

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,  
Plaintiffs,  
v.  
UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,  
Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF MATTHEW D.  
EMRICH IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
MOTION FOR SANCTIONS**

I, Matthew D. Emrich, do hereby declare and say:

1. I am the Associate Director of the Fraud Detection and National Security ("FDNS") Directorate, U.S. Citizenship and Immigration Services ("USCIS"), U.S. Department of Homeland Security ("DHS"). I have held this position since November 15, 2015.

2. As Associate Director of FDNS, I report directly to the Director of USCIS and Deputy Director of USCIS. L. Francis Cissna, Director of USCIS, has delegated to me the authority to assert the law enforcement and deliberative process privilege on his behalf regarding the documents at issue in this litigation.

3. I understand that there are five named plaintiffs in this litigation and that Plaintiffs have requested that USCIS produce unredacted Alien Files ("A-Files") for each named plaintiff.

1 4. I submit this declaration in order to: 1) provide an overview of what generally is  
2 contained in A-Files, including the type of information that may be privileged; and 2) to explain  
3 how the disclosure of privileged information contained within the A-Files of the named plaintiff's  
4 in this case would harm USCIS' interest in protecting privileged information, including  
5 information protected by the law enforcement and deliberative process privileges.  
6

7 5. The matters contained in this declaration are based upon my review of documents  
8 that have been withheld in the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in  
9 the United States District Court for the Western District of Washington, my personal knowledge,  
10 my knowledge of the documents kept by USCIS in the course of ordinary business, and on  
11 information provided to me by other USCIS employees in the course of my official duties as  
12 Associate Director of FDNS.  
13

#### 14 **Overview of A-Files**

15 6. An A-File serves as the official record of an individual's immigration history. 82  
16 Fed. Reg. 43556, 43557 (Sept. 18, 2017). Although USCIS is the custodian of the A-File, A-  
17 Files contain documents derived from the three immigration components of DHS: USCIS, U.S.  
18 Immigration and Customs Enforcement ("ICE"), and U.S. Customs and Border Patrol ("CBP").  
19 *Id.*  
20

21 7. A-Files also contain information that originates outside of DHS. For instance, A-  
22 Files may contain, but are not limited to, information provided by the individual to DHS or  
23 Department of State ("DOS"); publically available information; information shared by other  
24 agencies, including federal, state, and local governments, various courts and regulatory agencies,  
25 foreign government agencies, and international organizations, through information sharing  
26 agreements, reports of investigations, and written referrals from other entities. *Id.* at 43557.  
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1           8.       The purpose of the A-File is to document and maintain the official record of an  
2 individual's immigration applications, petitions, and requests, as well as enforcement actions as  
3 he or she passes through the U.S. immigration process. *Id.* at 43559. DHS employees are the  
4 primary users of the A-Files, and A-Files are used for immigration processing and adjudication,  
5 protection of national security, administering and enforcing immigration and nationality laws,  
6 detecting violations of immigration and nationality law, supporting the referral of such violations  
7 for prosecution or other appropriate enforcement action, supporting law enforcement efforts and  
8 inspection processes at the U.S. borders, and carrying out DHS enforcement, immigration,  
9 intelligence, or other homeland security functions. *Id.*

10  
11           9.       In the instant litigation, the A-Files of the five named plaintiffs affect the equities  
12 of several agencies other than USCIS, including ICE, CBP, Transportation and Security  
13 Administration ("TSA"), DOS, and Federal Bureau of Investigation ("FBI").

14  
15           10.      These agencies own, control, or have equities in particular documents or certain  
16 information within the A-Files of some or all of the named plaintiffs. In addition to the three  
17 DHS immigration components (USCIS, CBP and ICE), additional non-party agencies with  
18 equities in certain information in the A-Files are providing declarations to assert privilege over  
19 their information.  
20

21           11.      A-Files generally contain information that is subject to the law enforcement and  
22 deliberative process privileges for reasons completely unrelated to the CARRP policy. For  
23 instance, all individuals applying for adjustment of status or naturalization must undergo a suite  
24 of background checks, the results of which are often law enforcement privileged. A-Files may  
25 also include discussions, communications, and deliberations regarding the plaintiffs' immigrant  
26 benefit applications that are not related to the CARRP policy. Accordingly, the named plaintiffs'  
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1 A-Files in this case contain such law enforcement and deliberative process privileged  
2 information, which affect USCIS and third party agency equities.

3 12. In prior declarations to the Court, USCIS has explained that it considers  
4 information regarding whether any particular individual has been subject to the CARRP policy  
5 as law enforcement privileged. Dkt. Nos. 94-5; 119-2, 126-1. However, I understand that the  
6 Court found that, in this case, Plaintiffs' need to know "who is subject to CARRP" outweighed  
7 the government's need to withhold that information. Dkt. 98 at 3.

