

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF SAMEER AHMED
IN SUPPORT OF PLAINTIFFS’ MOTION
TO COMPEL DOCUMENTS WITHHELD
UNDER THE LAW ENFORCEMENT
AND DELIBERATIVE PROCESS
PRIVILEGES**

I, Sameer Ahmed, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Trump*, No. 17-cv-00094 RAJ.

2. On July 20, 2018, counsel for both Plaintiffs and Defendants met and conferred regarding reproducing documents without redactions asserting the law enforcement privilege. But the parties agreed that they were at an impasse.

3. Plaintiffs then culled 38 documents asserting the law enforcement privilege that appeared particularly relevant to Plaintiffs’ claims from the hundreds of withheld or redacted documents asserting the law enforcement privilege.

1 4. On October 5, 2018, Plaintiffs sent to Defendants the list of 38 documents that
2 Plaintiffs intended to move to compel on. On October 15, 2018, the parties met and conferred.
3 During the meet and confer, Defendants agreed to review and potentially reproduce the 38
4 documents with fewer or no redactions.

5 5. On December 5, 2018, Defendants finished reproducing the 38 previously
6 identified documents with fewer, but still significant, redactions. Many of the redacted sections
7 appear relevant to Plaintiffs' claims.

8 6. After reviewing the documents and Defendants' privilege logs, Plaintiffs culled
9 the list of squarely relevant documents to 26 and asked Defendants to produce unredacted
10 versions of those documents. After exchanging various communications and holding another
11 telephonic meet and confer on March 29, 2019 Plaintiffs reduced their list of documents to 25.

12 7. On April 5, 2019, Defendants wrote to Plaintiffs, declining to produce unredacted
13 versions of the remaining 25 documents. The parties reached another impasse.

14 8. Participants in the final meet and confer on March 29, 2019 included Andrew
15 Brinkman, Joseph Carilli, and Jesse Busen for the Defendants, and Nicholas Gellert, Cristina
16 Sepe, Heath Hyatt, and myself for the Plaintiffs.

17 9. Three of the 25 reproduced redacted documents contain redactions asserting the
18 deliberative process privilege. First, with respect to DEF-0094235, Defendants did not change
19 the scope of redactions in this document in the reproduced version. Defendants' reproduced
20 version now asserts the deliberative process privilege and the law enforcement privilege.
21 Plaintiffs' previously moved to compel DEF-0094235 without deliberative process privilege
22 redactions and that motion is currently before the Court. Second, with respect to DEF-0094269,
23 Defendants did not change the scope of redactions in this document in the reproduced version
24 either. Their log asserts both the law enforcement privilege and the deliberative process privilege
25 but their redactions only claim the deliberative process privilege. Third, with respect to DEF-
26 0094974, while Defendants unredacted parts of this document, a number of redactions remain,

1 all of which assert only the law enforcement privilege or both the law enforcement privilege and
2 the deliberative process privilege. Plaintiffs move only to unredact the assertions of the law
3 enforcement privilege at this time. Plaintiffs previously agreed to not move to compel the
4 deliberative process privilege assertions on this document.

5 10. Defendants reproduced No. DEF-00011281 at DEF-00095290 and reproduced
6 DEF-00016600 at DEF-0094974. Documents DEF-00011281 and DEF-00016600 are discussed
7 in paragraph 76 of the Affidavit of Matthew D. Emrich in Support of Defendants' Assertion of
8 the Deliberative Process Privilege at Dkt. 174-3.

9 11. Attached as Exhibit A is a true and correct copy of Defendants' Privilege Log for
10 Production Volume 25. As to DEF-0094269, Defendants included the following privilege
11 description:

12 Predecisional, deliberative draft document shared between agency
13 officials that was intended to rescind, update, and consolidate all
14 USCIS CARRP policy documents (the policy was not adopted).
15 Disclosure of this predecisional, deliberative information would
16 chill and distort the candid discussion needed for optimum
17 decisionmaking. Parts of this document are also law enforcement
18 privileged. The withheld information includes a discussion on
19 certain information collected from law enforcement and/or
20 intelligence partners and how that law enforcement and/or
21 intelligence should be considered by USCIS in cases posing
22 national security concerns. It contains specific information about
23 the operation of the Terrorist Screening Database and methods and
24 techniques involving terrorist watchlisting. Disclosure of this
25 information would reveal screening and vetting techniques that are
26 used by the broader law enforcement/intelligence partners, as well
as USCIS's vetting techniques for cases involving national security
concerns. This would reveal current law enforcement procedures
for which individuals would have otherwise been unaware, which
could reasonably be expected to risk circumvention of the law.

