

EXHIBIT D

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

TRUMP, et al.,

Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF MICHAEL
SCARDAVILLE IN SUPPORT
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL**

I, Michael Scardaville, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and
depose as follows:

1. I am a Senior Advisor for the Screening and Vetting Directorate in the Office of
Strategy, Policy, and Plans within the Department of Homeland Security (DHS). I have held this
position since 2017. The matters contained in this declaration are based upon my review of 12
documents in which certain information has been withheld in the case of *Wagafe, et al., v. Trump,
et al.*, Case No. 2:17-cv-00094 in the United States District Court for the Western District of
Washington, my personal knowledge, my knowledge of the documents kept by DHS in the course
of ordinary business, and on information provided to me by other DHS employees in the course of
my official duties as Senior Advisor. I have been delegated the authority of the Secretary of
Homeland Security to assert the law enforcement and deliberative process privileges on behalf of

1 DHS, and I submit this declaration to formally assert those privileges for purposes of the above
2 litigation.

3 2. I submit this supplemental declaration and incorporate the prior declarations of J.
4 Neal Latta made on: February 12, 2019, June 6, 2019, June 14, 2019, and July 24, 2019. These
5 declarations, attached here, were provided to Plaintiffs at the time privilege logs were produced
6 but were not filed with the Court.

7 3. The aforementioned declarations asserted the deliberative process and law
8 enforcement privileges—and provide the basis for those privileges—challenged in Plaintiffs’
9 motion to compel. I continue to assert the law enforcement and deliberative process privileges
10 over those documents:
11

- 12 A. How the Executive Order will Impact Vetting [DEF-00261633]
- 13 B. Executive Order’s Impact to Vetting [DEF-00261640; DEF-00263389]
- 14 C. 200-day Report Section 5(b) of Executive Order (EO) 13780, Protecting the
15 Nation from Foreign Terrorist Entry into the United States [DEF-00262350]
- 16 D. DHS Screening Coordination Office: FY2017 Goals and Objectives [DEF-
17 00262357]
- 18 E. Immediate Actions to Heighten Screening and Vetting of Applications for Visas
19 and Other Immigration Benefits [DEF-00262748]
- 20 F. Information Sharing Standards for Visa and Immigration Vetting [DEF-
21 00262793]
- 22 G. Attachment A: Criteria Decision Matrix [DEF-00262796]
- 23 H. EO 13780, Section 2b Report: Country Data Collection to Support Immigration
24 Vetting and Admissibility Determinations [DEF-00262802]
- 25 I. Executive Summary - Measuring the Effectiveness of Executive Order 13780:
26 Protecting the Nation from Foreign Terrorist Entry into the United States [DEF-
00266453]
- 27 J. Vetting and Screening [DEF-00267420]
- 28 K. Nabiscop Continuing Updates.doc [DEF-00003593]

Third-Party Information

4. Six of the 12 documents at issue here contain third-agency information.

5. As an initial matter, the all of these documents—DEF-00261633; DEF-00261640; DEF-00263389; DEF-00262748; DEF-00262357; DEF-00266453—are non-finalized, draft documents regarding the development of vetting and screening policies or are reflective of pre-decisional policy discussions among agency officials. As such, they are inherently deliberative in nature.

6. Moreover, these documents listed above contain a variety of information that relates to the law enforcement operations of third parties. Certain documents contain redacted information about third agencies' processes and techniques for making national security and law enforcement evaluations, as well as providing information regarding their interactions with other third agencies. The documents also contain operational details relating to law enforcement activities that are not yet, and should not be, disclosed. This includes information about third-party law enforcement and intelligence partners, the types of sensitive information that certain law enforcement checks may contain, and information about investigatory tools or techniques that have been considered but not implemented. In some cases, the information also reveals assessments of gaps in those agencies' processes, which could be exploited. Additionally, withheld information includes the names of sensitive electronic systems that belong to third parties.

7. As with 11 of the 12 documents Plaintiffs seek, none of these six documents relate to or reference CARRP. The documents do not provide any insight into CARRP policy, procedure, or training.

8. DHS does not disclose information it has obtained or was derived from partner agencies or its own law-enforcement components that it understands to be law enforcement or otherwise privileged. These principles operate to protect DHS's relationships with its law enforcement and intelligence partners to ensure that it can obtain necessary, timely, and accurate information to further its mission of protecting Americans from terrorism and other homeland security threats and securing our borders, cybersecurity, and critical infrastructure.

1 9. DHS asserts law enforcement privilege over third-agency law enforcement
2 privileged information because the disclosure of such information could impair DHS's ability to
3 share and collect information necessary to its mission. If DHS's law enforcement and intelligence
4 partners believe that providing DHS with information is risky because it may be revealed through
5 litigation, it could harm the collaborative relationship between DHS and its partners and reduce
6 the critical sharing of information. This would prevent DHS, as well as its components, from
7 fulfilling its mission.

8 10. I understand that third-agencies are providing their own declarations to further
9 describe the sensitivity of the law enforcement privilege information at issue and the harms that
10 may result if it is disclosed.

11 **Department of Homeland Security Information**

12 **Section 2 of Executive Order 13780**

13 11. In Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into*
14 *the United States*, 82 Fed. Reg. 13209 (Mar. 6, 2017) ("Executive Order 13780"), the Secretary of
15 Homeland Security was ordered, in consultation with the Secretary of State and the Director of
16 National Intelligence, to "conduct a worldwide review to identify whether, and if so what,
17 additional information will be needed from each foreign country to adjudicate an application by a
18 national of that country for a visa, admission, or other benefit under the INA (adjudications) in
19 order to determine that the individual is not a security or public-safety threat." Exec. Order 13780
20 § 2(a). Reports documenting the progress of this effort were also required. *See* Exec. Order 13780
21 § 2(b), (g).

