

Written Testimony of
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the National Applications Office”

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Introduction

Chairman Thompson, Ranking Member King and distinguished Members of this Committee: Thank you for providing me the opportunity to testify today on the National Applications Office (NAO) and the civil rights and civil liberties implications of its work. The work undertaken by the new NAO within our Department will be an asset to the country's homeland security effort, and NAO will reach its highest level of success when accomplished in ways that respect America's rich Constitutional history. I want to begin by assuring the Committee that the Office for Civil Rights and Civil Liberties is engaged with Assistant Secretary Allen and his staff and our colleagues in the Privacy Office to ensure that the NAO reaches the highest level of effectiveness. In addition, I look forward to continuing to work with our colleagues in the Office of the Director of National Intelligence's Civil Liberties Protection Officer, the Privacy and Civil Liberties Oversight Board and this Committee to provide strong oversight of the NAO.

The Mission of the Office for Civil Rights and Civil Liberties

In accordance with 6 U.S.C. § 345, the mission of the Office for Civil Rights and Civil Liberties is to assist the dedicated men and women of the Department of Homeland Security (DHS) to secure our country while preserving our freedoms and our way of life.

We assist our colleagues in four ways:

- We provide proactive advice on a wide range of issues, helping the Department to shape policy in ways that are mindful of civil rights and civil liberties;
- We investigate and facilitate the resolution of complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel;

- We provide leadership to the Department’s equal employment opportunity programs, seeking to make this Department the model Federal agency; and,
- We serve as an information and communications channel with the public regarding these issues.

In essence, we provide advice to our colleagues on issues at the intersection of homeland security and civil rights and civil liberties. We therefore have the opportunity to work closely with every DHS component, both in Washington, D.C., and in many field offices across the country. Our Office has been involved in nearly all aspects of the critical issues facing the homeland security effort – from the Hurricane Katrina recovery, to the operation of watch lists, to immigration policy, to the training of our workforce.

Because our Office is small, we realize that we must, to use a sports analogy, “punch above our weight.” One way we have accomplished this is by creating the “Civil Liberties Institute,” a program to provide high-quality training on a wide range of topics. Through the “Civil Liberties Institute,” we have developed:

- a training video that emphasizes elements of the National Detention Standards;
- a multi-hour instructional video on how to screen people with disabilities at airports;
- educational materials on how to screen those who wear religious head coverings;
- an intensive training DVD for DHS personnel who interact with Arab Americans, Muslim Americans, and people from the broader Arab and Muslim world; and,

- “Guidance Regarding the Use of Race for Law Enforcement Officers,” a tutorial on the Department of Justice’s Guidance and the DHS policy.

These materials are available to DHS law enforcement employees in DVD, CD-ROM, or via on-line web-based training formats.

Of course, we collaborate extensively with our colleagues in the Privacy Office. We work closely with colleagues from the Office of the Director of National Intelligence (DNI), the Privacy and Civil Liberties Oversight Board (PCLOB), and others across the government.

The work of the Office for Civil Rights and Civil Liberties has been supported by other DHS elements because we provide constructive advice that allows the men and women of the Department to fulfill their mission at the highest level of effectiveness.

Our work has also been welcomed by colleagues outside of government, as demonstrated by our frequent collaborations with leading civil rights, civil liberties, immigration, and community organizations. Our Office plays a unique role within DHS, and, we hope, a valuable one, and we will continue to assist our colleagues to tackle complex issues in innovative and constructive ways.

The Office for Civil Rights and Civil Liberties’ Role in the National Applications Office

Having laid out the role of our Office, let me address the specific topic of the National Applications Office. I would like to highlight four reasons why the protection of civil liberties will become a core responsibility – part of the basic infrastructure – of the National Applications Office.

First, the people who lead the program have made it clear that they are committed to protecting civil liberties. The Office for Civil Rights and Civil Liberties was written into the planning for the NAO and our important role is made clear in the NAO Concept of Operations (CONOPS). In recent weeks, we have been working very closely with the NAO, the DHS Office of Intelligence and Analysis (I&A) within which the NAO functions, the DHS Privacy Office, the DNI, the PCLOB, and the National Geospatial-Intelligence Agency (NGA). The Office for Civil Rights and Civil Liberties has established a solid working relationship with our colleagues in each of these organizations. The commitment to establishing safeguards to protect, and indeed enhance, our civil liberties has been front and center of all of these discussions. We believe that a great foundation has been laid for working together over the upcoming weeks, months and years.

Second, we have a solid track record of working with our colleagues in I&A on complex projects such as this. Our offices have worked together on many initiatives related to extremism and radicalization. Assistant Secretary Allen and his colleagues at I&A are great supporters of our work to engage with the American Arab, Muslim, Sikh and South Asian communities, the fruits of which we have described in prior meetings with your staffs and in testimony before this Committee. We are heavily involved in the Department's Information Sharing Environment efforts led by I&A, and we are also taking a leadership role with respect to government-wide efforts lead by the Program Manager for the Information Sharing Environment at DNI. This year we have begun to partner with I&A to train personnel and develop sound civil rights and civil liberties policies and procedures for State and local fusion centers. There are numerous other

projects for which our offices consult each other on a regular basis. This strong track record reassures us that we will be in a good position to advise the NAO for the long term.

