Cir. 2004) (citing Carey v. Saffold, 536 U.S. 214, 219-20 (2002)). The words of a statute must be read in their context taking into account the overall objective and policy of the statute. See Gonzlon-Peretz v. United States, 498 U.S. 395, 407 (1991); Brower v. Evans, 257 F.3d 1058, 1065 (9th Cir. 2001); Tralfalgar Capital Assoc. v. Cuomo, 159 F.3d 21, 30 (1st Cir. 1998).

"Threat" means "an expression of intention to inflict evil, injury, or damage" or one who so threatens (Webster's Ninth New Collegiate Dictionary at 1229-1230 (1987)) or "[o]ne that is regarded as a possible danger; menace" (The American Heritage Dictionary, Second College Ed. at 967 (1982)). "Airline" is defined as "an air transportation system including its equipment, routes, operating personnel and management" (Webster's Ninth New Collegiate Dictionary at 67 (1987)) or "[a] system for scheduled transport of passengers and freight by air" or "[a] business organization

providing such a system of air transport” (The American Heritage Dictionary, Second College Ed. at 90 (1982)). “Passenger” means “a traveler in a public or private conveyance” (Webster’s Ninth New Collegiate Dictionary at 860 (1987)) or “[a] person who travel in a train, airplane, ship, bus, or other conveyance without participating in its operation” (The American Heritage Dictionary, Second College Ed. at 907 (1982)). Finally, “safety” means “the condition of being safe from undergoing or causing hurt, injury, or loss” (Webster’s Ninth New Collegiate Dictionary at 1036 (1987)) or “[t]he condition of being safe; freedom from danger, risk, or injury” (The American Heritage Dictionary, Second College Ed. at 1084 (1982)).

d. What Does It Mean To “Pose” Such A “Risk”?

Section 46111 does not quantify the level of risk required for the Agency to take action against Respondent’s Airman Certificates. The meaning of “poses, or is suspected of posing, a risk” therefore must also be discussed to understand the meaning of the statute.

The relevant definition of “pose” means “to put or set forth: OFFER” – Webster’s Ninth New Collegiate Dictionary at 917 (1987) – or alternatively, “To present or put forward: pose a threat.” The American Heritage Dictionary, Second College Ed. at 967 (1982).

“Risk” means a “possibility of loss or injury: PERIL” or “a dangerous element or factor” – Webster’s Ninth New Collegiate Dictionary at 1018 (1987) – or alternatively “[t]he possibility of suffering harm or loss: danger” or “[a] factor, element, or course involving uncertain danger; hazard” – The American Heritage Dictionary, Second College Ed. at 1065 (1982). These definitions are hereby accepted as reasonable and within the ambit of Congressional intent.

The standard of “posing a risk” clearly must therefore be a rather broad one encompassing the idea that the Agency must show that Respondent offers or represents a possibility of danger with respect to the listed items in the statute – i.e., “air piracy,” “terrorism” or a “threat to airline or passenger safety” – by evidence contained on the record. The above-noted definitions parallel one another and are hereby accepted as reasonable and within Congressional intent for the purposes of construing Section 46111.

e. What Does It Mean To Be “Suspected Of Posing” Such A Risk?

“To suspect” means “to surmise to be true or probable; imagine” – The American Heritage Dictionary, Second College Ed. at 1224 (1982) – or alternatively, “to imagine (one) to be guilty or culpable on slight evidence or without proof” or “to imagine to exist or be true, likely or probable” – Webster’s Ninth New Collegiate Dictionary at 1189 (1987). See also Black’s Law Dictionary (8th ed. 2004) (defining “to suspect” as “[t]o consider (something) to be probable. 2. To consider (something) possible. 3. To consider (a person) as having probably committed wrongdoing, but without certain truth”).

The “suspected of posing” standard in Section 46111 must obviously be even broader than that of just “posing a risk” discussed above. Respondent argues that this standard is constitutionally vague and impermissible. The undersigned does not have appropriate jurisdiction to rule on such issues and must take the statute as written. Respondent’s arguments on the potential vagueness and over breadth of the statute are noted for the record and are preserved for a court of competent jurisdiction.

Despite the fact the undersigned may not rule on the constitutionality of the statute’s language with respect to the “suspicion” standard, it is necessary to come to some understanding of what such standard means to apply Section 46111 under the facts and circumstances of this case.

The statute clearly does not define what level of confidence the Agency must have to act when faced with a citizen “suspected of posing” the statutorily listed risks. An analogy can be drawn, however, from other arenas to help elucidate the required standard. While this is not a criminal case and the standard of proof in an administrative proceeding is significantly less onerous, a criminal law analogy is quite helpful. For example, a police officer may briefly detain an individual for questioning if the officer has “reasonable suspicion to believe that criminal activity ‘may be afoot.’” United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)); see also Terry v. Ohio, 392 U.S. 1, 30 (1968). While no perfect definition of reasonable suspicion exists, “it is well established that, in terms of the continuum of knowledge, reasonable suspicion requires more than a mere hunch but less than probable cause.” United States v. Ruidiaz, 529 F.3d 25, 29 (1st Cir. 2008).

Reasonable suspicion requires “‘a particularized and objective basis’ for suspecting the person [who is] stopped of criminal activity.” Ornelas v. United States, 517 U.S. 690, 696 (1996) (quoting United States v. Cortez, 449 U.S. 411, 417-18 (1981)). “Th[e] particularity requirement means, in effect, that such a finding must be ‘grounded in specific and articulable facts.’” United States v. Espinoza, 490 F.3d 41, 47 (1st Cir. 2007) (quoting United States v. Hensley, 469 U.S. 221, 229 (1985)). The “objective” component requires courts to “focus not on what the officer himself believed but, rather, on what a reasonable officer in his position would have thought.” Id.

Suspicion is a somewhat amorphous concept, and yet, some flesh must be put on the bones as it were. With no specific direction coming from the statute, the undersigned therefore finds that the level of “suspicion” contemplated by Section 46111 cannot be

baseless under general principles of due process but rather must have some grounding in articulable and reasonable facts on the record.¹⁵ This standard comports with the APA's requirements (i.e., an agency's action cannot be arbitrary or capricious to withstand judicial scrutiny) and makes it clear that the TSA's action toward Respondent's Airman Certificates must be based on some rational evaluation of Respondent's potential risk.¹⁶

B. Burden And Standard Of Proof

The statute provides an affected citizen a right to a hearing on the record. 49 U.S.C. § 46111(b). The Agency bears the ultimate burden of proof in this matter (see Interim Rules at (i)(6)), but under the APA, the proponent of a rule or order bears the burden of going forward to establish the proffer. See 5 U.S.C. § 556(d). The parties in this matter stipulated to the use of certain parts of the Agency's unpublished Interim Rules (attached hereto as in Appendix C) to provide a procedural framework for this proceeding. See Prehearing Conference Report and Order (November 25, 2009) (reflecting the parties' stipulation that Sections (g) through (j) of the Interim Rules would govern these proceedings).¹⁷

¹⁵ To be clear, the undersigned is not adopting the "reasonable suspicion" standard as developed under Terry and its progeny, but rather viewed the statements concerning "reasonable suspicion" contained in that case law as instructive for viewing what "suspected of posing" reasonably means under Section 46111. As discussed in this Decision and Order, the current proceedings are not criminal in nature and direct importation of concepts from criminal law would not be appropriate for a variety of reasons.

¹⁶ C.f., Poett v. United States, 657 F.Supp.2d 230 (D.C. Dist. 2009) (examining and ultimately remanding for further agency proceedings a claim by a chemist employed by the United States Department of Agriculture who was denied access under 42 U.S.C. § 262a(e)(3)(b)(ii) to certain agents and toxins within the course of his work because he was "reasonably suspected" of involvement with an organization that engages in domestic or international terrorism). In Poett, the agency apparently determined that such suspicion was "reasonable" based on a 1992 letter the plaintiff wrote to the British Ambassador expressing regret over his past participation with the Irish Northern Aid Committee in America – an organization that had been identified by the United States as an international terrorist organization. Id. at 234-235.

¹⁷ Importantly, although Sections (j)(1)-(3) of the Interim Rules refer to the undersigned making a finding of whether Respondent poses a "security threat," Respondent never stipulated to the definition of "security threat" referred to in the Interim Rules at Section (c). As such, the undersigned will not apply this

Despite Respondent's arguments that these proceedings are "quasi-criminal" in nature (see, e.g., Respondent's Closing Brief at 15-16; Respondent's Trial Brief at 1), the applicable standard of proof in this matter is substantial evidence on the record. See Interim Rules at (i)(7). This standard of proof comports with the provisions of the APA and due process and means that findings are supported by a preponderance of substantial, reliable and probative evidence. See Steadman v. S.E.C., 450 U.S. 91, 100-101 (1981).

These proceedings are neither criminal nor quasi-criminal and Respondent's contentions that a higher standard of proof is required are rejected as a matter of law. See Fleischman v. N.T.S.B., 927 F.2d 609 (9th Cir. 1991) (revocation proceedings against a pilot's license is not criminal action); United States v. Myers, 878 F.2d 1142 (9th Cir. 1989) (recognizing that F.A.A. proceedings against an airman's license is not criminal in nature as the penalty is a civil, administrative revocation proceeding); Roach v. N.T.S.B., 804 F.2d 1147, 1152-1155 (10th Cir. 1986) (finding that suspension and revocation proceedings against a pilot's license is neither criminal nor quasi-criminal). Respondent has preserved an argument to the contrary and may take such issues up with a court of competent jurisdiction to consider this and other identified constitutional issues.

Procedurally, the agreed-upon Interim Rules provided that the Federal Rules of Evidence "may serve as guidance, but are not binding." Interim Rules at (i)(3) (emphasis added). The undersigned used the Federal Rules of Evidence as such guidance during the course of the proceedings; but, given Respondent's several objections during the course of the hearing, it must be reiterated that such rules of evidence were never intended to rigidly apply in administrative hearings like this one. See, e.g., F.T.C. v. Cement

definition in the absence of such a stipulation and will apply the statutory framework under Section 46111 and associated definitional analysis discussed herein.

Institute, 333 U.S. 633 (1948) (administrative proceedings are not restricted by rigid rules of evidence, and rules barring certain types of evidence in criminal or quasi-criminal cases are not controlling). Rather, the undersigned generally received evidence during the hearing that might have been more properly questioned under rules of evidence in a criminal proceeding and attached the appropriate weight to such evidence in light of demonstrated deficiencies, if any. See, e.g., Garcia v. Califano, 463 F.Supp. 1098 (N.D.Ill. 1979).

III. FINDINGS OF FACT¹⁸

The record of this proceeding, including the evidence, pleadings and other submissions, has been reviewed by the undersigned. The findings of fact and conclusions of law that follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each exhibit entered, although perhaps not specifically mentioned in this Decision and Order, has been carefully reviewed and given thoughtful consideration.

1. Respondent, (b)(6) was born in Iran in 1954, first came to the United States in 1976 to study aircraft maintenance at the Pittsburgh Institute of Aeronautics. Tr. at 428-29.
2. After completing his studies, Respondent returned to Iran in 1977. Tr. at 429.
3. From 1977 until he fled the country after the 1979 Iranian revolution, Respondent worked as a pilot for a company called (b)(6) an agent for United States

¹⁸ References to the hearing transcript are designated as "Tr. at [pg. #]"; to Agency Exhibits as "Agency Exh. [#]"; Respondent's Exhibits as "Resp. Exh. [a]"; and the parties Joint Stipulation of Facts as "Stipulation".

defense contractor (b)(6) under contract to the Iranian government. Tr. at 429-430.

4. Respondent also worked as a translator and consultant for (b)(6) which was in the business of providing missile parts to the Iranian Air Force, during which time Respondent assisted the United States military attaché, (b)(6) Tr. at 430-432.

5. At the time of the Iranian revolution, Iran had recently purchased its fleet of F-14s and AIM-54 Phoenix missiles. Tr. at 434.

6. Before fleeing Iran in 1980, Respondent assisted the U.S. military attaché and U.S. contractors as a translator in efforts to sabotage the Phoenix missile guidance systems. Tr. at 434-439.

7. Respondent's association with the Americans, plus the fact that he once lived in the United States put Respondent's life in jeopardy, as reflected by the assassination of two of Respondent's associates. *Id.*

8. Respondent's profession as a pilot allowed him to escape from Iran, and his wife and son escaped through Afghanistan on a donkey and a camel. Tr. at 439-440.

9. After leaving Iran, Respondent moved with his family to Milan, Italy where he worked for a company called (b)(6) and was the (b)(6)

(b)(6)

Tr. at 441, 447.

10. While living in Milan, (b)(6)

(b)(6)

for

which Respondent was paid approximately \$2,000 to \$3,000 per month, plus expenses. Tr. 441-446.

11. Respondent immigrated to the United States in 1993 and became a citizen of the United States in 1996 or 1997. Tr. at 428-429.

12. Respondent is 55 years old, is married, has two adult children and is the sole support for two grandchildren (ages 13 and 3) who live with him and his wife. He also supports his 32 year old step-daughter who lives with them. Stipulation ¶ 14.

13. Respondent holds the following FAA-issued airman certificates: Airline Transport Pilot Certificate (Number (b)(6)), Private Pilot Certificate (Foreign Based) (Number (b)(6)) Flight Instructor Certificate (Number (b)(6)) Ground Instructor Certificate (Number (b)(6)) He also holds a Medical Certificate (Number (b)(6)) Tr. at 47; Agency Exh. 1.

14. For the last ten years Respondent was a (b)(6) a coveted designation given by the Federal Aviation Administration (FAA) to flight instructors who have maintained a high level of successful flight training activity and who meet special training criteria. Stipulation ¶ 4.

15. Respondent got into the business of buying and selling airplane parts in 2002 or 2003 when he learned that flight schools in Milan and Dubai needed parts for their American airplanes. Respondent was able to buy parts from a U.S. company called “Spruce” on eBay and bought some parts for which he had a customer and others on “spec.” Anyone can buy airplane parts from Spruce and eBay and do not need to be a pilot to do so. Tr. at 457-458.

16. On June 5, 2006, Respondent pleaded guilty to violating the International Emergency Economic Powers Act, (50 U.S.C. §§ 1701-1705), which prohibits, among other things, the export of any item to Iran without a license. Stipulation ¶ 1.

17. Respondent was arrested on February 3, 2006 by Immigration and Customs Enforcement (ICE) agents. Stipulation ¶ 2.

18. Until his incarceration, Respondent worked as a flight instructor. Tr. at 448.

19. Respondent admits that, on January 6, 2006, he attempted to FedEx items to Germany, which he believed would be forwarded to Iran. Stipulation ¶ 3.

20. Iran has been designated as a state sponsor of terrorism by the United States Department of State. State sponsors of terrorism provide critical support to non-state terrorist groups. Without state sponsors, terrorist groups would have greater difficulty obtaining the funds, weapons, materials and secure areas they require to plan and conduct operations. Tr. at 79-80; Agency Exh. 8.

21. The Qods Force, an elite branch of the Islamic Revolutionary Guard Corps, is Iran's primary mechanism for cultivating and supporting terrorists abroad. The Qods Force provided aid in the form of weapons, training, and funding to HAMAS and other Palestinian terrorist groups, Lebanese Hizballah, Iraq-based militants, and the Taliban in Afghanistan. Iranian authorities have provided lethal support, including weapons, training, funding, and guidance, to Iraqi militant groups that target Coalition and Iraqi forces and kill innocent Iraqi civilians. (In other words, the terrorist State of Iran has been severely maiming and killing literally hundreds of United States and

Coalition men and women with impunity for many years in both Iraq and Afghanistan.)
Tr. at 80-82; Agency Exh. 8.

22. The F-14 aircraft is a fighter aircraft developed for the United States Navy. It was developed primarily as an air-to-air fighter and was outfitted with air-to-air missiles. The F-14 has also been used for air-to-ground missions and it can be affixed with bombs. Tr. at 83-84; Agency Exh. 31.

23. F-14s are currently in the inventory of the Iranian Air Force. The Iranian Air Force uses F-14 aircraft for air-to-air defense, electronic radar, and air-to-ground missions. It can also be used as a weapon for offensive means. Tr. at 84-85; Agency Exhs. 31-32.

24. Iran purchased F-14 aircraft from the United States in the late 1970s and early 1980s. The United States did not sell F-14 aircraft to any other foreign country. Tr. at 85.

25. Iran is unable to obtain spare parts or maintenance parts for F-14 aircraft through legitimate means because the United States has embargoed those military technologies. Tr. at 85-88.

26. On December 14, 2005, ICE agents executed search warrants as part of a criminal investigation into (b)(6) for allegedly selling military aircraft parts for export to Iran. During the search, agents found a sales order concerning the (b)(6) Tr. at 132-34; Agency Exh. 11 at 8-9.

27. At a December 16, 2005 interview, (b)(6) told ICE agents that Respondent utilizes his business, (b)(6) to both teach flight instruction and purchase/sell aircraft parts to customers in Iran. (b)(6) further stated that

Respondent had requested maintenance kits from him that are for the F-14 fighter aircraft. Respondent had informed (b)(6) that the maintenance kits would be shipped to Germany and then transshipped to a contact in the Iranian military. Tr. at 132-37; Agency Exh. 11 at 9-11.

28. Respondent and (b)(6) have known each other since at least September 2004. On September 27, 2004, (b)(6) sent an e-mail message to Respondent at the (b)(6) stating: "i have been doing alot of thinking on the business you are doing and to be honest with you it is against the law[.] i can understand a position you may take and if the money is good for you but in my experience i think this is a lousy way of making money especially when you are dealing with a government that is on the embargo list[.] it is not worth breaking the law and if anything happens this is a federal offense and not a game[.] i understand your position and please do not take offense to this as i do not want the stress and legal ramifications of this venture." Tr. at 289-91; Agency Exh. 17.