22 12. In implementing Executive Order 13780, "the Secretary of Homeland Security
23 established global requirements for information sharing in support of immigration screening and
24 vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied
25 it to the information-sharing practices, policies, and capabilities of foreign governments. The
26 Secretary of State thereafter engaged with the countries reviewed in an effort to address
27 deficiencies and achieve improvements." Presidential Proclamation 9465, *Enhancing Vetting*
28 *Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or*

1 *Other Public-Safety Threats*, 82 Fed. Reg. 45161 (Sept. 24, 2017). Following this process, the
2 Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney
3 General, “determined that a small number of countries—out of nearly 200 evaluated—remain[ed]
4 deficient . . . with respect to their identity-management and information-sharing capabilities,
5 protocols, and practices.” *Id.* Consequently, the President imposed certain conditional restrictions
6 and limitations on the entry into the United States of nationals of eight countries. *Id.* § 2.

7 13. A number of the documents that Plaintiffs seek relate to the development and
8 implementation of the worldwide review process required by Section 2 of Executive Order 13780.
9 The information contained in these documents are law enforcement sensitive and largely reflect
10 agency and interagency deliberative processes.

11 14. Specifically, DEF-00262748 reflects deliberative, pre-decisional discussions
12 regarding proposals from the Department of State regarding the implementation of Section 2.
13 DEF-00262802 and DEF-00262796 include discussions of various options for the worldwide
14 evaluation, many of which were not implemented. The information reflects deliberative, pre-
15 decisional discussions regarding proposals considered by DHS, as well as discussions between
16 DHS and the Department of State. Even if the pre-decisional discussions ultimately contributed
17 to the process, early reflections of proposals before they were finalized may contain incomplete
18 considerations, inclusion of ideas that were not ultimately adopted, or candid discussions about
19 the reasons why certain proposals should or should not be adopted. Disclosure of this type of
20 information results in the same harm as when the pre-decisional deliberations do not lead to any
21 changes in policy, guidance, and/or process. It is crucial that DHS employees can candidly make
22 recommendations to agency leadership to improve government processes without concern that
23 such pre-decisional deliberations will be scrutinized before they are final. It is also crucial for
24 DHS to engage in interagency policy development without concern that its deliberations and
25 discussions will be scrutinized before they are final. If individuals—or interagency partners—are
26 concerned that pre-decisional deliberations will be disclosed, they may sanitize their statements
27 and reduce the free-flow of ideas. This would be detrimental to DHS’s ability to make decisions
28 based on the best information available.

1 15. Additionally, providing Plaintiffs with a document containing descriptions of
2 unimplemented ideas, proposals, and recommendations is confusing and has the potential to
3 mislead. Plaintiffs may assume that such ideas, proposals and recommendations are currently
4 ongoing or in effect. They may believe that early versions of ideas or proposals were in fact
5 implemented as described, although they were not. Ultimately, disclosure of confusing and
6 potentially misleading material could chill officials' future candor in decision-making.

7 16. Moreover, the information in DEF-00262802, DEF-00262796, and DEF-00262793
8 identifies what information the United States receives from foreign governments. This inherently
9 reveals information regarding the scope and limitations of U.S. Government's current screening
10 and vetting practices, and which could be at risk of exploitation through countermeasures,
11 including evasion and manipulation by individuals of law enforcement interest to the United
12 States, or who are as yet unknown to the Government, but wish to exploit or facilitate the
13 exploitation of the information in these documents for nefarious purposes, contrary to the national
14 security and law enforcement interests of the Nation.

15 17. Finally, this information is unrelated to Plaintiffs' claims. It includes no references
16 to CARRP, much less any discussion of CARRP policy, procedure, or training.

17 Section 5 of Executive Order 13780

18 18. In Executive Order 13780, the President ordered that the "Secretary of State, the
19 Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence
20 shall implement a program" that would include the "development of a uniform baseline for
21 screening and vetting standards and procedures." Exec. Order § 5(a). Executive Order 13780
22 further called for reports on the progress of the program's development. *Id.* 5(b).

23 19. A number of the documents that Plaintiffs seek relate to the implementation and
24 reporting requirements of Section 5 of Executive Order 13780. The information contained in these
25 documents are law enforcement sensitive and largely reflect agency and interagency deliberative
26 processes.

27 20. Plaintiffs request several documents relating to the U.S. Government's
28 implementation of and reporting on Section 5: DEF-00262350; DEF-00262748; DEF-00266453.

1 These pre-decisional documents contain highly sensitive assessments of current and proposed
2 future operational practices in the vetting and screening arena. These documents provide a road
3 map that delineates how screening and vetting activities are conducted and how senior
4 policymakers in the government have proposed that they be conducted in the future. It also
5 contains operational details relating to law enforcement activities that are not yet and should not
6 be disclosed. This includes information about third-party law enforcement and intelligence
7 partners, the types of sensitive information that certain law enforcement checks may contain, and
8 information about investigatory tools or techniques that have been considered but not
9 implemented. Setting aside their deliberative nature, disclosure of these documents would place
10 the U.S. Government's vetting and screening enterprise, both present and future, at risk of
11 exploitation through countermeasures, including evasion and manipulation by individuals of law
12 enforcement interest to the United States, or who are as yet unknown to the Government but wish
13 to exploit or facilitate the exploitation of the information in these documents for nefarious
14 purposes, contrary to the national security and law enforcement interests of the Nation.

