

In the United States District Court
Southern District of New York

Houser

v.

No. 10-cv-3105

Pritzker

Declaration of Frank A. S. Campbell

1. My name is Frank A. S. Campbell and I am the Founding Principal and CEO of Highland Strategies LLC, a security consulting and background screening resources company based in Washington, D.C. I have been in this position since June 2008.
2. From 1994 through 1999, I was Assistant General Counsel in the Office of the General Counsel of the Federal Bureau of Investigation (FBI); and from 1999 through 2008, I served as Senior Counsel and Deputy Assistant Attorney General for the Office of Legal Policy (OLP) in the United States Department of Justice (DOJ).
3. Throughout my 14 years of service at the FBI and DOJ, I had responsibilities concerning and worked on issues relating to the management and use of the criminal history record information maintained by the FBI in the national criminal justice information systems managed by the FBI's Criminal Justice Information Services Division (CJIS). Through that work I became familiar with the nature of the record systems managed by CJIS.

4. My main areas of involvement with CJIS systems included, from 1995-2008, the design, implementation, and oversight of the FBI's National Instant Criminal Background System (NICS), the system that does background checks on persons who buy firearms from Federal Firearms Licensees. I was also involved, from 2001-2008, in the establishment and initial operation of the National Crime Prevention and Privacy Compact Council, the body responsible for establishing rules governing access to and use of FBI-maintained criminal history record information for non-criminal justice purposes, such as licensing and employment checks. I authored the *Attorney General's Report on Criminal History Background Checks (June 2006)*, Office of the Attorney General, U.S. Dep't of Justice, http://www.justice.gov/olp/ag_bgchecks_report.pdf [hereinafter *Attorney General's Report*], a report to Congress that provided a comprehensive review of the way in which FBI-maintained criminal history record information is used for non-criminal justice licensing and employment purposes, including the governing legal authorities, and made detailed recommendations for law reforms for improving, standardizing, and consolidating the existing statutory authorizations, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes. I testified twice before Congress on the subject of criminal history background checks using the FBI system.¹

¹ See *Employer Access to Criminal Background Checks: The Need for Efficiency and Accuracy: Hearing Before the Subcomm. On Crime, Terrorism, and Homeland Security of the H. Comm. of the Judiciary*, 110th Cong. 6 (2007) (testimony of Frank A. S. Campbell, United States Dep't of Justice); and *H.R. 2703, Private Security Officer Employment Authorization Act of 2007: Hearing Before the Subcomm. On Health, Employment, Labor, and Pensions, H. Comm. On Education and Labor*, 110th Cong. (2008) (testimony of Frank A. S. Campbell, United State Dep't of Justice).

5. Since leaving DOJ in 2008, I have consulted for companies concerning background screening and fingerprinting in connection with criminal history checks using the FBI system. I continue to attend professional meetings relevant to background screening and the use of the FBI systems, including meetings of the National Crime Prevention and Privacy Compact Council, the FBI Advisory Policy Board (APB), and SEARCH (the National Consortium of Justice Information and Statistics – an organization with governor-appointed representatives from all 50 states involved with the state criminal history record repositories). I keep up with literature in this field and authored a section titled “Proposals to Improve Criminal History Background Checks Through New Rules of Access to Criminal Justice Information Repositories,” in the recently published Thomson Reuters WestLaw/NACDL Press treatise *Collateral Consequences of Criminal Convictions: Law, Policy and Practice*, 310-341 (2013). I believe the information provided below is current and up-to-date.
6. The information in the CJIS systems is contributed by State Identification Bureaus that receive information from state and local law enforcement agencies, as well as by federal law enforcement agencies. The federal, state, and local contributing agencies are also the primary users of the systems. See generally *Attorney General’s Report* at 13.
7. The FBI therefore uses a system of shared management of the CJIS information systems governed through an advisory board known as the FBI Advisory Policy Board (APB) created under the Federal Advisory Committee Act, as well as through the Compact Council, an entity created under the 1998 National Crime

Prevention and Privacy Compact, Pub. L. 115-251, 42 USC 14616. Members of the APB include FBI Director-appointed representatives of state, local, and federal agencies that contribute and use the information in the FBI systems. The APB focuses on issues concerning the criminal justice uses of the information in the CJIS systems and makes recommendations on management of the system to the FBI Director. Members of the Compact Council are Attorney General-appointed representatives of state and federal agencies involved with the non-criminal justice use of the CJIS national criminal history record system; the Council promulgates rules governing the non-criminal justice use of the system's criminal history record information. The APB and the Compact Council each meet twice a year, with additional subcommittee meetings as well, during which they address significant issues relating to the management and use of the CJIS information systems. I have attended and participated in many APB and Compact Council meetings since 1995.