9 13. If any of the named plaintiffs were subject to the CARRP policy at any point in  
10 their immigration history, the A-File would contain documents relating to whether and why that  
11 individual was subject to the CARRP policy.<sup>1</sup>

13 14. The privilege log that USCIS provided to Plaintiffs on March 16, 2018, would  
14 have, as appropriate, included subject descriptions to indicate if a particular document relates to  
15 the CARRP policy.

16 15. Just as non-CARRP documents in an A-File often impact the equities and  
17 privileges of third-party agencies, documents in an A-File that relate to the CARRP policy may  
18 impact the equities and privileges of third-party agencies, in addition to those of USCIS.

20 16. Documents relating any individual to the CARRP policy may be contained within  
21 the A-Files or stored in other locations. If any of the named plaintiffs were subject to the  
22 CARRP policy, documents that relate to why that individual was subject to the CARRP policy  
23 may also be stored in locations other than their A-Files. If those documents exist here, they will  
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26  
27 <sup>1</sup> In order to file this declaration on the public docket, USCIS cannot confirm or deny whether any particular A-File  
28 contains information that relates to the CARRP policy. USCIS has, however, included on a March 16, 2018  
privilege log, provided to Plaintiffs' counsel pursuant to the Stipulated Protective Order in this case, information  
sufficient to determine if the subject of that document relates to the CARRP policy.

1 be reviewed for privilege, and the non-privileged portions will be produced once review is  
2 complete.

3 **Assertion of Law Enforcement and Deliberative Process Privilege**

4 17. I submit this declaration as the formal assertion invoking the law enforcement  
5 privilege and deliberative process privilege for certain documents in the relevant A-Files.  
6

7 18. I have recently reviewed the A-Files of the named plaintiffs in this litigation,  
8 including the information that was withheld as privileged.

9 19. Each of the five A-Files contains law enforcement and deliberative process  
10 privileged information that does not relate to the CARRP policy. If any of the plaintiffs were  
11 subject to the CARRP policy, there would be documents in the A-Files that relate to the CARRP  
12 policy.  
13

14 20. Below is an explanation of the types of documents over which USCIS has  
15 asserted privilege in the A-Files, and the reasons why that information is privileged.

16 21. The majority of withheld documents in the named plaintiffs A-Files originated  
17 with UCSIS. If disclosed, the withheld information would identify USCIS internal case handling  
18 procedures for the adjudication of an immigration benefit application, to include methods used to  
19 evaluate an applicant's eligibility for the immigration benefit, which might reveal the methods  
20 and techniques used to uncover or elicit information that relates to eligibility for an immigration  
21 benefit.  
22

23 22. The withheld documents also identify sensitive information about the results of  
24 law enforcement checks performed on applicants for immigration benefits that would inform an  
25 individual of specific law enforcement entities that did or did not have investigative information  
26 regarding that individual. In addition, these documents may contain record identification  
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1 numbers and similar codes, information identifying law enforcement agencies, and narrative text,  
2 the disclosure of which might reveal sensitive law enforcement investigative information.  
3 techniques, and procedures.

4 23. The withheld documents also contain compilations or descriptions of the results  
5 of background checks performed by USCIS or obtained from other agencies. While these pages  
6 may affect the privileges of other agencies, USCIS also considers them law enforcement  
7 privileged. Disclosure of such information would reveal the type of information that USCIS  
8 gathers from its partners, which would inform individuals of sensitive investigative methods by  
9 which USCIS adjudicates cases, and which, if disclosed, would impair its ability to properly vet  
10 individuals.  
11

12 24. The withheld documents may also contain deliberative, pre-decisional  
13 considerations or discussions about the adjudication of an applicant's immigration benefit  
14 application. Disclosure of internal USCIS deliberative process documents, including draft policy  
15 documents, would harm USCIS' ability to confer openly before making important decisions.  
16 Disclosure of deliberative process documents between USCIS and third party agencies would  
17 have a chilling effect on USCIS' ability to discuss information with partners from which it  
18 obtains information. This could impact USCIS' ability to collect critical information in the  
19 future.  
20