15 21. Additionally, providing Plaintiffs with a document containing descriptions of
16 unimplemented ideas, proposals, and recommendations is confusing and has the potential to
17 mislead. Plaintiffs may assume that such ideas, proposals and recommendations are currently
18 ongoing or in effect. They may believe that early versions of ideas or proposals were in fact
19 implemented as described, although they were not. Ultimately, disclosure of confusing and
20 potentially misleading material could chill officials' future candor in decision-making

21 22. Moreover, DEF-00266453 is a pre-decisional, draft document containing
22 operational details relating to law enforcement activities that are not yet and should not be
23 disclosed. The final document, with appropriate redactions to protect deliberative and law-
24 enforcement information, was produced, including at DEF-00331096.

25 23. Finally, as with all but one documents Plaintiffs seek, the Section 5 information is
26 unrelated to Plaintiffs' claims. It includes no references to CARRP, much less any discussion of
27 CARRP policy, procedure, or training.

1 Other Documents Relating to Screening and Vetting

2 24. Plaintiffs also seek other deliberative and law enforcement privileged documents
3 related to screening and vetting.

4 25. Document DEF-00267420 is a pre-decisional, deliberative document containing
5 proposed talking points for consideration by the Secretary of Homeland Security in preparation
6 for a hearing before the U.S. House Homeland Security Committee. It is crucial that DHS
7 employees can candidly make recommendations to the Secretary of Homeland Security without
8 concern that such pre-decisional deliberations will be scrutinized before they are final. If
9 individuals are concerned that pre-decisional recommendations will be disclosed, they may
10 sanitize their statements and reduce the free-flow of ideas. This would be detrimental to DHS's
11 ability to make decisions on the best information available.

12 26. Document DEF-00262357 is a pre-decisional, deliberative, draft document
13 reflecting policy goals and objectives for the Screening Coordination Office in the Office of Policy
14 at DHS that were not yet finalized. Additionally, the draft document contains information
15 regarding considered policy initiatives that were not or have not yet been implemented. Even if
16 the pre-decisional discussions ultimately contributed to a change in the process, early reflections
17 of proposals before they were finalized may contain incomplete considerations, inclusion of ideas
18 that were not ultimately adopted, or candid discussions about the reasons why certain proposals
19 should or should not be adopted. Disclosure of this type of information results in the same harm
20 as when the pre-decisional deliberations do not lead to any changes in policy, guidance, and/or
21 process. It is crucial that DHS employees can candidly make recommendations to agency
22 leadership to improve government processes without concern that such pre-decisional
23 deliberations will be scrutinized before they are final. If individuals are concerned that pre-
24 decisional deliberations will be disclosed, they may sanitize their statements and reduce the free-
25 flow of ideas. This would be detrimental to DHS's ability to make decisions on the best
26 information available. Additionally, this document contains sensitive law enforcement
27 information. It includes information regarding of sensitive electronic systems, including
28 information regarding an intelligence partner's electronic systems.

1 27. Moreover, as with all documents Plaintiffs seek, the information in DEF-00262357
2 and DEF-00267420 is unrelated to Plaintiffs' claims. It includes no references to CARRP, much
3 less any discussion of CARRP policy, procedure, or training.

4 28. Finally, certain information in DEF-00003593—a USCIS document—includes
5 DHS law enforcement information. Portions of this document detail sensitive information
6 regarding a DHS law enforcement system for vetting and screening. The information provides
7 insight into the operations of the system. Disclosure of this information would place the DHS's
8 vetting and screening enterprise at risk of exploitation through countermeasures, including evasion
9 and manipulation by individuals of law enforcement interest to the United States, or who are as
10 yet unknown to the Government but wish to exploit or facilitate the exploitation of the information
11 in these documents for nefarious purposes, contrary to the national security and law enforcement
12 interests of the Nation. Additionally, if disclosed, this information would reveal techniques and
13 procedures for law enforcement and immigration assessments and would reveal the basis for
14 sensitive law enforcement judgments that could reasonably be expected to risk circumvention of
15 the immigration, criminal, and/or anti-terrorism laws. Individuals could be expected to change
16 behavior or conceal facts or information if they were aware of these methods and techniques.

17 29. I am aware that in this present litigation the parties have entered into a Stipulated
18 Protective Order, ECF No. 86, and I have reviewed the terms of this Stipulated Protective Order.
19 For the reasons mentioned in this declaration, disclosure of the information withheld would pose
20 a risk to national security, law enforcement interests, and government deliberations. Because these
21 documents contain highly sensitive government documents and deliberations, often prepared for
22 consideration by the President of the United States, even disclosure under a protective order would
23 not mitigate the risk to law enforcement interests, public safety, and government deliberations,
24 because highly sensitive law enforcement information (*e.g.*, the information appearing in draft
25 Executive Order 13780 documents) would be provided to third parties outside of the federal
26 government. In addition, the existence of the protective order does not change my assessment of
27 the importance of shielding the internal pre-decisional agency deliberations from disclosure. Even
28 under a protective order, disclosure of deliberative, pre-decisional information would have a

1 chilling effect on future agency deliberations and result in detrimental consequences to future
2 agency action.

3 30. The disclosure of the withheld information would result in the same type of harms
4 that described in the prior declarations filed by Mr. Latta, which are incorporated here by reference
5 and attached.

6 31. For the foregoing reasons, and based upon my personal consideration of the matter,
7 I have concluded that disclosure of the law enforcement sensitive information described in this
8 declaration could be expected to risk circumvention of the immigration, criminal, and/or anti-
9 terrorism laws and cause harm to national security, and therefore is properly protected from
10 disclosure by the law enforcement privilege. Information withheld in the above-identified
11 documents pursuant to the deliberative process privilege includes pre-decisional information,
12 reflecting internal government deliberations that are likewise properly protected from disclosure
13 by that privilege.