Third, the NAO is creating important procedural safeguards to protect civil liberties. Justice Felix Frankfurter once wrote, “The history of liberty has largely been the history of the observance of procedural safeguards.”¹ That is, if parameters are established, if ground rules are laid out, the chances that violations will occur are much less likely and are much more likely to be limited in scope and effect. There are several significant safeguards that are being built into the NAO’s infrastructure. First, we are working with NAO to implement the CONOPS for the office. The CONOPS includes a prominent role for our Office and the Privacy Office to provide support and guidance to the NAO, and will allow us to be embedded into the work of the NAO. Similarly, we will review the Standard Operating Procedures (SOP) and make recommendations related to the extent and process for our review of NAO requests for NGA Products and Services. We have already been assured that we will be part of the Policy and Legal Working Group, co-chaired by DNI and DHS, which we and the Privacy Office will participate in along with all relevant NAO sub-working groups. In addition, together with the Privacy Office and DNI’s Civil Liberties Protection Officer, we will serve as formal advisors to the National Applications Executive Committee, which will be established in the upcoming weeks. All of these procedural steps will help ensure that privacy and civil liberties issues are fully considered in the on-going work of the NAO.

¹ *McNabb v. United States*, 318 U.S. 332, 347 (1943).

Fourth and finally, we will provide training on these issues. We and the Privacy Office have already been asked to lead a training session on civil liberties and privacy protections to the new staff of the NAO. We expect that this training, which is anticipated to be scheduled for later this month, will only be the first of many such efforts. We believe that our training efforts should extend beyond DHS employees. For example, we will lead an effort for “customer education” on civil liberties as one means of warding off potential misuse.

Civil Liberties and the Domestic Use of Geospatial Imagery and Derived Products and Services

As we undertake our work, we will assist the NAO effort by keeping a watchful eye on several key potential civil liberties issues. We will carefully watch:

- The expansion of customers and increased use of geospatial imagery and derived products and services to ensure that the increased volume does not lead to mistakes. As the NAO customer base increases, it will likely receive many more new project requirements, potentially posing an increased risk that improper requests will be approved in error, with a concurrent increased risk to civil liberties. We will help our colleagues at NAO to ensure that quantity does not result in sacrifices of quality.
- NGA provides a legal and policy review of all Federal requests for domestic geospatial intelligence (GEOINT). NGA has a long-established process to review domestic requests to ensure compliance with the law and Intelligence Oversight rules. That process employs the Proper Use Memorandum (PUM). A PUM is a memorandum between the requesting agency and NGA outlining the parameters

of permissible requests. A PUM includes the requesting agency's authorized mission permitting use of such information, a description of the intended use of the domestic imagery, who will exploit the domestic imagery, who will receive the domestic imagery and derived products, storage and protection of the imagery, and certification by an appropriate official of the lawfulness and validity of the request. We will work with the NAO to ensure that the NAO's-sponsored PUMs submitted to NGA contain the appropriate parameters and authorities. We will also work with NAO to ensure that requests received and information provided fit within the contours of these PUMs.

- The NAO will review all State and local law enforcement requests for the use of NGA products and services. NAO will forward their vetted requests to NGA for legal and policy review and final approval. Domestic requests for NGA products and services will only be approved if they comply with applicable legal requirements, including, but not limited to, Executive Order 12333, and would not result in an unreasonable search under the Fourth Amendment. Our Office will monitor proposed efforts by law enforcement users involving novel uses of geospatial imagery and derived products and services or those which approach the limits of existing civil liberties standards in this area. We will address those issues in the planning phase and as they arise in the future.
- As geospatial imagery and derived products and services are added to other data to form products for dissemination throughout the information sharing environment, civil liberties and civil rights concerns may arise. As these products are developed, we anticipate that there may be potential concerns related to access

to those products, retention of images or data, and the reliability of the data and use of data. We will address those issues in the planning phase and as they arise in the future.

Conclusion

The Office for Civil Rights and Civil Liberties will work with the NAO to establish a firm and certain foundation that provides strong adherence to civil rights and civil liberties. We will closely monitor and address the areas I have mentioned and other issues that may arise. Building upon our success in civil rights and civil liberties compliance and training, and our track record of close cooperation with DHS components, we will work with the DHS Privacy Office, I&A, the Civil Liberties Protection Officer at DNI and the Privacy and Civil Liberties Oversight Board to protect and preserve civil liberties as NAO begins operations to help the government ensure the safety and well-being of our citizens.

I thank you for inviting me to share our thoughts on the National Applications Office today, and I look forward to working with this Committee to provide oversight of this important program.