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

**PLAINTIFFS' MOTION TO COMPEL RE DELIBERATIVE PROCESS PRIVILEGE**

**NOTE ON MOTION CALENDAR: MAY 4, 2018**



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## I. INTRODUCTION

In response to Plaintiffs' discovery requests, Defendants have broadly asserted the deliberative process privilege to justify redacting or withholding hundreds of responsive documents. Of the 1,619 documents produced with accompanying privilege logs, Defendants have invoked the deliberative process privilege for 378 documents, or roughly 23 percent. Defendants' reliance on the privilege is improper for three reasons. *First*, the deliberative process privilege does not apply where, as here, the government's decision-making process is itself at issue. *See In re Subpoena Duces Tecum Served on Office of Comptroller of Currency*, 145 F.3d 1422 (D.C. Cir.) ("*Subpoena I*"), *on reh'g in part*, 156 F.3d 1279 (D.C. Cir. 1998). *Second*, even if the privilege did apply, Plaintiffs' "need for the materials and the need for accurate fact-finding override the government's interest in non-disclosure." *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). Notably, the parties' Stipulated Protective Order minimizes any risk that disclosure would hinder frank communication within the government. *Third*, Defendants have failed to submit either an affidavit or detailed privilege logs, both of which are required to properly invoke the privilege.

Accordingly, Plaintiffs request that the Court order Defendants to produce the material they have withheld pursuant to the deliberative process privilege. In the alternative, Plaintiffs request that the Court order Defendants to properly support their privilege claims so that Plaintiffs and the Court may evaluate their assertions in more detail.

## II. RELEVANT PROCEDURAL BACKGROUND

This lawsuit challenges the legality of the Controlled Application Review and Resolution Program ("CARRP") created by U.S. Citizenship and Immigration Services ("USCIS") in 2008, Dkt. # 47 at ¶ 55, and related "extreme vetting" initiatives instituted in Executive Orders 13769, 82 Fed. Reg. 8977 ("First EO"), and 13780, 82 Fed. Reg. 13209 ("Second EO"), *id.* ¶¶ 18, 138-141. Plaintiffs allege that CARRP implements an extra-statutory internal vetting program that



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discriminates on the basis of religion and/or national origin and indefinitely delays or pretextually denies immigration benefits to statutorily-qualified applicants. *Id.* ¶¶ 35-51, 62-76.

In the course of their document productions to Plaintiffs, Defendants have produced seven privilege logs. Declaration of David A. Perez ("Perez Decl.") Exs. 1, 2, 3, 4, 5, 6, and 7.[1] These logs purport to invoke the deliberative process privilege to withhold or redact (often times heavily) hundreds of documents that are clearly relevant to Plaintiffs' claims. For example, Defendants have redacted, either in whole or in substantial part, the following documents: (1) USCIS Operational Guidance, National Guidance on the CARRP (DEF-00000276); (2) Structured Framework for Determining an Articulable Link to National Security Concerns (DEF-00004477); (3) USCIS Background Check Process: Policies, Procedures and Initiatives Paper (draft) (DEF-00004991); and (4) Interim Operational Guidance on Requirements for Vetting and Adjudication of National Security (NS) Cases (draft) (DEF-00005026). These documents could provide insight into the motivations behind CARRP and detail how the program creates additional hurdles beyond the statutory framework Congress enacted.

Notably, Defendants have also asserted the deliberative process privilege over the named Plaintiffs' A-files. Defendants assert that these files are "[d]eliberative, pre-decisional document[s] about the adjudication of [the applicants'] immigration benefit application[s]." Perez Decl. Ex. 6. But the process by which Plaintiffs' applications were adjudicated goes to the heart of their claims, as they have alleged that the process was discriminatory—*i.e.*, they have alleged that they were subjected to extra-statutory vetting procedures on the basis of their faith and/or national origin in violation of their constitutional rights.

On February 28, 2018, Plaintiffs requested a meet and confer. Perez Decl. Ex. 8. On March 7, 2018, the parties conferred by phone regarding Defendants' assertions of the deliberative process privilege. During that call, the parties agreed they were at an impasse, as

[1] Defendants have produced additional documents (Volumes 7, 9, and 10) but have not yet produced privilege logs for those documents.