29. Prior to his arrest, Respondent's long time friend (b)(6) offered Respondent an attractive business opportunity in Dubai selling salvage Boeing 747 parts, which was attractive to Respondent because he was deeply in debt to his son who had been lending him money on which to live. Tr. at 463-64.

30. On September 14, 2005, a facsimile was sent from Respondent's fax line to Talebi. The facsimile requested that (b)(6) locate part and serial numbers for nine parts. Five of the nine parts were for the F-14 fighter aircraft. Agency Exh. 18 at 5.

31. On October 22, 2005, a facsimile was sent from Respondent's fax line. The facsimile requested that (b)(6) locate part and serial numbers for ten parts. At least

two of the ten parts were specifically designated by their part number as being parts for the F-14 fighter aircraft. Agency Exh. 18 at 5-6.

32. From 2001 to 2006, Respondent purchased numerous airline tickets for trips from California to Germany. On at least two occasions, Respondent also purchased airplane tickets for trips from Germany to Iran. According to (b)(6) Respondent would sometimes purchase a flight to Germany and then buy a separate ticket from Germany to Iran. Respondent would do this so there were no records in the United States of his travels to Iran. Tr. at 119, 137-40, 372-73, 460-62; TSA's Exs. 11 at 11-12; 26.

33. Respondent first returned to Iran in 1995 to visit his sick mother. From then until 2005, he visited 8 or 9 times – mostly to visit his mother. After his father dies, as the oldest child, he had to return to Iran to sign papers to divide his father's property. Tr. at 459-460.

34. On December 18, 2005, Respondent met with (b)(6) The two men discussed how Respondent would transport aircraft parts to Iran. Respondent told (b)(6) that he had traveled to Frankfurt (Germany) with eight suitcases because luggage destined for Iran is inspected by officials. Tr. at 141-50, 161; Agency Exhs. 11 at 13-14; 19 at 4-5, 8-9, 23.

35. The F-14 maintenance kits were ultimately destined for a (b)(6) in Iran, who was chief inspector in the logistics department for the Iranian Air Force. Tr. at 168, 247-48, 253, 257, 484, 488-89; Agency Exh. 16 at 6.

36. On January 4, 2006, Respondent told (b)(6) that he was waiting to receive another package before shipping the maintenance kits. The package Respondent was

waiting for did not come from (b)(6) and it contained items that were to be included in the FedEx shipment to Iran. Tr. at 169-70; Agency Exh. 11 at 15-16.

37. On January 6, 2006, Respondent attempted to ship a package by dropping it off at a FedEx facility. The package was addressed to the attention of an individual in Germany. Respondent declared the package's value to be \$164.12 and listed its contents as "miscellaneous parts, nuts and bolts and magazines." Tr. at 170-74; Agency Exh. 11 at 18-20.

38. ICE Agents seized the package from the FedEx facility and inventoried its contents. The package contained the F-14 maintenance kits as well as other aircraft parts. Tr. at 171-74; Agency Exh. 11 at 19-20.

39. On January 9, 2006, when the package did not arrive in Germany, Respondent told (b)(6) that he cannot sleep at night because he was worried that "[c]ustoms" had seized the FedEx package. Respondent also stated that the package was valued at \$20,000 and indicated that he was aware of the export laws prohibiting shipments to Iran. Tr. at 184-89; Agency Exh. 20 at 12, 14.

40. During their January 9, 2006 conversation, Respondent and (b)(6) discussed the process of selling an engine blade for the F-5 military aircraft to the colonel in Iran. Respondent called the Iranian colonel his "puppy dog." Tr. at 192-94; Agency Exhs. 11 at 20-22; 20 at 16-18.

41. On January 11, 2006, Respondent again indicated his awareness of the export laws, telling (b)(6) "[t]he law is clear, it says for example[,] sell these things to Germany and if you know it's going to another country, you are responsible." On that same day, Respondent told (b)(6) that he had once purchased parts for the F-4 Phantom

aircraft and was scared that the FBI would knock on his door. Respondent and (b)(6) also discussed whether the colonel in Iran had requested the jet engine blade. Tr. at 199-202, 204-06; Agency Exhs. 11 at 24; 21 at 13-14; 22 at 9-10, 12-13.

42. In January 2006, Respondent told (b)(6) that he wanted to leave the country in February with more maintenance kits. Tr. at 208-09, 212; Agency Exh. 23 at 8.

43. On January 13, 2006, Respondent and (b)(6) discussed engine blades for the F-5 aircraft. Respondent stated to (b)(6) that his “great fear” was that he had been lying about the parts that he was shipping. Tr. at 213-16; Agency Exh. 24 at 1-3, 7.

44. On February 1, 2006, Respondent and (b)(6) discussed how Respondent could avoid being caught by “customs” when leaving the country with a second shipment of F-14 maintenance kits. Respondent told (b)(6) that he had sent 28 boxes to Germany that ultimately ended up in Iran. Tr. at 226-29; Agency Exh. 25 at 5-7.

45. The boxes containing the F-14 maintenance kits had a sticker on them that said “USS ABRAHAM LINCOLN.” The USS ABRAHAM LINCOLN is a nuclear-powered aircraft carrier. Tr. at 231-33; Agency Exh. 27.

46. On February 3, 2006, ICE Agents arrested Respondent at his residence. During the arrest, ICE Agents discovered boxes of aircraft parts in Respondent’s garage. ICE Agents also found suitcases that contained aircraft parts wrapped in towels. Tr. at 233-44; Agency Exhs. 27, 30.

47. According to information from the Demilitarization Coding Integrity Branch, which catalogues parts for the United States Military, the vast majority of parts

found in Respondent's garage have military applications for use on aircraft that are used by Iran. Agency Exh. 18 at 2-3.

48. One of the items found in Respondent's garage was a Rockwell Collins filter. According to the United States Navy, this filter is used by aircraft to communicate with submarines. Tr. at 254-55.

49. Authorities also seized "parts list[s]" from Respondent's home. On the top of one "parts list," there was a handwritten notation: "jet engine F-4-F-5-maybe F-14." On a second "parts list," the handwritten notation read: "For Airforce RFQ." Printouts, listing vendors who could provide these parts for sale, were also recovered from Respondent's residence. Agency's Exh. 18 at 6.

50. During his proffer session, Respondent stated that he had become aware in the early 1980s of "shopping lists" produced by the Iranian military/government for parts it needed. Respondent stated that he would obtain the lists from his cousin in Iran, buy parts in the United States, and then ship the parts to Iran through Germany. Respondent also stated that the part lists were provided by a General Mothama, who was paid a 10% commission. General Mothama was in the Iranian Air Force. The Iranian government would only pay Respondent for the parts that were on the list. Tr. at 245-47, 249-50, 252.

51. Pursuant to a written plea agreement, Respondent pleaded guilty to "willfully attempt[ing] to export and transship from the United States to Iran, aircraft parts, including approximately three F-14 maintenance kits, without first obtaining...a license or written authorization for export and transshipment, knowing such a license or authorization was required." Tr. at 257; Agency Exhs. 10, 12, 15.

52. On the day of Respondent's arrest, February 3, 2006, Assistant U.S. Attorney Ivy Wang, requested a detention hearing because Respondent was alleged to be a "serious risk of flight." Risk of flight in this context means fleeing to avoid prison. (Government's Request for Detention Exhibit A.) Stipulation ¶ 5.

53. Respondent was detained until June 2006, when he was released on bond and came under the supervision of a Pre-Trial Services Officer. Stipulation ¶ 6.

54. Before entering prison in September 2007, Respondent was allowed to resume work as a flight instructor with the knowledge of his arresting officer, (b)(6)(b)(7) (b)(6)(b)(7) Assistant U.S. Attorney Richard Lee, United States District Court Judge David Carter, and the Pre-Trial Services Officer. Stipulation ¶ 7.

55. On July 17, 2006, Judge Carter signed an order stating:

"That defendant is permitted to enter the premises of airports, (not including LAX), within the Central District of California and fly an airplane but only for the purpose of giving flying lessons to his students in his Cessna 172." (Stipulation and Order Allowing Flying Lessons Exhibit B.)

This order was based on a stipulation that was signed by Assistant U.S. Attorney Lee after consulting with Agent (b)(6)(b)(7) Stipulation ¶ 8.

56. On October 18, 2006, Judge Carter signed another order regarding Respondent's flying activities. (Stipulation and Order Re Allowing Flying Lessons Exhibit C). It permitted him "to fly aircraft owned by other individuals in his capacity as a flight instructor and [to give] flying lessons under the same terms and conditions he is currently permitted to fly his own aircraft." The reason given was that "many times defendant's flying students own their own airplane and want to get lessons on the plane they will actually fly rather than on defendant's plane. Therefore, in order to earn a

living and give lessons to these students, defendant needs permission from the Court to fly their aircraft as well as his own aircraft.” This order was also based on a stipulation that was signed by Assistant U.S Attorney Lee. Stipulation ¶ 9.

57. On January 12, 2007, Judge Carter signed a third order regarding Respondent’s flying activities. (Stipulation Allowing Flying Lessons Exhibit D and Order Allowing Flying Lessons Exhibit E.) It allowed him to travel to “three airports in Kingman, Arizona, Laughlin, Nevada, and North Las Vegas, Nevada for the period January 22, 2007-February 3, 2007 for the purpose of giving flying lessons to his...students.” Again, this order was based on a stipulation that was signed by Assistant U.S. Attorney Lee. Stipulation ¶ 10.

58. On May 7, 2007 Judge Carter sentenced Respondent to 24 months in prison. (Sentencing and Judgment Exhibit H). Stipulation ¶ 11.

59. Respondent was sentenced to 24 months in prison and 3 years of supervised release on May 7, 2007. TSA’s Exhs. 10, 13.

60. Respondent was primarily motivated by money when he knowingly and willfully attempted to ship military aircraft parts to a state sponsor of terrorism. Indeed, Respondent has been and continues to be in serious need of money. Respondent is an individual that is highly motivated by money and historically lacked any scruples as to how he obtains such funds. Tr. at 118-19, 307, 311-13, 393-96.

61. The United States Department of Commerce, Bureau of Industry and Security, denied Respondent export privileges on July 8, 2008. TSA’s Ex. 9.

62. On March 2, 2009 Respondent took a FAA flight physical, which is required to maintain his flying privileges. (b)(8) Airman Medical File Exhibit I.) In

support of his application for a medical certificate, Respondent's Probation Officer,

(b)(6) wrote a letter to Respondent stating,

"This letter is in response to your request for documentation regarding your Judgment [sic] and Commitment Order and supervised release compliance.

On May 7, 2007, (b)(6) was found guilty of International Emergency Economic Powers Act (50 USC 1701-1705). He was sentenced in the Central District of California by the Honorable David O. Carter, U.S. District Judge, and sentenced to 24 months custody and three years supervised release. (b)(6) anticipated expiration date from supervised release is set for January 28, 2012.

On January 29, 2009, (b)(6) term of supervised release commenced with the Probation Office. (b)(6) has no Court order that bars [sic] him from flying or operating an aircraft." (b)(6), (b)(6) to (b)(6) Exhibit J.)

Stipulation ¶ 12.

63. Respondent's probation officer believed that, given the circumstances of the crime, Respondent could be a possible threat to the community if allowed to fly, but did not prohibit Respondent from flying because there was no court order barring him from doing so. Tr. at 315.

64. FAA Medical Examiner, (b)(6) wrote on Respondent's application for renewal of his medical certificate that after "reviewing the court document, and letter issued by probation officer, he is not posing any risk to community or society as a whole." (b)(6) Airman Medical File Exhibit K.) Stipulation ¶ 13.

65. The FAA flight physical form 8500-8 was transmitted to the FAA, which issued his Medical Certificate authorizing Respondent to resume his flying activities, which Respondent did until the Airman Certificates were suspended by the FAA on June 25, 2009. Resp. Exhs. I, Q.

66. On June 24, 2009, TSA learned from a reporter that Respondent had been convicted of attempting to sell F-14 parts to Iran. Tr. at 42-43; Agency Exh. 31-32.

67. Upon learning of Respondent, TSA analysts searched various government systems, including the Treasury Enforcement Communication System (TECS) and the National Crime Information Center, for confirmation of his criminal conviction. A printout from the TECS confirmed that Respondent had been charged with violating the International Emergency Economic Powers Act. TSA also confirmed that Respondent held active and valid FAA airman certificates. Tr. at 43-47; Agency Exhs. 6-7, 31-32.

68. After a review of the information regarding Respondent's criminal actions by senior leaders at TSA, Acting Deputy Administrator Keith Kauffman decided to request that the FAA suspend Respondent's airman certificates. An Initial Notification of Threat Assessment (INTA), dated June 25, 2009, was sent to Respondent. TSA also mailed a letter to the FAA requesting that Respondent's airman certificates be suspended. Tr. at 53-60, 269; Agency Exhs. 2-3, 31-32.

69. The FAA issued an "Immediately Effective Order of Suspension" to Respondent on June 25, 2009. Tr. at 269; Agency Exh. 4.

70. TSA later provided Respondent with a "Summary of Basis for TSA's Initial Notification of Threat Assessment." Tr. at 277-79; Agency Exh. 5.

71. Subsequent to sending the INTA to Respondent, TSA reviewed additional information regarding Respondent's criminal case, including court documents and records from the investigation conducted by Immigration and Customs Enforcement (ICE). Tr. at 73-74.

72. Respondent's attempts in both his testimony (see, e.g., Tr. at 463, 469, 479-494) and in his post-hearing brief (see Closing Brief at 6-7, 21-22) to minimize his contacts with Iranian government personnel and prior illegal shipping activities is rejected and Respondent's testimony is found not credible on these points.

IV. ANALYSIS

This proceeding is not a re-litigation of Respondent's conviction for a violation of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1705. Respondent pled guilty to attempting to export F-14 maintenance kits to Iran in violation of IEEPA and on May 7, 2007 was convicted of a felony and sentenced to twenty-four (24) months in prison, followed by three (3) years of supervised release. Stipulation ¶ 11; Agency Exhs. 10, 13. The fact of Respondent's guilt on that offense is absolutely established, and any attempts by Respondent to distance himself from the facts of that conviction must be rejected.¹⁹

The question before the undersigned is limited: whether the Agency has sufficiently established that Respondent poses, or can be suspected of posing, a risk of air piracy, terrorism, or a threat to airline or passenger safety so that the action taken against his Airman Certificates is warranted. The details of Respondent's conviction are crucial to this determination because it is through Respondent's past conduct (as reflected in the facts surrounding his prior illegal activities) that one must evaluate the Agency's concerns about Respondent's risk or threat contemplated by Section 46111.

¹⁹ Pursuant to his plea agreement, Respondent pled guilty to "willfully attempt[ing] to export and transship from the United States to Iran, aircraft parts, including approximately three F-14 maintenance kits, without first obtaining . . . a license or written authorization for export and transshipment, knowing such a license or authorization was required." Agency Exhs. 10, 12, 15; Tr. at 257.

This is not a simple matter, and the stakes are of the highest order with concerns about national security and threats of international terrorism looming in the background. Nevertheless, the undersigned independently evaluated (as required by Section 46111) the TSA's actions to ensure that Respondent's right to due process and property interest in his Airman Certificates are properly balanced against any such legitimate concerns and possible threats. While Respondent's Airman Certificates represent a valuable property interest, such licenses are a privilege and not a right. Therefore, the government may revoke, suspend, or otherwise limit such interests for legitimate reasons. See Kratt v. Garvey, 342 F.3d 475, 483 (6th Cir. 2003) ("Although revocation of a pilot's license may significantly impair the ability of a professional pilot to earn a living, such a license is generally not essential to a person's survival"). The fundamental question in this matter is therefore the following:

- Does the fact of Respondent's prior willingness to violate the law for monetary gain in a way that was directly contrary to the security interests of the United States provide sufficient justification for the Agency's actions under Section 46111?

Agency counsel argues that Respondent's conviction provides adequate support for the Agency's threat determination. The Agency determined that Respondent poses, or is suspected of posing, a security threat after the Agency's senior leadership assessed the Iranian government's well-documented support of terrorism, the military purposes of F-14 aircraft, and "the particular harm that an individual flight instructor without scruples might pose in training pilots who may intend to commit acts of terrorism against the United States." See Agency Exhs. 31, 32. Agency counsel's basic argument is that Respondent's attempt to sell the F-14 maintenance kits to Iran, a state sponsor of

terrorism, evidences that Respondent is a “security threat (i.e., a threat to transportation or national security, or a risk of terrorism).” Agency Post-Hearing Brief at 5.

Respondent argues in contrast that he committed what amounts to an economic crime (motivated by a business deal with a friend) and is not a terrorist and represents no threat or risk of the sort contemplated by Section 46111. See Respondent’s Closing Brief.²⁰ This view is supported by an expert report Respondent submitted. See Resp. Exh. S.²¹ Respondent is an accomplished flight instructor (Stipulation ¶ 4), a number of whose character witnesses could not imagine Respondent committing an act of air piracy, terrorism, or being a threat to airline or passenger safety. See, e.g., Tr. at 116-117, 326, 334, 421-424.²²

²⁰ Part of Respondent’s argument is that the Agency was improperly motivated to take action against Respondent’s Airman Certificates by a threat of institutional embarrassment resulting from a reporter’s inquiry and possible publication of an article in the New York Times. See Respondent’s Closing Brief at 4 (Agency action “motivated – not by concern for public safety – but by political concern for covering up [its] own failure to identify terrorists and jihadists who pose a real threat to aviation safety”), at 26 (Agency motivation was to “act before the newspaper published a report critical of the TSA”). The Agency acknowledged that it became aware of Respondent’s conviction and the fact that he holds FAA issued documents from the New York Times Reporter. See Tr. at 42-43; Agency Exh. 31-32. After carefully evaluating the positions of both parties, I find no merit to Respondent’s arguments. Indeed, the fact that the Agency learned of Respondent from a reporter is irrelevant to the issues herein. Either the charges have merit or they do not! See, e.g., Estate of Landers v. Leavitt, 545 F.3d 98, 113 (2d Cir. 2008) (refusing to ascribe “nefarious motives” to an agency’s actions as a general matter). In this case, the Agency explained the origin and timing of its investigation into Respondent and Respondent’s counsel has failed to meet his burden of going forward to demonstrate that the Agency’s actions were so tainted, wrongful, and lacking in merit that the charges should be dismissed.

