THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE and MEHDI OSTADHASSAN on behalf of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the United States; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; JOHN F. KELLY, in his official capacity as Secretary of the U.S. Department of Homeland Security; LORI SCIALABBA, in her official capacity as Acting Director of the U.S. Citizenship and Immigration Services; MATTHEW D. EMRICH, in his official capacity as Associate Director of the Fraud Detection and National Security Directorate of the U.S. Citizenship and Immigration Services; DANIEL RENAUD, in his official capacity as Associate Director of the Field Operations Directorate of the U.S. Citizenship and Immigration Services,

Defendants.

No. 2:17-cv-00094-JCC

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE

NOTED FOR MARCH 24, 2017

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

I. INTRODUCTION

This class action lawsuit challenges the legality of the Controlled Application Review and Resolution Program ("CARRP") and any successor vetting program that unlawfully delays and prevents Plaintiffs, and similarly situated individuals, from obtaining immigration naturalization and lawful permanent resident status. Several weeks ago, Defendants asked the Court for more time to respond to Plaintiffs' class certification motion. According to the government's brief, Defendants needed more time because the facts concerning President Trump's executive order were subject to change. But after the Court granted the motion, Defendants used the extra time to act quickly on Plaintiff Wagafe's immigration application (which had been pending for over three years), in an apparent attempt to moot his claims. Now that Defendant U.S. Citizenship and Immigration Services ("USCIS") has approved Mr. Wagafe's naturalization application, Defendants incorrectly presume that Mr. Wagafe, a resident of SeaTac, Washington, can no longer serve as a named Plaintiff and class representative, and they ask the Court to transfer this case to North Dakota.

The Court should see through these tactics and deny Defendants' motion. As a threshold matter, Mr. Wagafe is still, and intends to remain, a Plaintiff and named class representative in this case—he has not been dismissed from this case. Further, as a named class representative, Mr. Wagafe's class claims are not moot because his claims fall within the inherently transitory exception to mootness in class actions. Where claims are inherently transitory or where Defendants take actions attempting to pick off plaintiffs, the relation back doctrine preserves their standing to represent the class, even if the individual claims are mooted. *See Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081 (9th Cir. 2011) ("[E]ven if the district court has not yet addressed the class certification issue, mooting the putative class representative's claims will not necessarily moot the class action."). Mr. Wagafe's immigration application was delayed by CARRP for three and a half years. Defendants' decision to approve Mr. Wagafe's application

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

mere days after Plaintiffs filed for class certification—in an apparent effort to evade the jurisdiction of this Court—in and of itself warrants denial of their motion to transfer. Moreover, Defendants' sudden decision to approve Mr. Wagafe's naturalization application underscores that subjecting him to CARRP and labeling him a "national security concern" was arbitrary and unreasonable. Far from eliminating this District as the proper venue for this case, Defendants' actions only strengthen the ties between this District and the operative facts.

Even setting aside Defendants' questionable tactics, the Court should deny Defendants' motion because each of the relevant factors weighs strongly against transfer. Because Mr. Wagafe lives in this District, there is no reason to set aside Plaintiffs' preferred venue. Moreover, Plaintiffs will be filing a Second Amended Complaint shortly that will add several more Plaintiffs who live in Seattle. Additionally, this District has more contacts with Plaintiffs and with the facts relating to the causes of action than North Dakota. As for convenience, the government has failed to identify any of its witnesses by name, much less show why their testimony would be important or why North Dakota would be "so much more convenient" than Plaintiffs' chosen forum. *See* Dkt. 39 at 7-8. Nor would North Dakota be a better forum to access evidence, because almost all the key evidence is likely outside of North Dakota.

Simply put, transfer is unwarranted here. Defendants' actions leading up to this motion, and the motion to transfer itself, are a transparent attempt to use 28 U.S.C. § 1404(a) to forum shop. Plaintiffs respectfully request that the Court retain jurisdiction and deny Defendants' motion to transfer.

II. BACKGROUND

Plaintiffs filed this class action lawsuit on January 23, 2017, to challenge an unauthorized and largely undisclosed program known as the Controlled Application Review and Resolution Program ("CARRP"). Under CARRP, the USCIS blacklists thousands of applicants who are seeking immigration benefits, labeling them "national security concerns." On February 1, 2017,

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Plaintiffs filed the First Amended Complaint, which added additional causes of action relating to the President's Executive Order 13769, 82 Fed. Reg. 8977 ("First EO").

