THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00094-RAJ

JOINT STATUS REPORT REGARDING DOCUMENTS RELATED TO THE EXECUTIVE ORDERS

Plaintiffs Abdiqafar Wagafe *et al.*, and Defendants Donald Trump *et al.*[1], by and through their counsel of record, hereby submit this Joint Status Report Regarding Documents Related to the Executive Orders, pursuant to the Court's Order dated October 19, 2017, Dkt. No. 98.

The parties have spent several hours conferring on this issue on two separate occasions. The parties have determined that, before any alternative custodians or sources of information can be identified, there is a prerequisite issue that needs to be resolved. Specifically, the parties have a dispute regarding the appropriate scope of Plaintiffs' discovery related to the First and Second EOs.

[1] All Defendants are named in their official capacities only.

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

Plaintiffs' position is that they are entitled to discovery of documents related to any "extreme vetting" or other adjudicatory program being planned or implemented pursuant to the First or Second EO, pursuant to claims I, II, III, V, and VI of the Second Amended Complaint (Dkt. No. 47). *See* also Ex. A (11/10/2017 Perez Letter to White).

Defendants' position is that Plaintiffs are only entitled to discovery of documents related to any "extreme vetting" programs that may be implemented pursuant to the First and Second EOs, if the "extreme vetting" program is a successor program to the CARRP (*i.e.*, CARRP in all but name). Defendants represent that there is no connection between the CARRP and any "extreme vetting" program that may be implemented pursuant to the First and Second EOs. Thus, Defendants do not possess any discoverable information.

The parties are at an impasse on this prerequisite issue and intend to seek the Court's guidance on the appropriate scope of discovery related to the EOs via the Expedited Joint Motion Procedure outlined in Local Rule 37(a)(2). The parties plan to file this joint motion to compel briefing no later than December 8, 2017.

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

DATED: November 20, 2017

By:

COUNSEL FOR PLAINTIFFS:

s/Jennifer Pasquarella (admitted pro hac vice)
s/Sameer Ahmed (admitted pro hac vice)
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236
Facsimile: (213) 997-5297
jpasquarella@aclusocal.org
sahmed@aclusocal.org

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/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

s/Hugh Handeyside
Hugh Handeyside #39792
s/Lee Gelernt (admitted pro hac vice)
s/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

Attorneys for Plaintiffs

s/ Harry H. Schneider, Jr.
Harry H. Schneider, Jr. #9404
s/ Nicholas P. Gellert
Nicholas P. Gellert #18041
s/ David A. Perez
David A. Perez #43959
s/ Laura K. Hennessey
Laura K. Hennessey #47447
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
DPerez@perkinscoie.com
LHennessey@perkinscoie.com

s/Trina Realmuto (admitted pro hac vice)
s/Kristin Macleod-Ball (admitted pro hac vice)
Trina Realmuto
Kristin Macleod-Ball
American Immigration Council
100 Summer St., 23rd Fl.
Boston, MA 02110
Tel: (857) 305-3600
Email: trealmuto@immcouncil.org
Email: kmacleod-ball@immcouncil.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

COUNSEL FOR DEFENDANTS:

s/Aaron R. Petty
Aaron R. Petty
US Department Of Justice
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
Telephone: 202-532-4542
aaron.r.petty@usdoj.gov

s/Joseph F. Carilli, Jr.
Joseph F. Carilli, Jr.
US Department Of Justice (450 FIFTH)
Civil Division, Office Of Immigration Litigation
450 Fifth Street NW
Washington, DC 20001
Telephone: 202-616-4848
joseph.f.carilli2@usdoj.gov

s/Edward S. White
Edward S. White
US Department Of Justice
PO Box 868
Ben Franklin Station
Washington, DC 20044
Telephone: 202-616-9131
Facsimile: 202-305-7000
edward.s.white@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury and the laws of the State of Washington that on November 20, 2017, I caused service of the foregoing, JOINT STATUS REPORT REGARDING DOCUMENTS RELATED TO EXECUTIVE ORDERS, via email to all counsel of record herein.

Aaron R Petty — Via Email
US Department Of Justice
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
Telephone: 202-532-4542
aaron.r.petty@usdoj.gov

Edward S. White — Via Email
US Department Of Justice
PO Box 868
Ben Franklin Station
Washington, DC 20044
Telephone: 202-616-9131
Facsimile: 202-305-7000
edward.s.white@usdoj.gov

Joseph F. Carilli, Jr. — Via Email
US Department Of Justice (450 FIFTH)
Civil Division, Office Of Immigration Litigation
450 Fifth Street NW
Washington, DC 20001
Telephone: 202-616-4848
joseph.f.carilli2@usdoj.gov