²¹ Respondent’s expert, (b)(6) an acknowledged leader in the field of terrorism studies and evaluation, concluded that Respondent could be a national security risk “if he continues to sell military spare parts to [the United States’] implicit enemies.” Resp. Exh. S at 4. But the (b)(6) Report concludes that there is nothing in Respondent’s background to indicate that he is a threat to aviation and “no reason to suspect that [Respondent] poses a risk of air piracy or terrorism or a threat to airline or passenger safety.” Id. at 5. Importantly, (b)(6) report posits that Respondent would not directly engage in jihadist or terrorist activities himself as the principal agent of such acts. As discussed herein, the Agency’s theory is not that Respondent is such a direct threat, but rather that he would serve as an insider threat or would aid and abet or provide material support to terrorists who would commit such acts. The (b)(6) report does not evaluate this risk.

²² Importantly, the testimony of such character witnesses is not dispositive in any respect on the issue of whether Respondent poses, or can be suspected of posing, the risks and threats identified in Section 46111. None of these lay witnesses are tasked to make such assessments, and while their input into Respondent’s character is relevant to this matter (e.g., Respondent does not espouse jihadist or fundamentalist views),

In fact, Respondent paints a picture of himself as a “patriot” who: (1) worked with the United States before he fled Iran in 1980 by helping to sabotage the F-14’s missile guidance system and “rendering Iran’s F-14 fleet toothless” (Respondent’s Closing Brief at 5);²³ (2) (b)(6) id.); and (3) provided “valuable information about Arab flight students” to the F.B.I. following the September 11th terrorist attacks on the United States (id. at 6).²⁴ Balanced against Respondent’s claims of patriotism is his demonstrated willingness to violate the laws of the United States in direct opposition to this country’s security interests.

Respondent also attempts to invoke the blessings of others (e.g., FAA medical review; probation officer letter; allowances made by the District Court judge and U.S. Attorney’s office in his criminal case to allow him to travel and fly airplanes) for the proposition that he is not a risk of terrorism, air piracy, or a threat to airline or passenger safety. See Respondent’s Post-Hearing Brief at 16-17.²⁵ Respondent was allowed to engage in his flying profession and take trips outside the district where he was serving probation following his arrest and conviction and was certified as medically fit to engage

such testimony cannot displace by itself the weight of the Agency’s assessment of Respondent’s risk or threat potential. This is especially true given the reliable comments by the lay witnesses that Respondent was motivated by money. See Tr. at 116, 118, 424. Thus, the question arises as to how far would Respondent go, and what illegal act would Respondent engage in, to obtain money? See Section IV.B below.

²³ Respondent’s claim that Iran’s F-14 fleet is “toothless” is unsupported by any other record evidence and found to lack credibility. In fact, one of Respondent’s own experts indicates that Iran has 20-30 F-14s in service. See Resp. Exh. G at 9.

²⁴ Even assuming Respondent’s account is credible, there is no evidence other than Respondent’s unsubstantiated claims in the record to indicate what level of assistance and/or information Respondent may have provided to these agencies. Furthermore, (b)(6)

(b)(6)

See Tr. at 446.

²⁵ See also Stipulation ¶ 7 (before entering prison in September 2007, Respondent was allowed to resume work as a flight instructor with the knowledge of his arresting officer, (b)(6);(b)(7)(C) Assistant U.S. Attorney Richard Lee, United States District Court Judge David Carter, and the Pre-Trial Services Officer); Stipulation ¶¶ 8-10 (discussing the three orders signed by Judge Carter allowing Respondent to resume his flying activities).

in flying activities by the FAA. See Stipulation ¶ 13 (discussing FAA medical examiner's opinion that Respondent did not pose a threat to the community).

But these records and statements did not result from proceedings under 49 U.S.C. § 46111. The goals and purposes of the criminal proceedings, post-incarceration matters within the probation office, and medical certifications under the FAA are fundamentally different than the current inquiry and are entitled to very little weight in the analysis required for this case. For example, the Department of Commerce's Bureau of Industry and Security revoked Respondent's export privileges under statutory/regulatory authority which had different causes of action with separate elements of proof. . See In re Reza Mohammed Tabib, Order Denying Export Privileges, United States Dept. of Commerce, Bureau of Industry and Security (June 23, 2008), published at 73 FR 38971 (July 8, 2008).

These statements and opinions from other contexts reflect, at most, an assessment that Respondent does not pose an immediate, direct threat to the community within the particular scope of analysis made by those individuals. As developed at the hearing, however, the Agency's concerns are not so much that Respondent would commit an act of terror directly (i.e., fly a plane into a building or commit an act of air piracy or otherwise use a plane himself in the commission of a terrorist act), but rather that he represents a significant "insider threat" or would aid another in committing an act contemplated by Section 46111. Respondent's proffering of allowances, opinions, or assessments by non-Agency personnel who are not responsible for making the particular risk and threat assessments called for by Section 46111 are not competent to speak to or evaluate such risk or threat potential.

A. Respondent's Criminal Activity Of Shipping Material To Iran

On December 14, 2005, ICE agents executed search warrants as part of that agency's criminal investigation into (b)(6) for allegedly selling military parts for export to Iran, and during this search, the agents found a sales order concerning Respondent's business. Agency Exh. 11; Tr. at 132-134. (b)(6) told ICE agents during a subsequent interview that Respondent uses his business to purchase/sell aircraft parts to customers in Iran and that Respondent has requested (b)(6) to procure F-14 maintenance kits that would eventually be shipped to a contact in Iran through Germany. Agency Exh. 11; Tr. at 132-137. The F-14 maintenance kits were ultimately destined for a (b)(6) in Iran, who was chief inspector in the logistics department for the Iranian Air Force. Agency Exh. 16 at 6; Tr. at 168, 247-248, 253, 257, 484, 488-489.²⁶

The F-14 is a fighter aircraft developed for the United States Navy, primarily as an air-to-air fighter, outfitted with air-to-air missiles, but can also be used for air-to-ground support. Agency Exh. 31; Tr. at 83-84. The Iranian Air Force currently has a number of F-14s in its inventory and uses these F-14s for air-to-air defense, electronic radar, and air-to-ground missions. Agency Exhs. 31, 32; Tr. at 84-85. Iran purchased its F-14s from the United States in the late 1970s and early 1980s, and Iran was the only country to which the United States sold the F-14 aircraft. Tr. at 85. Iran is unable to obtain spare parts or maintenance kits for its F-14s through legitimate means since the United States has embargoed such military technologies. Tr. at 85-88.

²⁶ Iran has been designated by the United States as a state sponsor of terrorism. Agency Exh. 8. Such state sponsors of terrorism provide critical support to non-state terrorist groups. *Id.*; Tr. at 79-80. Iran, through its Qods Force, an elite branch of the Islamic Revolutionary Guard, has provided aid in the form of weapons, training and funding to various terrorist groups in the Middle East, including militant forces in Iraq that target Coalition and Iraqi forces and Iraqi civilians. Tr. at 80-82; Agency Exh. 8. Respondent's attempt to ship F-14 maintenance kits to Iran is contrary to the interests of the United States, its citizens, and soldiers fighting abroad.

On December 18, 2005, Respondent met with (b)(6) and the two discussed how to transport aircraft parts to Iran, during which discussion, Respondent told (b)(6) (b)(6) that he had traveled to Frankfurt, Germany with eight (8) suitcases because luggage for Iran is inspected. Agency Exhs. 11 at 13-14; 19 at 4-5, 8-9, 23; Tr. at 141-150, 161. On January 4, 2006, Respondent told (b)(6) that he was waiting to receive another package before shipping the F-14 maintenance kits, which package was not coming from (b)(6) and included other (undisclosed) items that would be shipped to Iran. Agency Exh. 11 at 15-16; Tr. at 169-170. On January 6, 2006, Respondent attempted to ship a package containing F-14 maintenance kits as well as other aircraft parts to an individual in Germany by dropping the package off at a FedEx facility. Agency Exh. 11 at 18-20; Tr. at 170-174. Respondent knew that the F-14 parts, which he attempted to ship to Germany, were destined for Iran. Stipulation ¶ 3.

ICE agents seized the package at the FedEx facility and inventoried its contents finding that the package contained the F-14 maintenance kits, as well as other aircraft parts. Agency Exh. 11 at 19-20; Tr. at 171-174. On January 9, 2006, when the package did not arrive in Germany, Respondent told (b)(6) that he cannot sleep at night because he was worried that “[c]ustoms” had seized the FedEx package. Respondent also stated that the package was valued at \$20,000 and indicated that he was aware of the export laws prohibiting shipments to Iran. Tr. at 184-89; Agency Exh. 20 at 12, 14.²⁷

During this conversation, Respondent and (b)(6) discussed the selling of an engine blade for an F-5 military aircraft to the colonel in Iran, whom Respondent referred to as his “puppy dog.” Agency Exhs. 11 at 20-22, 20 at 16-18; Tr. at 192-194.

²⁷ Respondent admitted to (b)(6) that he feared lying about the parts he was shipping. See Agency Exh. 24 at 1-3, 7; Tr. at 213-216.

Respondent was arrested on February 3, 2006 by ICE agents. Stipulation ¶ 2. During the arrest at his residence, ICE agents discovered boxes of aircraft parts in Respondent's garage and found suitcases that contained aircraft parts in towels. Agency Exhs. 27, 30; Tr. at 233-244. There is insufficient evidence in the record to determine what parts, if any, of those found in Respondent's garage were destined for Iran.

Respondent made his living, in part, by engaging in the buying and selling of aircraft parts. The Agency cites information from the Demilitarization Coding Integrity Branch to indicate that a vast majority of parts found in Respondent's garage have military applications for use on aircraft used by Iran. See Agency Exh. 18 at 2-3. Many of the parts listed had dual use (both military and civilian aircraft) applications. Id.

Indeed, Respondent submitted an expert report analyzing the items found in Respondent's garage that counters the assessment presented by the Agency. See Resp. Exh. G (Moss Report). The Moss Report indicates that of the almost three hundred (300) different parts found in Respondent's garage, only ten (10) items had any potential military significance generally and none have a significant military utility to Iran. Id. at 2. Significant questions thus exist as to whether the parts found in Respondent's garage had military uses or were possibly destined for Iran. However, given the discovery of parts lists likely coming from sources in Iran (see Agency's Exh. 18 at 6) and Respondent's demonstrated willingness to ship military aircraft parts to Iran, it is not unreasonable to conclude that it was more likely than not that a significant but unknown number of these parts could have ultimately ended up in hands of the Iranian military. Even if the Moss Report was fully credited, it does not provide any exoneration for Respondent's criminal conduct for which he was convicted; nor does this report speak to

the type of risk or threat contemplated by Section 46111. Simply put, whether Respondent engaged in IEEPA violations in the past, was preparing to do so when he was arrested, or will do so again in the future is not the issue in this case for the reasons discussed herein.

The Agency also points to the fact that Respondent took several trips to Iran by way of Germany from 2001 to 2006, which the Agency asserts were arranged so that Respondent's trips to Iran would not be directly traceable. Agency's Exhs. 11, 26; Tr. at 119, 137-140, 372-373, 460-462. Respondent has family still living in Iran, has family in Germany, and had reasons to go to Iran that did not necessarily have anything to do with any alleged carrying of airplane parts into Iran.

The record demonstrates, however, that Respondent had engaged in his illegal exporting business to Iran prior to his attempted shipment of the F-14 maintenance kits and it is more likely than not that Respondent's motivations, in part, for arranging his travel to Iran in such a manner would be connected to such activities. It is more likely than not that Respondent engaged in a series of illegal transactions and that his attempted shipment of the F-14 maintenance kits supplied by the ICE informant was not an isolated incident.²⁸ Just because Respondent was not criminally charged with any earlier shipments/attempted shipments does not mean that such activities did not happen.

²⁸ Respondent's efforts to make his attempted shipment of F-14 parts an isolated, one-off incident resulting from a government sting operation must be rejected. There is ample evidence that Respondent engaged in repeated efforts to transport parts to Iran and planned to do so again had he not been caught. See, e.g., Agency Exh. 17 (September 27, 2004 email sent from (b)(6) to Respondent asserting that Respondent's business involved dealing illegally with a country on the embargo list); Agency Exh. 18 (October 22, 2005 facsimile from Respondent's facsimile to (b)(6) requesting (b)(6) to locate certain parts, including some parts for F-14 aircraft; October 22, 2005 facsimile from Respondent to (b)(6) (b)(6) requesting (b)(6) to locate certain parts, including some parts for F-14 aircraft); Agency Exh. 23 at 8; Tr. at 208-209, 212 (indicating that Respondent wanted to take more F-14 maintenance kits to Iran); Agency Exh. 25 at 5-7 (Respondent bragged to (b)(6) about having previously sent twenty-eight (28) boxes of material to Germany that ultimately ended up in Iran); Tr. at 192-94; Agency Exhs. 11 at 20-22;

The undersigned need not determine that Respondent's attempt to send the F-14 parts to Iran was itself a terrorist act or constituted material support for terrorism. The pertinent issue for this proceeding is what such behavior by Respondent reveals or demonstrates about his current level of risk or threat contemplated by the Section 46111.²⁹ The matter at hand is not whether Respondent will commit an IEEPA offense again. Clearly, Respondent chose to knowingly support a hostile/terrorist state (i.e., Iran), contrary to the interests of the United States, for monetary gain. Respondent knew what he was doing was illegal and yet chose to engage in such behavior for his own interests.

1. Respondent's Attempts To Distance Himself From His Sworn Statement Of Facts In The Criminal Proceedings Must Be Rejected

Respondent's arguments in this case are based largely on his own testimony and his attempts to minimize his prior sworn proffer and statements concerning the extent and nature of his activities. For example, Respondent attempted in both his testimony (see, e.g., Tr. at 463, 469, 479-494) and in his post-hearing brief (see Respondent's Closing Brief at 6-7, 21-22) to minimize his contacts with Iranian government personnel and prior illegal shipping activities. These efforts cannot be accepted given his plea bargain with the government in his criminal proceedings, statements made during his proffer session and evidence from recordings of conversations between (b)(6) and Respondent, as discussed above. Respondent swore under oath the facts were one way during his criminal proceedings (both in his plea agreement and his proffer session) to receive a

20 at 16-18 (conversation between (b)(6) and Respondent concerning Iranian contact looking for military part and discussing business dealings).

²⁹ Respondent was not charged under any federal terrorism statute in connection with his attempted shipment of F-14 parts to Iran. As outlined above, Respondent was convicted of a violation of IEEPA.

lighter sentence and then tried to backpedal from the implications of such pled facts in the current proceeding. See Agency Exh. 15 (plea bargain agreement including statement of facts).

Such efforts cast a serious pall on the credibility of Respondent's testimony in this case. Respondent either misled the United States Attorney's office during his proffer session, or is seeking to mislead the undersigned in this case by re-characterizing the extent and nature of his illegal conduct. Respondent's testimony is thus found to be unsubstantiated, self-serving, and inherently incredible on several points.

B. The Risk Or Threat Respondent Poses, Or Can Be Suspected Of Posing, Under The Terms Of Section 46111

The risk or threat contemplated by the Agency is not necessarily that Respondent will commit a further violation of IEEPA or will directly engage in an act of terrorism or air piracy. Rather, the Agency argues that as an "insider" licensed pilot/flight instructor with contacts to a terrorist government hostile to the United States, Respondent is a risk of "terrorism" or a threat to national transportation. See Agency Post-Hearing Brief at 5; Agency Exhs. 31, 32; Tr. at 30-31, 89-90 (Agency witness describing the concept of "insider threat"); 68 Fed. Reg. 3756, 3757 (Jan. 24, 2003) (Agency recognition that those who hold FAA certificates, ratings, or authorizations are "in positions to disrupt the transportation system and harm the public.").³⁰

³⁰ Agency counsel also argued that no factual nexus is required between Respondent's conduct and his Airman Certificates. See Agency Post-Hearing Brief at 13-14. Rather, Agency counsel suggests that the only link required is that Respondent holds FAA issued certificates and the Agency has determined that he is a risk or can be suspected of posing a risk under the terms of the statute. Id. This argument is rejected because interpreting Section 46111 as requiring no connection would, in effect, convert a licensing decision into an arbitrary and capricious denial of property rights without just cause. See, e.g., Walters v. McLucas, 597 F.2d 1230, 1232 (9th Cir. 1979) (upholding revocation of pilot's license of individual convicted of possessing marijuana for sale, finding a "rational relation between a conviction for the possession of drugs for sale and the unsafe use of aircraft for drug smuggling"). The Agency is entitled to make reasonable

More specifically, Agency Acting Deputy Administrator Keith Kauffman provided a sworn declaration providing the rationale for the Agency's threat assessment against Respondent as:

In assessing the future threat to transportation or national security posed by Respondent, I considered Respondent's extraordinary access to aircraft and/or aircraft parts in the United States afforded to him by his airman certificates, thereby placing Respondent in a position to harm transportation or national security. I also considered Respondent's demonstrated willingness to harm the United States and United States citizens. I also considered the particular harm an individual flight instructor without scruples might pose in training student pilots who may intend to commit terrorist acts against the United States.

Agency Exh. 32 at ¶ 11. See also Agency Exh. 31 at ¶ 14 (declaration of Gregory Wellen, Agency Assistant Administrator for Transportation Threat Assessment and Credentialing, that articulates much the same rationale). The evidence on the record demonstrates that such concerns are valid.