8. The Integrated Automated Identification System (IAFIS) is one of the primary information systems managed by CJIS. It contains the criminal history record information on arrested individuals submitted by law enforcement agencies from all 50 states and territories. The Interstate Identification Index (III) ("Triple I") is a segment of IAFIS that is the national system designed to provide automated criminal history record information. The III is an index-pointer system that allows for the exchange of criminal records. The III stores the criminal history records of federal offenders and records of offenders submitted by all states and territories. Under the III, the FBI maintains an index of persons arrested for

felonies or misdemeanors under either state or federal law. Each criminal history record indexed in the III is created through the submission of fingerprint images to IAFIS. The III-participating states establish and update records within III through the submission of first and subsequent fingerprint images of arrested subjects. The fingerprints and the criminal history records indexed in the III are kept in the FBI Privacy Act system of records named the Fingerprint Identification Record System (FIRS). States participating in the III's National Fingerprint File (NFF) submit only the first arrest fingerprint images on a subject to establish a pointer record within the III. Any subsequent activity related to the person whose fingerprints have been placed in the NFF, such as disposition reports, expungements, or subsequent arrests, are maintained solely at the state level by the NFF participating state, rather than the FBI. Currently, eighteen states participate in the NFF. See generally The Attorney General's Report at 14-16.

9. The arrest data in the III is collected at the time of the booking of the subject by the arresting agency. The data collected and entered include name, social security number, date of birth, sex, race, height, weight, eye color, hair color, scars, marks, tattoos, and amputations, residence address, fingerprints, date of arrest, arrest charge, and disposition if available. See generally *Guidelines for Preparation of Fingerprint Cards and Associated Criminal History Information*, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/guidelines-for-preparation-of-fingerprint-cards-and-association-criminal-history-information, and the *Electronic Biometric Transmission Specification* (the FBI's specification

for electronic fingerprint submissions to the IAFIS) [hereinafter *EBTS*], Appendix C: Descriptors and Field Edit Specifications for Type-2 Logical Records (July 2013), <https://www.fbibiospecs.org/docs/Master%20EBTS%20v10%20-%20FINAL.%2020130702.pdf>.

10. The III also contains FBI and state identification numbers (SIDs) from each state that has information about an individual. Search queries using names and other identifiers are made by law enforcement agencies throughout the country. The automated name search process takes about two seconds and, if a hit occurs, record requests are made using the associated SIDs or FBI numbers. Data is automatically retrieved from the appropriate repositories, including state repositories, and forwarded to the requesting agency. *See Attorney General's Report* at 15.
11. Police officers are the primary consumers and users of the biographical/descriptive data identifying arrested subjects in the III system which “responds to requests 24 hours a day, 365 days a year to help [the FBI’s] local, state, and federal partners—and our own investigators—solve and prevent crime and catch criminals and terrorists.” *See* FBI IAFIS webpage, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis. Biographical/descriptive information entered into the III with an arrestee’s fingerprint submission is used by law enforcement officers in name-based checks identifying a record match in subsequent encounters with the subject when fingerprints are not available to make a positive identification, thereby providing important information about the subject’s criminal history. *See Attorney*

General's Report at 26. Knowing about a subject's previous record can be important to officer safety. *Id.* The accuracy and reliability of the biographical/descriptive data is therefore a high priority for the FBI and the federal, state, and local users of the III system.

12. As noted above, race is one of the required biographic data elements for III record submissions. A race field is used to indicate the race of the subject in the IAFIS/III record with one of the following categories to be entered for race:

- a. Chinese, Japanese, Filipino, Korean, Polynesian, Indian, Indonesian, Asian Indian, Samoan, or any other Pacific Islander. (Code A)
- b. A person having origins in any of the black racial groups of Africa. (Code B).
- c. American Indian, Eskimo, or Alaskan native, or person having origins in any of the 48 contiguous states of the United States or Alaska who maintains cultural identification through tribal affiliation or community recognition. (Code I)
- d. Of indeterminate race. (Code U)
- e. Caucasian, Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race. (Code W)

See *Guidelines for Preparation of Fingerprints and Associated Criminal History Information, Race Code Table*, *supra* at 39; and *EBTS, supra*, Appendix C: Descriptors and Field Edit Specifications for Type-2 Logical Records, 2.025 Race, at C-28.