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Defendants disagreed with Plaintiffs' interpretation of the relevant legal standards. On April 11, 2018, the Court issued an order holding, among other things, that Defendants had failed to properly claim the law enforcement privilege because a department head did not claim the privilege based on personal consideration. Dkt. # 148 at pp. 2-4. The Court also found Defendants' privilege logs insufficient. *Id.* at pp. 4-5. On April 13, 2018, Plaintiffs inquired via email whether Defendants intended to revise their privilege logs and reconsider their position that the government may invoke the deliberative process privilege without submitting a declaration from a department head. Perez Decl. Ex. 9. Defendants responded that they had "not yet considered in a focused way how [the Court's] order collaterally impacts [Defendants'] prior assertions of deliberative process privilege or the adequacy of the privilege log descriptions for deliberative process privilege." *Id.* As Defendants did not specify when, if ever, they would modify their views, Plaintiffs now move for an order compelling Defendants to produce the documents they have withheld under the deliberative process privilege.

## III. ARGUMENT

### A. The Deliberative Process Privilege Does Not Apply Because Defendants' Decision-Making Process Is At Issue.

The deliberative process privilege permits the government to withhold documents that "reflect[ ] advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and polices are formulated." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). The purpose of this privilege is "to allow agencies freely to explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny." *Carter v. U.S. Dep't of Commerce*, 307 F.3d 1084, 1089 (9th Cir. 2002).

Courts have held, however, that the privilege does not apply when a plaintiff challenges the agency's decision-making process, including its intent in taking certain actions. In *Subpoena I*, for example, a bankruptcy trustee alleged that the Federal Deposit Insurance Corporation ("FDIC") had improperly caused assets to be transferred to an insolvent bank. The trustee's



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theory "required him to show . . . that the transfers were made 'with actual intent to hinder, delay, or defraud.'" 145 F.3d at 1423. The D.C. Circuit rejected the FDIC's assertion of the deliberative process privilege, reasoning that the privilege does not apply "when a plaintiff's cause of action turns on the government's intent":

> The privilege was fashioned in cases where the governmental decision-making process is collateral to the plaintiff's suit. If the plaintiff's cause of action is directed at the government's intent, however, it makes no sense to permit the government to use the privilege as a shield. For instance, it seems rather obvious to us that the privilege has no place in a Title VII action or in a constitutional claim for discrimination. . . . [I]f either the Constitution or a statute makes the nature of governmental officials' deliberations *the* issue, the privilege is a non-sequitur. The central purpose of the privilege is to foster government decision-making by protecting it from the chill of potential disclosure. If Congress creates a cause of action that deliberatively exposes government decision-making to the light, the privilege's raison d'être evaporates.

*Id*. at 1424 (footnote and citations omitted).

While it appears the Ninth Circuit has not addressed the logic of *Subpoena I* in any depth,[2] district courts within this Circuit have found its reasoning persuasive. In *Jones v. Hernandez*, No. 16-CV-1986-W(WVG), 2017 WL 3020930 (S.D. Cal. July 14, 2017), for example, the court cited *Subpoena I* and explained that a court "may deny the protection of the deliberative process privilege, *regardless of the balancing test* . . . (1) when there is reason to believe that the documents sought may shed light on government misconduct, and (2) when the agency's decision-making process is itself at issue." *Id.* at *3 (citations omitted, emphasis added). Similarly, in *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1021 (E.D. Cal. 2010), the court found the reasoning of *Subpoena I* "highly persuasive," and concluded that "the fact that the decision-making process is at issue . . . weighs heavily against Respondent's assertion of privilege." *See*

[2] In *Lahr v. Nat'l Transp. Safety Bd.*, 569 F.3d 964 (9th Cir. 2009), plaintiff argued that "evidence of government misconduct, crime, and fraud bars the application of Exemption 5." *Id.* at 980. But the Ninth Circuit held that plaintiff "waived this argument by not advancing it in the district court." *Id.* Similarly, in *Hongsermeier v. C.I.R.*, 621 F.3d 890 (9th Cir. 2010), petitioners requested certain documents on the ground that they might contain "information regarding misconduct" on the part of an IRS official. *Id.* at 903. But the Ninth Circuit concluded that petitioners' discovery request "exceed[ed] the mandate" of a prior Ninth-Circuit decision, which had ordered a financial settlement "and not further exploration into IRS misconduct or additional sanctions." *Id.* at 903-04. Accordingly, government misconduct was effectively no longer at issue in that case.



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*also Greenpeace v. Nat'l Marine Fisheries Serv.*, 198 F.R.D. 540, 543 (W.D. Wash. 2000) ("the privilege may be inapplicable where the agency's decision-making process is itself at issue").