Respondent admitted to, and was convicted of, participating in an effort to illegally export military parts to Iran. During Respondent's proffer session with the government during his criminal proceedings, he admitted that he would receive parts lists from the Iranian military and arrange for shipment of parts through Germany to his cousin in Iran, with payments for parts on the list to be made to contacts within the Iranian military (i.e., [REDACTED]). Respondent's statements during the proffer session and recordings of Respondent's conversations with [REDACTED] confirm his method of conducting this business and the existence of these contacts. See Tr. at 192-94, 245-47, 249-50, 252; Agency Exhs. 11 at 20-22; 20 at 16-18.

assessments of risk and threats identified in Section 46111 but cannot do so in a way that is so broad that there is no rational connection between the Airman Certificates themselves and the identified risk or threat.

The overwhelming record evidence supports a finding that Respondent was primarily motivated by monetary, not ideological concerns.³¹ Because of Respondent's single-minded motivation for money, Respondent put his own interests above those of the laws of the United States and the welfare of its citizenry.

Based on this past illegal conduct, the question arises as to what Respondent would do in the future with his access to, and familiarity with, the aviation industry and facilities, combined with his connections to a state sponsor of terrorism, if presented with the opportunity to benefit financially from assisting those seeking to do harm to the interests of the United States. Would Respondent train or otherwise assist those seeking to commit a terrorist act like that of September 11th? No one could legitimately argue that such an act would fail to constitute a risk of terrorism or a threat to airline or passenger safety contemplated by the scope of Section 46111.

Clearly, the government may reasonably extend the bounds of usual principles when heightened dangers and risks are present. See, e.g., Cassidy v. Chertoff, 471 F.3d 67 (2d Cir. 2006) (prevention of terrorist attacks on large vessels engaged in mass transportation constituted special need supporting Coast Guard's suspicionless searches of passengers' carry-on baggage and automobile trunks). The risks of terrorism and the concomitant danger posed to national security and public welfare represent such a heightened danger.

³¹ See, e.g., Agency Exh. 17 (Attachment A thereto – email from (b)(6) to Respondent dated September 27, 2004, discussing Respondent's illegal business and the fact that "the money is good for you"); Tr. at 116, 118 (testimony of Respondent's friend, (b)(6) indicating that Respondent has no money and (b)(6) loaned him \$30,000 for his defense and that he was "lured by (b)(6) for the love of money"); 424 (testimony of Respondent's friend, (b)(6) speaking to Respondent's motivations and stating, "[i]t was quite obvious to me that, you know, if you dangle enough carrot in front of someone, you know, they're going to go ahead and try to bite in a bad economy" and "I believe that a mistake was made, and maybe greed played a part in a situation").

Respondent argues that his background clearly demonstrates that he is not a risk or threat as contemplated by Section 46111. For example, he fled Iran following the fall of the Shah and has not expressed any love for the current regime and its policies and has not been known to express jihadist or fundamentalist views. He served as an (b)(6) (b)(6) and assisted United States personnel prior to his (and his family's) fleeing Iran in efforts to render Iran's military aircraft non-functional.

Respondent is married, has two adult children and is the sole support for two grandchildren (ages 13 and 3) who live with him and his wife, and also supports his 32 year old step-daughter who lives with them. Stipulation ¶ 14. Therefore, Respondent argues that engaging in further illegal activities would clearly compromise his ability to provide such support.

As discussed in detail above, Section 46111 is a broad statute, encompassing a range of risks and threats that must be construed to encompass not only direct acts of air piracy and terrorism and threats to the aviation system generally, but also reasonable suspicions of the same, and the activities of those who would provide material support and/or aid and abet in the commission of the same. The Agency sufficiently articulated its concerns about Respondent being a potential insider threat given the particulars of his past criminal history, his connections to a state sponsor of terrorism (both with his cousin who lives in Iran and connections and dealings with those within or affiliated with the Iranian military), and his access to, and experience within, the aviation industry. Given the broad parameters of Section 46111, there is more than enough substantial, credible and reliable evidence in the record for the undersigned to independently find that

Respondent poses, or can be suspected of posing, a risk of air piracy, terrorism, or a threat to airline or passenger safety, and the undersigned so finds.

C. Miscellaneous Issues Pertinent To This Decision

1. Respondent's Challenge To The Agency's Use Of Transcribed/Translated Conversations Between Respondent And (b)(6) Must Be Rejected

Respondent challenged the transcripts and translation of the Agency's proffered evidence on basis of the adequacy of the translation (some parts of Respondent's and (b)(6) conversation were conducted in Farsi) and asserted gaps in conversation and also general authenticity and foundational grounds.³² See, e.g., Tr. at 151-161; Respondent's Response Brief. The undersigned determined that the Agency had adequately set forth the chain of custody for the tapes and the process by which tapes were transcribed and translated through Special Agent (b)(6):(b)(7)(C) testimony. See, e.g., Tr. at 161. The burden then shifted to Respondent to demonstrate problems with the transcription/translation process.

The undersigned gave Respondent the opportunity to obtain the tapes and have an independent transcription/translation of them made, but Respondent chose not to do so. See Tr. at 180-183. Even in the context of criminal proceedings (which this is not), the burden is on the proponent of alleged inaccuracies in a transcript to come forward with evidence of such deficiencies. See, e.g., United States v. Pion, 25 F.3d 18, 21, 26-27 (1st Cir. 1994) (rejecting a party's claim about the admissibility of a transcript when the district court had invited the party to submit a transcript of its own, and the party declined to take up this invitation); United States v. Hogan, 986 F.2d 1364, 1376 (11th Cir. 1993)

³² Importantly, Respondent knew about existence of these transcribed/translated conversations prior to the hearing in this matter and had not made objections to the accuracy of the transcripts/translations during his proffer session, in which information from such tapes were discussed. See Tr. at 258, 261-262.

("[a] district court need not find that the transcript is perfectly accurate prior to its admission, and a defendant's remedy for alleged inaccuracies is to offer his own transcript with proof as to why it is a better one").

Respondent cannot reasonably expect to merely assert that the Agency's offered transcripts and translations are deficient without demonstrating such faults, particularly in the more relaxed evidentiary environment of proceedings conducted under the APA. Information from such tapes (as transcribed and translated and reflected in the Agency's exhibits) is material and relevant to these proceedings and was therefore considered.

2. Respondent's Challenge To The Adequacy Of An Agency Witness' Expert Testimony Must Be Rejected

Respondent argues that the testimony of Agency witness (b)(6) should be rejected as not meeting sufficient standards for "expert witness testimony." See Respondent's Post-Hearing Brief at 18-21. The undersigned gave both parties the opportunity to conduct Daubert³³ proceedings at the hearing with respect to proffered expert testimony, but both parties decided that such proceedings were unnecessary and instead reached a stipulation regarding the submission of certain Agency personnel's declarations (Agency Exhs. 31, 32) and Respondent's two expert reports (Respondent's Exhs. G, S). See Tr. at 275-276, 292-293. Nevertheless, Respondent encourages the undersigned to disregard (b)(6) opinion as providing an adequate basis for the Agency's actions.

The Federal Rules of Evidence, which serve as guidance but are not binding in this proceeding (see Interim Rules at (i)(3)), "provide a liberal standard for the

³³ See Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993); see also General Elec. Co. v. Joiner, 522 U.S. 136 (1997) (adopting abuse of discretion standard for trial court's admission of expert testimony); Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) (extending Daubert principles to non-scientific expert testimony).

admissibility of expert testimony.” United States v. Aref, 2008 WL 2663348 (2d Cir. July 2, 2008) (upholding district court’s qualification of an expert witness on terrorism) (quotation omitted); see also United States v. Damrah, 2005 WL 602593 (6th Cir. March 15, 2005) (upholding district court’s admission of terrorism expert’s testimony despite challenge about lack of materials relied upon for expert testimony).

(b)(6) opinion in this matter is relevant and admissible – his background in analyzing and dealing with potential terrorist threats is extensive. See Tr. at 31-39. As a matter of practical experience and professional training, (b)(6) has made security threat determinations and is familiar with various theatres of operation in which terrorist activities take place. Id. His testimony, whether denominated as an “expert opinion” or not, therefore was properly offered and received in this matter.

V. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Congress has charged the Agency with the responsibility of providing security for all modes of transportation under the ATSA, and specifically directed the Agency to take action toward holders of FAA issued documents it determines poses, or are suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety under 49 U.S.C. § 46111.

2. Respondent’s past criminal conduct of attempting to ship military parts to Iran, a state sponsor of terrorism, demonstrates an unquestionable lack of scruples and a willingness to put his own interests ahead of those of the United States and its citizens for monetary gain.

3. Respondent is an insider within the aviation industry by virtue of his holding the Airman Certificates and has increased access to the aviation and

transportation system of the United States through holding such certificates and is also an insider with connections and contacts to Iran and its military. Respondent's status as a holder of the Airman Certificates and his connections and contacts to Iran and its military renders him an "insider threat" for purposes of determining the level of risk or threat contemplated by 49 U.S.C. § 46111.

4. Based upon a preponderance of substantial, credible and reliable evidence, it is hereby found that Respondent poses, or is suspected of posing, a risk of aiding and abetting or providing material support to those who would commit air piracy.³⁴

5. Based upon a preponderance of substantial, credible and reliable evidence, it is hereby found that Respondent poses, or is suspected of posing, a risk of aiding and abetting or providing material support to those who would commit terrorism.

6. Based upon a preponderance of substantial, credible and reliable evidence, it is hereby found that Respondent poses, or is suspected of posing, a threat to airline or passenger safety either through direct acts by Respondent or by abetting and abetting or providing material support to those who would present a threat to airline or passenger safety.

7. The Agency has therefore proven by a preponderance of substantial, credible and reliable evidence that Respondent poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety under 49 U.S.C. § 46111.

8. The Agency's actions and the FAA's Order of Suspension with respect to Respondent's Airman Certificates were justified and appropriate under the terms of 49

³⁴ Importantly, even if one assumes that the definitions of "air piracy," "terrorism," and "threat to airline or passenger safety" did not encompass a broad notion of a security risk/threat to transportation and/or national security as suggested in Section II.A.3 of this Decision and Order, the undersigned finds Respondent poses, or is suspected of posing, such risks and threats under a more limited definition of these terms by a preponderance of substantial, credible and reliable evidence.

U.S.C. § 46111, and there is no reason to order the return of Respondent's suspended Airman Certificates.

VI. SANCTION

As indicated in Section I of this Decision and Order, the Agency issued its INTA on June 25, 2009, the result of which was the FAA's Order of Suspension. Importantly, that order temporarily suspended Respondent's Airman Certificates and did not revoke them. The Order of Suspension, by its terms, thus contemplates further Agency action making a final determination and requesting the appropriate sanction, if any, be issued in light of further Agency proceedings.⁵⁵

When Respondent requested a hearing pursuant to the requirements of 49 U.S.C. § 46111, Agency counsel's position was that such a hearing was not timely until a Final Notice of Threat Assessment (FNTA) had been issued. In the Notice of Assignment, the Chief Administrative Law Judge of the Coast Guard ordered that the hearing in this matter be held before the undersigned under the clear mandates of the statute.

The result is that a hearing on the record has been held pursuant to the requirements 49 U.S.C. § 46111(b), in which the undersigned has found by a preponderance of substantial, credible and reliable evidence that Respondent poses, or is suspected of posing, a risk of air piracy, terrorism or a threat to airline or passenger safety. Therefore, this Decision and Order shall constitute the Agency's Final Notice of Threat Assessment and the Undersecretary for Border and Transportation Security of the Department of Homeland Security, or his or her designee, shall direct the FAA to revoke Respondent's Airman Certificates.

⁵⁵ See Tr. at 62 (b)(6) Agency witness, describing that the suspension was not a final Agency decision).

As pointed out in this Decision and Order, the Agency has not adopted any procedural regulations applicable to these proceedings, and it is left to the undersigned to determine how best to effectuate the statute's requirements according to principles of due process and the APA generally. Respondent was properly put on notice of the charges against him (through the Agency's INTA and the Agency's pre-hearing pleadings and communications to Respondent in this case). Respondent also had to be aware of the potential sanctions – up to and including revocation of his Airman Certificates – for an adverse finding based upon the explicit language of 49 U.S.C. § 46111, which provides that upon a finding that Respondent “poses, or is suspected of posing, a risk of air piracy, terrorism or a threat to airline or passenger safety” the Administrator of the FAA “shall issue an order amending, modifying, suspending, or revoking” any part of an airman certificate (emphasis added). See, e.g., Air North America v. Dept. of Transportation, 937 F.2d 1427, 1434 (9th Cir. 1991) (observing that when a statute authorizes a number of alternative remedies, the agency must be allowed to choose among such sanctions explicitly left to its discretion following notice and opportunity to be heard).

The record has been fully developed following a hearing, and the only appropriate sanction is the revocation of Respondent's Airman Certificates. Should Respondent or the Agency wish to appeal this Decision and Order, such appeal shall be made to the Transportation Security Oversight Board under 49 U.S.C. § 46111(d).

VII. ORDER

WHEREBY:

IT IS HEREBY ORDERED that this Decision and Order shall constitute the Agency's Final Notice of Threat Assessment finding Respondent poses, or is suspected of posing, a risk of air piracy, terrorism, or a threat to airline or passenger safety;

IT IS HEREBY FURTHER ORDERED that the Undersecretary for Border and Transportation Security of the Department of Homeland Security, or the Undersecretary's lawful designee, request the FAA to immediately revoke Respondent's Airman Certificates; and

IT IS HEREBY FURTHER ORDERED that the service of this Decision and Order triggers appeal rights pursuant to 49 U.S.C. § 46111(d).

**Done and dated on this 14th day of April, 2010 at
Alameda, California.**



**Hon. Parlen L. McKenna
Administrative Law Judge
United States Coast Guard**

APPENDIX A - LIST OF WITNESSES AND EXHIBITS

Agency Witnesses

1. (b)(6)
2. Special Agent (b)(6),(b)(7)(C)
3. Special Agent

Respondent Witnesses

1. (b)(6)
- 2.
- 3.
- 4.
- 5.
- 6.

Agency Exhibits

1. List of (b)(6) Airman Certificates from FAA Registry
2. INTA
3. Notice to FAA re: INTA
4. FAA Order suspending (b)(6) airman certificates
5. Summary of basis for INTA
6. (b)(6) Criminal History Record
7. Redacted ROI
8. Excerpts from Country Reports on Terrorism, U.S. State Department Publication
9. Order denying (b)(6) Export Privileges
10. (b)(6) Criminal Docket
11. (b)(6),(b)(7)(C) Affidavit in Support of Application for Criminal Complaint and Arrest Warrant
12. Indictment against (b)(6)
13. (b)(6) Judgment and Consent Order
14. District Court order unsealing documents
15. Plea Agreement
16. Government's Under Seal Filing, dated 2/26/07
17. Government's Under Seal Filing in Response to Defendant's Under Seal Filing, dated 3/12/07
18. Government's Under Seal Filing in Response to Court's Questions at Prior Sentencing Hearing; Declaration of (b)(6),(b)(7)(C) in Support Thereof, dated 4/10/07
19. Transcript dated 1/6/06
20. Transcript dated 1/9/06 (Track 06-0077)
21. Transcript dated 1/11/06 (Track 06-0078)
22. Transcript dated 1/11/06 (Track 06-0079)

23. Transcript dated 1/12/06, 1/17/06, 1/19/06
24. Transcript dated 1/13/06
25. Transcript from 2/1/06
26. Documents relating to (b)(6) flights to Germany from 2001-2006
27. 7 photographs from criminal investigation
28. Transcript from 1/13/06 (Track 06-0082)
29. District Court Judgment and Probation/Commitment Order for (b)(6)
30. (b)(6) Inventory dated 1/22/07
31. Declaration of Mr. Gregory Wellen dated 11/23/09
32. Declaration of Mr. Keith Kauffman 11/12/09

Respondent Exhibits

- A. Government Notice of Request for Detention
- B. Stipulation and Order re Modifications of Bond
- C. Stipulation and Order re Modifications of Bond
- D. Stipulation to Modify Bond to Permit Defendant to Travel to Out of State Airports for the Purpose of Giving Flying Lessons
- E. Portion of Order of District Judge David O. Carter dated 1/12/07
- F. Disposition Order of 36 boxes of aircraft parts
- G. Military Assessment of Inventory, prepared by (b)(6)
- H. Criminal Minutes – Sentencing and Judgment
- I. FAA Medical Certificate
- J. Letter to Respondent from (b)(6) dated 3/3/09
- K. FAA Medical Record for (b)(6)
- L. FAA Directory entry for (b)(6)
- M. Copy of SBS Webpage
- N. FAA Airmen Registry Report from SBS, dated June 2009
- O. Airman Certification System Airman Inquiry, date 6/24/09
- P. Letter from TSA to (b)(6) dated 6/25/09
- Q. FAA Immediately Effective Order of Suspension, dated 6/25/09
- R. Criminal history record, dated 6/26/09
- S. Report of (b)(6) dated 9/29/09
- T. Letter from TSA to (b)(6) dated 7/14/09
- U. **[Originally Designated as the Dreyling Decision in Respondent’s Pre-Hearing List of Exhibits but Not Offered or Admitted at the Hearing]**
- V. Curriculum Vitae of (b)(6)
- W. Letters of Support for Respondent to Judge Carter
- X. NY Times Article, “6 Considered Threats Kept Licenses for Aviation”, dated 6/26/09
- Y. FAA Registry printout for (b)(6) dated 12/2/09

APPENDIX B - RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. AGENCY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW³⁵

A. PROPOSED FINDINGS OF FACT³⁶

1. Respondent (b)(6) was born in Iran in 1954. He became a citizen of the United States in 1996 or 1997. Tr. at 428-29.

RULING: Accepted and incorporated.

2. Respondent holds the following FAA-issued airman certificates: Airline Transport Pilot Certificate (Number (b)(6)) Private Pilot Certificate (Foreign Based) (Number (b)(6)) Flight Instructor Certificate (Number (b)(6)) Ground Instructor Certificate (Number (b)(6)) He also holds a Medical Certificate (Number (b)(6)) Tr. at 47; TSA's Ex. 1.