The following week, on February 9, 2017, Plaintiffs filed a motion for class certification, asking the Court to certify two classes: the Naturalization Class (represented by Mr. Wagafe) and the Adjustment of Status Class (represented by Mr. Ostadhassan). Dkt. 26. In their motion for class certification, Plaintiffs argued, *inter alia*, that the Court should certify these classes "to prevent Defendants from attempting to evade judicial review by adjudicating Plaintiffs' individual applications." *Id*. at 16. Plaintiffs explained that past challenges to CARRP have proven to be the very sort of transitory claims that are "capable of repetition, yet evading review," and predicted that as this case progressed Defendants would attempt to moot the claims of the named Plaintiffs before a ruling on the merits could be obtained. *Id*. at 17.

In the meantime, rather than respond to Plaintiffs' class certification motion, Defendants asked the Court for an extension. Dkt. 35. Defendants argued that they needed more time because the facts relating to the First EO "may well change," but they did not suggest that any facts relevant to the two named Plaintiffs might change. *Id*. at 5-6. Subsequently, Defendants approved Mr. Wagafe's application before responding to the class certification motion, while no similar progress has been made on Mr. Ostadhassan's application for adjustment of status.

Five days after Plaintiffs filed their motion for class certification, a USCIS officer called Mr. Wagafe's attorney to schedule an interview on his immigration application. Declaration of Jennie Pasquarella in Support of Plaintiffs' Opposition to Defendants' Motion to Transfer ("Pasquarella Decl."), ¶¶ 1-2 . By that point Mr. Wagafe's application had been pending for over three years, and USCIS had stopped responding to inquiries about the status of his application. After the interview, which occurred on February 22, 2017, the immigration officer approved Mr. Wagafe's application. *Id*. Mr. Wagafe's oath ceremony took place on March 2, 2017, and he became a U.S. citizen that same day. *Id*. In other words, although Mr. Wagafe's immigration application had been pending for three and a half years, USCIS processed and

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

approved his application less than two weeks after Plaintiffs filed for class certification. On the same day that Mr. Wagafe became a U.S. citizen, Defendants filed this motion to transfer the case to North Dakota, where Mr. Ostadhassan, the other named Plaintiff, resides.

On March 6, 2017, the President issued a new Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 ("Second EO"), which ostensibly replaced the First EO as of its effective date, March 16, 2017. Because the Second EO is infected with the same constitutional infirmities as the first, and given Defendants' strategy of trying to "pick off" certain named plaintiffs in CARRP cases, Plaintiffs will be filing a motion for leave to amend the Complaint. The proposed Second Amended Complaint will add three Plaintiffs, all of whom reside in the Western District of Washington, and amends Plaintiffs' allegations to take the Second EO into account.

III. ARGUMENT

A. Legal Standard

A court may transfer a civil action to any other district court in which the action may have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). When considering a change in venue, the court "must make an individualized, case-by-case determination of convenience and fairness." *Dominion Pipe & Piling v. City of Kodiak*, No. C16-1699-JCC, 2017 WL 58839, at *2 (W.D. Wash. Jan. 5, 2017). The Ninth Circuit has identified several factors courts consider when making this determination, including: (i) plaintiffs' choice of forum; (ii) the parties' contacts with the forum; (iii) the contacts in the forum relating to plaintiffs' causes of action; (iv) convenience of the parties; (v) convenience of the witnesses; and (vi) ease of access to the evidence. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

As the moving party, the government has the burden of showing that these factors, and the interests of justice, weigh in favor of transfer. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). A motion to transfer venue should be denied unless "the

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

transferee venue is *clearly more convenient* than the venue chosen by the plaintiff." *In re Nintendo Co.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009) (emphasis added). In other words, "the appropriate inquiry is whether requiring [Defendants] to litigate in this district would be so inconvenient that the interests of justice require a transfer." *Peterson v. Nat'l Sec. Techs., LLC*, No. 12-CV-5025-TOR, 2012 WL 3264952, at *6 (E.D. Wash. Aug. 9, 2012).