22 Please note that Plaintiffs' counsel made small adjustments to the row sizes of the spreadsheet to
23 ensure text did not appear cut off in the exhibit.

24 12. During the meet and confer between the parties on March 29, 2019 and through
25 subsequent correspondence, the parties agreed on document titles that could be filed publicly.

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13. On April 10 and 11, 2019, Counsel for Plaintiffs and Defendants corresponded about publicly filing Defendants’ Privilege Log for Production Volume 25. Plaintiffs and Defendants agreed that Plaintiffs would publicly file Defendants’ Privilege Log for Production Volume 25 after redacting the names in the “Author” field.

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

EXECUTED this 11th day of April, 2019, at Los Angeles, California.

/s/ Sameer Ahmed
Sameer Ahmed

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused service of the foregoing document via the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

DATED this 11th day of April, 2019, at Seattle, Washington.

/s/ Cristina Sepe
Cristina Sepe, WSBA No. 53609
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
Email: CSepe@perkinscoie.com

EXHIBIT A

Privilege Log - Production Volume 038 (Revised)

BEGIN BATES	END BATES	CUSTODIAN	DATE TIME SENT	AUTHOR	To	FROM	CC	BCC	FILENAME	SUBJECT	DATE TIME CRTD	PRIVILEGE	PRIVILEGE DESCRIPTION
													Predecisional deliberative draft policy memorandum shared between agency officials that was intended to rescind update and consolidate all USCIS CARRP policy documents (the policy was not adopted). Disclosure of this predecisional deliberative information would chill and distort the candid discussion needed for optimum decisionmaking. Parts of this document are also law enforcement privileged. The document outlines TECS codes that are used to indicate a possible national security concern. The withheld information includes a discussion on certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. Unique database codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. This would reveal current law enforcement procedures for which individuals would have otherwise been unaware which could reasonably be expected to risk circumvention of the law.
DEF-0094235	DEF-0094252	USCIS FDNS ECN							CARRP Policy 11.22.16 SCOPS Reviewed.docx		11/30/2016 0:00	DP - Deliberative Process; LE - Law Enforcement	
DEF-0094260	DEF-0094268	USCIS FDNS ECN							Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving NS Concerns (FOD - 2.6.2009).pdf		7/14/2016 0:00	LE - Law Enforcement	This document includes unique codes that exist in the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. Unique TECS codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. The disclosure of this information could reasonably be expected to risk circumvention of the law.
DEF-0094269	DEF-0094270	USCIS FDNS ECN							CARRP Exec Summary.docx		1/6/2017 0:00	DP - Deliberative Process; LE - Law Enforcement	Predecisional deliberative draft document shared between agency officials that was intended to rescind update and consolidate all USCIS CARRP policy documents (the policy was not adopted). Disclosure of this predecisional deliberative information would chill and distort the candid discussion needed for optimum decisionmaking. Parts of this document are also law enforcement privileged. The withheld information includes a discussion on certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. This would reveal current law enforcement procedures for which individuals would have otherwise been unaware which could reasonably be expected to risk circumvention of the law.
DEF-0094271	DEF-0094274	USCIS FDNS ECN							Case Prioritization Intelligence Assessment CPIA.pdf		10/14/2015 0:00	LE - Law Enforcement	Document was compiled for law enforcement purposes and contains internal case handling procedures for cases with national security concerns. Specific databases are referenced which reveal the types of information and indicators that are used during the process and which law enforcement agencies are involved. The withheld information also consists of substantive explanations of how USCIS may analyze the risk level certain national security indicators may present and how national security cases should be prioritized based on their risk level. Disclosure of this information involving specific law enforcement databases and how USCIS analyzes risk levels for certain national security indicators would reveal current law enforcement procedures for which individuals would have otherwise been unaware.
