

# **EXHIBIT**

# **B**

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

CASE NO. C17-0094-RAJ

DECLARATION OF DAVID  
EISENREICH IN SUPPORT OF  
DEFENDANTS' MOTION FOR LIMITED  
PROTECTIVE ORDER

Noting Date: March 9, 2018

**DECLARATION OF DAVID EISENREICH**

(1) I am currently the Section Chief of the National Name Check Program Section ("NNCPS") with the Federal Bureau of Investigation ("FBI"). I have held that position since June 25, 2017.

(2) In my current capacity as Section Chief, I supervise the National Name Check Units. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

1 (3) Due to the nature of my official duties, I am familiar with the procedures  
2 followed by the FBI in responding to requests for information from its files pursuant to the  
3 policy and the procedures of the United States Citizenship and Immigration Services  
4 ("USCIS").

5 (4) The purpose of this declaration is to explain the FBI's National Name Check  
6 Program and to explain the harms that could result from disclosure to individual Plaintiffs and  
7 individual potential class members in *Wagafe, et al v. Trump, et al.* a list of the two classes of  
8 Plaintiffs certified by the Court in this case.

9  
10 **NATIONAL NAME CHECK PROGRAM**

11 (5) The National Name Check Program ("Program") has the mission of disseminating  
12 information from the FBI's Central Records System ("CRS") in response to requests submitted  
13 by federal agencies. The CRS contains the FBI's administrative, personnel, and investigative  
14 files. The Program has its genesis in Executive Order No. 10450, issued during the Eisenhower  
15 Administration. That executive order addressed personnel security issues and mandated  
16 National Agency Checks as part of the pre-employment vetting and background investigation  
17 process for prospective Government employees. Although Executive Order No. 10450 was  
18 superseded in January of 2017 by Executive Order No. 13467, the FBI continues to perform the  
19 primary National Agency Check conducted on all United States Government employees. Since  
20 its modest beginning, the Program has grown exponentially, with more and more customers  
21 seeking background information from FBI files on individuals before bestowing a privilege, such  
22 as Government employment or an appointment, a security clearance, attendance at a White  
23 House function, a "green card," naturalization, or a visa. In addition to serving our regular  
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1 Government customers, the FBI conducts numerous name searches in direct support of the FBI's  
2 counterintelligence, counterterrorism, and homeland security efforts.

3 **RESOLUTION RATE**

4 (6) There are three stages involved in the completion of an individual name check:  
5 Batch processing, Name Search, and Analysis & Reporting. The first stage in the process, Batch  
6 processing, involves the transfer of the name check requests from USCIS to the NNCPS via  
7 electronic medium. The output data is uploaded into an FBI system, and the names are  
8 electronically checked against the FBI's CRS.  
9

10 (7) If there is a possible match with the subject's Personally Identifiable Information  
11 (PII) to a FBI record, it is considered a "hit." If a search comes up with an exact match to a  
12 name and either a close date of birth or social security number, it is designated an "Ident."  
13 During the Batch processing phase, approximately 60 percent of the name checks submitted by  
14 USCIS are returned to USCIS as non-reportable information within 48-72 hours. Non-  
15 reportable information indicates that the FBI's CRS contains no identifiable information  
16 regarding a particular individual or that the FBI has a matching record but the information does  
17 not add adjudicative value to USCIS. A non-reportable information result returned to USCIS  
18 definitively concludes the name check process concerning that particular request. Duplicate  
19 submissions (i.e., identically spelled names with identical dates of birth and other identical  
20 information submitted while the original submission is still pending) are not checked, and the  
21 duplicate submissions are returned to USCIS within 48-72 hours.  
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25 (8) The remaining 40 percent of name checks continue forward to the second stage of  
26 the process, Name Search. During Name Search an expanded manual name search is required.  
27 NNCPS analysts search computer databases for different fields and identifying information  
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1 pertaining to USCIS subjects. Approximately 30 percent of these resulted as non-reportable  
2 information in the Name Search process. Again, this result is returned to USCIS and  
3 definitively conclude the name check process. NNCPS generally completes 90% of the name  
4 check requests in thirty (30) days.

5 (9) The remaining 10 percent of name checks proceed to the third and final stage of  
6 the processing, Analysis and Reporting. During Analysis and Reporting NNCPS analysts are  
7 responsible for reviewing and analyzing FBI records and providing results to customers. If a  
8 record was electronically uploaded into the FBI's CRS electronic record-keeping system, it can  
9 be reviewed quickly. If the record is not electronically available, the relevant information must  
10 be retrieved from an existing paper record. Once the information is retrieved, an analyst  
11 reviews the records for relevant information. If appropriate, the FBI forwards a summary of  
12 the relevant information to USCIS.

13 (10) At each stage of processing, the NNCPS generally works on the oldest name  
14 checks on a first-in, first-served protocol. This protocol reflects that all applicants are equally  
15 deserving and ensures that all applicants are treated fairly. However, if an applicant's name  
16 check requires a review of numerous FBI records and files, even though that name check  
17 request came in first, the name check may require additional time until all responsive records  
18 are located and reviewed.

