

THE HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of
himself and other similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, *et al.*,

Defendants.

CASE NO. C17-00094RAJ

**DEFENDANTS' CERTIFICATION
OF COMPLIANCE WITH THE
MEET AND CONFER
REQUIREMENT OF LCR 26(c)(1);
DECLARATION OF BRENDAN T.
MOORE IN SUPPORT THEREOF**

Pursuant to LRC 26(c)(1), of the Local Rules of the United States District Court for the Western District of Washington, Defendants, through counsel, hereby certify that they have fully complied with the requirement that they meet and confer with counsel for Plaintiffs prior to the filing of the motion for a protective order filed contemporaneously herewith.

This certification is based on the declaration of Brendan T. Moore that is attached hereto.

Dated: March 7, 2019.

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Assistant Attorney General
Civil Division

ANDREW BRINKMAN
Trial Attorney
Office of Immigration Litigation

DEFENDANTS' CERTIFICATION OF COMPLIANCE WITH THE
MEET AND CONFER REQUIREMENT OF LCR 26(c)(1);
DECLARATION OF BRENDAN MOORE IN SUPPORT THEREOF -
(Case No. C17-00094RAJ)

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DECLARATION OF BRENDAN T. MOORE

I, Brendan T. Moore, declare and say:

1. I am a trial attorney in the Department of Justice’s Office of Immigration Litigation’s Appellate Section. I am one of the attorneys of record for Defendants in the above-captioned lawsuit.

2. In general, regular telephonic conferences between attorneys for the parties as a means to informally resolve a variety of issues relating to discovery and other matters as they have arisen has been an ongoing feature of this litigation since at least the Summer of 2018.

3. With respect to the dispute between the parties concerning Plaintiffs’ Request For Production (RFP) No. 53, requesting the production of “[t]he Alien Files (“A files”) of 100 members of the Naturalization and Adjustment Classes statistically chosen at random,” the parties had numerous discussions with the purpose of attempting to avert the need to bring this dispute to the Court. RFP No. 53 was one of the topics discussed during formal meet and confer sessions between the parties on the October 19, 2018 and October 24, 2018, November 8, 2018. Although some of these sessions involved full teams of lawyers from both sides, other sessions involved smaller breakout groups of attorneys.

4. In a telephonic meeting on November 20, 2018, the parties agreed that they had exhausted all avenues of compromise on RFP No. 53 and had reached an impasse on the matter.

5. An impasse between the parties with respect to their request for so-called “why information” as to the five named Plaintiffs has persisted for a longer period of time, though Defendants have never acknowledged on the public docket that any of the named Plaintiffs were ever placed in the CARRP program. Defendants have consistently taken the position that, because such information is, by its very nature, law enforcement privileged, classified, or both, it cannot be disclosed to Plaintiffs, even under an Attorney’s Eyes only order. Prior to the filing of this motion, and Plaintiffs motion to compel, the parties discussed this issue during the November 20, 2018 meet and confer and agreed that an impasse on this issue had occurred.

1 6. During the November 20, 2018, meet and confer, Plaintiffs' counsel also informed
 2 Defendants' counsel of their intention to ask the Court for permission to communicate with *Wagafe*
 3 class members through a public notice. Plaintiffs' public notice proposal was discussed by the
 4 parties over the course of several prior meetings but, as Defendants' counsel informed Plaintiffs'
 5 counsel, Defendants opposed the idea because of the increased risk of a disclosure of sensitive
 6 information subject to the AEO protective order to unnamed class members who are targets of
 7 investigations. During the November 20, 2018 meet and confer, the parties agreed that an impasse
 8 had been reached on that issue as well.

9 7. Finally, during a meeting and confer between the parties on December 20, 2018,
 10 Defendants informed Plaintiffs of their intention to file a limited number of declarations, and
 11 possibly some portions of their memorandum of law in support of the protective order *in camera* and
 12 *ex parte*. Plaintiffs stated that they would consult internally before taking a position on this
 13 issue. On February 28, 2019, in anticipation of filing their motion for a protective order, Ethan
 14 Kanter, counsel for Defendants, again informed Plaintiffs' counsel by e-mail of Defendants intention
 15 to file a limited number of declarations, and potentially some portions of their memorandum of law
 16 in support of the protective order *in camera* and *ex parte*. On March 6, 2019, Plaintiffs, through
 17 attorney Sameer Ahmed, informed Defendants by e-mail of their decision to oppose Defendants'
 18 motion to seek leave to submit declarations and briefing *in camera* and *ex parte*. Plaintiffs also
 19 communicated their expectation that Defendants provide Plaintiffs a summary of the materials
 20 Defendants intend to submit *in camera* and *ex parte* in as much detail as possible without revealing
 21 the information claimed to be classified and law enforcement privileged information.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on this 7th day of March 2019, at Washington D.C.

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