14
15 I declare under penalty of perjury that the foregoing is true and correct. Executed on
16 February 4, 2020.

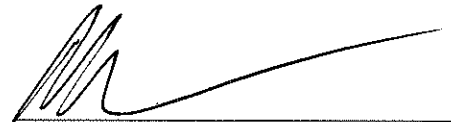
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19 MICHAEL SCARDAVILLE
20 Washington, D.C.

EXHIBIT D-1

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,
Plaintiffs,
v.
TRUMP, et al.,
Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF J. NEAL LATTA
IN SUPPORT OF THE ASSERTION OF
THE LAW ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES REGARDING PROD.
VOLS. 15 THROUGH 24**

I, J. Neal Latta, for my Declaration pursuant to 28 U.S.C. § 1746, hereby state and depose as follows:

1. I am Senior Director of the Screening Coordination Office (SCO) in the Office of Strategy, Policy, and Plans within the Department of Homeland Security (DHS). I have held this position since 2012. The matters contained in this declaration are based upon my review of exemplar documents in which certain information has been withheld in the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in the United States District Court for the Western District of Washington, my personal knowledge, my knowledge of the documents kept by DHS in the course of ordinary business, and on information provided to me by other DHS employees in the course of my official duties as Senior Director of SCO.

1 2. I submit this Declaration in conjunction with and based on the documents
2 contained in Production Volumes Defendant USCIS 015–024 and the privilege logs associated
3 with these production volumes. I have been delegated the authority of the Secretary of
4 Homeland Security to assert the law enforcement and deliberative process privileges on behalf of
5 DHS, and I submit this declaration to formally assert those privileges for purposes of the above
6 litigation.

7 3. The following categories of documents, including any draft documents and
8 internal deliberations, are covered by this declaration and are withheld or redacted pursuant to,
9 *inter alia*, these two privileges:

- 10 A. Documents reflecting the development and delivery of reports required by
11 Executive Orders 13769 Section 4 and 13780 Section 5 (Section 5 Reports),
12 concerning screening and vetting;
- 13 B. Documents containing deliberations concerning the development of the
14 National Vetting Center and National Security Presidential Memorandum 9;
- 15 C. Documents reflecting deliberations concerning screening enforcement
16 transparency;
- 17 D. Documents reflecting efforts to track or internally report on the
18 implementation of Executive Orders 13769 and 13780;

19 4. As to the law enforcement privilege, the government’s disclosure of information
20 identified and redacted as law enforcement privileged in these production volumes could
21 reasonably be expected to risk circumvention of the law and to cause harm to law enforcement
22 interests. Specifically:

- 23 A. Drafts of Section 5 Reports (or portions thereof) and deliberations about the
24 contents of such reports. These predecisional documents contain detailed,
25 highly sensitive assessments of current and proposed future operational
26 practices in the vetting and screening arena. Taken together, these
27 documents provide a comprehensive road map that delineates how screening
28 and vetting activities are conducted and how senior policymakers in the

1 government have proposed that they be conducted in the future. They also
2 contain numerous specific operational details relating to law enforcement
3 activities that are not yet and should not be disclosed. This includes
4 information about third-party law enforcement and intelligence partners, the
5 types of sensitive information that certain law enforcement checks may
6 contain, and information about investigatory tools or techniques that have
7 been considered but not implemented. Setting aside their deliberative
8 nature, disclosure of these documents would place the entire vetting and
9 screening enterprise, both present and future, at risk of exploitation through
10 countermeasures, including evasion and manipulation by individuals of law
11 enforcement interest to the United States, or who are as yet unknown to the
12 Government but wish to exploit or facilitate the exploitation of the
13 information in these documents for nefarious purposes, contrary to the
14 national security and law enforcement interests of the Nation.

15 B. Other related documents assessing the current state and practice of vetting
16 and screening, combined with specific operational proposals for presidential
17 consideration. As with draft Section 5 reports, disclosure of the scope and
18 limitations of current screening and vetting practices, or of particular
19 proposed actions, to individuals who, for nefarious purposes, may wish to
20 evade U.S. government screening or vetting scrutiny, or to facilitate such
21 evasion by others, may enable such individuals to undertake
22 countermeasures and undermine the nation's law enforcement interests.

23 5. Separately, the information identified and redacted as subject to the deliberative
24 process privilege reflects the deliberative, pre-decisional processes of DHS and other
25 government personnel engaged in efforts to generate, review, revise, discuss, and otherwise
26 formulate policy and procedure relating to national security, vetting, and related governmental
27 interests. Those documents include draft memoranda (most notably draft reports required to be
28 submitted to the President of the United States pursuant to Executive Order), emails, and other

1 documents memorializing the internal process of discussion and deliberation related to policy
2 formulation and/or revision. Disclosure of the withheld portions of these documents would
3 jeopardize DHS's (and other agencies') ability to engage in decision-making by discouraging
4 future candid discussion and debate within the government. DHS and other government
5 personnel would be reluctant to share their opinions for or against a particular decision if those
6 predecisional comments were subject to disclosure, and to future use for the purpose of
7 challenging the final decision and/or the process by which it was achieved.

8 6. The majority of documents withheld in these production volumes and covered by
9 this declaration consist of deliberation concerning, and drafts of, the uniform screening and
10 vetting reports required by Executive Orders 13769 and 13780 (*i.e.*, the "Section 5 Reports").
11 These reports, and their contents, are highly sensitive, and the harms to the successful
12 enforcement of criminal and immigration-related laws that would be expected to flow from their
13 disclosure would be difficult to overstate. As discussed above, revelation of the means by which
14 screening and vetting is conducted, as presented in these documents, could do significant harm to
15 the Nation's efforts to conduct its screening and vetting mission, engage in partnerships, and
16 protect the country. And the chilling effect that might occur among senior officials in the
17 Government if their sensitive deliberations on such important policy matters were subject to
18 disclosure would be far-reaching and significant.

