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**United States Department of Energy  
Office of Hearings and Appeals**

**In the Matter of: Personnel Security Hearing** )

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**Filing Date: December 1, 2015** )

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**Case No.: PSH-15-0098**

**Issued:** March 30, 2016

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

On May 7, 2015, police arrested the Individual and charged him with Public Intoxication (PI), Disorderly Conduct, Resisting Arrest, and Bribery of a Public Servant. Ex. 8 at 2-4. In order to address those concerns, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on June 3, 2015, and sponsored a forensic psychiatric examination of the Individual which occurred on August 5, 2015. Because the PSI and forensic psychiatric examination did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on December 2, 2015.

<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his former supervisor, a coworker, his counselor (the Counselor), and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-15-0098 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15, while the Individual submitted 17 exhibits, which are marked as Exhibits A through Q.

## II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (h), (j), and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the Individual has: “An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Specifically, the Notification Letter alleges that the Individual has been diagnosed by a psychiatrist with Alcohol Abuse (under the American Psychiatric Association’s Diagnostic and Statistical Manual-Fourth Edition Text Revision, DSM-IV-TR). These circumstances adequately justify the DOE’s invocation of Criterion H, and raise significant security concerns. The Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

Criterion J refers to information indicating that the Individual has: “Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse... .” 10 C.F.R. § 710.8(l). Specifically, the Notification Letter alleges that the Individual has been diagnosed by the Psychiatrist with Alcohol Abuse after incurring three alcohol-related arrests. These circumstances adequately justify the DOE’s invocation of Criterion J, and raise significant security concerns. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guideline G at ¶ 21. “Conditions that could raise a security concern and may be disqualifying include: . . . alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, [and] (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.” Adjudicative Guideline G at ¶ 22(a) and (d).

Criterion L refers to information indicating that the Individual has: “Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the

best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l). Specifically, the Notification Letter, citing the Individual’s three-alcohol related arrests, alleges that the Individual has exhibited a pattern of criminal conduct. “Criminal activity creates doubt about a person’s judgment, reliability and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Adjudicative Guideline J at ¶ 30.

### **III. REGULATORY STANDARDS**

The Administrative Judge’s role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual’s age and maturity at the time of the conduct; the voluntariness of the Individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. See 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. FINDINGS OF FACT**

The Individual has a history of three alcohol-related arrests. On May 7, 2015, he was arrested and charged with PI, Disorderly Conduct, Resisting Arrest, and Bribery of a Public Servant.<sup>3</sup> On

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<sup>3</sup> The Police Report for the May, 7, 2015, incident states in pertinent part:

On 05/07/2015 at 19:30 hours, Officer . . . responded to a disturbance . . . Upon arrival, I spoke to the suspect, [The Individual]. I detected a strong odor of alcohol on his breath and person, blood shot watery eyes, slurred speech, and the suspect was hostile. The suspect started yelling at mall security officers and cursing. I told the suspect to turn around and put his hands behind his back and that he is being placed under arrest. The suspect looked at me and stated, "what are you going to do?" I grabbed the suspect by the left arm and attempted to use directional controls to get him into a cuffing position. The suspect jerked away and pushed me. I again attempted to grab the suspect with the help of mall security, and the suspect stood up and became more hostile. I retrieved my X-26 Taser, and told the suspect to lay down on the ground and put his arms behind his back. The suspect refused. I again gave him the command to quit resisting and get on the ground. The suspect again refused. I deployed my X-26 Taser into the suspects left side and he fell to the ground. I told the suspect to stop resisting and to put his arms behind his back. The suspect attempted to stand up again. I deployed my Taser a second time, bringing the suspect back down to the ground. I then got on top of the suspect and applied handcuffs. . . . While in my custody the suspect offered to take me to an ATM and withdraw money if I were to let him go. He offered to

September 15, 2012, he was arrested and charged with PI and Resisting Arrest.<sup>4</sup> On September 22, 2006, he was arrested and charged with Driving Under the Influence of Alcohol (DUI). The May 7, 2015, arrest led the LSO to reinvestigate the Individual's eligibility to hold a DOE security clearance, which in turn led to the present proceeding.