13. The FBI CJIS Division conducts triennial audits of state and local agencies for compliance with III policy regarding access to, storage of, and dissemination of the information. See CJIS Security Policy, Version 5.2, 8/9/2013, CJISD-ITS-DOC-08140-5.2 at 61, <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center/view>. These are security audits by the FBI and generally do not include an audit of the accuracy of the data entered on the fingerprint card. Local and state agencies are responsible for the accuracy and timeliness of the data entered in the records. The Federal regulations governing the CJIS systems provide that each participating state have operational procedures to:

[i]nsure that criminal history record information is complete and accurate... [T]o be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

28 CFR 20.21. See also 28 CFR 20.37 (“It shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current ...”). The U.S. Department of Justice, Bureau of Justice Statistics (BJS), published a detailed audit guide for state record repositories to follow in fulfilling this responsibility to keep criminal history information complete and accurate. See *Audit Guide for Assessing Completeness and Accuracy of Criminal History Record Systems*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, January 1992, NCJ-133651, <http://www.search.org/files/pdf/auditguide.pdf> (prepared by SEARCH, the

National Consortium for Justice Information and Statistics). The *Audit Guide* recommends a number of approaches to data quality audits, including: (1) comparing the repository database to externally obtained information such as stored source documents or to FBI Uniform Crime Report (UCR) data and statistics obtained from the same agencies; and (2) site visits to reporting agencies to make comparisons of repository data to a sample of source documents and to examine their policies and procedures regarding data collection and entry.

14. While the race entered on a III criminal history record is not a scientific determination of a person's racial make up like a DNA analysis, the information is collected by law enforcement agency officers entering the data in a routine, business-like manner, generally through observational assessment of the subject by the entering officer. Race information continues to be a required data element in arrest records to assist in III identification.
15. Race is one of the descriptive data elements required to request a check of a prospective gun transferee through the FBI's National Instant Criminal Background Check System (NICS). The biographical/descriptive identifiers required to initiate a NICS check are name, date of birth, sex, race, and state of residence. See 28 CFR 25.7(a). The NICS is a name-check system that does not require fingerprints. Because of the issue of common names, information about a person's race, which is entered by the individual buyer on the ATF Firearms Transaction Record, Form 4473, Item 10.b. (which includes race categories of American Indian or Alaskan Native, Asian, Black or African American, Native

Hawaiian or Other Pacific Islander, or White), can help the NICS in determining whether a particular III record belongs to the prospective gun buyer.

16. The biographical/descriptive data collected by police departments about arrested persons, whether in the police incident report or in the fingerprint arrest record, is also used in statistical analyses of arrests in studies performed or supported by the FBI and BJS.

17. In its Uniform Crime Reports (UCR) Program, the FBI relies on the biographical/descriptive data and charging information about arrested persons in police incident reports from more than 18,000 law enforcement agencies, aggregated by states and voluntarily submitted to the FBI for use in crime statistics. See UCR Program webpage, <http://www.fbi.gov/about-us/cjis/ucr>. The UCR Program annually develops statistics about crime in the United States, including demographic statistics on arrested persons. According the FBI's UCR website, "agencies began contributing data [to the UCR Program] on the age, sex, and race of arrestees in 1952." *Id.* at Appendix 1 – A Brief History of the UCR Program. Of the 69 statistical tables in the 2012 UCR Crime in the United States report, five tables provide a statistical breakdown of arrests by race. See *Crime in the United States 2012, Persons Arrested*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested>.

18. The FBI's UCR website states that the UCR Program:

has been the starting place for law enforcement executives, students of criminal justice, researchers, members of the media, and the public at large seeking information on crime in the nation. The program was conceived in 1929 by the International Association of Chiefs of Police to meet the need

for reliable uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics.

See UCR Program webpage, <http://www.fbi.gov/about-us/cjis/ucr>. The primary objective of the UCR Program is to:

generate a reliable set of crime statistics for use in law enforcement administration, operation, and management. ... Additionally, the American public relies on these data sets for information on the fluctuations in the level of crime from year to year, and criminologists, sociologists, legislators, city planners, the media, and other students of criminal justice use them for a variety of research and planning purposes.