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

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

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

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

PERKINSCOIE

1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099

T +1.206.359.8000
F +1.206.359.9000
PerkinsCoie.com

David A. Perez
DPerez@perkinscoie.com
D. +1.206.359.6767
F. +1.206.359.7767

November 10, 2017

VIA EMAIL

Edward S. White
District Court Section
Civil Division – Office of Immigration
Litigation
U.S. Department of Justice
450 Fifth Street, N.W.
Washington, DC 20530
Edward.s.white@usdoj.gov

Re: Wagafe et al. v. Donald Trump et al. (USDC No. 17-cv-00094-RAJ)
Discovery Relating to Executive Orders

Dear Ed:

Thank you for making the time to speak with us earlier this week concerning the Court's October 19, 2017, order. As you know, the Court asked that we meet and confer about our discovery requests relating to the two Executive Orders. As the Court put it, "Plaintiffs seek documents that connect any kind of 'extreme vetting' program to the two Executive Orders." Dkt. # 98 at 5. The government invoked two privileges: the deliberative process privilege and the Executive privilege. In response to deliberative process, the Court concluded that argument was "premature" and ordered that "the Government must provide a proper privilege log if it means to assert a deliberative-process privilege over certain documents." *Id*.

As for the Executive privilege, the Court asked that we meet and confer "to discuss alternative custodians and non-custodial sources of information for any discovery over which the Government asserts this specific privilege." *Id*.

During our call, we asked whether you had identified any such alternative custodial and non-custodial sources. Rather than provide any, you stated that Plaintiffs are not entitled to any discovery concerning the Executive Orders. First, you asserted that whatever "extreme vetting" may be implemented under the Executive Orders, such programs or processes will not directly relate to the CARRP program. Based on that representation, you asserted that there are no relevant documents to produce, or custodians to search.

We explained why we disagree with your understanding, and wish to take this opportunity to further outline our position in advance of our follow up call next week. First, the notion that this case is only about CARRP, and therefore Plaintiffs are not allowed any discovery on other "extreme vetting" programs is just wrong. As the Second Amended Complaint (Dkt. # 47) makes clear, Plaintiffs' allegations encompass any extreme vetting program implemented by the Executive Orders, and are not limited solely to CARRP.

For instance, our First Claim (under the INA and APA) and Second Claim (mandamus), each allege as follows:

> Defendants have interpreted the First EO and will interpret the Second EO to authorize the suspension of immigration petitions, applications, or requests involving Plaintiff Wagafe, Plaintiff Ostadhassan, Plaintiff Bengezi, and members of the Muslim Ban Class. Accordingly, Defendants will suspend adjudication of such immigration benefits petitions, applications, or requests.

SAC, ¶¶ 251-52; ¶¶ 257-58. Likewise, Plaintiffs' Third Claim (Establishment Clause), alleges as follows:

> The First EO was and Second EO is intended to target a specific religious faith—Islam. The First EO gave preference to other religious faiths—principally Christianity—and the Second EO has that intended effect when applied to Plaintiffs and members of the Muslim Ban Class. Defendants' application of the First EO and Second EO to Plaintiffs and members of the Plaintiff Classes violates the Establishment Clause of the First Amendment to the United States Constitution by not pursuing a course of neutrality with regard to different religious faiths.

SAC, ¶ 261. All three of those claims are brought on behalf of Plaintiffs Wagafe, Ostadhassan, and Bengezi, in addition to the Muslim Ban Class.[1]

Moreover, Plaintiffs' Fifth Claim (Substantive Due Process), alleges that under CARRP and the Executive Orders, the "unauthorized and indefinite suspension of the adjudication of Plaintiffs' and the Proposed Classes' applications for immigration benefits" is unconstitutional. SAC, ¶ 266. And our Sixth Claim (Equal Protection) explicitly alleges that the Government has "applied the First EO and will apply the Second EO with discriminatory animus and

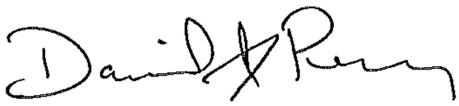
[1] Although Plaintiffs have not yet moved to certify the Muslim Ban Class, that does not mean discovery on these claims is improper.

discriminatory intent in violation of the equal protection component of the Fifth Amendment." SAC, ¶ 272. Both claims are brought on behalf of all Plaintiffs and all Plaintiff Classes.

Notably, the Court denied the Government's motion to dismiss as to all those claims. Dkt. # 69 at 22. Plaintiffs are therefore entitled to discovery on the Executive Orders, and such discovery cannot be limited or restricted to documents that directly relate to or reference CARRP. As the Court accurately pointed out, "Plaintiffs seek documents that connect any kind of 'extreme vetting' program to [the] two Executive Orders." Dkt. # 98 at 5.

We therefore ask that, in advance of our call on Tuesday, you identify alternative custodial or non-custodial sources in response to our discovery requests.

Very truly yours,



David A. Perez

DAP:vlb