

The Honorable Richard A. Jones

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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. 2:17-cv-00094-RAJ

**DECLARATION OF LINDSAY M.
MURPHY IN SUPPORT OF
DEFENDANTS' REPOSE TO
MOTION TO COMPEL
STATISTICAL DATA**

I, Lindsay M. Murphy do declare and say:

1. I am a duly appointed Senior Counsel for National Security for the U.S. Department of Justice, Civil Division, Office of Immigration Litigation in Washington, D.C., and I am one of the attorneys assigned to represent Defendants in this action.

2. Attached hereto and marked as "Exhibit 1" is a true and correct copy of an email from Defendants' counsel Andrew Brinkman, dated May 16, 2018;

3. Marked as "Exhibit 2 and filed separately under seal is a true and correct copy of excerpts from the transcript of the January 31, 2020 Deposition Testimony of Kevin Quinn;

4. Attached hereto and marked as "Exhibit 3" is a true and correct copy of an email from Defendants' counsel Michelle Slack, dated July 26, 2019;

1 5. Attached hereto and marked as “Exhibit 4” is a true and correct copy of an email from
2 Defendants’ counsel Michelle Slack, dated November 29, 2019;

3 6. Attached hereto and marked as “Exhibit 5” is a true and correct copy of an email from
4 Plaintiffs’ counsel Hugh Handyside, dated February 7, 2020;

5 7. Marked as “Exhibit 6” and filed separately under seal is a true and correct copy of
6 excerpts from the Amended Expert Witness Report of Bernard Siskin, dated July 17, 2020;

7 8. Marked as “Exhibit 7” and filed separately under seal is a true and correct copy of
8 excerpts from the Supplemental Expert Witness Report of Sean Kruskol, dated July 17, 2020;

9 9. Attached hereto and marked as “Exhibit 8” is a true and correct copy of excerpts from the
10 transcript of the August 31, 2020 Deposition Testimony of Kevin Shinaberry;

11 10. Marked as “Exhibit 9” and filed separately under seal is a true and correct copy of
12 excerpts from the transcript of the October 20, 2020 Deposition Testimony of Sean Kruskol.

13
14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on this 26th day of October 2020, at Washington, D.C.

16
17 /s/ Lindsay M. Murphy
18 LINDSAY M. MURPHY

EXHIBIT 1

Murphy, Lindsay M. (CIV)

From: Brinkman, Andrew (CIV)
Sent: Wednesday, May 16, 2018 5:27 PM
To: Perez, David A. (Perkins Coie); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Hennessey, Laura K. (Perkins Coie); Gellert, Nicholas (Perkins Coie); Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Matt Adams (matt@nwirp.org)
Cc: Flentje, August (CIV); Bensing, Daniel (CIV); Brinkman, Andrew (CIV); Jentzer, Lyle (CIV); Julius, Derek (CIV); Kanter, Ethan (CIV); Kipnis, Brian (USAWAW); Menkin, Jeff (CIV); Moore, Brendan T. (CIV); Murphy, Lindsay M. (CIV); Taranto, Leon B. (CIV); Carilli, Joseph F. (CIV)
Subject: Wagafe Class List
Attachments: Class List (as of Apr. 12, 2018) (Confidential Attorney Eyes Only) (password protected).xlsb

Counsel,

Pursuant to the Court's May 10, 2018 Order, attached is the *Wagafe* class list as of April 12, 2018. I will send the password via separate e-mail message.

As you know, this information is extraordinarily sensitive, and the Court granted Defendants' motion to produce it under an attorney-eyes-only restriction. We trust that you will contact us if you have any questions or concerns about how to safeguard the information or interpret the Court's Order.