19 7. I am aware that in this present litigation the parties have entered into a Stipulated
20 Protective Order, ECF No. 86, and I have reviewed the terms of this Stipulated Protective Order.
21 For the reasons mentioned in the above paragraphs, disclosure of the information withheld would
22 pose a risk to national security, law enforcement interests, and government deliberations.
23 Because these documents contain highly sensitive government documents and deliberations,
24 often prepared for consideration by the President of the United States, even disclosure under a
25 protective order would not mitigate the risk to law enforcement interests, public safety, and
26 government deliberations, because highly sensitive law enforcement information (*e.g.*, the
27 information appearing in draft Section 5 Reports) would be provided to third parties outside of
28 the federal government. In addition, the existence of the protective order does not change my

1 assessment of the importance of shielding the internal pre-decisional agency deliberations from
2 disclosure. Even under a protective order, disclosure of deliberative, pre-decisional information
3 would have a chilling effect on future agency deliberations and result in detrimental
4 consequences to future agency action.

5 8. For the foregoing reasons, and based upon my personal consideration of the
6 matter, I have concluded that disclosure of the information described in this declaration could be
7 expected to risk circumvention of the law and cause harm to national security, and therefore is
8 properly protected from disclosure by the law enforcement privilege. Information withheld in
9 the above-identified documents pursuant to the deliberative process privilege includes
10 predecisional information, reflecting internal government deliberations that are likewise properly
11 protected from disclosure by that privilege.

12
13 I declare under penalty of perjury that the foregoing is true and correct. Executed on

14 2-12, 2019.

15
16 
17 _____
18 J. NEAL LATTA
19 Washington, D.C.

EXHIBIT D-2

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,
Plaintiffs,
v.
TRUMP, et al.,
Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF J. NEAL LATTA
IN SUPPORT OF THE ASSERTION OF
THE LAW ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES REGARDING PROD.
VOLS. 26 THROUGH 27**

I, J. Neal Latta, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and depose as follows:

1. I am the Acting Director for Screening and Vetting Coordination in the Office of Strategy, Policy, and Plans within the Department of Homeland Security (DHS). I have held this position since June 2019. Previously, I held the position of Senior Director of the Screening Coordination Office in the Office of Strategy, Policy, and Plans at DHS. The matters contained in this declaration are based upon my review of exemplar documents in which certain information has been withheld in the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in the United States District Court for the Western District of Washington, my personal knowledge, my knowledge of the documents kept by DHS in the course of ordinary business, and on information

1 provided to me by other DHS employees in the course of my official duties as Acting Director for
2 Screening and Vetting Coordination.

3 2. I submit this supplemental declaration and incorporate my prior declaration in
4 conjunction with and based on the documents contained in Production Volumes Defendant USCIS
5 026–027 and the privilege logs associated with these production volumes. I have been delegated
6 the authority of the Secretary of Homeland Security to assert the law enforcement and deliberative
7 process privileges on behalf of DHS, and I submit this declaration to formally assert those
8 privileges for purposes of the above litigation.

9 3. In addition to the categories of documents identified in my prior declaration, the
10 following categories of documents, including any draft documents and internal deliberations, are
11 covered by this declaration and are withheld or redacted pursuant to, *inter alia*, these two
12 privileges:

- 13 A. Documents relating to the drafting, consideration, and interpretation of
14 international agreements, legislation, and legislative proposals;
- 15 B. Documents relating to preparation of responses to media inquiry and other
16 documents for public distribution regarding the implementation and
17 interpretation of Executive Orders 13769 and 13780;
- 18 C. Documents relating to preparation for Congressional inquiry or testimony
19 regarding Executive Order 13780, in addition to a number of policies and
20 issues outside the scope of this litigation;
- 21 D. Documents relating to proposed and implemented policies, procedures,
22 guidance, training, and reporting related to vetting and screening and
23 background, identity, and security checks;
- 24 E. Documents relating to preparation for meetings or communications with
25 foreign government officials;
- 26 F. Documents relating to policy considerations regarding, implementation of,
27 and reports on Executive Orders outside the scope of this litigation;
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- 1 G. Documents relating to DHS Senior Leadership seminars and weekly internal
- 2 update calls regarding the implementation of Executive Order 13780, and
- 3 screening, vetting, and security operations, in addition to a number of policies
- 4 and issues outside the scope of this litigation;
- 5 H. Documents relating to review and clearance of standard immigration and
- 6 foreign travel forms;
- 7 I. Documents relating to reports, briefings, emails, and memoranda discussing
- 8 the implementation and interpretation of Executive Orders 13769 and 13780;
- 9 and
- 10 J. Documents reflecting the implementation of Presidential Proclamation 9645;
- 11 K. Documents reflecting the development and delivery of reports required by
- 12 Executive Order 13769, Section 3 and Executive Order 13780, Section 2.

13 4. As to the law enforcement privilege, the government's disclosure of information
14 identified and redacted as law enforcement privileged in these production volumes could
15 reasonably be expected to risk circumvention of the immigration, criminal, and/or anti-terrorism
16 laws and to cause harm to law enforcement interests. In addition to the descriptions of the
17 information withheld listed in my prior declaration, which I incorporate here by reference, the
18 information withheld relates to the following:

- 19 A. It identifies case evaluations, training materials, and internal operation manuals,
- 20 which necessarily include information about law enforcement agencies'
- 21 investigatory methods and techniques, including the manner in which agencies may
- 22 coordinate to further investigations. It also identifies internal case handling
- 23 procedures, including but not limited to vetting and investigatory methods
- 24 employed to determine if an individual is eligible for an immigration benefit. If
- 25 disclosed, this information would disclose techniques and procedures for law
- 26 enforcement investigations and would reveal the basis for sensitive law
- 27 enforcement judgments that could reasonably be expected to risk circumvention of
- 28 the immigration, criminal, and/or anti-terrorism laws. Individuals could be

1 expected to change behavior or conceal facts or information if they were aware of
2 these methods and techniques.