The LSO conducted a PSI of the Individual on June 3, 2015. Ex. 12 at 1. During this PSI, the Individual was asked how many beers he had consumed before the incident which resulted in his May 7, 2015, arrest, the Individual stated "I don't know three or four, we had a pitcher." Ex. 12 at 16. The Individual further reported that he had left a bar and proceeded to a local mall. Ex. 12 at 18. The Individual reported that he was feeling "a little buzz" but was not intoxicated. Ex. 12 at 18. While he was at the mall, his estranged spouse called him on his cell phone and they began a conversation concerning their contentious divorce settlement and custody arrangements for their minor daughters. Ex. 12 at 22. When his estranged spouse told him she wanted part of his pension and retirement benefits, he began raising his voice at her. Ex. 12 at 24. A mall security officer observed the Individual raising his voice and asked him to quiet down. Ex. 12 at 24. The Individual then told the mall security officer to mind his own business and to leave him alone. Ex. 12 at 25. The mall security officer summoned the police. Ex. 12 at 25. The Individual reported that he told the police officer to leave him alone and to stay out of his business. Ex. 12 at 26. The police officer then tried to handcuff him, which he resisted, and the police officer used a Taser on him. Ex. 12 at 26-27. The Individual reported that he was angry with the police officer because the police officer would not explain why he was being handcuffed and arrested. Ex. 12 at 28. The Individual reported that he was so emotional that the first Taser did not hurt much or incapacitate him. Ex. 12 at 30-31. A second Taser incapacitated him. Ex. 12 at 32. The Individual then begged the officer to let him go and then tried to bribe the officer to let him go. Ex. 12 at 34. The Individual claimed that the police officer "had it out"

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pay me money several times to be released. The suspect was taken to [a local medical center] to be treated for his injuries.

Ex. 8 at 5.

<sup>4</sup> An LSO Incident Report provides the following account of the incident that led to the Individual's September 15, 2012, arrest:

[The Individual] and his friend tailgated from 12:30 till 4:30 PM prior to [a college] football game. He estimates he drank 6-7 beers. The group walked over a mile to the stadium, where beer is not sold. During the game, [the Individual] came to his feet, cheering loudly whenever [the home team] made a good play. Several [of the visiting team's] fans were sitting in the area, one directly in front of [the Individual]. During one episode of cheering, [the Individual] accidentally kicked over the cup of Coke that was sitting on the stadium floor. It spilled down [a visiting team's] fan's back. The [visiting team's] fan was reportedly incensed and contacted an usher who called [the Individual] and his friend out to the aisle. When [the Individual] expressed his indignation, the usher contacted the highway patrolman who was helping to police the arena. The patrolman escorted the 2 men to the gate. As they approached the gate, some [of the visiting team's] fans taunted him and [the Individual] responded in kind. When he was turned over to the City police officer outside the gate, the police officer made a verbally "aggressive" statement. Once again, [the Individual] responded in kind. The officer "took him down" and kicked and hit him. He was taken to jail.

Ex. 7 at 5.

for him. Ex. 12 at 34-35. The Individual seemed surprised that the officer charged him with bribery, stating: “Who, who, who charges somebody with a felony, you know what I mean?” Ex. 12 at 34. The Individual questioned whether he was intoxicated and hostile enough to warrant being arrested, while simultaneously admitting that he had behaved inappropriately. Ex. 12 at 38-43. After he reported this incident and his arrest to his employer and the LSO, his employer had him evaluated by a counselor who recommended that he undergo stress management counseling, and enroll in an intensive outpatient program (IOP) for alcohol treatment. Ex. 12 at 64. The Individual enrolled in the IOP and began seeing the Counselor for stress management counseling once a week. Ex. 12 at 66, 73. The Individual stated that when he was evaluated for an alcohol problem, he was told that he did not need treatment. Ex. 12 at 70. The Individual reported that he had been attending Alcoholics Anonymous (AA) meetings three times a week, and that he has a sponsor, whom he speaks with on a daily basis. Ex. 12 at 79, 216. The Individual admitted that in the year leading up to the May 7, 2015, incident he would drink up to five to seven beers in a sitting, once or twice a month. Ex. 12 at 161-162, 172. He stated that it would take nine or ten beers to intoxicate him. Ex. 12 at 165. The Individual stated that he drank to relieve stress and to escape the hurt and pain of his divorce. Ex. 12 at 166. The last time he consumed alcohol was on May 7, 2015. Ex. 12 at 187-188. The Individual admitted that he continued to use alcohol even after he had been cautioned by mental health and healthcare providers against using alcohol. Ex. 12 at 195-196. When the Individual was asked about his future intentions concerning alcohol, he stated he plans to “refrain.” Ex. 12 at 204.