Other courts across the country have found the deliberative process privilege inapplicable where plaintiffs' claims involve the government's intent or decision-making process. *See, e.g.*, *Children First Found., Inc. v. Martinez*, No. CIV. 1:04-CV-0927, 2007 WL 4344915, at *5 (N.D.N.Y. Dec. 10, 2007) ("deliberative process privilege [could] not stand" where nonprofit corporation alleged that agency "violated its First Amendment rights to be free of prior restraints on its speech, and its Fourteenth Amendment rights of due process and equal protection," by denying its application for a custom license plate) (collecting authorities); *Qamhiyah v. Iowa State Univ. of Sci. & Tech.*, 245 F.R.D. 393, 397 (S.D. Iowa 2007) (holding that the deliberative process privilege did not apply where plaintiff alleged that the deliberative process itself was "tainted with unlawful discrimination"); *Tri-State Hosp. Supply Corp. v. United States*, No. CIV.A. 00-1463HHKJMF, 2005 WL 3447890, at *8 (D.D.C. Dec. 16, 2005) (deliberative process privilege inapplicable where plaintiff alleged abuse of process and malicious prosecution); *United States v. Lake Cty. Bd. of Comm'rs*, 233 F.R.D. 523, 525-28 (N.D. Ind. 2005) (privilege did not apply in case brought under the Fair Housing Act alleging that agencies unlawfully discharged employees and denied zoning permission for racial reasons) (collecting authorities); *Waters v. U.S. Capitol Police Bd.*, 216 F.R.D. 153, 163 (D.D.C. 2003) ("[I]t is inconceivable that Congress intended federal agencies to shield from discovery information otherwise subject to the deliberative process privilege when that information bears on whether or not the agency discriminated against an employee[.]"); *Anderson v. Cornejo*, No. 97 C 7556, 2001 WL 826878, at *1-4 (N.D. Ill. July 20, 2001) (in a case brought by African American women alleging they were discriminatorily selected for nonroutine personal searches, a document that was part of pre-decisional deliberations regarding changes to the targeting policy was subject to disclosure because it would shed light on the subjective intent of a commissioner) (applying balancing test but collecting authorities categorically denying privilege when claim goes to government's



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subjective intent); *Alexander v. F.B.I.*, 186 F.R.D. 170, 177-78 (D.D.C. 1999) (deliberative process privilege inapplicable where government misconduct was at issue); *In re Franklin Nat. Bank Sec. Litig.*, 478 F. Supp. 577, 582 (E.D.N.Y. 1979) ("[W]here the documents sought may shed light on alleged government malfeasance, the privilege is denied.").

Here, Defendants' decision-making process is central to this case. Plaintiffs allege that Defendants created an extra-statutory internal vetting program that discriminates on the basis of religion and/or national origin and indefinitely delays or pretextually denies immigration benefits to statutorily-qualified applicants. Dkt. # 47 at ¶¶ 35-51, 62-76. Specifically, Plaintiffs allege, among other things, that (1) "CARRP labels applicants national security concerns based on vague and overbroad criteria that often turn on national origin or innocuous and lawful activities or associations," *id.* ¶ 76; (2) "Defendants' indefinite suspension of the adjudication of Plaintiffs' applications for immigration benefits on the basis of their country of origin, and without sufficient justification, violates the equal protection component of the Due Process Clause of the Fifth Amendment," *id.* ¶ 268; (3) Defendants' suspensions of applications for immigration benefits "under the First and Second EOs was and is substantially motivated by animus toward—and has a disparate effect on—Muslims, which . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment," *id.* ¶ 269; (4) "[t]he Second EO is intended and will be applied primarily to exclude individuals on the basis of their national origin and religion," *id.* ¶ 271; and (5) "Defendants have applied the First EO and will apply the Second EO with discriminatory animus and discriminatory intent in violation of the equal protection component of the Fifth Amendment," *id.* ¶ 272.

Accordingly, Defendants' intent in creating and amending CARRP (which necessarily involves the evolutionary changes CARRP has undergone over the years) and any successor "extreme vetting" program implemented pursuant to the EOs is central to Plaintiffs' claims that Defendants have violated the First Amendment and the Equal Protection Clause of the Fifth Amendment. If Defendants' creation of CARRP (and any successor programs) was in fact



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motivated by discriminatory animus against immigrants based on their faith or national origin, records of Defendants' internal deliberations are likely to contain the best evidence of Defendants' bias. The information redacted from Plaintiffs' A-files is particularly pertinent; the process by which Plaintiffs' benefit applications were adjudicated would shed light on whether Defendants subjected their applications to extra-statutory hurdles under CARRP for impermissible, discriminatory reasons. Where, as here, "there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve the public's interest in honest, effective government." *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997) (quotation marks omitted).