3 B. Additionally, this information includes excerpts from actual cases, which is used to
4 provide guidance regarding processing cases that involve national security
5 concerns. The disclosure of this information would reveal information related to a
6 real case, as well as internal practices, techniques, and procedures used by
7 government agencies in civil and law enforcement investigations related to
8 immigration benefits fraud and national security issues and risks circumvention of
9 the immigration, criminal, and/or anti-terrorism laws.

10 C. It also identifies sensitive information about sharing information with, or obtaining
11 information from, law enforcement or intelligence partners. The disclosure of such
12 information could impair DHS's ability to share and collect necessary information
13 to determine if an individual is eligible for an immigration benefit and could impact
14 other law enforcement or intelligence agencies' missions or operations. DHS is
15 obligated to protect information that it obtains that is owned by a third-party
16 agency.

17 5. Separately, the information identified and redacted as subject to the deliberative
18 process privilege reflects the deliberative, pre-decisional processes of DHS and other government
19 personnel engaged in efforts to generate, review, revise, discuss, and otherwise formulate policy
20 and procedure relating to national security, vetting, and related governmental interests. Those
21 documents include draft memoranda (including draft reports required to be submitted to the
22 President of the United States pursuant to Executive Order), emails, and other documents
23 memorializing the internal process of discussion and deliberation related to policy formulation
24 and/or revision. Disclosure of the withheld portions of these documents would jeopardize DHS's
25 (and other agencies') ability to engage in decision-making by discouraging future candid
26 discussion and debate within the government. DHS and other government personnel would be
27 reluctant to share their opinions for or against a particular decision if those predecisional comments
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1 were subject to disclosure, and to future use for the purpose of challenging the final decision and/or
2 the process by which it was achieved.


3 6. I am aware that in this present litigation the parties have entered into a Stipulated
4 Protective Order, ECF No. 86, and I have reviewed the terms of this Stipulated Protective Order.
5 For the reasons mentioned in the above paragraphs, disclosure of the information withheld would
6 pose a risk to national security, law enforcement interests, and government deliberations. Because
7 these documents contain highly sensitive government documents and deliberations, often prepared
8 for consideration by the President of the United States, even disclosure under a protective order
9 would not mitigate the risk to law enforcement interests, public safety, and government
10 deliberations, because highly sensitive law enforcement information would be provided to third
11 parties outside of the federal government. In addition, the existence of the protective order does
12 not change my assessment of the importance of shielding the internal pre-decisional agency
13 deliberations from disclosure. Even under a protective order, disclosure of deliberative, pre-
14 decisional information would have a chilling effect on future agency deliberations and result in
15 detrimental consequences to future agency action.

16 7. The disclosure of the withheld information would result in the same type of harms
17 that I described in my prior declaration, which is incorporated here by reference.

18 8. For the foregoing reasons, and based upon my personal consideration of the matter,
19 I have concluded that disclosure of the information described in this declaration could be expected
20 to risk circumvention of the immigration, criminal, and/or anti-terrorism laws and cause harm to
21 national security, and therefore is properly protected from disclosure by the law enforcement
22 privilege. Information withheld in the above-identified documents pursuant to the deliberative
23 process privilege includes predecisional information, reflecting internal government deliberations
24 that are likewise properly protected from disclosure by that privilege.

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

2 June 6, 2019.

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5 J NEAL LATTA
6 Washington, D.C.

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EXHIBIT D-3

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

TRUMP, et al.,

Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF J. NEAL LATTA
IN SUPPORT OF THE ASSERTION OF
THE LAW ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES REGARDING PROD.
VOL. 28**

I, J. Neal Latta, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and depose as follows:

1. I am the Acting Director for Screening and Vetting Coordination in the Office of Strategy, Policy, and Plans within the Department of Homeland Security (DHS). I have held this position since June 2019. Previously, I held the position of Senior Director of the Screening Coordination Office in the Office of Strategy, Policy, and Plans at DHS. The matters contained in this declaration are based upon my review of exemplar documents in which certain information has been withheld in the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in the United States District Court for the Western District of Washington, my personal knowledge, my knowledge of the documents kept by DHS in the course of ordinary business, and on information

1 provided to me by other DHS employees in the course of my official duties as Acting Director for
2 Screening and Vetting Coordination.

3 2. I submit this supplemental declaration and incorporate my prior declarations in
4 conjunction with and based on the documents contained in Production Volume Defendant USCIS
5 028 and the privilege logs associated with these production volumes. I have been delegated the
6 authority of the Secretary of Homeland Security to assert the law enforcement and deliberative
7 process privileges on behalf of DHS, and I submit this declaration to formally assert those
8 privileges for purposes of the above litigation.

9 3. In addition to the categories of documents identified in my prior declarations, the
10 following categories of documents, including any draft documents and internal deliberations, are
11 covered by this declaration and are withheld or redacted pursuant to, *inter alia*, these two
12 privileges:

- 13 A. Documents relating to aviation security;
- 14 B. Documents relating to risk assessments and draft strategies by DHS and its
15 components;
- 16 C. Documents relating to investigations of status violators by DHS components;
- 17 D. Drafts of Executive Order 13780; and
- 18 E. Documents relating to preparation of responses to media inquiry and other
19 documents for public distribution regarding the implementation and interpretation
20 of Presidential Proclamation 9645, as well as Executive Orders outside the scope
21 of this litigation.