DEF-0094275	DEF-0094277	USCIS FDNS ECN							SPC Watchlist Options 4-27-2016.doc		4/26/2016 0:00	LE - Law Enforcement	The withheld information includes a discussion on certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. Unique database codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. This would reveal current law enforcement procedures for which individuals would have otherwise been unaware which could reasonably be expected to risk circumvention of the law.
DEF-0094295	DEF-0094348	USCIS SCOPS ECN							DomOps Final Instructor's Guide 050108 a.doc		5/1/2008 14:50	LE - Law Enforcement	This training instructor guide on the CARRP policy was compiled for law enforcement purposes and contains information and procedures related to vetting and adjudicating cases with national security concerns. Here the information withheld includes specific law enforcement coordination instructions that would reveal how USCIS conducts the CARRP process without compromising other law enforcement investigations and initiatives. Further the guide provides examples of ways to obtain relevant information that may be used to assist immigration officers in identifying national security concerns or vetting those already identified. This document includes unique codes that exist in the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. Unique TECS codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. Unique database codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law. Individuals could be expected to change behavior or conceal facts or information if they were aware of these methods and techniques used to assess and evaluate national security concerns.
DEF-0094351	DEF-0094535	FDNS OS Shared Drive							NS Indicator Training - FOD	CARRP	11/15/2004 11:36	LE - Law Enforcement	The withheld information in this training includes certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. The guidance outlines specific instructions on using the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. TECS codes that indicate a possible national security concern and thereby necessitating further investigation of the subject are detailed and explained. Unique codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. Screenshots of law enforcement databases that would provide insight into how to navigate these databases and the information that they contain is revealed in this document. Descriptions and copies of information submitted by actual persons are included in this document and are described in sufficient detail to identify a specific individual who was considered a national security concern. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law. Individuals could be expected to change behavior or conceal facts or information if they were aware of these methods and techniques used to assess and evaluate national security concerns.
DEF-0094536	DEF-0094544	Mark C Freeman							CARRP- Attachment A to CARRP Operational Guidance 04-11-2008	Identifying National Security Cases	5/21/2008 1:43	LE - Law Enforcement	The attachment was compiled for law enforcement purposes and contains information and procedures related to processing cases involving a national security concern. Specifically the information withheld consists of examples of indicators used to identify cases that may include a national security concern. Additionally specific instructions are given related to the CARRP process so that adjudicators can ensure that internal and external vetting processes do not compromise or impede ongoing investigations or other law enforcement interests. Further specific databases are referenced which reveal the types of information and indicators that are used during the process and which law enforcement agencies are responsible for which steps of the process. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law.
DEF-0094545	DEF-0094629	Christopher M Heffron							CARRP Training 12 17 2013	CARRP	11/15/2004 11:36	LE - Law Enforcement	The guidance outlines specific instructions on using the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. TECS codes that indicate a possible national security concern and thereby necessitating further investigation of the subject are detailed and explained. Unique codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. Screenshots of law enforcement databases that would provide insight into how to navigate these databases and the information that they contain is revealed in this document. The attachment was compiled for law enforcement purposes and contains information and procedures related to processing cases involving a national security concern. Specifically the information withheld consists of examples of indicators used to identify cases that may include a national security concern. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law. Individuals could be expected to change behavior or conceal facts or information if they were aware of these methods and techniques used to assess and evaluate national security concerns.