Best,
Drew

Drew Brinkman
Trial Attorney
United States Department of Justice
Office of Immigration Litigation – Appellate Section
(202) 305-7035

EXHIBIT 2
– FILED UNDER SEAL –

EXHIBIT 3

Murphy, Lindsay M. (CIV)

From: Slack, Michelle R (CIV)
Sent: Friday, July 26, 2019 6:08 PM
To: Sepe, Cristina (Perkins Coie); 'Sameer Ahmed'; 'Jennie Pasquarella'; 'Matt Adams (matt@nwirp.org)'; Gellert, Nicholas (Perkins Coie); Perez, David A. (Perkins Coie); Hyatt, Heath (Perkins Coie)
Cc: Kanter, Ethan (CIV); Murphy, Lindsay M. (CIV); Brinkman, Andrew (CIV); Bowen, Brigham (CIV); Taranto, Leon B. (CIV); Moore, Brendan T. (CIV); Kipnis, Brian (USAWAW); Busen, Jesse (CIV); Kipnis, Brian (USAWAW); Flentje, August (CIV); Braga, Victoria M. (CIV)
Subject: Wagafe v. Trump: Defendants' First Set of Supplemental Initial Disclosures & Data
Attachments: Def First Set Supp Initial Disclosures 07-26-19.pdf; Wagafe_USCIS_data_FY2013_to_FY2019.xlsx

Dear counsel,

Please find attached the Defendants' First Set of Supplemental Initial Disclosures, as well as an Excel spreadsheet summarizing/compiling the data referenced within these supplemental disclosures.

Sincerely,

Michelle R. Slack
Trial Attorney
USDOJ, Civil Division, OIL
michelle.r.slack@usdoj.gov
(202) 598-8897

EXHIBIT 4

Murphy, Lindsay M. (CIV)

From: Slack, Michelle R (CIV)
Sent: Friday, November 29, 2019 12:10 PM
To: Sepe, Cristina (Perkins Coie); Jennie Pasquarella; 'Matt Adams (matt@nwirp.org)'; Gellert, Nicholas (Perkins Coie); Perez, David A. (Perkins Coie); Hyatt, Heath (Perkins Coie)
Cc: Kanter, Ethan (CIV); Braga, Victoria M. (CIV); Brinkman, Andrew (CIV); Busen, Jesse (CIV); Kipnis, Brian (USAWAW); Murphy, Lindsay M. (CIV); Davis, Kathryn C (CIV); Taranto, Leon B. (CIV); Moore, Brendan T. (CIV)
Subject: Wagafe v. Trump: Defendants' Third Set of Supplemental Initial Disclosures and Updated Data Compilations/Summaries
Attachments: Def Third Set of Supp Initial Disclosures Final.pdf; 2019-11
Wagafe_Internal_Data_FY2013_FY2019 (Confidential Pursuant to Protective Order).xlsx

Counsel,

Please find attached the Defendants' Third Set of Supplemental Initial Disclosures, as well as an Excel spreadsheet with the updated data summaries/compilations referenced in these supplemental disclosures.

Regards,

Michelle R. Slack
Trial Attorney
United States Department of Justice, Civil Division
Office of Immigration Litigation—Appellate Section
michelle.r.slack@usdoj.gov

EXHIBIT 5

Murphy, Lindsay M. (CIV)

From: Hugh Handeyside <hhandeyside@aclu.org>
Sent: Friday, February 07, 2020 2:31 PM
To: Braga, Victoria M. (CIV); Brinkman, Andrew (CIV); Busen, Jesse (CIV); Davis, Kathryn C (CIV); Kanter, Ethan (CIV); Kipnis, Brian (USAWAW); Moore, Brendan T. (CIV); Murphy, Lindsay M. (CIV); Slack, Michelle R (CIV); Taranto, Leon B. (CIV)
Cc: Hyatt, Heath (SEA; Jennie Pasquarella; Gellert, Nicholas (SEA; Perez, David A. (SEA
Subject: Wagafe v. Trump: USCIS data
Attachments: Questions Regarding USCIS Data.docx

Counsel,

We have noted discrepancies or unexplained aspects of some of the application data produced by the Defendants. The attached document details those discrepancies and includes clarifying questions. As these issues go to the accuracy, consistency, and reliability of the data, we request that you provide answers to these questions as soon as practicable, particularly in light of the approaching expert disclosure deadline.

Please let us know if you need anything further from us in order to respond to these questions.

