

The Honorable Richard A. Jones

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,  
Plaintiffs,  
v.  
DONALD TRUMP, President of the United  
States, *et al.*,  
Defendants.

No. 2:17-cv-00094-RAJ

**DEFENDANTS' SUBMISSION PER  
THE COURT'S ORDER OF APRIL 24,  
2018**

In its April 24, 2018, order, the Court directed Defendants to (a) identify the total number of potential class members belonging to the two classes certified by the Court; and (b) provide in an *in camera* submission a random sampling of at least fifty class members with case-by-case explanations for why their names may not be produced to Plaintiffs. Dkt. 162. In response to the Court's order, Defendants today have submitted four declarations. The first, an unclassified declaration from USCIS, certifies the process used to identify the random sampling and includes the privileged list of fifty randomly-selected members appended to it. The second, a classified FBI declaration, addresses a subset of individuals from that list. The third, a classified USCIS declaration, addresses a subset of individuals from that list. The fourth, a privileged U.S. Immigration and Customs Enforcement ("ICE") declaration, addresses a subset. Together, these declarations address all individuals on the list.

1 Anthony J. Kassekert, Statistician, Reports and Analysis Branch, Fraud Detection and  
2 National Security Directorate, USCIS, explains in an unclassified declaration how USCIS  
3 gathered the random sample of fifty class members. Appended to the Kassekert declaration is a  
4 complete list of the fifty class members' names and immigration ("A") numbers pulled in the  
5 random sample – that attachment is privileged and is being submitted *ex parte*.

6 Matthew D. Emrich, Associate Director of the Fraud Detection and National Security  
7 Directorate, USCIS, identifies in a classified declaration the total number of Controlled  
8 Application Review and Resolution Program ("CARRP") class members as 4,817 as of April 12,  
9 2018, from roughly 150 countries. The Emrich declaration notes that the total number of  
10 naturalization and adjustment of status applications pending six months or more is approximately  
11 1.4 million, of which the 4,871 CARRP class members' applications are a subset.

12 The Emrich declaration also addresses a subset of the randomly selected class members  
13 to explain why unredacted information in the possession of USCIS relating to them may not be  
14 produced to Plaintiffs or their counsel.

15 The unclassified but privileged declaration of Tatum King, Assistant Director, Domestic  
16 Operations, Homeland Security Investigations ("HSI"), ICE, summarizes its concerns about  
17 disclosing the identities of the class members and specifically discusses a subset of the  
18 individuals from the random sample who are the subjects of active HSI investigations.

19 Last is a classified declaration by Stephen P. Rees, Assistant Director of the FBI's  
20 Records Management Division, detailing reasons why unredacted information in the possession  
21 of the FBI regarding a subset of the individuals from the random sampling, as well as all the  
22 potential class members more broadly, may not be produced to Plaintiffs or their counsel.  
23 Defendants respectfully note that because the declarations contain classified and privileged  
24 information, they must be reviewed *ex parte*, *in camera*.

25 Defendants are producing this information in accordance with the Court's April 24, 2018,  
26 order, but respectfully reserves the right to seek further review or assert privilege in the event  
27 that the Court determines it must be disclosed to the Plaintiffs.

28 Dated: May 1, 2018

Respectfully submitted,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ANNETTE L. HAYES  
United States Attorney

CHAD A. READLER  
Acting Assistant Attorney General

BRIAN C. KIPNIS  
Assistant United States Attorney  
Senior Litigation Counsel  
Office of the United States Attorney for the  
Western District of Washington  
5220 United States Courthouse  
700 Stewart Street  
Seattle, Washington 98101-1271  
Telephone: (206) 553-7970  
e-mail: brian.kipnis@usdoj.gov

/s/ August E. Flentje  
AUGUST E. FLENTJE  
Special Counsel  
Civil Division  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
Telephone: (202) 514-3309  
E-mail: august.flentje@usdoj.gov  
  
*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 1, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Harry H. Schneider, Jr., Esq.  
Nicholas P. Gellert, Esq.  
David A. Perez, Esq.  
Laura Hennessey, Esq.  
**Perkins Coie L.L.P.**  
1201 Third Ave., Ste. 4800  
Seattle, WA 98101-3099  
PH: 359-8000  
FX: 359-9000  
Email: HSchneider@perkinscoie.com  
Email: NGellert@perkinscoie.com  
Email: DPerez@perkinscoie.com  
Email: LHennessey@perkinscoie.com

Matt Adams, Esq.  
Glenda M. Aldana Madrid, Esq.  
**Northwest Immigrant Rights Project**  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
PH: 957-8611  
FX: 587-4025  
E-mail: matt@nwirp.org  
E-mail: glenda@nwirp.org

Emily Chiang, Esq.  
**ACLU of Washington Foundation**  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
Telephone: (206) 624-2184  
E-mail: Echiang@aclu-wa.org

Jennifer Pasquarella, Esq.  
Sameer Ahmed, Esq.  
**ACLU Foundation of Southern California**  
1313 W. 8th Street  
Los Angeles, CA 90017  
Telephone: (213) 977-5211  
Facsimile: (213) 997-5297  
E-mail: jpasquarella@clusocal.org

1 E-mail: sahmed@aclusocal.org

2 Stacy Tolchin, Esq.

3 **Law Offices of Stacy Tolchin**

634 S. Spring St. Suite 500A

4 Los Angeles, CA 90014

Telephone: (213) 622-7450

5 Facsimile: (213) 622-7233

E-mail: Stacy@tolchinimmigration.com

7 Trina Realmuto, Esq.

8 Kristin Macleod-Ball, Esq.

**American Immigration Council**

100 Summer St., 23rd Fl.

9 Boston, MA 02110

10 Tel: (857) 305-3600

Email: trealmuto@immcouncil.org

11 Email: kmacleod-ball@immcouncil.org

12 Lee Gelernt, Esq.

13 Hugh Handeyside, Esq.

14 Hina Shamsi, Esq.

**American Civil Liberties Union Foundation**

125 Broad Street

New York, NY 10004

16 Telephone: (212) 549-2616

17 Facsimile: (212) 549-2654

E-mail: lgelernt@aclu.org

E-mail: hhandeyside@aclu.org

18 E-mail: hshamsi@aclu.org

19 /s/ August Flentje

20 AUGUST FLENTJE

21 Civil Division

22 U.S. Department of Justice

*Counsel for Defendants*