RULING: Accepted and incorporated.

3. On June 24, 2009, TSA learned from a reporter that Respondent had been convicted of attempting to sell F-14 parts to Iran. Tr. at 42-43; TSA's Exs. 31-32.

RULING: Accepted and incorporated.

4. Iran has been designated as a state sponsor of terrorism by the United States Department of State. State sponsors of terrorism provide critical support to non-state terrorist groups. Without state sponsors, terrorist groups would have greater difficulty obtaining the funds, weapons, materials and secure areas they require to plan and conduct operations. Tr. at 79-80; TSA's Ex. 8.

RULING: Accepted and incorporated.³⁷

5. The Qods Force, an elite branch of the Islamic Revolutionary Guard Corps, is Iran's primary mechanism for cultivating and supporting terrorists abroad. The

³⁵ The Agency designated its Exhibits as "TSA's Ex[s], [#]" and the transcript of the hearing as "Tr. at [pg.#]".

³⁶ Respondent made evidentiary objections and factual arguments to both the Agency's Proposed Findings of Fact and its Proposed Conclusions of Law. Rulings on these objections and arguments will be made as part of the rulings on the Agency's Proposed Findings of Fact and Conclusions of Law. See Respondent's Response to TSA's Closing Brief at 6-14.

³⁷ Respondent objects to the Agency's Proposed Findings of Fact Nos. 4-9 regarding Iran as insufficiently probative of the issue of whether Respondent poses a risk of terrorism. For the reasons discussed in this Decision and Order, such objections and arguments are overruled/rejected.

Qods Force provided aid in the form of weapons, training, and funding to HAMAS and other Palestinian terrorist groups, Lebanese Hizballah, Iraq-based militants, and the Taliban in Afghanistan. Iranian authorities have provided lethal support, including weapons, training, funding, and guidance, to Iraqi militant groups that target Coalition and Iraqi forces and kill innocent Iraqi civilians. Tr. at 80-82; TSA's Ex. 8.

RULING: Accepted and incorporated.

6. The F-14 aircraft is a fighter aircraft developed for the United States Navy. It was developed primarily as an air-to-air fighter and was outfitted with air-to-air missiles. The F-14 has also been used for air-to-ground missions and it can be affixed with bombs. Tr. at 83-84; TSA's Ex. 31.

RULING: Accepted and incorporated.

7. F-14s are currently in the inventory of the Iranian Air Force. The Iranian Air Force uses F-14 aircraft for air-to-air defense, electronic radar, and air-to-ground missions. It can also be used as a weapon for offensive means. Tr. at 84-85; TSA's Exs. 31-32.

RULING: Accepted and incorporated.

8. Iran purchased F-14 aircraft from the United States in the late 1970s and early 1980s. The United States did not sell F-14 aircraft to any other foreign country. Tr. at 85.

RULING: Accepted and incorporated.

9. Iran is unable to obtain spare parts or maintenance parts for F-14 aircraft through legitimate means because the United States has embargoed those military technologies. Tr. at 85-88.

RULING: Accepted and incorporated.

10. Upon learning of Respondent, TSA analysts searched various government systems, including the Treasury Enforcement Communication System (TECS) and the National Crime Information Center, for confirmation of his criminal conviction. A printout from the TECS confirmed that Respondent had been charged with violating the International Emergency Economic Powers Act. TSA also confirmed that Respondent held active and valid FAA airman certificates. Tr. at 43-47; TSA's Exs. 6-7, 31-32.

RULING: Accepted and incorporated.

11. After a review of the information regarding Respondent's criminal actions by senior leaders at TSA, Acting Deputy Administrator Keith Kauffman decided to request that the FAA suspend Respondent's airman certificates. An Initial Notification of Threat Assessment (INTA), dated June 25, 2009, was sent to Respondent. TSA also mailed a letter to the FAA requesting that Respondent's airman certificates be suspended. Tr. at 53-60, 269; TSA's Exs. 2-3, 31-32.

RULING: Accepted and incorporated.

12. The FAA issued an "Immediately Effective Order of Suspension" to Respondent on June 25, 2009. Tr. at 269; TSA Ex. 4.

RULING: Accepted and incorporated.

13. TSA later provided Respondent with a "Summary of Basis for TSA's Initial Notification of Threat Assessment." Tr. at 277-79; TSA's Ex. 5.

RULING: Accepted and incorporated.

14. Subsequent to sending the INTA to Respondent, TSA reviewed additional information regarding Respondent's criminal case, including court documents and records from the investigation conducted by Immigration and Customs Enforcement (ICE). Tr. at 73-74.

RULING: Accepted and incorporated.

15. On December 14, 2005, ICE agents executed search warrants as part of a criminal investigation into (b)(6) for allegedly selling military aircraft parts for export to Iran. During the search, agents found a sales order to or from Newport Flight Center. Tr. at 132-34; TSA's Ex. 11 at 8-9.

RULING: Accepted and incorporated.³⁸

16. At a December 16, 2005 interview, (b)(6) told ICE agents that Respondent utilizes his business, (b)(6) to both teach flight instruction and purchase/sell aircraft parts to customers in Iran. (b)(6) further stated that Respondent had requested maintenance kits from him that are for the F-14 fighter aircraft. The Respondent had informed (b)(6) that the maintenance kits would be shipped to Germany and then transshipped to a contact in Iran. Tr. at 132-37; TSA's Ex. 11 at 9-11.

³⁸ Respondent objects to this proposed finding of fact arguing that there is no evidence linking the sales order to military parts or to Iran. Such argument is rejected because the finding of fact provides part of the background under which ICE began an investigation into Respondent's activities and provides support for (b)(6) claimed dealings with Respondent.

RULING: Accepted and incorporated.³⁹

17. Respondent and (b)(6) have known each other since at least September 2004. On September 27, 2004, (b)(6) sent an e-mail message to Respondent at the (b)(6) (b)(6) stating: “i have been doing alot of thinking on the business you are doing and to be honest with you it is against the law[.] i can understand a position you may take and if the money is good for you but in my experience i think this is a lousy way of making money especially when you are dealing with a government that is on the embargo list[.] it is not worth breaking the law and if anything happens this is a federal offense and not a game[.] i understand your position and please do not take offense to this as i do not want the stress and legal ramifications of this venture.” Tr. at 289-91; TSA’s Ex. 17.

RULING: Accepted and incorporated.⁴⁰

18. On September 14, 2005, a facsimile was sent from Respondent’s fax line to (b)(6). The facsimile requested that (b)(6) locate part and serial numbers for nine parts. Five of the nine parts were for the F-14 fighter aircraft. TSA’s Ex. 18 at 5.

RULING: Accepted and incorporated.⁴¹

19. On October 22, 2005, a facsimile was sent from Respondent’s fax line. The facsimile requested that (b)(6) locate part and serial numbers for ten parts. At least two of the ten parts were specifically designated by their part number as being parts for the F-14 fighter aircraft. TSA’s Ex. 18 at 5-6.

RULING: Accepted and incorporated.

³⁹ Respondent objects to this proposed finding of fact as not being supported by reliable evidence (as hearsay within hearsay) and is inconsistent with the undisputed fact that Respondent refused to take/send the parts to Iran himself. Respondent’s objection is overruled/rejected for the reasons given in this Decision and Order. As an administrative proceedings governed by the APA, hearsay is permitted in this case (see, e.g., *Kim v. Holder*, 560 F.3d 833, 836 (8th Cir. 2009) (hearsay evidence properly admitted in administrative proceeding where insufficient basis upon which to doubt the accuracy of the evidence in question was offered); *Bennett v. N.T.S.B.*, 66 F.3d 1130, 1137 (10th Cir. 2003)). The undersigned found Special Agent (b)(6),(b)(7) testimony, who was the investigating agent in this case and who sat in on (b)(6) (b)(6) proffer session (see Tr. at 133-134), sufficiently reliable and probative for admission of the evidence proffered. *C.f.*, *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 406-407 (3rd Cir. 2003) (rejecting multiple hearsay in a consular report as unreliable where investigating agent was not testifying and information was coming from unknown declarants).

⁴⁰ Respondent objects to this proposed finding of fact as not being probative on the issue of Respondent’s risk of terrorism. For the reasons given in this Decision and Order, the objection is overruled/rejected.

⁴¹ Respondent does not dispute the existence of these facsimile transmissions in Proposed Findings of Fact Nos. 18 and 19 or their content, but objects that these faxes were related to any illegal activity or to Iran. For the reasons given in this Decision and Order, the objection is overruled/rejected.

20. From 2001 to 2006, Respondent purchased numerous airline tickets for trips from California to Germany. On at least two occasions, Respondent also purchased airplane tickets for trips from Germany to Iran. According to (b)(6) Respondent would sometimes purchase a flight to Germany and then buy a separate ticket from Germany to Iran. Respondent would do this so there were no records in the United States of his travels to Iran. Tr. at 119, 137-40, 372-73, 460-62; TSA's Exs. 11 at 11-12; 26.

RULING: Accepted and incorporated.⁴²

21. On December 18, 2005, Respondent met with (b)(6). The two men discussed how Respondent would transport aircraft parts to Iran. Respondent told (b)(6) that he had traveled to Frankfurt (Germany) with eight suitcases because luggage destined for Iran is inspected by officials. Tr. at 141-50, 161; TSA's Exs. 11 at 13-14; 19 at 4-5, 8-9, 23.

RULING: Accepted and incorporated.⁴³

22. On January 3, 2006, Respondent again met with (b)(6). Respondent stated during the meeting that he would "FedEx" the F-14 maintenance kits to a contact in Germany. The contact would then personally fly the kits to Iran. Tr. at 168; TSA's Ex. 11 at 15.

RULING: Accepted and incorporated.⁴⁴

23. The F-14 maintenance kits were ultimately destined for a (b)(6) in Iran, who was chief inspector in the logistics department for the Iranian Air Force. Tr. at 168, 247-48, 253, 257, 484, 488-89; TSA's Ex. 16 at 6.

RULING: Accepted and incorporated.⁴⁵

⁴² Respondent argues that the evidence does not demonstrate that Respondent travelled through Germany to Iran to avoid scrutiny. For the reasons given in this Decision and Order, the argument is rejected.

⁴³ Respondent disputes the description of the recorded conversation with (b)(6). For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled and Respondent's contentions regarding the substance of the conversation is rejected.

⁴⁴ Respondent disputes any inference that he arranged for transport of the F-14 parts to Iran. Whether Respondent made the actual arrangements for how these parts would get to Iran is irrelevant for the purposes of this Decision and Order, and the objection is overruled/rejected.

⁴⁵ Respondent disputes the truth of this Proposed Finding of Fact and suggests that nothing in the transcripts indicate that the parts were destined for (b)(6) and also disputes the testimony of Special Agent (b)(6)(b) regarding Respondent's proffer session. For the reasons given in this Decision and Order, this objection is overruled/rejected. Respondent may not counter the statements found to have been made during his proffer session with the government.

24. On January 4, 2006, Respondent told (b)(6) that he was waiting to receive another package before shipping the maintenance kits. The package Respondent was waiting for did not come from (b)(6) and it contained items that were to be included in the FedEx shipment to Iran. Tr. at 169-70; TSA's Ex. 11 at 15-16.

RULING: Accepted and incorporated.⁴⁶

25. On January 6, 2006, Respondent attempted to ship a package by dropping it off at a FedEx facility. The package was addressed to the attention of an individual in Germany. Respondent declared the package's value to be \$164.12 and listed its contents as "miscellaneous parts, nuts and bolts and magazines." Tr. at 170-74; TSA's Ex. 11 at 18-20.

RULING: Accepted and incorporated.

26. ICE Agents seized the package from the FedEx facility and inventoried its contents. The package contained the F-14 maintenance kits as well as other aircraft parts. Tr. at 171-74; TSA's Ex. 11 at 19-20.

RULING: Accepted and incorporated.

27. On January 9, 2006, Respondent told (b)(6) that he cannot sleep at night because he was worried that "[c]ustoms" had seized the FedEx package. Respondent also stated that the package was valued at \$20,000 and indicated that he was aware of the export laws prohibiting shipments to Iran. Tr. at 184-89; TSA's Ex. 20 at 12, 14.

RULING: Accepted and incorporated.⁴⁷

28. During their January 9, 2006 conversation, Respondent and (b)(6) discussed the process of selling an engine blade for the F-5 military aircraft to the colonel in Iran. Respondent called the Iranian colonel his "puppy dog." Tr. at 192-94; TSA's Exs. 11 at 20-22; 20 at 16-18.

⁴⁶ Respondent objects to the Proposed Finding of Fact (as hearsay within hearsay) and argues that no inference should be drawn that the parts to be included in the package were illegal. For the reasons discussed in this Decision and Order, this objection is overruled/rejected. See also *supra*, Note 39 on hearsay issues. Furthermore, Respondent's assertion about the possible legality of items contained in this shipment is contradicted by evidence in the record indicating the package contained other aircraft parts, which Respondent does not dispute.

⁴⁷ Respondent objects to this Proposed Finding of Fact on the same basis as objections to Proposed Finding of Fact No. 21. For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled. Respondent also argues that the conversation must be placed in the proper context and attempts to explain the alleged innocuousness of Respondent's statements. Such objection is rejected for the reasons given in this Decision and Order.

RULING: Accepted and incorporated.⁴⁸

29. On January 11, 2006, Respondent again indicated his awareness of the export laws, telling (b)(6) “[t]he law is clear, it says for example[,] sell these things to Germany and if you know it’s going to another country, you are responsible.” On that same day, Respondent told (b)(6) that he had once purchased parts for the F-4 Phantom aircraft and was scared that the FBI would knock on his door. Respondent and (b)(6) also discussed whether the colonel in Iran had requested the jet engine blade. Tr. at 199-202, 204-06; TSA’s Exs. 11 at 24; 21 at 13-14; 22 at 9-10, 12-13.

RULING: Accepted and incorporated.⁴⁹

30. In January 2006, Respondent told (b)(6) that he wanted to leave the country in February with more maintenance kits. Tr. at 208-09, 212; TSA’s Ex. 23 at 8.

RULING: Accepted and incorporated.⁵⁰

31. On January 13, 2006, Respondent and (b)(6) discussed engine blades for the F-5 aircraft. Respondent stated to (b)(6) that his “great fear” was that he had been lying about the parts that he was shipping. Tr. at 213-16; TSA’s Ex. 24 at 1-3, 7.

RULING: Accepted and incorporated.⁵¹

32. On February 1, 2006, Respondent and (b)(6) discussed how Respondent could avoid being caught by “customs” when leaving the country with a second shipment of F-14 maintenance kits. Respondent told (b)(6) that he had sent 28

⁴⁸ Respondent objects to this Proposed Finding of Fact on the same basis as objections to Proposed Finding of Fact No. 21. For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled.

⁴⁹ Respondent objects to this Proposed Finding of Fact on the same basis as objections to Proposed Finding of Fact No. 21. For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled. Respondent also objects that the F-4 transaction had been investigated by the FBI, which determined that Respondent bought and sold such parts legally and that the Agency’s interpretation of the conversation about the F-5 blade is incomprehensible. Such arguments are rejected as evidence of the F-4 transaction and FBI’s investigation is not in the record and the undersigned found the Agency’s interpretation reasonable given the evidence in the record.

⁵⁰ Respondent objects to this Proposed Finding of Fact on the same basis as objections to Proposed Finding of Fact No. 21. For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled. Respondent further argues that Respondent never told (b)(6) that he wanted to leave the country with F-14 maintenance kits. This argument is rejected. See Agency Exh. 25 at 8 (indicating that Respondent was willing to take such kits on a trip to Iran in February).

⁵¹ Respondent objects to this Proposed Finding of Fact on the same basis as objections to Proposed Finding of Fact No. 21. For the reasons given in this Decision and Order, the objections to the recorded and transcribed conversations are overruled.

boxes to Germany that ultimately ended up in Iran. Tr. at 226-29; TSA's Ex. 25 at 5-7.

RULING: Accepted and incorporated.⁵²

33. The boxes containing the F-14 maintenance kits had a sticker on them that said "USS ABRAHAM LINCOLN." The USS ABRAHAM LINCOLN is a nuclear-powered aircraft carrier. Tr. at 231-33; TSA's Ex. 27.

RULING: Accepted and incorporated.⁵³

34. On February 3, 2006, ICE Agents arrested Respondent at his residence. During the arrest, ICE Agents discovered boxes of aircraft parts in Respondent's garage. ICE Agents also found suitcases that contained aircraft parts wrapped in towels. Tr. at 233-44; TSA's Exs. 27, 30.

RULING: Accepted and incorporated.⁵⁴

35. According to information from the Demilitarization Coding Integrity Branch, which catalogues parts for the United States Military, the vast majority of parts found in Respondent's garage have military applications for use on aircraft that are used by Iran. TSA's Ex. 18 at 2-3.

RULING: Accepted and incorporated.⁵⁵

36. One of the items found in Respondent's garage was a Rockwell Collins filter. According to the United States Navy, this filter is used by aircraft to communicate with submarines. Tr. at 254-55.

⁵² Respondent argues that no evidence established that the 28 boxes ended up in Iran. The undersigned found the Agency's interpretation of Respondent's conversation with (b)(6) more likely than not. Respondent's argument is therefore rejected.

⁵³ Respondent argues that this Proposed Finding of Fact is not probative of any issue. This argument is rejected as the Proposed Finding of Fact establishes the origin and nature of the F-14 maintenance kits that Respondent attempted to ship to Germany with the ultimate destination being Iran.

⁵⁴ Respondent objects to this Proposed Finding of Fact as false to the extent that there is no evidence that aircraft parts were covered in towels in suitcases and cites to Special Agent (b)(6)/(b)(7) testimony at Tr. 240. This objection is overruled/rejected. See Agency Ex. 27 (picture of suitcase with bundled up towels and aircraft parts).