22 4. As to the law enforcement privilege, the government's disclosure of information
23 identified and redacted as law enforcement privileged in these production volumes could
24 reasonably be expected to risk circumvention of the immigration, criminal, and/or anti-terrorism
25 laws and to cause harm to law enforcement interests. In addition to the descriptions of the
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1 information withheld listed in my prior declaration, which I incorporate here by reference, the
2 information withheld relates to the following:

3 A. It identifies risk assessment and program evaluations, which necessarily include
4 information about law enforcement agencies' investigatory methods and
5 techniques, including the manner in which agencies may coordinate to further
6 investigations. It also identifies internal case handling procedures, including but
7 not limited to vetting and investigatory methods employed to determine if an
8 individual is eligible for an immigration benefit. If disclosed, this information
9 would disclose techniques and procedures for law enforcement investigations and
10 would reveal the basis for sensitive law enforcement judgments that could
11 reasonably be expected to risk circumvention of the immigration, criminal, and/or
12 anti-terrorism laws. Individuals could be expected to change behavior or conceal
13 facts or information if they were aware of these methods and techniques.

14 B. Additionally, this information includes excerpts from actual cases, which is used to
15 provide guidance regarding processing cases that involve national security
16 concerns. The disclosure of this information would reveal information related to a
17 real case, as well as internal practices, techniques, and procedures used by
18 government agencies in civil and law enforcement investigations related to
19 immigration benefits fraud and national security issues and risks circumvention of
20 the immigration, criminal, and/or anti-terrorism laws.

21 C. It also identifies sensitive information about sharing information with, or obtaining
22 information from, law enforcement or intelligence partners. The disclosure of such
23 information could impair DHS's ability to share and collect necessary information
24 to determine if an individual is eligible for an immigration benefit and could impact
25 other law enforcement or intelligence agencies' missions or operations. DHS is
26 obligated to protect information that it obtains that is owned by a third-party
27 agency.

1 D. Documents may disclose shortcomings or vulnerabilities in DHS's vetting,
2 screening, or security procedures that require further action to resolve and address,
3 the disclosure of which might reveal sensitive law enforcement investigative
4 information, techniques, and procedures.

5 5. Separately, the information identified and redacted as subject to the deliberative
6 process privilege reflects the deliberative, pre-decisional processes of DHS and other government
7 personnel engaged in efforts to generate, review, revise, discuss, and otherwise formulate policy
8 and procedure relating to national security, vetting, and related governmental interests. Those
9 documents include draft memoranda (including draft reports required to be submitted to the
10 President of the United States pursuant to Executive Order), emails, and other documents
11 memorializing the internal process of discussion and deliberation related to policy formulation
12 and/or revision. Disclosure of the withheld portions of these documents would jeopardize DHS's
13 (and other agencies') ability to engage in decision-making by discouraging future candid
14 discussion and debate within the government. DHS and other government personnel would be
15 reluctant to share their opinions for or against a particular decision if those predecisional comments
16 were subject to disclosure, and to future use for the purpose of challenging the final decision and/or
17 the process by which it was achieved.

18 6. I am aware that in this present litigation the parties have entered into a Stipulated
19 Protective Order, ECF No. 86, and I have reviewed the terms of this Stipulated Protective Order.
20 For the reasons mentioned in the above paragraphs, disclosure of the information withheld would
21 pose a risk to national security, law enforcement interests, and government deliberations. Because
22 these documents contain highly sensitive government documents and deliberations, often prepared
23 for consideration by the President of the United States, even disclosure under a protective order
24 would not mitigate the risk to law enforcement interests, public safety, and government
25 deliberations, because highly sensitive law enforcement information would be provided to third
26 parties outside of the federal government. In addition, the existence of the protective order does
27 not change my assessment of the importance of shielding the internal pre-decisional agency
28 deliberations from disclosure. Even under a protective order, disclosure of deliberative, pre-

1 decisional information would have a chilling effect on future agency deliberations and result in
2 detrimental consequences to future agency action.

3 7. The disclosure of the withheld information would result in the same type of harms
4 that I described in my prior declarations, which are incorporated here by reference.

5 8. For the foregoing reasons, and based upon my personal consideration of the matter,
6 I have concluded that disclosure of the information described in this declaration could be expected
7 to risk circumvention of the immigration, criminal, and/or anti-terrorism laws and cause harm to
8 national security, and therefore is properly protected from disclosure by the law enforcement
9 privilege. Information withheld in the above-identified documents pursuant to the deliberative
10 process privilege includes predecisional information, reflecting internal government deliberations
11 that are likewise properly protected from disclosure by that privilege.

12
13 I declare under penalty of perjury that the foregoing is true and correct. Executed on

14 June 14th, 2019.

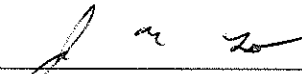
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18 J. NEAL LATTA
19 Washington, D.C.

EXHIBIT D-4

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,
Plaintiffs,
v.
TRUMP, et al.,
Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF J. NEAL LATTA
IN SUPPORT OF THE ASSERTION OF
THE LAW ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES REGARDING PROD.
VOLS. 29-30**

I, J. Neal Latta, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and depose as follows:

1. I am the Acting Director for Screening and Vetting Coordination in the Office of Strategy, Policy, and Plans within the Department of Homeland Security (DHS). I have held this position since June 2019. Previously, I held the position of Senior Director of the Screening Coordination Office in the Office of Strategy, Policy, and Plans at DHS. The matters contained in this declaration are based upon my review of exemplar documents in which certain information has been withheld in the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in the United States District Court for the Western District of Washington, my personal knowledge, my knowledge of the documents kept by DHS in the course of ordinary business, and on information

1 provided to me by other DHS employees in the course of my official duties as Acting Director for
2 Screening and Vetting Coordination.