B. Convenience and the Interests of Justice Weigh Against Transfer.

1. Deference to Plaintiffs' chosen venue weighs strongly against transfer.

Plaintiffs filed this action in the Western District of Washington. Unless the balance of factors tilts "*strongly* in favor of the defendants, the plaintiff's choice of forum should rarely be disturbed." *Dominion Pipe*, 2017 WL 58839, at *2 (citation and internal quotation marks omitted) (emphasis in original); *see also Authentify Patent Co., LLC v. Strikeforce Techs., Inc.*, 39 F. Supp. 3d 1135, 1148 (W.D. Wash. 2014) ("There is a strong presumption in favor of the plaintiff's choice of forum which must be taken into account when deciding whether transfer is warranted."). Defendants acknowledge that this factor "can only favor Plaintiffs." Dkt. 39. at 4. Nevertheless, Defendants assert that this factor "is not entitled to great weight" because, according to them, "the only remaining named Plaintiff does not reside" in Washington. *Id.* Defendants' claims that Mr. Ostadhassan is "the only remaining named Plaintiff" are simply incorrect. *See* Dkt. 39 at 7. Mr. Wagafe is still a named Plaintiff and class representative and Defendants have not even sought to dismiss him from this lawsuit. Moreover, should the Court grant Plaintiffs' motion for leave to amend their complaint, there will be four Plaintiffs who reside in King County, Washington.

Second, while this motion is not the proper vehicle to litigate Plaintiff Wagafe's standing as a named Plaintiff, it is important to note that a named class representative's claims are *not* mooted when the defendant attempts to resolve that individual's claims after a motion for class certification has been filed. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) ("That the class was not certified until after the named plaintiffs' claims had become moot does

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

not deprive [the Court] of jurisdiction."); *Parole Comm'n v. Geraghty*, 445 U.S. 388, 398 (1980) (explaining when a "claim on the merits is 'capable of repetition, yet evading review,' the named plaintiff may litigate the class certification issue despite loss of his personal stake in the outcome of the litigation" (quoting *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975))); *Haro v. Sebelius*, 747 F.3d 1099, 1110 (9th Cir. 2014) (holding that Article III justiciability requirements were satisfied despite the expiration of the named plaintiff's claim for injunctive relief); *Rivera v. Holder*, 307 F.R.D. 539, 548 (W.D. Wash. 2015) ("Although plaintiff's class certification motion was ultimately noted for consideration well after plaintiff's release [mooting out the individual claim], the Court finds that the relation back doctrine applies.").

Plaintiffs' class claims fall within the "inherently transitory" exception to mootness in class actions because Defendants' litigation strategy is aimed at "picking off" plaintiffs who seek to challenge CARRP by swiftly adjudicating their applications before a court can rule on the merits. *Pitts*, 653 F.3d at 1091 ("[A] claim transitory by its very nature and one transitory by virtue of the defendant's litigation strategy share the reality that both claims would evade review."); *see also Preap v. Johnson*, 831 F.3d 1193, 1197 (9th Cir. 2016) (holding claims of named plaintiffs on behalf of putative class of immigration detainees were not mooted by the named plaintiffs' release from custody and termination of removal proceedings because the claims are "transitory in nature and may otherwise evade review"); *Weiss v. Regal Collections*, 385 F.3d 337, 344 (3d Cir. 2004) ("[A]llowing the defendants here to 'pick off' a representative plaintiff with an offer of judgment less than two months after the complaint is filed may undercut the viability of the class action procedure, and frustrate the objectives of this procedural mechanism for aggregating small claims."); *Nw. Immigrant Rights Project v. U.S. Citizenship & Immigration Servs.*, No. C15-0813JLR, 2016 WL 5817078, at *9 (W.D. Wash. Oct. 5, 2016) (finding that the individual plaintiffs, immigrants who had filed asylum-based employment authorizations, remained "putative class representatives whose claims are inherently transitory and relate back to the filing of the amended complaint"); *Lyon v. U.S. Immigration & Customs*

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Enf't, 300 F.R.D. 628, 639 (N.D. Cal. 2014), *modified sub nom. Lyon v. U.S. Immigration & Customs Enf*'t, 308 F.R.D. 203 (N.D. Cal. 2015) (finding immigration detainees' class claims were inherently transitory because "the length of detention cannot be ascertained at the outset and may be ended before class certification by various circumstances").