19 (11) Exceptions to the first-in, first-served policy occur when USCIS directs that name  
20 checks be handled on an "expedited" basis. Based on its own criteria, USCIS determines,  
21 which name checks are to be expedited. Once designated as an "expedite," that name check  
22 proceeds to the front of the queue along with other prioritized name check requests, in front of  
23 the others waiting to be processed.

1 (12) Expedited service allows USCIS to expedite name checks based on their internal  
2 criteria. However, the FBI limits the number of expedite requests it will accept from USCIS  
3 consistent with available resources and personnel, as well as because only a limited number of  
4 applications can be expedited for the process to remain meaningful, as too many expedited  
5 requests would merely reorder the queue and lead to no net benefit.

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7 **USCIS NAME CHECK REQUESTS**

8 (13) I understand that the Plaintiffs certified by the Court as classes in *Wagafe, et al v.*  
9 *Trump, et al.* contain individuals seeking to adjust to legal permanent resident status and  
10 individuals seeking naturalization. USCIS typically requests name checks for individuals  
11 seeking to adjust to legal permanent resident status and individuals seeking naturalization.

12  
13 (14) USCIS, in fact, submits a significant portion of all incoming name check requests.  
14 In Fiscal Year (FY) 2017, the number of USCIS name checks was more than 20% higher than  
15 the average of the prior three years. This equated to approximately 7,250 additional USCIS  
16 name check requests submitted to NNCPS weekly. Despite the increase, NNCPS generally  
17 continues to complete 60% of the name check requests within 48 – 72 hours. NNCPS generally  
18 completes 90% of the name check requests in thirty (30) days. The remaining 10% of the name  
19 checks require a more detailed review or further research. These 10% of USCIS name checks  
20 are then being assigned to analysts for detailed review and research.

21  
22 (15) As previously mentioned, the number of "hits" and the availability of electronic  
23 files associated with a name may delay the processing of a name check request. A "hit" is a  
24 possible match with a name in an FBI record. The number of times the name appears in FBI  
25 records correlates to the number of records which require review.  
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1 (16) In addition, the processing of common names also contributes to a delay in  
2 processing a name check request. The names associated with a name check request are searched  
3 in a multitude of combinations, switching the order of first, last, and middle names, as well as  
4 combinations with just the first and last, first and middle, and so on. Without detailed  
5 information in both the file and agency submission, it is difficult to determine whether or not a  
6 person with a common name is the same person mentioned in FBI records. Common names can  
7 often have more than 200 hits on FBI records.  
8

9 (17) Another contributing factor which was briefly mentioned earlier in this  
10 declaration is the customer agencies' elective to expedite name check processing for certain  
11 name check requests. NNCPS acknowledges expediting checks is the result of a compelling  
12 need, but it does further delay checks which are not expedited.  
13

14 **THE NATIONAL NAME CHECK PROGRAM IS ADDRESSING THE FACTORS THAT**  
15 **CONTRIBUTE TO DELAYS IN PROCESSING A NAME CHECK**

16 (18) I understand that Plaintiffs have alleged that delays in FBI name checks previously  
17 led to delays in USCIS adjudication decisions. Complaint at ¶ 57.

18 (19) The FBI is addressing delays on three fronts: leveraging technology, augmenting  
19 resources and refining processes.

20 (20) NNCPS developed and is implementing the Next Generation Name Check  
21 Program ("NGNCP") system to replace the current workflow applications in use and provide  
22 additional automation aimed at improving the accuracy and efficiency of the name check  
23 process.  
24

25 (21) In September of 2015, the NNCPS awarded a new five-year analytical services  
26 contract. Since awarded, the contract has been modified to increase the overall number of  
27 contractors, provide overtime hours and modify terms to incentivize high performers. In  
28

1 addition, two other FBI support contracts have been modified to support the retrieval and  
2 scanning of paper-based records.

3 (22) The FBI is also using overtime to maximize productivity. The NNCPS is in the  
4 process of hiring additional employees to fill current vacancies and has implemented an  
5 employee development program to streamline the training of new employees, thereby  
6 significantly decreasing the amount of time needed before a new employee can begin to  
7 significantly impact the NNCPS workload. The employee development program led to the  
8 development of a name check employee training manual.

10 (23) NNCPS, through the FBI's Records Management Division, Records Automation  
11 Section, is scanning the paper files required for review in order to provide machine readable  
12 documents for the Analysis and Reporting stage. It is also building an Electronic Records  
13 System that allows for future automation of the name check process.

15 (24) NNCPS is working with federal agency customers to identify high priority  
16 requests or requests no longer needed to prioritize/reduce backlog.

18 (25) As a mid-term improvement, NNCPS is exploring technology updates to the name  
19 check process. Specifically, the FBI procured textual analysis software in order to investigate  
20 ways to further automate the name check process. The goal is to incorporate analytical software  
21 applications that reduce the time spent to verify the identity of the individual and, once verified,  
22 assists in the analysis. This type of automation should decrease the time required to process a  
23 name check, thereby increasing production.