⁵⁵ Respondent objects to this Proposed Finding of Fact because it is alleged to be "based solely on argument by Assistant U.S. Attorney Lee in a legal brief" which may not be considered as evidence and is countered by Respondent's expert report (the Moss Report). This objection is overruled/rejected as the Demilitarization Coding Integrity Branch report was provided as part of Agency Ex. 18 and is found to be probative and reliable on the issue. The Moss Report is discussed in this Decision and Order at Section IV.A.

RULING: Accepted and incorporated.⁵⁶

37. Authorities also seized “parts list[s]” from Respondent’s home. On the top of one “parts list,” there was a handwritten notation: “jet engine F-4-F-5-maybe F-14.” On a second “parts list,” the handwritten notation read: “For Airforce RFQ.” Printouts, listing vendors who could provide these parts for sale, were also recovered from Respondent’s residence. TSA’s Ex. 18 at 6.

RULING: Accepted and incorporated.⁵⁷

38. During his proffer session, Respondent stated that he had become aware in the early 1980s of “shopping lists” produced by the Iranian government for parts it needed. Respondent stated that he would obtain the lists from his cousin in Iran, buy parts in the United States, and then ship the parts to Iran through Germany. Respondent also stated that the part lists were provided by a (b)(6) who was paid a 10% commission. (b)(6) was in the Iranian Air Force. The Iranian government would only pay Respondent for the parts that were on the list. Tr. at 245-47, 249-50, 252.

RULING: Accepted and incorporated.⁵⁸

39. Pursuant to a written plea agreement, Respondent pleaded guilty to “willfully attempt[ing] to export and transship from the United States to Iran, aircraft parts, including approximately three F-14 maintenance kits, without first obtaining... a license or written authorization for export and transshipment, knowing such a license or authorization was required.” Tr. at 257; TSA’s Exs. 10, 12, 15.

RULING: Accepted and incorporated.

40. Respondent was sentenced to 24 months in prison and 3 years of supervised release on May 7, 2007. TSA’s Exs. 10, 13.

RULING: Accepted and incorporated.

⁵⁶ Respondent objects to this Proposed Finding of Fact as unreliable hearsay and that Iran does not have any submarines in any event. The hearsay objection is overruled for reasons previously stated in these rulings and the fact of whether Iran does or does not have submarines is not in the record.

⁵⁷ Respondent does not dispute that these documents were found in his home or the documents’ contents. Respondent instead objects to the inferences to be drawn from these documents as indicating illegal activity. For the reasons discussed in this Decision and Order, such objection is overruled/rejected.

⁵⁸ Respondent disputes the substance of this Proposed Finding of Fact and objects to its reliability and maintains that Respondent never sold anything to the Iranian government. The undersigned found Special Agent (b)(6), (b)(7)(C) testimony concerning Respondent’s proffer session reliable and probative. For the reasons discussed in this Decision and Order, this objection is overruled/rejected.

41. The United States Department of Commerce, Bureau of Industry and Security, denied Respondent export privileges on July 8, 2008. TSA's Ex. 9.

RULING: Accepted and incorporated.

42. Respondent's probation officer believed that, given the circumstances of the crime, Respondent could be a possible threat to the community if allowed to fly, but did not prohibit Respondent from flying because there was no court order barring him from doing so. Tr. at 315.

RULING: Accepted and incorporated.⁵⁹

43. Respondent was primarily motivated by money when he knowingly and willfully attempted to ship military aircraft parts to a state sponsor of terrorism. Tr. at 118-19, 307, 311-13, 393-96.

RULING: Accepted and incorporated.⁶⁰

B. PROPOSED CONCLUSIONS OF LAW

1. Congress has charged TSA with the responsibility of providing security for all modes of transportation.

RULING: Accepted and incorporated.

2. TSA is authorized under 49 U.S.C. § 114 and § 46111 to determine that the holder of an FAA-issued airman certificate poses a threat to transportation or national security or risk of terrorism. Upon being notified of TSA's determination, the FAA is required to issue an order modifying, suspending, or revoking any part of that individual's airman certificate or certificates.

RULING: Accepted and incorporated.⁶¹

⁵⁹ Respondent objects to this Proposed Finding of Fact in part because he argues that it misconstrues the evidence. Respondent maintains that the witness indicated that she did not believe Respondent would fly an airplane into a building or drop a bomb from an airplane or otherwise use an airplane that would harm or kill people (see Tr. at 315-316). Thus, Respondent contends that such testimony reflects an opinion that Respondent poses no threat to the community. For the reasons given in this Decision and Order, this objection is overruled/rejected.

⁶⁰ Respondent argues that this Proposed Finding of Fact is "a cheap prosecutor's trick" to conflate two facts and infer that Respondent's motivation was to ship military parts to a state sponsor of terrorism. This argument is rejected. This Decision and Order makes it clear what Respondent's motivations were and the Proposed Finding of Fact does not misstate the evidence in the record.

⁶¹ Respondent objects to this conclusion of law on the basis that the Agency is conflating the two statutes and the differing Agency responsibilities under each. This Decision and Order discusses and analyzes the

3. Neither 49 U.S.C. § 114 nor 49 U.S.C. § 46111 requires a factual nexus between an individual's possession of airman certificates and the threat to transportation or national security or risk of terrorism.

RULING: Rejected for the reasons stated in the Decision and Order above.

4. TSA's determination that Respondent poses a threat to transportation or national security or risk of terrorism is supported by substantial evidence on the record and is entitled to deference.

RULING: Accepted in part and incorporated, rejected in part. The fact that Respondent poses a risk of terrorism or of a threat to airline or passenger safety is accepted for the reasons discussed in the Decision and Order above. The Agency's factual determination on this point (and its interpretations of the law) is not, however, entitled to deference by the undersigned under the clear terms of 49 U.S.C. § 46111.

II. RESPONDENT'S PROPOSED FINDINGS OF FACT

1. Respondent is 55 years old, married, has two adult children and is the sole support for two grandchildren (ages 13 and 3) who live with him and his wife. He also supports his 32 year old step-daughter who lives with them. (Stip. ¶14)

RULING: Accepted and incorporated.

2. Respondent was born in Iran in 1954 and first came to the U.S. in 1976 to study aircraft maintenance at the Pittsburgh Institute of Aeronautics. (428:19-429:11)

RULING: Accepted and incorporated.

3. After completing his studies he returned to Iran in 1977. (429:12-16)

RULING: Accepted and incorporated.

4. From 1977 until he fled the country after the 1979 Iranian revolution, he worked as a pilot for a company called (b)(6) an agent for U.S. defense contractor (b)(6) under contract to the Iranian government. (429:16-430:22)

RULING: Accepted and incorporated.

Agency's burden under Section 46111 and does not suggest or imply that these proceedings were brought pursuant to the requirements of 49 U.S.C. § 114.

5. He also worked as a translator and consultant for (b)(6) which was in the business of providing missile parts to the Iranian Air Force. (430:25-431:6)

RULING: Accepted and incorporated.

6. While working for (b)(6) Respondent also assisted the American military attaché, (b)(6) (431:15-432:2)

RULING: Accepted and incorporated.

7. At the time of the revolution, Iran had recently purchased its fleet of F-14s and AIM-54 Phoenix missiles (434:4-7)

RULING: Accepted and incorporated.

8. Before he fled Iran in 1980, Respondent assisted the U.S. military attaché and U.S. contractors in sabotaging the Phoenix missile guidance systems rendering them useless and rendering Iran's F-14 fleet toothless. While his only role was translating for them, his mere association with Americans plus the fact that he once lived in the U.S. put his life in jeopardy. Indeed two of his associates were assassinated. Since then, these F-14s were use only for "radar protection." (434:19-439:16)

RULING: Accepted in part/incorporated and rejected in part. Accepted that Respondent worked as translator for the U.S. military attaché and U.S. contractors and that such work put him and other Iranians associated with the United States in jeopardy. Rejected as too speculative and unsupported to the extent the proposed fact states that such efforts eliminated the tactical capabilities of the F-14.

9. In 1981, Respondent's profession as a pilot allowed him to escape from Iran. (439:17-24) His wife and son escaped through Afghanistan to Pakistan on a donkey and a camel. (440:1-4)

RULING: Accepted and incorporated.

10. After leaving Iran, Respondent moved with his family to Milan, Italy (441:6-7) where he worked for a company called (b)(6) and was (b)(6) (b)(6) He was also an instructor for the (b)(6) (447:4-13)

RULING: Accepted and incorporated.

11. While living in Milan Respondent (b)(6)

(b)(6)

(b)(6)

(441:8-446-18)

RULING: Accepted and incorporated in part, rejected in part as not having sufficient foundation. The value of any information provided (b)(6) during this period is unsubstantiated.

12. Respondent immigrated to the United States in 1993 (448:8-10) and became a U.S. citizen in 1996 or 97. (429:19-20).

RULING: Accepted and incorporated.

13. Until his incarceration, Respondent worked as a flight instructor. (448:14-15) For the last ten years Respondent was a (b)(6) a coveted designation given by the Federal Aviation Administration (FAA) to flight instructors who have maintained a high level of successful flight training activity and who meet special training criteria. (Stip. ¶4)

RULING: Accepted and incorporated.

14. After the 9/11 attacks, Respondent provided valuable information about Arab flight students to F.B.I. Agents (b)(6):(b)(7)(C) (450:11- 454:22)

RULING: Accepted and incorporated in part, rejected in part as not having sufficient foundation. The value of any information provided to the FBI during this period is unsubstantiated.

15. Respondent got into the business of buying and selling airplane parts in 2002 or 2003 when he learned that flight schools in Milan and Dubai needed parts for their American airplanes. He was able to buy parts from a U.S. company called "Spruce" and on eBay. He bought some parts for which he had a customer and others on "spec." Anyone can buy airplane parts from Spruce and E-bay. You do not have to be a pilot. (457:2-458:24)

RULING: Accepted and incorporated.

16. Respondent first returned to Iran in 1995 to visit his sick mother. From then until 2005, he visited 8 or 9 times – mostly to visit his mother. After his father died, as the oldest child, he had to return to Iran to sign papers to divide his father's property. (459:12-460:4)

RULING: Accepted in part and incorporated, rejected in part. The fact that Respondent had relatives and family obligations in Iran is accepted and incorporated. To the extent this proposed finding of fact states or implies that Respondent did not unlawfully transport material into Iran during his trips to Iran, it is rejected.

17. Since there are no non-stop flights to Iran, Respondent flew on Lufthansa through Frankfurt where he always stopped for two or three days to visit his son and grandchild. (460:5-12) On three or four trips prior to his arrest, Respondent took airplane parts with him to Iran for his cousin's single engine civilian airplanes. These parts included tires, nuts, bolts, o-rings and rivets. On one occasion, while he was in Iran, Respondent had some ball bearings sent to him that he had bought on eBay for use in his cousin's model airplane. (460:19-463:2).

RULING: Accepted in part and incorporated, rejected in part. The fact that Respondent had relatives in Germany and Iran is accepted and incorporated. The fact that Respondent only transported parts for his cousin's use is rejected for the reasons discussed in the Decision and Order above.

18. Before the incident which resulted in his arrest, Respondent never took or exported military parts to Iran. (465:2-5)

RULING: Rejected for the reasons discussed in the Decision and Order. It is more likely than not that Respondent exported or attempted to export such parts to Iran prior to his arrest.

19. Prior to the arrest, Respondent's long time friend (b)(6) offered him an attractive business opportunity in Dubai selling salvage Boeing 747 parts. This was attractive to Respondent because he was in deeply debt to his son who had been lending him money to live on. (463:12-464:23)

RULING: Accepted and incorporated.

20. To convince (b)(6) that he was the right person for this business opportunity, Respondent often exaggerated or even lied to (b)(6) to bolster his image as a salesman. For instance, he told (b)(6) that he sold the aforementioned ball bearings that he shipped to Iran for his cousin for \$98 each. (462:3-9)

RULING: Rejected for the reasons stated in the Decision and Order.

21. On one occasion, (b)(6) asked Respondent to take a C-130 aircraft part to Iran. Respondent did not take the part with him but on his return, he told

(b)(6) that there was no need for the part in Iran. In fact, he had no way of knowing one way or the other whether there was a need for the part in Iran because he did not know anyone in Iran who could provide him with this information. (467:7-468:19)

RULING: Rejected for the reasons stated in this Decision and Order. The record clearly demonstrates that Respondent had contacts in the Iranian military, received parts lists from Iran, and knew that Iran had C-130s and was “always looking for parts for everything.” See Tr. at 468.

22. Unbeknownst to Respondent, (b)(6) had been arrested for illegally attempting to export F-14 parts to Singapore. To reduce his sentence; he cooperated with Immigration and Customs Enforcement (ICE) agents including Agent (b)(6)(b)(7) in a sting operation directed at his “friend.” In connection with the sting, (b)(6) asked Respondent if he would take airplane parts with him to Iran. Respondent refused to take the parts with him but eventually agreed to ship them to Germany where (b)(6) said his uncle would pick them up and forward them to Iran. Respondent knew this was illegal but wanted to keep (b)(6) happy because of his promise to send Respondent to Dubai to run the 747 parts business. Respondent never asked for money and (b)(6) never offered to pay money. (470:5-471:9)

RULING: Accepted in part and incorporated, rejected in part. Accepted with respect to the fact that (b)(6) was working with ICE agents as a confidential informant in a sting operation against Respondent. Rejected to the extent this proposed finding states or implies that Respondent’s actions were an isolated incident.

23. One day, (b)(6) brought over the parts he wanted Respondent to ship. Respondent opened and inspected the parts and determined that they were F-14 fuel system parts but could be used on any airplane fuel system and vice versa. There were o-rings and cotter pins that he could buy for 5 or 10 cents each and small filters used on civilian airplanes. Based on his knowledge, Respondent did not believe that sending these parts to Iran would help the Iranian Air Force. Nor would he have agreed to ship the parts if he thought they would help the government of Iran. Indeed, he would not do anything he thought would help the present Iranian regime for any amount of money. (470:10-473:15)

RULING: Rejected for the reasons stated in the Decision and Order.

24. On January 6, 2006, Respondent took the F-14 parts that (b)(6) provided him as part of the sting operation, to FedEx for shipment to Germany and was arrested for this act on February 3, 2006. (Stip. ¶2 and 3)

RULING: Accepted and incorporated.

25. On the day of Respondent's arrest, February 3, 2006, Assistant U.S. Attorney Ivy Wang, requested a detention hearing because Respondent was alleged to be a "serious risk of flight." Risk of flight in this context means fleeing to avoid prison. (Government's Request for Detention Exhibit A.) (Stip. ¶5)

RULING: Accepted and incorporated.

26. In requesting detention, Assistant U.S. Attorney Ivy Wang did not consider Respondent to be a danger to the community. (See Exhibit A) Respondent was detained until June 2006, when he was released on bond and came under the supervision of a Pre-Trial Services Officer. (Stip. ¶6)

RULING: Accepted and incorporated as the undersigned is required by law to accept party stipulations to the facts. To the extent that Respondent attempts to imply that U.S. Attorney Wang is qualified or authorized under Section 46111 to make determinations regarding Respondent's risk or threat level, such proposed fact is rejected as a matter of law.

27. Before entering prison in September 2007, Respondent was allowed to resume work as a flight instructor with the knowledge of his arresting officer, (b)(6);(b)(7)(C) Assistant U.S. Attorney Richard Lee, United States District Court Judge David Carter, and the Pre-Trial Services Officer. (Stip. ¶7)

RULING: Accepted and incorporated.

28. On July 17, 2006, Judge Carter signed an order stating:

"That defendant is permitted to enter the premises of airports, (not including LAX), within the Central District of California and fly an airplane but only for the purpose of giving flying lessons to his students in his Cessna 172."

(Stipulation and Order Allowing Flying Lessons Exhibit B.)

RULING: Accepted and incorporated.

29. This order was based on a stipulation that was signed by Assistant U.S. Attorney Lee after consulting with Agent (b)(6);(b)(7)(C) (Stip. ¶8)

RULING: Accepted and incorporated.

30. On October 18, 2006, Judge Carter signed another order regarding Respondent's flying activities. (Stipulation and Order Re Allowing Flying Lessons Exhibit C). It permitted him "to fly aircraft owned by other individuals in his capacity as a flight instructor and [to give] flying lessons under the same terms and conditions he is currently permitted to fly his own aircraft." The reason given was that "many times defendant's flying students own their own airplane and want to get lessons on the plane they will actually fly rather than on defendant's plane. Therefore, in order to earn a living and give lessons to these students, defendant needs permission from the Court to fly their aircraft as well as his own aircraft." This order was also based on a stipulation that was signed by Assistant U.S. Attorney Lee. (Stip. ¶9)

RULING: Accepted and incorporated.

31. On January 12, 2007, Judge Carter signed a third order regarding Respondent's flying activities. (Stipulation Allowing Flying Lessons Exhibit D and Order Allowing Flying Lessons Exhibit E.) It allowed him to travel to "three airports in Kingman, Arizona, Laughlin, Nevada, and North Las Vegas, Nevada for the period January 22, 2007-February 3, 2007 for the purpose of giving flying lessons to his...students." Again, this order was based on a stipulation that was signed by Assistant U.S. Attorney Lee. (Stip. ¶10)

RULING: Accepted and incorporated.

32. Upon his arrest 13,000 airplane parts were seized from Respondent's garage. This was a loose count of parts totaling only about 300 different types, of which only 10 types had any potential military application at all and none would have been of any significant military utility to Iran. Moreover, with the exception of the F-14 Maintenance Kits provided to Respondent by the ICE informant, there was no systematic or reasonable connection between the items in the inventory and the weapon systems currently in use in the country of Iran. (Moss Report admitted into evidence as expert testimony by stipulation. Exhibit G) All of the items in the garage were purchased by Respondent on E-bay with the intent to resell them. Before Respondent pled guilty, the government returned the parts to him. (Order returning parts. Exhibit F).