As Plaintiffs noted in their motion for class certification, for years the government's strategy has been to "pick off" plaintiffs that challenge CARRP by quickly adjudicating their applications before a court can issue a ruling on the merits. In at least two cases involving twenty-five plaintiffs, that strategy worked, and Defendants are using it here.[1] But unlike previous cases, this is a class action. If anything, the government's decision to act on Mr. Wagafe's application shortly after Plaintiffs filed for class certification underscores the need to certify the naturalization class Mr. Wagafe has moved to represent to address its inherently transitory claims; but it does not diminish his standing to pursue his claims on behalf of the putative class he represents.[2]

Third, in light of the forthcoming proposed Second Amended Complaint, Mr. Wagafe is unlikely to be the only named Plaintiff that resides in Seattle. In circumstances where defendants try to moot the claims of an original named plaintiff, courts regularly permit the addition of new plaintiffs. *See, e.g.*, *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194, 1202 (W.D. Wash. 2008),

[1] In *Muhanna v. USCIS*, No. 14-cv-05995 (C.D. Cal. July 31, 2014), five individual plaintiffs filed suit challenging delays to their naturalization applications. Each of these plaintiffs had been waiting years for USCIS to process their applications. But shortly after filing suit, USCIS adjudicated the naturalization applications for all five plaintiffs, and the lawsuit was voluntarily dismissed as moot. *Muhanna*, No. 14-cv-05995, Dkt. 51 (entered Dec. 23, 2014). The same thing happened in *Arapi v USCIS*, No. 16-cv-00692 JLR (E.D. Mo. 2016), where twenty individual plaintiffs filed suit asserting causes of action relating to CARRP. Once again, USCIS quickly moved to adjudicate all twenty applications to avoid subjecting CARRP to any judicial scrutiny. Nineteen of the plaintiffs voluntarily dismissed their claims at that point, and USCIS moved to dismiss the remaining plaintiff's claims as moot. *Arapi*, No. 16-cv-00692 JLR, Dkt. 22 (filed Dec. 19, 2016).

[2] This is especially true where, as here, the claims are based, in part, on arbitrary delays to immigration applications. As courts have concluded in similar circumstances, "[t]he claims of delay which the plaintiffs advance . . . epitomize the type of claim which continually evades review if it is declared moot merely because the defendants have voluntarily ceased the illegal practice complained of in the particular instance." *Blankenship v. Sec'y of HEW*, 587 F.2d 329, 333 (6th Cir. 1978). Defendants should not be able to "avoid judicial scrutiny of [their] procedures by the simple expedient of granting hearings to plaintiffs who seek, but have not yet obtained, class certification." *See White v. Mathews*, 559 F.2d 852, 857 (2d Cir. 1977).

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

amended in part, No. C07-1739MJP, 2008 WL 2275558 (W.D. Wash. June 3, 2008) (holding three new named plaintiffs could be added where the FBI had completed the name checks of the original class representatives while class certification was pending).

Defendants also urge the Court to disregard Plaintiffs' choice of forum because this is a class action. Although a "named plaintiff's choice of forum is given less weight," that does not mean Plaintiffs' venue choice in class actions is entitled to *no deference at all*. *See Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). In *Lou*, even though "the operative facts [had] not occurred within the forum and the forum [had] no interest in the parties or subject matter," the court still gave the plaintiffs' venue choice "minimal consideration." *Id*. In each of the cases Defendants cite, the chosen forum had little or no connection whatsoever with the operative facts in the case. By contrast, Mr. Wagafe and three other named Plaintiffs in the proposed Second Amended Complaint live and work in this District, and key operative facts, such as Defendant USCIS's 3-year review and adjudication of Plaintiff Wagafe's naturalization application, and the delayed adjudication of three other forthcoming proposed named Plaintiffs' adjustment of status and naturalization applications, occurred in this District. Given these connections, the mere fact that Plaintiffs seek to represent a class does not eliminate the deference accorded to Plaintiffs' venue choice. Moreover, Defendants are government agencies and officials; when ruling on motions to transfer, courts afford less weight to the government's forum preferences. *See E.E.O.C. v. United Airlines, Inc.*, No. C 09-2469 PJH, 2009 WL 7323651, at *3 (N.D. Cal. Dec. 3, 2009).

