

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.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

JOESEPH R. BIDEN, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**THIRD DECLARATION OF JENNIFER
PASQUARELLA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

I, Jennifer Pasquarella, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Biden*, No. 17-cv-00094 RAJ.

2. [REDACTED] appears on the March 2021 class list produced in this case, based on [REDACTED].

3. In discovery, Defendants withheld all information that touched on third agency security checks and information, and cooperation and communication with USCIS. Dkt. 320 at 6-7; Dkt. 451-1; Dkt. 458. During multiple depositions, Defendants' counsel blocked answers to Plaintiffs' questions related to law enforcement information, as well as questions about how USCIS obtains information from law enforcement, the content of that information, and USCIS's own evaluation of the reliability of the information it receives from law enforcement. Defendants

1 withheld answers to a range of questions about the FBI Name Check, including what types of
2 information USCIS has told the FBI it is interested in receiving and USCIS's own studies and
3 evaluations of problems with accuracy of the Name Check information. In written discovery,
4 Defendants withheld significant portions of policy documents that further explain how, why, and
5 when law enforcement information creates NS concerns or indicators, and how that information
6 guides USCIS's adjudications.

7 4. Defendants also withheld all information on why and how USCIS concluded
8 [REDACTED] class members were NS concerns based on law enforcement information,
9 USCIS's communication with those agencies, and USCIS's evaluation of the information and its
10 relevance to the adjudication of their benefits. Defendants withheld all information about how
11 the NS concerns of [REDACTED] class members influenced the adjudication of their
12 immigration benefits. Dkt. 274 at 5; Dkt. 451-1; Dkt. 458. Defendants thus withheld the very
13 evidence in individual cases that demonstrates how CARRP leads to pretextual denials and years
14 of inaction. Defendants withheld this information in [REDACTED] A-Files, as
15 well as in the random four A-Files disclosed in discovery. Defendants also blocked Plaintiffs'
16 efforts to audit the A-Files in a more representative sample of class members. Plaintiffs sought to
17 inspect 100 A-Files, and Defendants refused. Following Plaintiffs' motion to compel, the Court
18 permitted Plaintiffs to only inspect one to five A-Files. Dkt. 274 at 7. Defendants ultimately
19 agreed to produce four A-Files. Just like [REDACTED], those four A-Files
20 were redacted to exclude all information that demonstrated how CARRP impacted their
21 adjudication. Finally, while Defendants produced the Record of Proceedings of [REDACTED]
22 [REDACTED] class members, they similarly withheld all information that demonstrated how CARRP
23 impacted their adjudication.

24 5. Defendants withheld all information that would permit Plaintiffs to test whether
25 delays under CARRP were based on proper invocation of the withholding of adjudication
26 regulation, 8 C.F.R. § 103.2(b)(18), including in the named Plaintiffs' own cases. Defendants
27 withheld all abeyance requests under the regulation, including those prepared by USCIS staff and
28

1 those received from third agencies, in [REDACTED] class member
2 cases. Defendants withheld all information about their own consideration of those abeyance
3 requests, including any evidence of what information USCIS considered in deciding whether to
4 withhold adjudication.

5 6. Defendants withheld all evidence of law enforcement “feedback” on the
6 adjudication of immigration benefits, including any and all direction or input from law
7 enforcement about whether a benefit should be granted, denied or held in abeyance, the stated
8 reason for that request, and USCIS’s consideration of it. As a result, Plaintiffs are deprived of the
9 ability to test how USCIS is influenced by law enforcement direction and “feedback” and the full
10 extent to which that violates the INA because it has no bearing on eligibility. Defendants also
11 withheld all evidence of its deconfliction process with third agencies, including all evidence in
12 individual cases about when it reached out to third agencies and what information it provided.
13 Defendants withheld all information that would enable Plaintiffs to test or understand the nature
14 of any USCIS claim that a third agency was investigating an applicant, including to what extent
15 such investigations are merely the FBI or the Joint Terrorism Task Force (“JTTF”) following up
16 on leads initiated by USCIS or are investigations at the behest of USCIS.

17 7. Defendants withheld all the reasons [REDACTED]
18 subject to CARRP, why USCIS concluded [REDACTED]
19 [REDACTED], the real reason it [REDACTED] I-485 application, and all communications
20 with the FBI or any other third agency. Defendants withheld all the contents of abeyance
21 requests and consideration under 8 C.F.R. § 103.2(b)(18).

22
23 I declare under penalty of perjury that the foregoing is true and correct.

24 EXECUTED this 11th day of June, 2021, in Seattle, Washington.

25 /s/ Jennifer Pasquarella
26 Jennifer Pasquarella