3 2. I submit this supplemental declaration and incorporate my prior declarations in
4 conjunction with and based on the documents contained in Production Volumes Defendant USCIS
5 029–30 and the privilege logs associated with these production volumes. I have been delegated
6 the authority of the Secretary of Homeland Security to assert the law enforcement and deliberative
7 process privileges on behalf of DHS, and I submit this declaration to formally assert those
8 privileges for purposes of the above litigation.

9 3. In addition to the categories of documents identified in my prior declarations, the
10 following categories of documents, including any draft documents and internal deliberations, are
11 covered by this declaration and are withheld or redacted pursuant to, *inter alia*, these two
12 privileges:

- 13 A. Documents relating to international agreements outside the scope of this litigation;
- 14 B. Documents from other government agencies discussing law enforcement initiatives
15 in foreign countries outside the scope of this litigation;
- 16 C. Documents relating to cyber security;
- 17 D. Documents prepared for and relating to briefing books and hearing preparation for
18 the Secretary and Deputy Secretary of Homeland Security regarding topics outside
19 the scope of this litigation; and
- 20 E. Drafts of issue papers regarding topics outside the scope of this litigation.

21 4. As to the law enforcement privilege, the government's disclosure of information
22 identified and redacted as law enforcement privileged in these production volumes could
23 reasonably be expected to risk circumvention of the immigration, criminal, and/or anti-terrorism
24 laws and to cause harm to law enforcement interests. In addition to the descriptions of the
25 information withheld listed in my prior declaration, which I incorporate here by reference, the
26 information withheld relates to the following:

- 27 A. It identifies draft and implemented strategies, which necessarily include
28 information about law enforcement agencies' investigatory methods and

1 techniques, including the manner in which agencies may coordinate to further
2 investigations. It also identifies internal case handling procedures, including but
3 not limited to a number of law enforcement actions outside the scope of this
4 litigation. If disclosed, this information would disclose techniques and procedures
5 for law enforcement investigations and would reveal the basis for sensitive law
6 enforcement judgments that could reasonably be expected to risk circumvention of
7 the immigration, criminal, and/or anti-terrorism laws. Individuals could be
8 expected to change behavior or conceal facts or information if they were aware of
9 these methods and techniques.

10 B. It also identifies sensitive information about sharing information with, or obtaining
11 information from, law enforcement or intelligence partners. The disclosure of such
12 information could impair DHS's ability to share and collect necessary information
13 to determine if an individual is eligible for an immigration benefit and could impact
14 other law enforcement or intelligence agencies' missions or operations. DHS is
15 obligated to protect information that it obtains that is owned by a third-party
16 agency.

17 C. Documents may disclose shortcomings or vulnerabilities in DHS's vetting,
18 screening, or security procedures that require further action to resolve and address,
19 the disclosure of which might reveal sensitive law enforcement investigative
20 information, techniques, and procedures.

21 5. Separately, the information identified and redacted as subject to the deliberative
22 process privilege reflects the deliberative, pre-decisional processes of DHS and other government
23 personnel engaged in efforts to generate, review, revise, discuss, and otherwise formulate policy
24 and procedure relating to national security, vetting, and related governmental interests. Those
25 documents include draft memoranda, emails, and other documents memorializing the internal
26 process of discussion and deliberation related to policy formulation and/or revision. Disclosure of
27 the withheld portions of these documents would jeopardize DHS's (and other agencies') ability to
28 engage in decision-making by discouraging future candid discussion and debate within the

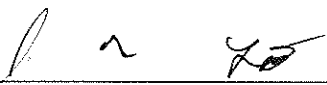
1 government. DHS and other government personnel would be reluctant to share their opinions for
2 or against a particular decision if those predecisional comments were subject to disclosure, and to
3 future use for the purpose of challenging the final decision and/or the process by which it was
4 achieved.

5 6. I am aware that in this present litigation the parties have entered into a Stipulated
6 Protective Order, ECF No. 86, and I have reviewed the terms of this Stipulated Protective Order.
7 For the reasons mentioned in the above paragraphs, disclosure of the information withheld would
8 pose a risk to national security, law enforcement interests, and government deliberations. Because
9 these documents contain highly sensitive government documents and deliberations, often prepared
10 for consideration by the President of the United States, even disclosure under a protective order
11 would not mitigate the risk to law enforcement interests, public safety, and government
12 deliberations, because highly sensitive law enforcement information would be provided to third
13 parties outside of the federal government. In addition, the existence of the protective order does
14 not change my assessment of the importance of shielding the internal pre-decisional agency
15 deliberations from disclosure. Even under a protective order, disclosure of deliberative, pre-
16 decisional information would have a chilling effect on future agency deliberations and result in
17 detrimental consequences to future agency action.

18 7. The disclosure of the withheld information would result in the same type of harms
19 that I described in my prior declarations, which are incorporated here by reference.

20 8. For the foregoing reasons, and based upon my personal consideration of the matter,
21 I have concluded that disclosure of the information described in this declaration could be expected
22 to risk circumvention of the immigration, criminal, and/or anti-terrorism laws and cause harm to
23 national security, and therefore is properly protected from disclosure by the law enforcement
24 privilege. Information withheld in the above-identified documents pursuant to the deliberative
25 process privilege includes predecisional information, reflecting internal government deliberations
26 that are likewise properly protected from disclosure by that privilege.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on
2 July 24, 2019.

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6 J. NEAL LATTA
7 Washington, D.C.

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