In sum, Mr. Wagafe and three additional proposed named Plaintiffs in the forthcoming proposed Second Amended Complaint live and work in this District, and key operative facts occurred here. Plaintiffs' choice of venue weighs heavily in favor of this District.

2. Contacts in the forum weigh against transfer.

The contacts of the parties and Plaintiffs' causes of action to the respective forums also weigh against transfer. Defendants argue that these factors favor transfer because Mr.

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Ostadhassan lives in North Dakota, and his application is pending in Minnesota. Dkt. 39 at 6. This argument is based on the incorrect assumption that Mr. Ostadhassan is the only remaining Plaintiff. As outlined above, Mr. Wagafe is still a named Plaintiff, and intends to remain one. Dkt. 28, ¶ 7. Further, should the Court approve Plaintiffs' forthcoming motion for leave to amend their complaint, three more Plaintiffs that reside in this District will be added to this lawsuit.

Moreover, Defendant USCIS's recent attempt to moot Mr. Wagafe's claims by quickly approving his application has only strengthened the connections between this District and the operative facts in the case. Specifically, Defendant USCIS's sudden decision to fast-track Mr. Wagafe's application days after Plaintiffs filed for class certification speaks to the government's arbitrary and capricious application of CARRP to immigration applicants, and strongly suggests that Mr. Wagafe was eligible for citizenship all along. Whatever "national security concern" that Defendants used to hold Mr. Wagafe's application for three and a half years could not have been valid if they were able to resolve it in a matter of days. Notably, Mr. Wagafe's interview occurred in Seattle, his A-File is located in Seattle, the immigration officers who reviewed and processed his application for three and a half years are in Seattle and are likely relevant witnesses in this case. All of these factors are more relevant to the case than ever, now that they indicate that Defendants wrongly labeled Mr. Wagafe a national security concern and then illegally delayed approval of his application.

As for Defendants' contacts, the government acknowledges that it has "no more contact with [the Western] District than any other," Dkt. 39 at 6, which means this factor can only favor this District.[3]

[3] It is highly unlikely that North Dakota sees more CARRP cases than Washington State, given the States' respective demographics and immigration populations. *Compare* American Immigration Council, *New Americans in Washington: The Political and Economic Power of Immigrants, Latinos, and Asians in the Evergreen State,* https://www.americanimmigrationcouncil.org/sites/default/files/research/new_americans_in_washington_2015.pdf (reporting that 1 in 7 Washingtonians are immigrants, representing 13.5% of the state's population), *with* American Immigration Council, *New Americans in North Dakota: The Political and Economic Power of Immigrants, Latinos, and Asians in the Peace Garden State,*

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

3. Convenience to parties and witnesses weighs against transfer.

Convenience factors also weigh against moving this case to North Dakota. Defendants make two arguments here: first, that the costs of litigating in North Dakota favor transfer, and second, that witnesses would be more readily available if the case were transferred. With respect to costs, Defendants argue that it will be "less expensive and less time-consuming for government personnel in Minnesota to travel to North Dakota than to Seattle." Dkt. 39 at 6. This wrongly assumes, once again, that the only relevant "government personnel" are the officials who are handling Mr. Ostadhassan's application. To be sure, any such officials (who the government notably fails to identify) will be relevant; but so are the officials who handled the applications of Mr. Wagafe and, if the forthcoming motion for leave to amend is granted, the three other individuals Plaintiffs propose to add. And it is likely that the most important witnesses are not *any* of the immigration officers handling individual files, but rather the government officials who designed and implemented CARRP—and Defendants provide no evidence that any of those witnesses are in North Dakota.