Regards,

Hugh Handeyside
Senior Staff Attorney | National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

EXHIBIT 6
– FILED UNDER SEAL –

EXHIBIT 7
– FILED UNDER SEAL –

EXHIBIT 8

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

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ABDIQAFAR WAGAFE, et al., on      )
behalf of themselves and others  )
similarly situated,              )
                                  )
                                Plaintiffs, ) No.
                                  )
v.                                ) 17-cv-00094 RAJ
                                  )
DONALD TRUMP, President of the   )
United States, et al.,          )
                                  )
                                Defendants. )
-----X

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CONFIDENTIAL UNDER THE PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF KEVIN MARK SHINABERRY
Monday, August 31, 2020; 10:24 a.m. EST

Job No.: 623007

Pgs. 1 - 221

Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,
CLR, RSA, Remote Counsel Reporter, LiveDeposition
Authorized Reporter

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1 Q. Did you look at any of the underlying
2 data or Excel spreadsheets that were prepared in
3 this case?

4 A. No.

5 Q. And when you say you looked at
6 Kruskol report, are you referring to the expert
7 report submitted by Plaintiffs' expert
8 Sean Kruskol?

9 A. Yes, I am.

10 Q. And he submitted two reports in this
11 case; is that correct?

12 A. I believe that's correct.

13 Q. Did you review both his first report
14 and his supplemental report?

15 A. I reviewed his first report, you
16 know, before prep -- preparing for the deposition
17 and his revised report in more recent weeks.

18 Q. What role have you had -- what role
19 have you played for USCIS in this case, Wagafe
20 versus Trump?

21 A. So I have queried USCIS' adjudicative
22 information systems and matched up the results of

1 those queries for -- for fiscal year '13 to '19
2 receipts with data from FDNS to identify
3 applications that were subject to CARRP
4 processing.

5 Q. And after you did that, what did you
6 do with that analysis or that data that you
7 gathered?

8 A. So I created the various tabs and
9 charts in the internal data that we've produced.

10 Q. So you played the primary
11 responsibility for creating the data that has
12 been produced by Defendants in this case, Wagafe
13 versus Trump?

14 A. That's correct.

15 Q. So, specifically, if we look back at
16 Topic Number 27 -- do you still have that on your
17 screen?

18 A. I do.

19 Q. So if you look at this first
20 paragraph, it says, As relates to data that
21 Defendants provided to Plaintiffs on July 26th,
22 2019, which was replaced and supplemented on

1 bit more detail. I just had a question because
2 you said there were earlier iterations of the
3 algorithm and then the algorithm changed.

4 So did you produce data in this case
5 based on the earlier iteration of the algorithm?

6 A. Yes. Typically, the first -- the
7 first version of the data would have -- did not
8 take completion dates into account.

9 Q. So earlier, you had referenced data
10 that was produced in response to
11 Interrogatory Number 3.

12 Do you know if that data used the
13 earlier iteration or the later iteration of the
14 algorithm?

15 A. It also used the --

16 MR. TARANTO: Excuse me. I -- we
17 have an objection that -- to the extent
18 the -- asking the witness to testify as
19 to USCIS -- for USCIS. He's not been
20 designated to respond to
21 Interrogatory Number 3, just the data set
22 that we're speaking of here.

1 But he may respond in his
2 individual capacity.

3 MR. AHMED: And just to respond to
4 that, to understand the error that was
5 created here, I think we have to
6 understand how the previous data that was
7 produced -- not only this data set but
8 other data that was produced in this
9 case.

10 BY MR. AHMED:

11 Q. But you can answer the question.

12 A. Yeah. So it was the same algorithm
13 that was used in the earlier iterations of the
14 detail data. It looked -- it took the -- the
15 earliest CME creation date for an individual and
16 compared it against the status date of an
17 apple -- of the application.

18 Q. So if you consider that earlier
19 iteration to be inaccurate, then is it your
20 understanding that the data that was produced in
21 response to Interrogatory Number 3 is also
22 inaccurate?

EXHIBIT 9
– FILED UNDER SEAL –