25 (26) As a long-term improvement, the FBI is developing a Central Records Complex  
26 that will create a central repository of records. Currently, paper files/information must be  
27 retrieved from over 265 locations throughout the FBI. The Central Records Complex will  
28



1 address this issue, creating a central repository-scanning of documents, and expediting access to  
2 information contained in billions of documents that are currently manually accessed in locations  
3 throughout the United States and the world.

4 (27) The FBI cannot provide a specific time frame for completing any particular name  
5 check submitted by USCIS. The processing of name checks, including those which are  
6 expedited at the request of USCIS, depends upon a number of factors, including where in the  
7 processing queue the name check lies; the workload of the analyst processing the name check;  
8 the volume of expedited name checks the analyst must process for, among others, military  
9 deployment, "age-outs," sunset provisions such as Diversity Visa cases, compelling reasons such  
10 as critical medical conditions, and loss of Social Security or other subsistence; the number of  
11 "hits," (*i.e.*, possible matches) that must be retrieved, reviewed and resolved; the number of  
12 records from various Field Offices that must be retrieved, reviewed and resolved; the name  
13 check subject's role and extent of involvement in any FBI investigation or case file; whether the  
14 case is currently pending or closed; necessary steps to ensure pending investigations and  
15 classified or sensitive information is not compromised through a name check response; and,  
16 more generally, the staff and resources available to conduct the checks.  
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20 (28) When a USCIS name check is completed, the FBI provides the results to USCIS as  
21 quickly as possible. On occasion, depending on the results provided to USCIS by the FBI,  
22 USCIS may require additional follow-up and coordination with the FBI.  
23

24 **THE FBI DOES NOT ADJUDICATE IMMIGRATION APPLICATION BENEFITS**  
25 **OR ADMINISTER CARRP**

26 (29) It is important to note that the FBI does not adjudicate applications for benefits  
27 under the Immigration and Nationality Act. If appropriate, through the Name Check Program,  
28 the FBI provides a summary of available information to USCIS for use in its adjudication

1 process. I am aware from my review of the declaration of James W. McCament submitted in the  
 2 *Wagafe, et al v. Trump, et al* case (“McCament declaration”) that a USCIS immigration services  
 3 officer adjudicating an immigration benefit application shall check and review law enforcement  
 4 agencies and/or intelligence community records, including the FBI Name Check, to determine  
 5 whether an articulable link to national security exists related to a particular applicant.<sup>1</sup>

6  
 7 (30) USCIS’s Controlled Application Review and Resolution Program (“CARRP”) is  
 8 not an FBI program. I understand from my review of the McCament declaration that “CARRP is  
 9 a consistent, [USCIS] agency-wide approach for identifying, processing and adjudicating  
 10 application and petition for immigration benefits that involve national security concerns.” The  
 11 FBI, however, does not administer CARRP, which is solely a USCIS program.

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 13 **THE FBI DOES NOT PUBLICLY DISCLOSE**  
**NAME CHECKS RESULTS**

14  
 15 (31) I have been advised that the Plaintiffs in *Wagafe, et al. v. Trump, et al.*, have  
 16 requested that USCIS provide to them a list of individuals who are subject to CARRP. While  
 17 the FBI will acknowledge whether or not a name check was conducted, and process such  
 18 requests, it does not disclose to individuals the results of their name checks with respect to  
 19 investigative records. The FBI follows this approach whether or not the name check revealed  
 20 derogatory information – *i.e.*, the existence of investigative records – because if the FBI only  
 21 refused to disclose information in those instances involving derogatory information, that refusal  
 22 would itself be interpreted as an admission that the FBI possessed investigative records about  
 23 the individual. This, in turn, could result in subjects or targets of FBI investigations taking  
 24 countermeasures or other actions to thwart law enforcement, thus potentially compromising  
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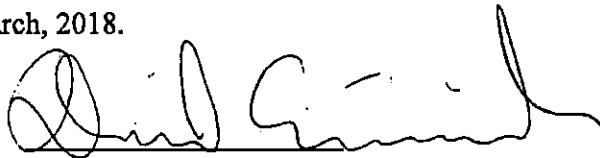
28 <sup>1</sup> Nothing in this declaration should be construed as confirming or denying the name check results of any particular individual.

1 investigations, confidential sources, or investigative techniques. Through channels developed  
2 in the FBI's name check process, the FBI discloses relevant information only to USCIS for its  
3 use before USCIS renders final decisions on applicants' petitions.

4 (32) In light of this concern, a list of individuals to whom USCIS has applied CARRP  
5 should not be publicly disclosed or disclosed to individual Plaintiffs because disclosure could  
6 allow individuals to infer that they may be subject to scrutiny by law enforcement. Such  
7 disclosure could suggest to subjects that USCIS may have received derogatory information from  
8 the FBI during the name check process. As explained above, the FBI must take a consistent  
9 approach to protecting against the disclosure of information implicating name check results to  
10 protect sensitive law enforcement information and prevent individuals from attempting to thwart  
11 FBI investigations.  
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14 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is  
15 true and correct to the best of my knowledge and belief.

16 Executed this 1<sup>st</sup> day of March, 2018.

17  
18 

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21 National Name Check Program Section  
22 Records Management Division  
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25  
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27  
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