Transferring this case to North Dakota would force Mr. Wagafe, the other proposed Plaintiffs in the forthcoming proposed Second Amended Complaint, and their attorneys to travel to Grand Forks, which would be more costly and less convenient for Plaintiffs. Seven out of fourteen of Plaintiffs' lawyers reside in Seattle, and an additional two reside in Los Angeles. Transfer of this case to North Dakota would require all of Plaintiffs' lawyers to travel and result in no local counsel. The Court may take judicial notice of the fact that Seattle is also a more accessible area overall, given that Seattle's airport is much larger than the airport in Grand Forks, with many more direct flight options.[4] Courts do not grant motions to transfer where doing so

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https://www.americanimmigrationcouncil.org/sites/default/files/research/new_americans_in_north_dakota_2015.pdf (reporting that immigrants make up only 2.7% of North Dakota's population).

[4] Whereas the Seattle-Tacoma International Airport serviced 45.7 million air passengers in 2016, operating as the 9th busiest airport in the country, Grand Forks International Airport serviced just 131,481 passengers in the same year. *Compare* Port of Seattle, Airport Statistics, https://www.portseattle.org/About/Publications/Statistics/Airport-Statistics/Pages/default.aspx (last visited March

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

would merely shift the inconvenience from one party to another. *Dominion Pipe*, 2017 WL 58839, at *2; *Nike, Inc. v. Lombardi*, 732 F. Supp. 2d 1146, 1158 (D. Or. 2010) (citing *Decker*, 805 F.2d at 843); *Cochran v. NYP Holdings, Inc.*, 58 F. Supp. 2d 1113, 1119 (C.D. Cal. 1998).

As for witness convenience, Defendants fail to show why North Dakota would be a better venue for party and non-party witnesses.

> The party seeking the transfer must identify, typically by affidavit, the key witnesses to be called, state their residence, and provide at least a general summary of what their testimony will cover. The emphasis, articulated by many courts, is properly on this showing rather than on which party can present a longer list of possible witnesses located in its preferred district. In other words, the focus on this point is qualitative, not quantitative. And it clearly depends upon the factual and legal context of the particular case. Obviously, one important or material witness may outweigh a great number of less important witnesses.

15 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION AND RELATED MATTERS § 3851 (footnotes omitted). But other than Mr. Ostadhassan, the only witness that the government identifies within the subpoena power of the North Dakota federal court is Mr. Ostadhassan's wife, and there is no suggestion or evidence that she would not attend a trial in Seattle, or even if she were unwilling, why her testimony could not be presented by deposition. *See, e.g.*, *B.E. Technology, LLC v. Google Inc.*, No. 2:12-cv-02830-JPM, 2013 WL 2297086, at *7-*8 (W.D. Tenn. May 24, 2013); *Oracle Corp. v. epicRealm Licensing, LP.*, No. CIV. 06-414-SLR, 2007 WL 901543, at *4 (D. Del. Mar. 26, 2007) ("From a practical standpoint, much of the testimony presented at trial these days is presented via recorded depositions, as opposed to witnesses traveling and appearing live. There certainly is no obstacle to EpicRealm embracing this routine trial practice."); *Samsung Elecs. Co., Ltd. v. Rambus, Inc.*, 386 F. Supp. 2d 708, 719 (E.D. Va. 2005) ("Somewhat less weight is given to witness inconvenience when a party is unable to demonstrate with any particularity that videotaped deposition testimony will be inadequate, and that live testimony is critical.");

20, 2017), *with* Grand Forks International Airport, Airport Facts, http://gfkairport.com/facts-statistics/ (last visited March 20, 2016).

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

comScore, Inc. v. Integral Ad Sci., Inc., 924 F. Supp. 2d 677, 688 (E.D. Va. 2013) (same); *see also Anderson v. Century Prods. Co.*, 943 F. Supp. 137, 149 (D.N.H. 1996) (denying motion to transfer because "loss of live testimony of less central witnesses is not so great a price for honoring plaintiff's choice").

Defendants vaguely allude to other government witnesses near North Dakota, but fail to identify them by name, or specify why their testimony would be material. "Absent a more specific showing that particular witnesses will be necessary at trial, the court cannot consider the convenience of these unnamed witnesses." *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1108 (N.D. Cal. 2001). *See also Intelect Corp. v. Cellco P'ship GP*, 160 F. Supp. 3d 157, 173 (D.D.C. 2016) (denying motion to transfer where defendants failed to explain which witnesses or documents will be unavailable in the forum); *Heinz Kettler GMBH & Co. v. Razor USA, LLC*, 750 F. Supp. 2d 660, 668 (E.D. Va. 2010) (holding that the party asserting inconvenience must provide "sufficient details respecting the witnesses and their potential testimony to enable the court to assess the materiality of evidence and the degree of inconvenience").