RULING: Accepted in part and incorporated, rejected in part for the reasons stated in the Decision and Order above. The fact that 13,000 parts were seized from Respondent's garage and that these parts were returned by the government is accepted and incorporated. The conflicting information from the Moss Report and the report by the Demilitarization Coding Integrity Branch is discussed in the Decision and Order above.

33. On May 7, 2007 Judge Carter sentenced Respondent to 24 months in prison. (Sentencing and Judgment Exhibit H). (Stip. ¶11)

RULING: Accepted and incorporated.

34. On May 9, 2007, based on information in a newspaper article, (b)(6) (b)(6) who is employed by the FAA Office of Aerospace Medicine, requested Respondent's medical file. Upon review of Respondent's medical file and the facts of his conviction, the FAA did not revoke or suspend his certificates. (b)(6) Airman Medical File Exhibit I and (b)(6) contact info Exhibit L)

RULING: Accepted and incorporated in part, rejected in part. To the extent that Respondent attempts to imply that (b)(6) is qualified or authorized under Section 46111 to make determination regarding Respondent's risk or threat level, such proposed fact is rejected.

35. Prior to his imprisonment, Judge Carter, upon approval of Pretrial Services, expressly permitted Respondent to fly to Kingman, Arizona twice. (Sentencing and Judgment Exhibit H)

RULING: Accepted and incorporated.

36. After his release from prison in January 2009, until the FAA suspended his pilot and instructor certificates, with the knowledge of his probation officer, (b)(6),(b)(7)(C) and her supervisor (b)(6),(b)(7)(C) Respondent resumed his flying and instructing activities. (315:1-317:18)

RULING: Accepted and incorporated.

37. On March 2, 2009 Respondent took a FAA flight physical, which is required to maintain his flying privileges. (b)(6) Airman Medical File Exhibit I.) In support of his application for a medical certificate, Respondent's Probation Officer, (b)(6),(b)(7)(C) wrote a letter to Respondent stating,

"This letter is in response to your request for documentation regarding your Judgement [sic] and Commitment Order and supervised release compliance.

On May 7, 2007, Respondent was found guilty of International Emergency Economic Powers Act (50 USC 1701-1705). He was sentenced in the Central District of California by the Honorable David O. Carter, U.S. District Judge, and sentenced to 24 months custody and three years supervised release. Respondent's anticipated expiration date from supervised release is set for January 28, 2012.

On January 29, 2009, Respondent's term of supervised release commenced with the Probation Office. Respondent has no Court order that bar's [sic] him from flying or operating an aircraft."

(b)(6)(b)(7)(C) to (b)(6) Exhibit J.) (Stip. ¶12)

RULING: Accepted and incorporated.

38. On the FAA flight physical form 8500-8, as required, Respondent disclosed the facts of his conviction and incarceration. (b)(6) Airman Medical File Exhibit I) He also gave the FAA Medical Examiner a copy of this Judgment and Commitment. FAA Medical Examiner, (b)(6) wrote on Respondent's application for renewal of his medical certificate that after "reviewing the court document, and letter issued by probation officer, he is not posing any risk to community or society as a whole." (b)(6) Airman Medical File Exhibit K.) (Stip. ¶13)

RULING: Accepted and incorporated as the undersigned is required by law to accept party stipulations to the facts. To the extent that Respondent attempts to imply that (b)(6) is qualified or authorized under Section 46111 to make determination regarding Respondent's risk or threat level is rejected as a matter of law.

39. The FAA flight physical form 8500-8 was transmitted to the FAA which issued his Medical Certificate authorizing Respondent b to resume his flying activities. (Airman Medical Certificate Exhibit I) Respondent resumed his flying activities and continued until his airman certificates were suspended by the FAA on June 25, 2009. (FAA suspension notice Exhibit Q)

RULING: Accepted and incorporated.

APPENDIX C – INTERIM RULES⁶²

Citizens or nationals of the United States holding or applying for certificates, ratings, or authorizations issued by the Federal Aviation Administration (FAA).

(a) Applicability. This section applies when TSA determines that a citizen or a national of the United States who holds or is applying for a certificate, rating, or authorization issued by the FAA pursuant to Title 14 of the Code of Federal Regulations (CFR) poses a security threat.

(b) Representation by counsel. A person may be represented by counsel at his or her own expense.

(c) Security Threat. A person poses a security threat when the person is suspected of posing, or is known to pose—

- (1) A threat to transportation or national security;
- (2) A threat of air piracy or terrorism;
- (3) A threat to airline or passenger security; or
- (4) A threat to civil aviation security.

(d) Initial Determination of Threat Assessment. If TSA determines that a person applying for or holding an FAA certificate, rating, or authorization poses a security threat, TSA serves upon the person and the FAA an Initial Determination of Threat Assessment and requests that the FAA certificate, rating, or authorization be suspended, revoked or, in the case of an application, denied. TSA may request the immediate revocation of the FAA certificate, rating, or authorization.

(e) Respondent request for materials. No later than 30 calendar days from the date of service of the Initial Determination of Threat Assessment, the respondent may

⁶² As discussed in this Decision and Order, the parties only stipulated that Section (g) through (j) of these Interim Rules would apply. See Prehearing Conference Report and Order (November 25, 2009).

submit a written request for copies of the releasable materials upon which the Initial Determination of Threat Assessment is based and an unclassified summary of the classified information upon which the initial determination is based.

(f) TSA provision of materials. No later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the respondent's request for materials and unclassified summary, TSA provides all relevant documents that support the determination, to the maximum extent possible, subject to the following provisions:

(1) TSA will not disclose to the respondent, or the respondent's counsel, classified information, as defined in Executive Order 12968 section 1.1(d).

(2) TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure by law or regulation.

(g) Respondent reply and request for hearing. No later than 30 calendar days from the date of service of the releasable materials and unclassified summary, or 30 calendar days from the date of service of the initial determination if no request for materials is made, the respondent may serve upon TSA a written reply.

(1) The reply may include any relevant information TSA should consider in reviewing the basis for the Initial Determination of Threat Assessment.

(2) The reply may include a request for an in-person or written hearing.

(i) The hearing will be conducted by an administrative law judge who possesses the appropriate security clearance necessary to review classified or otherwise protected information and evidence.

(3) If the respondent fails to reply to an Initial Determination of Threat Assessment, TSA may issue a Final Notification of Threat Assessment to the FAA. The final notification is final with respect to the parties.

(h) Duties of the administrative law judge. The administrative law judge may:

(1) Determine whether a request for an in-person hearing is granted.

(i) If granted, the hearing will be held at TSA's headquarters building, or at an alternate location selected by TSA within the metropolitan area where the TSA headquarters building is located.

(ii) If the request for an in-person hearing is denied, the administrative law judge will state the basis for the denial.

(2) Give notice of, and hold, pre-hearing conferences and other conferences if necessary.

(3) Rule on offers of proof.

(4) Receive relevant and material evidence on the record.

(5) Examine witnesses.

(6) Regulate the course of the hearing, including granting extensions of time limits the administrative law judge may impose during the hearing.

(7) Dispose of procedural motions and requests.

(i) Hearing. The hearing must begin within 60 calendar days of the date of receipt of the request for hearing. The hearing is a limited discovery proceeding and is conducted as follows:

(1) The administrative law judge schedules and provides notice of the date and time of the in-person hearing or the date and time for written submissions. The notice includes a description of the issues in dispute.

(2) The administrative law judge determines whether the in-person hearing, or portions of the hearing, may be open to the public.

(3) A party may present the party's case or defense by oral testimony, or by documentary, or demonstrative evidence, submit rebuttal evidence, and conduct cross-examination, as permitted by the administrative law judge. The Federal Rules of Evidence may serve as guidance, but are not binding.

(4) The administrative law judge will review any classified information on an ex parte, in camera basis, and may consider such information in rendering a decision if the information appears to be material and relevant.

(5) The administrative law judge must exclude irrelevant, immaterial, or unduly repetitious evidence.

(6) The burden of proof is on TSA.

(7) The standard of proof is substantial evidence on the record.

(8) The parties may submit proposed findings of fact and conclusions of law.

(9) If an in-person hearing is conducted, a verbatim transcript will be made of the hearing and will be provided upon request at the expense of the requesting party. In cases in which classified or otherwise protected evidence is received, the transcript may require redaction of the classified or otherwise protected information.

(j) Decision of the administrative law judge. The administrative law judge issues an unclassified written decision no later than 30 calendar days from the close of the

record and serves the decision on the parties. The administrative law judge may issue a classified decision to TSA. The record is closed once the certified transcript and all documents and materials have been submitted for the record.

(1) If the administrative law judge determines that the respondent poses a security threat and the respondent does not timely request review of the decision by a panel of the TSOB, TSA issues a Final Notification of Threat Assessment to the FAA. The Final Notification is final with respect to the parties.

(2) If the administrative law judge determines that the respondent does not pose a security threat and TSA does not timely request review of the decision by a panel of the TSOB, TSA issues a Withdrawal of Initial Determination to the respondent and the FAA.

(3) If the administrative law judge determines that the respondent does not pose a security threat, the respondent's certificate, rating, authorization, or application must not be reinstated until TSA has exhausted the administrative process.

(k) Extension of time. TSA may grant an extension of the time limits described in this section for good cause shown. A request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended. TSA may grant itself an extension of time for good cause shown. This paragraph does not apply to time limits set by the ALJ during the hearing.

(l) TSOB review. (1) A party may petition for review of the decision of the administrative law judge by a panel of the TSOB no later than 30 calendar days after the date of service of the decision of the administrative law judge. A petition received by TSA after 30 calendar days will not be accepted, except for good cause.

(i) The petition must be in writing, served on the other party, and may only address the following issues:

(A) Whether each finding of fact is supported by substantial evidence on the record; and

(B) Whether the rulings and decision are arbitrary, capricious, or contrary to law.

(ii) No later than 30 calendar days after receipt of the petition, the other party may file a response.

(2) Upon request of the panel, the administrative law judge will provide the panel with a certified transcript of the hearing and all unclassified documents and material submitted for the record. TSA will provide any classified materials.

(3) The members of the panel—

(i) Will not include employees of TSA; and

(ii) Will have the level of clearance necessary to review classified material.

(4) No later than 30 calendar days after receipt of the petition, or if the other party files a response, 30 calendar days after receipt of the response, or such longer period as may be required, the panel issues an unclassified decision and serves the decision on the parties. The panel may affirm, remand, modify, or reverse the decision of the administrative law judge. The panel may issue a classified opinion to TSA. The decision of the panel is a final agency order.

(i) If the panel determines that the respondent poses a security threat, TSA issues a Final Determination of Threat Assessment to the FAA.

(ii) If the panel determines that the respondent is not a security threat, TSA issues a Withdrawal of the Initial Determination to the respondent and the FAA

(m) Judicial review. Compliance with the procedures in this section is required before the respondent may seek judicial review of a final agency order as provided in 49 U.S.C. 46110.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Decision and Order (09-TSA-0050) upon the following parties and limited participants (or designated representative) in this proceeding at their listed facsimile number and address by Certified Mail (postage pre-paid) Return Receipt Requested as follows:

**ALJ Docketing Center
United States Coast Guard
40 South Gay Street
Baltimore, MD 21202-4022
Comm: (410) 962-7434
Fax No. (410) 962-1746**

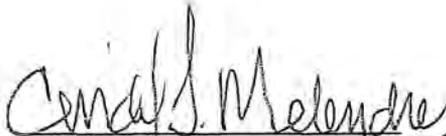
**U.S. Department of Homeland Security
Transportation Security Administration
Mr. Kelly D. Wheaton, Esq., Assistant Chief Counsel
Mr. Michael Delman, Esq.
Mr. Peter Zolper, Esq.
601 South 12th Street
Arlington, VA 20598
Com: (571) 227-(b)(6)
Fax: (571) 227-1380**

**U.S. Department of Homeland Security
Transportation Security Administration
Ms. Starla R. Matthews, Supervisory Field Counsel
San Diego Field Office
401 West A Street, Suite 1800
San Diego, CA 92101
Com: (b)(6)
Fax: (619) 230-7574**

(b)(6)

**Comm: (b)(6)
Fax: (303) 456-5575**

**Done and dated on this 14th day of April, 2010
Alameda, California**


**Cindy J. Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna**



Transportation
Security
Administration

By Registered Mail - Return Receipt Requested

(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
& Medical Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

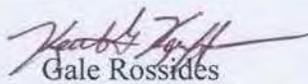
Constance Genter
Senior Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,


Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbit
Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

- (1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).
- (2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).
- (3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.
- (4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.
- (5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



Transportation
Security
Administration

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
and Medical Certificates Numbers

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Dear

(b)(6);(b)(3):49 U.S.C. § 114(r)

On July 7, 2010, the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

Sincerely,

Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



**Transportation
Security
Administration**

(b)(3):49 U.S.C. §
114(r)

By Certified Mail - Return Receipt Requested

(b)(6),(b)(3):49 U.S.C. § 114(r)

(b)(6),(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
and Medical Certificate Number

(b)(6),(b)(3):49
U.S.C. § 114(r)

(b)(6),(b)(3):49
U.S.C. § 114(r)

Dear (b)(6),(b)(3):49
U.S.C. § 114(r)

On (b)(3):49 U.S.C. § (b)(6),(b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you an Initial Notification of Threat Assessment (Initial Notification) pursuant to 49 C.F.R. § 1540.117 and concurrently notified the Federal Aviation Administration (FAA) that you pose, or are suspected of posing, a security threat. On March 11, 2010, TSA re-issued the Initial Notification to you at an alternate address. Based on a review of our records, it has come to our attention that you are a U.S. citizen. Accordingly, the Initial Notification is governed not by 49 C.F.R. § 1540.117, but 49 U.S.C. § 46111, and this letter provides you with additional information pursuant to 49 U.S.C. § 46111.

No later than 15 calendar days after the date of service of this letter, you may serve upon TSA a written request for copies of releasable materials and an unclassified summary of the classified information upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 30 calendar days after the date of service of this letter, or 30 days after the date of service of TSA's response to your request for copies of the releasable materials upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

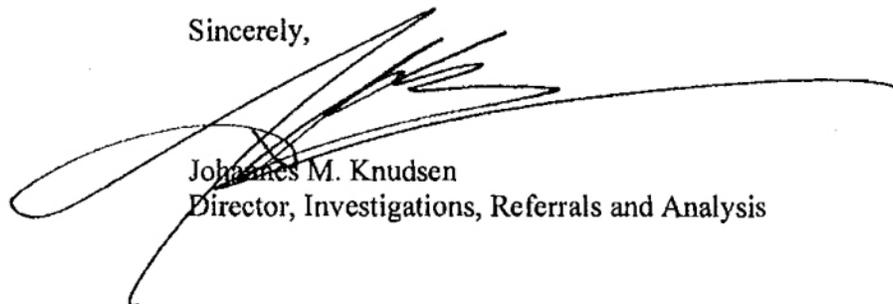
In your written reply, you may request an in-person or written hearing before an administrative law judge. If requested, the in-person hearing will be held either at TSA headquarters or a location selected by TSA in the metropolitan Washington, D.C. area. The administrative law judge will issue a written decision no later than 30 calendar days after the conclusion of the hearing. The administrative law judge's decision may be appealed by either party to the Transportation Security Oversight Board (TSOB). The TSOB shall issue a Final Determination, which constitutes a final agency order. You should serve all documents upon:

Constance Genter
Senior Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Johannes M. Knudsen', is written over the typed name and title.

Johannes M. Knudsen
Director, Investigations, Referrals and Analysis

Enclosure



Transportation
Security
Administration

By First Class and Certified Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number 375862200
and Medical Certificate Number (b)(6);(b)(3):49 U.S.C. § 114(r)

Dear (b)(6);(b)(3):49 U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) issued you an Initial Notification of Threat Assessment (Initial Notification) pursuant to 49 C.F.R. § 1540.117 and concurrently notified the Federal Aviation Administration (FAA) that you pose, or are suspected of posing, a security threat. On (b)(3):49 U.S.C. § 114(r) TSA re-issued the Initial Notification to you at an alternate address. On (b)(3):49 U.S.C. § 114(r) TSA again re-issued the Initial Notification in order to inform you of your rights as a U.S. citizen under 49 U.S.C. § 46111.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment.

Sincerely,

Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



Transportation
Security
Administration

(b)(3):49 U.S.C. § 114(r)

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

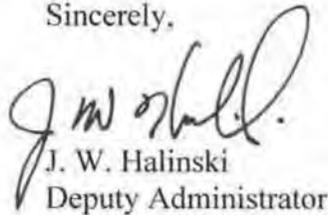
Robert G. Seasonwein
Assistant Chief Counsel
Security Threat Assessment Operations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration

enc.

U.S. Department of Homeland Security
Arlington, Virginia 20598



**Transportation
Security
Administration**

(b)(3);49 U.S.C. §
114(r)

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3);49
& Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

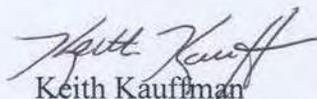
Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Keith Kauffman
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

- (1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).
- (2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).
- (3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.
- (4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.
- (5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

- (i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or
- (ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



**Transportation
Security
Administration**

By Certified Mail - Return Receipt Requested

(b)(3):49 U.S.C. § 114(r)

(b)(6):(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
& Medical Certificate Number

(b)(6):(b)(3):49
U.S.C. § 114(r)

(b)(6):(b)(3):49 U.S.C.
§ 114(r)

Dear (b)(6):(b)(3):49
U.S.C. § 114(r)

This letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, and pursuant to 49 United States Code § 46111, I have determined that you pose or are suspected of posing a security threat. Accordingly, TSA is initiating the process to revoke all certificates issued to you by the Federal Aviation Administration (FAA).

As part of this process, TSA is concurrently notifying the FAA of the determination that you pose or are suspected of posing a security threat and requesting that the FAA suspend all certificates issued to you by the FAA.