At the request of the LSO, the Psychiatrist evaluated the Individual on August 5, 2015. Exhibit 4 at 1. In addition to conducting a 1.75-hour forensic psychiatric interview of the Individual, the Psychiatrist reviewed the Individual’s personnel security file, and sent him to a laboratory to obtain a blood sample. Exhibit 4 at 1. During this examination, the Individual reported that his last use of alcohol occurred on May 7, 2015. Ex. 4 at 6. The Individual further admitted to: developing a tolerance to alcohol; “extended times of using and recovering from the use of alcohol;” extensive legal problems resulting from his alcohol use; and complaints and arguments with his then-wife about his alcohol use. Ex. 4 at 9. The Individual has also ignored repeated medical advice to curtail or cease his alcohol use, but continued to do so in order to “calm his anger about his marital strife.” Ex. 4 at 11. After completing his evaluation of the Individual, the Psychiatrist issued a report (the Psychiatric Report) on August 12, 2015, in which he found that the Individual had a mental condition, Alcohol Abuse, which he opined causes, or may cause, a significant defect in his judgment or reliability. Exhibit 4 at 11. The Psychiatrist noted that while the Individual had begun to attend AA meetings, and had obtained an AA sponsor, the Individual did not yet identify as an “alcoholic,” and did not appear to be fully engaged in his AA program. Ex. 4 at 9, 11. The Psychiatrist further noted that the Individual’s future intention towards alcohol was to eventually return to occasional alcohol use. Ex. 4 at 9. During his Psychiatric examination, the Individual denied that he has a problem with alcohol. Ex. 4 at 10. The Psychiatrist further reported that the Counselor had reported to him that it had been difficult for her to break through the Individual’s defenses and that therapeutic progress had been slow. Ex. 4 at 10. He noted that the Individual’s laboratory results revealed no overt evidence of recent alcohol use. Ex. 4 at 11. The Psychiatrist opined that the Individual’s prognosis appeared to be “fairly poor.” Ex. 4 at 11. The Psychiatrist opined that in order to demonstrate rehabilitation or reformation from his Alcohol Abuse, the Individual should: (1) participate in a

12-step recovery program, (2) gain familiarity with a recovery model, and have least one year of complete sobriety. Exhibit 4 at 12.

## V. ANALYSIS

### A. Alcohol Abuse

During his hearing testimony, the Individual testified that his last use of alcohol occurred on May 7, 2015.<sup>5</sup> Tr. at 50, 55. The Individual recounted the events leading up to his May 7, 2015, arrest for PI. The Individual's testimony concerning this incident indicated that he attributes his actions on May 7, 2015, to: his inability to handle his divorce, the inexperience of the mall security official and the inexperience of the arresting police officer, rather than his use of alcohol prior to this incident. Tr. at 64, 83-86. He further testified that he only had "a couple" of beers earlier in the day on May 7, 2015.<sup>6</sup> Tr. at 82.

The Individual testified that he does not have an alcohol problem, or an alcohol use disorder. Tr. at 116-118. However, the Individual admitted to a past alcohol problem, where he would drink when he was depressed and then become more depressed. Tr. at 86-87. The Individual further admitted that he consumed part of a bottle of beer on January 2, 2016. Tr. at 68, 94. The Individual testified he caught himself, and ended up throwing the beer away before he finished it and called his father. Tr. at 69. The Individual testified if he felt like drinking again, he would contact a member of his support system for help. Tr. at 116.

The Individual testified that he has been undergoing individual counseling for anger and stress management. Tr. at 58, 62, 88, 92, 98-99, 104-108. The Individual further testified that he is working on steps six and seven of the AA Twelve Step Program in his individual counseling sessions. Tr. at 107-108. Through his individual counseling, he has learned to open up about his issues. Tr. at 63. The Individual testified that he has also been attending AA meetings, has a sponsor, and has completed the first five steps of AA's Twelve-Step Program. Tr. at 58, 92-93. The Individual further testified that he has attended, and completed, an IOP, where he completed the first five steps of AA's Twelve-Step Program. Tr. at 59-60; 90. Although the IOP has an aftercare program, he does not attend those meetings regularly. Tr. at 92. The Individual has been prescribed an anti-depressant medication to address his depression and anxiety. Tr. at 87-88, 96-97. The Individual believes that this medication is effective. Tr. at 113. The Individual testified that he has a strong support system, which consists primarily of his parents and the Counselor. Tr. at 74-76, 95. The Individual testified that he does not have cravings for alcohol. Tr. at 103-104. The Individual testified that he plans to abstain from future alcohol use. Tr. at 78, 91, 115.

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<sup>5</sup> The Individual has submitted the results of a number of drug and alcohol tests taken after that date which are negative for drugs or alcohol. Ex. B; Ex. C; and Ex. Q.

<sup>6</sup> During his PSI, the Individual described his alcohol consumption on May 7, 2015, as follows: "I don't know three or four, [beers] we had a pitcher." Ex. 12 at 16.