DEF-0094630	DEF-0094792	Christopher M Heffron					NS Indicator Training - FOD (FDNS edits 9.5.17)	CARRP	11/15/2004 11:36	LE - Law Enforcement	The withheld information in this training includes certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. The guidance outlines specific instructions on using the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. TECS codes that indicate a possible national security concern and thereby necessitating further investigation of the subject are detailed and explained. Unique codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. Screenshots of law enforcement databases that would provide insight into how to navigate these databases and the information that they contain is revealed in this document. Descriptions and copies of information submitted by actual persons are included in this document and are described in sufficient detail to identify a specific individual who was considered a national security concern. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law. Individuals could be expected to change behavior or conceal facts or information if they were aware of these methods and techniques used to assess and evaluate national security concerns.
DEF-0094793	DEF-0094803	Susan J Knafle					CPIA Update	USCIS Fraud Detection and National Security Directorate Intelligence Branch	3/23/2010 6:41	LE - Law Enforcement	This document contains unique codes from the Enforcement Communications System (TECS) describing highly sensitive law enforcement databases. If disclosed this information could reasonably be expected to risk circumvention of the law.
DEF-0094804	DEF-0094966	Susan J Knafle					NS Indicator Training - FOD (FDNS edits 9.5.17)	CARRP	11/15/2004 11:36	LE - Law Enforcement	The withheld information in this training includes certain information collected from law enforcement and/or intelligence partners and how that law enforcement and/or intelligence should be considered by USCIS in cases posing national security concerns. It contains specific information about the operation of the Terrorist Screening Database and methods and techniques involving terrorist watchlisting. Disclosure of this information would reveal screening and vetting techniques that are used by the broader law enforcement/intelligence partners as well as USCIS's vetting techniques for cases involving national security concerns. The guidance outlines specific instructions on using the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. TECS codes that indicate a possible national security concern and thereby necessitating further investigation of the subject are detailed and explained. Unique codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. Screenshots of law enforcement databases that would provide insight into how to navigate these databases and the information that they contain is revealed in this document. Descriptions and copies of information submitted by actual persons are included in this document and are described in sufficient detail to identify a specific individual who was considered a national security concern. If disclosed this information would disclose techniques and procedures for law enforcement investigations that could reasonably be expected to risk circumvention of the law. Individuals could be expected to change behavior or conceal facts or information if they were aware of these methods and techniques used to assess and evaluate national security concerns.
DEF-0094968	DEF-0094973	Christopher M Heffron					EVIDENTIARY STANDARDS for NS concerns Powerpoint	EVIDENTIARY STANDARDS	11/20/2014 4:53	LE - Law Enforcement	This document contains unique codes from the Enforcement Communications System (TECS) describing highly sensitive law enforcement databases. If disclosed this information could reasonably be expected to risk circumvention of the law.
DEF-0094974	DEF-0094978	Christopher M Heffron					CARRP Service Center Questions		2/29/2016 5:25	DP - Deliberative Process; LE - Law Enforcement	Deliberative pre-decisional discussion between agency officials considering and deliberating as to how to interpret CARRP policy and considering non-final proposed changes to the CARRP policy. Disclosure of this predecisional deliberative information would chill and distort the candid discussion needed for optimum decisionmaking. This document also includes unique codes that exist in the Enforcement Communications System (TECS) to identify subjects of concern and the nature of the concern. Unique TECS codes describing highly sensitive law enforcement databases are also revealed and discussed in this document. The disclosure of this information could reasonably be expected to risk circumvention of the law.
DEF-0094979	DEF-0094993	Susan J Knafle					CARRP Cross Section Final 040815		4/10/2015 3:52	LE - Law Enforcement	This document contains unique codes from the Enforcement Communications System (TECS) describing highly sensitive law enforcement databases. If disclosed this information could reasonably be expected to risk circumvention of the law.
DEF-0094994	DEF-0095008	Markus K Montezemolo					Shark Tank Briefing_REVISED 05042015_sjk	USCIS Fraud Detection and National Security Directorate Intelligence Branch	3/23/2010 6:41	LE - Law Enforcement	Document was compiled for law enforcement purposes. The withheld information consists of substantive exp anations of how USCIS may analyze the risk level certain national security indicators may present and how national security cases should be prioritized based on their risk level. Disclosure of this information how USCIS analyzes risk levels for certain national security indicators would reveal current law enforcement procedures for which individuals would have otherwise been unaware and could reasonably be expected to risk circumvention of the law.