21 25. The following types of documents were created by or originated with UCSIS, and  
22 implicate the law enforcement information described in paragraphs [21-24]: Form N-400  
23 Processing Worksheets; FOUO Coversheets; Requests for Assistance for Vetting Immigration  
24 Benefit Application; TECS/IBIS Results/Resolution Memos; Records of TECS/IBIS Queries;  
25 CIV-CPMS-IVT worksheets/printouts; Memoranda/communications/ inquiries about the  
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1 adjudication/status of an immigrant benefit application: various coversheets/worksheets/routing  
2 sheets/case transfers/records/files: various statement of findings: Case notes/summaries/histories:  
3 FDNS-DS printouts: CLAIMS Mainframe pages: various Form I-485 processing sheets/screen  
4 print reports/adjudication processing worksheets: NBC I-485 ready criteria pages: IBIS/NAILS  
5 Resolution Memoranda: adjustment of status case relocation memoranda: various interoffice  
6 memoranda: CIS/CI/EARM printouts: Case Status Printout: draft policies: memoranda of  
7 interviews: various emails: notes from A file reviews: resolution pages: memoranda to file: NBC  
8 requests for assistance: Central Index System printouts: general inquiries: contact information:  
9 spreadsheet assessing eligibility for immigration benefit: interview of applicant pages: Intake and  
10 closure checklists; as well as additional USCIS-created documents.

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13 26. The A-Files also contain documents that do not originate with USCIS or contain  
14 information that was primarily collected from third-party sources.

15 27. Some of these documents contain the names of USCIS officers who performed  
16 those background checks and are charged with investigating individuals' eligibility for  
17 immigration benefits. Disclosure of the identity of such officers might reveal sensitive law  
18 enforcement investigative information, techniques, and procedures.

19 28. Further, although the information in these documents may not originate with  
20 USCIS, disclosure would reveal the type of materials that USCIS gathers from its partners, and  
21 which, if disclosed, would impair its ability to properly investigate individuals.

22 29. The following types of documents do not originate with USCIS or contain  
23 information that was primarily collected from third-party sources, and implicate the law  
24 enforcement information described in paragraphs [26-29]: TECS/IBIS printouts: FD258  
25 Tracking System printouts: FBI Namecheck responses: ENFORCE printouts: IO95 Inspection  
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1 Results printouts. US-VISIT Secondary Processing printouts; Netleads-Avalanche printouts; IV  
2 requests for immigrant numbers; Alien check numbers; PQH API/HIT data pages;  
3 Nonimmigrant visa ("NIV") (CCD Printouts); NIV applicant detail printouts; SEVIS printouts;  
4 EARM printouts; US-VISIT ADIS printouts; WRAPS printouts; ATS printouts; NNSV Query  
5 Results; CSIS Inspection Records; Vehicle Search Results; refugee application assessments; and  
6 BBSS printouts.  
7

8 **Impact if Privileged Information were Disclosed**

9 30. In my February 20, 2018 declaration, Dkt. 126-1, I explained how disclosure of  
10 the law enforcement documents that were at issue in that motion would cause a risk to law  
11 enforcement efforts. Similar issues arise within the documents contained within the A-Files at  
12 issue here. There are also unique issues particular to the information contained within these A-  
13 Files.  
14

15 31. The A-Files contain information that reveals the procedures used by USCIS to  
16 investigate and to adjudicate immigration benefit applications, and disclosure of this information  
17 would impair the effectiveness of USCIS' processes and procedures to determine an applicant's  
18 eligibility for the immigration benefit sought. With regards to particular A-Files, individuals  
19 would gain insight into the particular procedures that USCIS employs to investigate a particular  
20 individual's eligibility for an immigration benefit. Disclosure of this information would provide  
21 an applicant for an immigration benefit a roadmap to evade such processes and procedures and  
22 conceal information that would otherwise make the applicant ineligible for the immigration  
23 benefit sought.  
24

25  
26 32. The A-Files also contain records of sensitive data systems of law enforcement  
27 partners that USCIS does not own. Disclosure of the results of background checks that USCIS  
28



1 conducts would provide insight into how USCIS identifies, investigates, and combats security  
2 threats. This could create programmatic vulnerabilities and allow potential threats to adjust,  
3 adapt and better avoid detection.

4 33. Relatedly, disclosure of documents that USCIS does not own, which originate  
5 with other law enforcement or intelligence agencies, could impair USCIS' ability to share and  
6 collect necessary information to determine if an individual is eligible for an immigration benefit,  
7 and could impact other law enforcement or intelligence agencies' missions or operations. USCIS  
8 is obligated to protect information that it obtains from third-party agencies. Disclosure could  
9 harm the collaborative relationship between USCIS and the law enforcement partners, which  
10 could degrade USCIS' ability to collect information it needs to prevent potential bad actors from  
11 infiltrating the immigration system, despite not being eligible for an immigration benefit.

12 34. Next, some of the individuals whose A-Files are at issue in this case may apply  
13 for immigrant benefits from USCIS in the future. If they have insight into the sensitive law  
14 enforcement procedures utilized in prior immigration benefits, they may have the necessary  
15 information to conceal critical information that would be relevant in determining if they are  
16 eligible for an immigration benefit that they seek in the future.