The Counselor, a board-certified, licensed clinical social worker, testified on the Individual's behalf at the hearing. Tr. at 120. The Counselor testified that she has treated hundreds of clients with substance abuse issues. Tr. at 120. The Counselor testified that she has been treating the Individual for over eight months. Tr. at 127. When the Counselor was asked if she believed that the Individual has an alcohol problem, she responded by stating that the Individual's "behaviors, his maladaptive behaviors are exacerbated when he drinks [and that] he has less impulse control at those times." Tr. at 121. She testified that the focus of her work with the Individual was "to help him identify some of the underlying issues such as his anger, his blaming, his sense of victimization." Tr. at 121. The Counselor testified that the Individual has made progress during his therapy. Tr. at 122-125, 127. When the Counselor was asked if the Individual has the "tools and skills necessary to abstain," she responded by stating "I believe he is filling up his tool box presently." Tr. at 124. She testified that between his participation in the IOP, AA and his individual counseling, the Individual "has followed every recommendation that has been given to him. He has been extremely responsible in his therapy and it has been very trying at times. He is utilizing the verbal skills he is developing, he is utilizing the things he is learning about appropriate boundaries." Tr. at 136. She further opined that the Individual is particularly honest. Tr. at 137. The Counselor testified that the Individual now fully recognizes that danger that alcohol presents to his well-being. Tr. at 150. She testified that the Individual's insight is "growing." Tr. at 150-151. Moreover, the Counselor testified that having his security clearance suspended has alerted him to the importance of his sobriety, and that he is now "committed to abstinence." Tr. at 140- 141. While the Counselor testified that she has diagnosed the Individual with Alcohol Disorder, Mild and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, she further testified that his current diagnoses do not significantly affect the Individual's judgment and reliability. Tr. at 126-127, 132, 148-149. The Counselor further testified that the Individual has "a very positive prognosis." Tr. at 127. The Counselor testified that the Individual is presently "adequately rehabilitated and reformed." Tr. at 131.

At the hearing, the Psychiatrist listened to the testimony of each of the other witnesses before he testified. The Psychiatrist testified that the testimony he had observed at the hearing did not change his original conclusions. Tr. at 153. The Psychiatrist still believes that the Individual needs at least one year of sobriety before he can be considered to be reformed or rehabilitated from his Alcohol Abuse.<sup>7</sup> Tr. at 154. The Psychiatrist testified that the Individual has exhibited a great deal of resistance to recognizing that he has a problem with alcohol, even though he has apparently abstained from alcohol use. Tr. at 154. The Psychiatrist noted that the Individual denied having a problem with alcohol during his psychiatric examination and during the hearing. Tr. at 155. The Psychiatrist noted that this denial continues to persist even in the face of the Individual's three alcohol-related arrests. Tr. at 155, 161. Although, the Psychiatrist testified that the Individual has gained "some insight." Tr. at 157-158. The Psychiatrist testified that he would like to see the Individual's counseling treatment to focus more on being "more anger specific and depression specific;" to help the Individual understand how his anger and depression are dangerous to his sobriety; and to realize that he has a pattern of using alcohol to medicate his anger and depression. Tr. at 159. The Psychiatrist testified that the Individual's prognosis is "fair to good" and his likelihood of relapse is "moderate." Tr. at 160, 162. The Psychiatrist noted that the Individual's participation in therapy was encouraging, that he is taking the right steps towards recovery, he is being honest about his relapse, that he is "finally" starting to realize

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<sup>7</sup> The Psychiatrist testified that he considered the Individual to have nine months of sobriety. Tr. at 154.

that he gets in trouble when he drinks, and that there could be serious consequences if he continues to use alcohol. Tr. at 160-162, 165. However, the Individual still does not accept that he has a problem with alcohol and is still in denial. Tr. at 161-162. The Psychiatrist characterized the Individual's level of insight as "still pretty poor" but improving. Tr. at 162. The Psychiatrist noted that in order to recover, the Individual needs "to come to the understanding or the appreciation that it is a problem and certainly we are not there yet." Tr. at 164-165.

After carefully considering all the evidence, I find that the Individual has not shown that he is sufficiently reformed or rehabilitated from his Alcohol Abuse Disorder. Accordingly, I find that the security concerns raised by his Alcohol Abuse diagnosis under Criteria H and J have not been resolved. The Individual has, with one small exception, refrained from using alcohol for the past nine months, attended an IOP, attended AA, began working AA's Twelve-Step Program, obtained a sponsor, and received individualized counseling. The Individual has made progress as a result of these efforts. However, the Individual's recovery is obviously still in its beginning stages. He does not yet accept that he has an alcohol problem or recognize the obvious role that it has played in his three alcohol-related arrests.

## **B. Criminal Activity**

The Individual's three alcohol-related arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L.<sup>8</sup> This conduct is clearly symptomatic of his Alcohol Abuse Disorder. Given the role that alcohol has played in the Individual's past conduct, I find that since the concerns raised by his Alcohol Abuse Disorder have been not been sufficiently resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct under Criterion L are also not resolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated the Criteria H, J, and L security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

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<sup>8</sup> In addition to his three alcohol-related arrests, the Notification Letter also cites two minor traffic violations that the Individual has been cited for: on January 1, 2013, he was cited for Speeding; in 2010, he was cited for a Stop Sign Violation. Because these citations were for such minor infractions, I find that they do not raise any security concerns and therefore I need not discuss them further or consider their implications.



Date: March 30, 2016