See UCR webpage, A Word About UCR Data, <http://www.fbi.gov/about-us/cjis/ucr/word>. Data reliability is therefore a high priority for the UCR Program and Data Quality Guidelines for the program were issued by the FBI pursuant to the Office of Management and Budget (OMB) guidelines that provide “policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” See UCR webpage, Data Quality Guidelines, <http://www.fbi.gov/about-us/cjis/ucr/data-quality-guidelines-new>.

19. According to the UCR website, “in response to a directive by the U.S.

Government’s Office of Management and Budget, the national UCR Program has expanded its data collection categories for race from four (White, Black, American Indian or Alaska Native, and Asian or Other Pacific Islander) to five (White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander).” The website states that these changes are reflected in the UCR data presented for 2012. See UCR webpage, About UCR, Recent Developments in the UCR System,

<http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/resource-pages/about-ucr/aboutucrmain>.

20. The Bureau of Justice Statistics (BJS) also issues statistical reports about crime that are relied upon by law enforcement managers and policy makers at all levels of government in decisions about planning, resource allocation, management, training, and operations. BJS studies on recidivism, for example, are based in part on information obtained from state and federal corrections agencies as well as from state and federal arrest records. See e.g. *Recidivism of Prisoners Released in 1994*, Patrick A. Langan, Ph.D, and David J. Levin, Ph.D. (June 2, 2002) (<http://www.bjs.gov/content/pub/pdf/rpr94.pdf>); *Recidivism of Prisoners Released in 1983*, Alan J. Beck, Ph.D., and Bernard Shipley (April 1, 1989) (<http://www.bjs.gov/content/pub/pdf/rpr83.pdf>). These studies contain racial statistics about offenders who are rearrested after release from prison.
21. In addition, BJS has on its website an Arrest Data Analysis Tool that allows users to select criteria to generate custom tables and charts with national arrest estimates, including demographic characteristics of arrestees such as race (with race categories of White, Black, American Indian/Alaskan Native, and Asian/Pacific Islander). See BJS webpage Arrest Data Analysis Tool, <http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#>. The underlying data in the tool are from the FBI's UCR Program. BJS expanded upon the FBI estimates to provide national arrest estimates detailed by offenses, sex, age, and race through an estimation process detailed on the BJS website – “Expanding upon, and based on, the FBI’s estimate of national arrest counts, BJS

has developed a consistent set of national estimates of arrest counts, arrest rates and arrest trends for the various demographic groups (age, sex, and race) using UCR arrest data.” Id. at Methods tab.

22. To my knowledge, to date, no one has suggested discontinuing the collection of race as a required data element for fingerprint submissions to the FBI III system because it is considered unreliable; nor has the reliability of race data entered in III criminal history records ever been raised as an issue for consideration by the APB. To my knowledge, there have been no studies by the FBI or the states addressing the reliability of the race data entered with fingerprint submissions to the III.

Addendum

1. This report was prepared in response to a request from Outten & Golden LLP for the case of *Houser at al v. Pritzker*, No. 10-cv-3105, United States District Court, SDNY. I am being compensated \$600.00 per hour for my work in preparing this report.
2. I have not testified in any other case as an expert witness in the last four years.
3. Publications I have authored in the previous 10 years include the following:
 - *Collateral Consequences of Criminal Convictions: Law, Policy and Practice*, Ch. 5, Access to and Use of Criminal Records, 5.C. Proposals to Improve Criminal Background Checks Through New Rules of Access to Criminal Justice Information Repositories, Thomson Reuters WestLawNational Association of Criminal Defense Lawyers Press (2013).
 - *Gun Background Checks Work. Let's Fund Them*. Frank A. S. Campbell (Bloomberg View, Feb. 7, 2013).
 - *Here's an Easy Way to Improve Gun Safety*. Frank A. S. Campbell (AOL News, Jan. 31, 2011).
4. My declaration is based on a review of the complaint in this case, the documents and sources cited in the declaration, and my years of experience at the FBI and DOJ working with the FBI CJIS Division and the state representatives that help the FBI manage its national criminal justice information systems.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Washington, D. C., on December 23, 2013.


Frank A. S. Campbell