In short, Defendants have failed to identify who the inconvenienced witnesses will be, what their specific testimony will be, and how that testimony will be relevant to this case. Because Mr. Wagafe and several other proposed Plaintiffs and witnesses are in this District, convenience factors weigh against transfer.

4. Ease of access to evidence weighs against transfer.

The government argues that transferring the case to North Dakota would make it easier to access evidence. This, yet again, is based on Defendants' incorrect assumption that Mr. Ostadhassan is the only remaining Plaintiff, and that only evidence relating to his case is relevant. To be clear, the key focus of discovery likely will be on documents relating to CARRP and any successor vetting program. Defendants make no showing that those documents are stored in Grand Forks, North Dakota. Nor has the government suggested that discovery will occur through on-site inspection of government records, rather than a standard production of

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

electronically copied files. Absent any other grounds for transfer, the fact that records are located in a particular district is not itself sufficient to support a motion for transfer. *See Royal Queentex Enters. v. Sara Lee Corp.*, No. C-99-4787 MJJ, 2000 WL 246599, at *7 (N.D. Cal. Mar. 1, 2000); *STX, Inc. v. Trik Stik, Inc.*, 708 F. Supp. 1551, 1556 (N.D. Cal. 1988).

IV. CONCLUSION

Because Defendants have failed to carry their burden of "showing that balance of the factors *strongly* favors transfer," *Dominion Pipe*, 2017 WL 58839, at *4, the Court should deny the motion to transfer.

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

By:

s/Matt Adams
s/Glenda M. Aldana Madrid
Matt Adams #28287
Glenda M. Aldana Madrid #46987
Northwest Immigrant Rights Project
615 Second Ave., Ste. 400
Seattle, WA 98122
Telephone: (206) 957-8611
Facsimile: (206) 587-4025
matt@nwirp.org
glenda@nwirp.org

s/Emily Chiang
Emily Chiang #50517
ACLU of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Telephone: (206) 624-2184
Echiang@aclu-wa.org

Jennifer Pasquarella (admitted *pro hac vice*)
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5211
Facsimile: (213) 997-5297
jpasquarella@aclusocal.org

Stacy Tolchin (admitted *pro hac vice*)
Law Offices of Stacy Tolchin
634 S. Spring St. Suite 500A
Los Angeles, CA 90014
Telephone: (213) 622-7450
Facsimile: (213) 622-7233
Stacy@tolchinimmigration.com

Trina Realmuto (admitted *pro hac vice*)
Kristin Macleod-Ball (admitted *pro hac vice*)
National Immigration Project of the National Lawyers Guild
14 Beacon St., Suite 602
Boston, MA 02108
Telephone: (617) 227-9727
Facsimile: (617) 227-5495
trina@nipnlg.org
kristin@nipnlg.org

s/Hugh Handeyside
Hugh Handeyside #39792
Lee Gelernt (admitted *pro hac vice*)
Hina Shamsi (admitted *pro hac vice*)
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2616
Facsimile: (212) 549-2654
lgelernt@aclu.org
hhandeyside@aclu.org
hshamsi@aclu.org

s/ Harry H. Schneider, Jr.
Harry H. Schneider, Jr. #9404
s/ Nicholas P. Gellert
Nicholas P. Gellert #18041
s/ Kate Reddy
Kate Reddy #42089
s/ David A. Perez
David A. Perez #43959
Attorneys for Plaintiffs
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
Email: HSchneider@perkinscoie.com
NGellert@perkinscoie.com
KReddy@perkinscoie.com
DPerez@perkinscoie.com

CERTIFICATE OF SERVICE

The undersigned certifies that on the dated indicated below, I caused service of the foregoing OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 20th day of March, 2017, at Seattle, Washington.

By: s/ David A. Perez
David A. Perez, #43959
Attorneys for Plaintiffs
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
Email: DPerez@perkinscoie.com