17 35. Even plaintiffs who are now U.S. citizens may petition for relatives or other  
18 individuals to obtain immigration benefits in the future, or otherwise be involved in the  
19 immigration process. If such individuals have insight into the particular sensitive law  
20 enforcement procedures USCIS utilizes to determine if an individual is eligible for an  
21 immigration benefit, they could provide that information to individuals for whom they petition or  
22 with whom they are otherwise involved in the immigration process.  
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1           36.     Therefore, public disclosure of the withheld portions of these documents could  
2 provide individuals with a roadmap into the specific procedures and techniques USCIS uses to  
3 uncover information that an individual may wish to hide and the techniques USCIS uses to elicit  
4 information. Individuals who are aware of the techniques that USCIS uses to collect, record, and  
5 elicit information related to eligibility for an immigration benefit may more successfully employ  
6 evasion tactics to make it more difficult for USCIS to discover information needed to adjudicate  
7 future immigration benefit applications. Individuals could also share these techniques with  
8 criminals, individuals engaged in fraud, terrorist organizations, or other bad actors so that  
9 individuals engaged in bad acts could seek to improperly obtain immigration benefits.  
10

11           37.     Public disclosure of the withheld information in these A-Files that relates to  
12 USCIS' coordination and interaction with third-party law enforcement or intelligence agencies  
13 could provide applicants with information to discover whether that individual is the subject of an  
14 investigation by a third-party law enforcement or intelligence agency. In addition, the privileged  
15 documents could provide individuals with information that could allow them to determine if they  
16 are or were likely under investigation by another law enforcement or intelligence agency.  
17 Individuals who become aware of such information could gain insight that would allow them to  
18 disrupt or circumvent a third-party immigration, criminal, or national security investigation.  
19 USCIS would be damaged by the disclosure of such information because it would jeopardize its  
20 relationships with third-party agencies and undermine its ability to collect relevant information  
21 related to eligibility for immigration benefits. Without access to relevant information, USCIS  
22 could grant benefits to individuals who are not only ineligible for the benefit but who may seek  
23 to use the benefits of U.S. citizenship or permanent residence to harm the United States, which  
24 may pose a risk to national security and public safety.  
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1           38.     If individuals with nefarious intent were to obtain access to privileged information  
2 in A-Files, they would have far greater tools at their disposal to avoid detection and perpetrate  
3 fraud or deception. In particular, the individuals may become aware of the methods that USCIS  
4 uses to obtain information that an individual seeks to conceal, and techniques USCIS uses to  
5 collect information needed to uncover attempts to misrepresent information or withhold it. This  
6 could cripple USCIS' ability to properly investigate individuals to determine their eligibility for  
7 immigration benefits, undermine the integrity of the immigration system, and, if individuals who  
8 wish to harm the United States obtain greater rights and abilities through their immigration  
9 status, threaten the national security of the United States.

11           39.     Finally, disclosure of deliberative process documents that reveal confidential  
12 communications within USCIS would undermine USCIS' ability to discuss sensitive matters  
13 freely. Disclosure of deliberative draft policy documents that were not finalized would further  
14 undermine USCIS's ability to consider various policy options in a confidential manner.

16           40.     Disclosure of documents that reveal confidential communications between USCIS  
17 and third-party agencies could chill information-sharing and potentially limit USCIS from  
18 obtaining key information needed to determine if a particular individual is eligible for an  
19 immigration benefit.

21           41.     Based upon my professional experience, I have concluded that any disclosure of  
22 the information withheld from these documents, which has been appropriately withheld pursuant  
23 to the law enforcement and deliberative process privilege, would undermine the integrity of the  
24 U.S. immigration system, facilitate fraud, and pose significant potential to harm national security  
25 and public safety. Public disclosure of the withheld information could result in more fraudulent  
26 applications for immigration benefits by individuals who seek immigration benefits for which  
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1 they are not eligible or who pose national security risks to the United States and more  
2 sophisticated and targeted fraud schemes in such applications. Larger numbers of fraudulent  
3 applications and increasingly sophisticated schemes will impair the ability of USCIS officers to  
4 identify and address immigration fraud and national security risks.

5  
6 42. Based on the reasons set forth above, I assert the law enforcement and  
7 deliberative process privileges with respect to the withheld and redacted information.

8 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
9 information, knowledge and belief.

10 Executed this 9th day of April, 2018 at Washington, D.C.

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13 Matthew D. Emrich  
14 Associate Director, FDNS  
15 U.S. Citizenship and Immigration Services  
16 Washington, D.C.  
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