No later than 15 calendar days after the date of service of this Initial Notification, you may serve upon TSA a written request for copies of releasable materials and an unclassified summary of the classified information upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 30 calendar days after the date of service of the Initial Notification, or 30 days after the date of service of TSA's response to your request for copies of the releasable materials upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

In your written reply, you may request an in-person or written hearing before an administrative law judge. If requested, the in-person hearing will be held either at TSA headquarters or a location selected by TSA in the metropolitan Washington, D.C. area. The administrative law judge will issue a written decision no later than 30 calendar days after the conclusion of the hearing. The administrative law judge's decision may be appealed by either party to the Transportation Security Oversight Board (TSOB). The

TSOB shall issue a Final Determination, which constitutes a final agency order. You should serve all documents upon:

Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Sincerely,



Keith Kauffman
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



Transportation
Security
Administration

By Registered Mail - Return Receipt Requested

(b)(3);49 U.S.C. § 114(r)

(b)(6);(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
(b)(6);(b)(3);49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(6);(b)(3);49
U.S.C. § 114(r)

(b)(6);(b)(3);49
U.S.C. § 114(r)

Dear (b)(6);(b)(3);49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

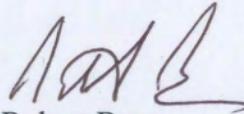
Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Robert Bray
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

enc.



Transportation
Security
Administration

(b)(3):49 U.S.C. § 114(r)

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificates Numbers
(b)(6);(b)(3):49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3):49 U.S.C. § 114(r)

Dear (b)(6);(b)(3):49 U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

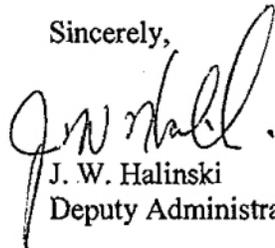
Robert G. Seasonwein
Assistant Chief Counsel
Security Threat Assessment Operations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration

enc.

(1) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(1) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(1) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 16 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



Transportation
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By First Class and Registered Mail - Return Receipt Requested

(b)(3):49 U.S.C. §
114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number Federal
Aviation Administration Airman Certificate Numbers (b)(6);(b)(3):49
(b)(6);(b)(3):49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3):49 U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

Sincerely,

Melvin J. Carraway
Deputy Administrator

cc: The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration



**Transportation
Security
Administration**

By First Class and Certified Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
(b)(6);(b)(3);49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C. § 114(r)

This letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, and pursuant to 49 United States Code § 46111, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process to revoke all certificates issued to you by the Federal Aviation Administration (FAA).

As part of this process, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting that the FAA suspend all certificates issued to you by the FAA.

No later than 15 calendar days after the date of service of this Initial Notification, you may serve upon TSA a written request for copies of releasable materials and an unclassified summary of the classified information upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 30 calendar days after the date of service of the Initial Notification, or 30 days after the date of service of TSA's response to your request for copies of the releasable materials upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

In your written reply, you may request an in-person or written hearing before an administrative law judge. If requested, the in-person hearing will be held either at TSA headquarters or a location selected by TSA in the metropolitan Washington, D.C. area. The administrative law judge will issue a written decision no later than 30 calendar days after the conclusion of the hearing. The administrative law judge's decision may be appealed by either party to the Transportation Security Oversight Board (TSOB). The

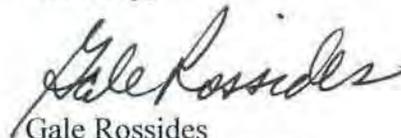
TSOB shall issue a Final Determination, which constitutes a final agency order. You should serve all documents upon:

Constance Genter
Senior Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Sincerely,



Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



Transportation
Security
Administration

(b)(3):49 U.S.C. § 114(r)

By First Class and Certified Mail - Return Receipt Requested

(b)(6),(b)(3):49 U.S.C. § 114(r)

(b)(6),(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number
(b)(6),(b)(3):49 U.S.C. § 114(r) and Medical Certificate Number (b)(6),(b)(3):49 U.S.C. § 114(r)

Dear (b)(6),(b)(3):49 U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r), the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 United States Code § 46111.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment.

Sincerely,

Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



**Transportation
Security
Administration**

(b)(3):49 U.S.C. § 114(r)

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

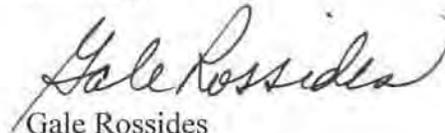
Peter Zolper
Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Gale Rossides
Deputy Administrator

cc: The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in §1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



U.S. Department of Homeland Security
Arlington, Virginia 20598

**Transportation
Security
Administration**

By Certified Mail - Return Receipt Requested

(b)(3):49 U.S.C. §
114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment

Federal Aviation Administration Airman Certificate Numbers (b)(6);(b)(3):49
U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

and Medical Certificate Number (b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

This letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, and pursuant to 49 United States Code § 46111, I have determined that you pose or are suspected of posing a security threat. Accordingly, TSA is initiating the process to revoke all certificates issued to you by the Federal Aviation Administration (FAA).

As part of this process, TSA is concurrently notifying the FAA of the determination that you pose or are suspected of posing a security threat and requesting that the FAA suspend all certificates issued to you by the FAA.

No later than 15 calendar days after the date of service of this Initial Notification, you may serve upon TSA a written request for copies of releasable materials and an unclassified summary of the classified information upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 30 calendar days after the date of service of the Initial Notification, or 30 days after the date of service of TSA's response to your request for copies of the releasable materials upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

In your written reply, you may request an in-person or written hearing before an administrative law judge. If requested, the in-person hearing will be held either at TSA headquarters or a location selected by TSA in the metropolitan Washington, D.C. area. The administrative law judge will issue a written decision no later than 30 calendar days after the conclusion of the hearing. The administrative law judge's decision may be appealed by either party to the Transportation Security Oversight Board (TSOB). The

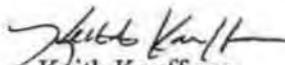
TSOB shall issue a Final Determination, which constitutes a final agency order. You should serve all documents upon:

Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Sincerely,



Keith Kauffman
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



**Transportation
Security
Administration**

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. §
114(r)

Re: Final Notification of Threat Assessment

Federal Aviation Administration Airman Certificate Numbers (b)(6);(b)(3):49
U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3):49 U.S.C.
§ 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration an Initial Notification of Threat Assessment pursuant to 49 United States Code § 46111.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment.

Sincerely,

Robert Bray
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



U.S. Department of Homeland Security
Arlington, Virginia 20598

Transportation
Security
Administration

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(3);49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number

(b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C. § 114(r)

On (b)(3);49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

Sincerely,

Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



**Transportation
Security
Administration**

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

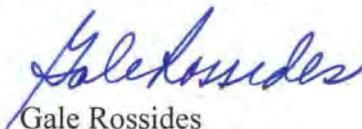
Peter Zolper
Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment—(1) Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



**Transportation
Security
Administration**

By First Class and Certified Mail - Return Receipt Requested

(b)(3):49 U.S.C. §
114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration **Airman** Certificates Numbers
and Medical Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C.
§ 114(r)

Dear (b)(6);(b)(3):49
U.S.C. §

This letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, and pursuant to 49 United States Code § 46111, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process to revoke all certificates issued to you by the Federal Aviation Administration (FAA).

As part of this process, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting that the FAA suspend all certificates issued to you by the FAA.

No later than 15 calendar days after the date of service of this Initial Notification, you may serve upon TSA a written request for copies of releasable materials and an unclassified summary of the classified information upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 30 calendar days after the date of service of the Initial Notification, or 30 days after the date of service of TSA's response to your request for copies of the releasable materials upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

In your written reply, you may request an in-person or written hearing before an administrative law judge. If requested, the in-person hearing will be held either at TSA headquarters or a location selected by TSA in the metropolitan Washington, D.C. area. The administrative law judge will issue a written decision no later than 30 calendar days

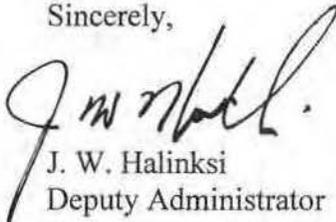
after the conclusion of the hearing. The administrative law judge's decision may be appealed by either party to the Transportation Security Oversight Board (TSOB). The TSOB shall issue a Final Determination, which constitutes a final agency order. You should serve all documents upon:

Peter Zolper
Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Sincerely,



J. W. Halinksi
Deputy Administrator

cc: The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration



Transportation
Security
Administration

(b)(3);49 U.S.C. §
114(r)

The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

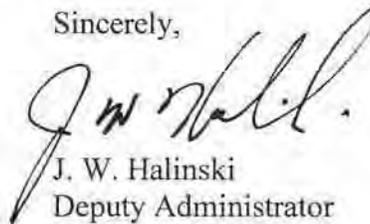
Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificates Numbers
and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear Acting Administrator Huerta:

The Transportation Security Administration (TSA) has issued an Initial Notification of Threat Assessment to (b)(6);(b)(3);49 U.S.C. § 114(r) informing him that he poses, or is suspected of posing, a security threat under 49 U.S.C. § 46111.

After personally reviewing the materials available to TSA, pursuant to 49 U.S.C. § 46111, I am notifying you that (b)(6);(b)(3);49 U.S.C. § 114(r) poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. I request that you issue an order to (b)(6);(b)(3);49 U.S.C. § 114(r) suspending all certificates issued by the Federal Aviation Administration under 49 U.S.C. Chapter 447, and that the order be effective immediately.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: Peter J. Lynch
Federal Aviation Administration



Transportation
Security
Administration

By First Class and Certified Mail - Return Receipt Requested

(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificates Numbers
and Medical Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C.
§ 114(r)

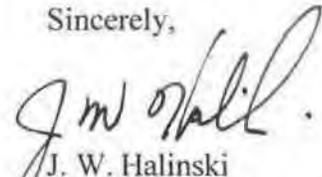
Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 United States Code § 46111.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration



U.S. Department of Homeland Security
Arlington, Virginia 20598

**Transportation
Security
Administration**

By First Class, Certified, and Registered Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)
and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

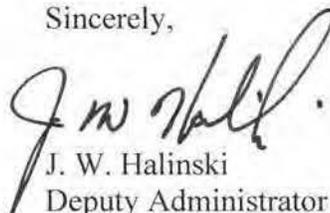
Peter Zolper
Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

- (1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).
- (2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).
- (3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.
- (4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.
- (5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

- (i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or
- (ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



Transportation
Security
Administration

By First Class, Certified, and Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3):49 U.S.C. § 114(r)
and Medical Certificate Number (b)(6);(b)(3):49 U.S.C. § 114(r)

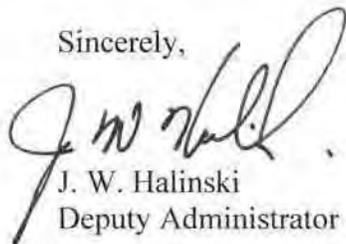
Dear (b)(6);(b)(3):49 U.S.C. § 114(r)

On (b)(3):49 U.S.C. § 114(r) the Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose, or are suspected of posing, a security threat and requesting the FAA to revoke all of your airman certificates, ratings or authorizations.

This letter serves as a Final Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117.

Sincerely,



J. W. Halinski
Deputy Administrator

cc: The Honorable Michael P. Huerta
Acting Administrator
Federal Aviation Administration



Transportation
Security
Administration

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. §
114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49
U.S.C. § 114(r)

On (b)(3):49 U.S.C. §
114(r) the Transportation Security Administration (TSA) served
upon you and the Federal Aviation Administration an Initial Notification of Threat
Assessment pursuant to 49 C.F.R. § 1540.117.

After personally reviewing the Initial Notification of Threat Assessment and
materials available to TSA, I have determined that you pose, or are suspected of posing, a
security threat. Accordingly, TSA is concurrently notifying the Federal Aviation
Administration (FAA) of the determination that you pose, or are suspected of posing, a
security threat and requesting the FAA to revoke all of your airman certificates, ratings or
authorizations.

This letter serves as a Final Notification of Threat Assessment pursuant to 49
C.F.R. § 1540.117.

Sincerely,

Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration



Transportation
Security
Administration

(b)(3):49 U.S.C. § 114(r)

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear (b)(6);(b)(3):49 U.S.C.
§ 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

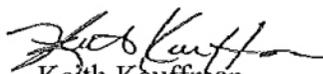
Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 22202-4220

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Keith Kauffman
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

enc.



**Transportation
Security
Administration**

(b)(3):49 U.S.C. §
114(r)

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3):49 U.S.C. § 114(r)

Re: Final Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Numbers

(b)(6);(b)(3):49
U.S.C. § 114(r)

Dear

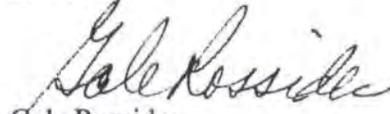
(b)(6);(b)(3):49
U.S.C. § 114(r)

The Transportation Security Administration (TSA) served upon you and the Federal Aviation Administration (FAA) an Initial Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117(e).

After personally reviewing the Initial Notification of Threat Assessment and materials available to TSA, I have determined that you pose a security threat. Accordingly, TSA is concurrently notifying the FAA of the determination that you pose a threat and requesting the FAA to revoke your airman certificate, rating or authorization.

This letter serves as a Final Notification of Threat Assessment pursuant to 49 C.F.R. § 1540.117(f)(2).

Sincerely,


Gale Rossides
Deputy Administrator

cc: Robert A. Sturgell
Acting Administrator
Federal Aviation Administration



U.S. Department of Homeland Security
Arlington, Virginia 22202-4220

Transportation
Security
Administration

By Registered Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3);49
U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C.
§ 114(r)

Section 1540.117 of Title 49, Code of Federal Regulations, sets forth the procedure by which the Transportation Security Administration (TSA) notifies individuals and the Federal Aviation Administration (FAA) of TSA's assessment that an individual who is an alien and who holds an FAA Airman Certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

Pursuant to 49 C.F.R. § 1540.117(e), this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the TSA, which I have personally reviewed, I have determined that you may pose a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization may be revoked.

As part of that process, TSA is concurrently notifying the FAA of the determination that you may pose a threat and requesting that the FAA suspend your airman certificate, rating or authorization.

No later than 15 calendar days after the date of service of the FAA's order suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the FAA's order, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification.

You should serve all documents upon:

Assistant Chief Counsel
Criminal Enforcement
TSA Headquarters-East Tower
12th Floor, TSA -2
601 South 12th Street
Arlington, VA 22202-4220

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,

Timothy Upham
Director
Aviation and Analysis Directorate
Transportation Threat Assessment
and Credentialing

cc: Marion C. Blakey
Administrator
Federal Aviation Administration

enc.



**Transportation
Security
Administration**

By First Class and Registered Mail - Return Receipt Requested

(b)(6);(b)(3);49 U.S.C. § 114(r)

(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)
and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses, or is suspected of posing, a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

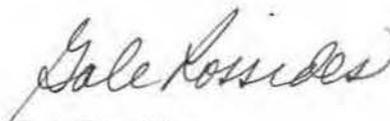
Constance Genter
Senior Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,



Gale Rossides
Deputy Administrator

cc: The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

enc.

(1) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials

upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information*. In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

- (1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).
- (2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).
- (3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.
- (4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.
- (5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA

determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

- (i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or
- (ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

- (i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.
- (ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.
- (iii) Date and place of birth.
- (iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).
- (v) Gender.
- (vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.
- (vii) Alien registration number, if applicable.
- (viii) The following statement reading:

(viii) The following statement reading:

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure



**Transportation
Security
Administration**

By Registered Mail - Return Receipt Requested

(b)(3);49 U.S.C. § 114(r)

(b)(6);(b)(3);49 U.S.C. § 114(r)

Re: Initial Notification of Threat Assessment
Federal Aviation Administration Airman Certificate Number GG-
(b)(6);(b)(3);49 U.S.C. § 114(r) and Medical Certificate Number (b)(6);(b)(3);49 U.S.C. § 114(r)

Dear (b)(6);(b)(3);49 U.S.C. § 114(r)

Pursuant to section 1540.117 of Title 49, Code of Federal Regulations, this letter serves as an initial notification of a threat assessment (Initial Notification). Based upon materials available to the Transportation Security Administration (TSA), which I have personally reviewed, I have determined that you pose, or are suspected of posing, a security threat. Accordingly, TSA is initiating the process by which your Federal Aviation Administration (FAA) airman certificate, rating, or authorization will be suspended and may ultimately be revoked.

49 C.F.R. § 1540.117 sets forth the procedure by which the TSA notifies individuals and the FAA of TSA's assessment that an individual who is an alien and holds an FAA airman certificate, rating, or authorization poses a security threat. This regulation in the Code of Federal Regulations has been included for your reference.

No later than 15 calendar days after the date of service of the Initial Notification suspending your certificate or any part of your certificate, you may serve upon TSA a written request for copies of releasable materials upon which this Initial Notification was based.

In addition, you may serve upon TSA a written reply to the Initial Notification no later than 15 calendar days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to your request for copies of the releasable material upon which this Initial Notification was based, whichever is later. This written reply should include any information that you believe TSA should consider in reviewing the basis for the Initial Notification. You should serve all documents upon:

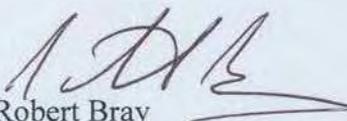
Peter Zolper
Acting Assistant Chief Counsel
Threat Assessment and Internal Investigations
TSA Headquarters
12th Floor, TSA-2
601 South 12th Street
Arlington, VA 20598

TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right to not disclose any other information or material not warranting disclosure or protected from disclosure under law.

You may, if you choose, be represented by counsel during this process at your own expense.

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will issue a final determination.

Sincerely,


Robert Bray
Acting Deputy Administrator

cc: The Honorable J. Randolph Babbit
Administrator
Federal Aviation Administration

enc.

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the indi-

vidual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;