The deliberative process privilege is thus inapplicable, and Defendants cannot use it to shield documents from discovery.

**B. Plaintiffs' Need For Information Outweighs Any Interest In Keeping The Information Secret.**

Even if the deliberative process privilege applied, it is qualified. *See F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). "Like all evidentiary privileges that derogate a court's inherent power to compel the production of relevant evidence, the deliberative process privilege is narrowly construed." *Greenpeace*, 198 F.R.D. at 543. A party may obtain disclosure of deliberative materials if it can establish that the need for the materials to allow for accurate fact-finding outweighs the government's interest in non-disclosure. *Warner*, 742 F.2d at 1161. In deciding whether the qualified privilege should be overcome, a court may consider "1) the relevance of the evidence; 2) the availability of other evidence; 3) the government's role in the litigation; and 4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions." *Id*. "Other factors that a court may consider include: (5) the interest of the litigant, and ultimately society, in accurate judicial fact finding, (6) the seriousness of the litigation and the issues involved, (7) the presence of issues concerning



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alleged governmental misconduct, and (8) the federal interest in the enforcement of federal law." *N. Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1122 (N.D. Cal. 2003).

All but one of these factors weigh in favor of disclosure, and the only factor that would support withholding in this case—the risk that disclosure would hinder frank and independent discussion regarding contemplated policies—is neutralized by the existence of a protective order.

*First*, records describing Defendants' deliberations would shed light on whether discriminatory animus motivated their enactment of CARRP and any successor "extreme vetting" programs. As such, the records are clearly relevant to Plaintiffs' claims that Defendants violated the First Amendment and the Equal Protection Clause. *Cf. N. Pacifica*, 274 F. Supp. 2d at 1124 ("motive and intent of City Council members" was "highly relevant to [plaintiff's] equal protection claim" because plaintiff was required to demonstrate "there was no rational basis for the difference in treatment or the difference in treatment was motivated by animus").

*Second*, Plaintiffs would face unique obstacles in their effort to obtain the evidence they seek through other means. Because CARRP (and any successor programs) have been kept secret from the public, there is no administrative record that might illuminate Defendants' reasons for enacting CARRP. And even if there were such a record, evidence of discriminatory intent "does not typically lay dormant in an administrative record." *Newport Pac. Inc. v. Cty. of San Diego*, 200 F.R.D. 628, 639 (S.D. Cal. 2001). Accordingly, this factor weighs heavily in favor of disclosure.

*Third*, the government's role in the litigation also weighs in favor of disclosure, as Plaintiffs allege that the government has engaged in misconduct in the form of invidious discrimination. *See supra* at p. 6; *see also N. Pacifica*, 274 F. Supp. 2d at 1124 (government's role in litigation weighed in favor of disclosure because "the decision-making process of the City Council [was] by no means collateral to" plaintiff's equal protection claim); *Newport*, 200 F.R.D. at 640 (noting that the "role of the government in the litigation itself"—being sued for, *inter alia*, violation of equal protection and due process—"tip[s] the scales in favor of disclosure"); *cf.*



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*Warner*, 742 F.2d at 1162 (noting as part of its analysis of the government's role in the litigation that "defendants have presented no evidence of bad faith or misconduct").

*Fourth*, as noted, any risk that disclosure would hinder frank and independent discussion regarding contemplated policies and decisions is substantially mitigated by the existence of a protective order. *See Rodriguez v. City of Fontana*, No. EDCV 16-1903-JGB (KKX), 2017 WL 4676261, at *4 (C.D. Cal. Oct. 17, 2017) ("[T]he Court finds disclosure of the information sought subject to an appropriate protective order will not harm the generally asserted governmental interest in confidentiality of performance evaluations."); *Kelly v. City of San Jose*, 114 F.R.D. 653, 662 (N.D. Cal. 1987) ("[I]t is important to emphasize that in many situations what would pose the threat to law enforcement interests is disclosure to the public generally, not simply to an individual litigant and/or her lawyer."). In any event, the government has little interest in shielding its potential wrongdoing from public scrutiny. *Cf. Newport*, 200 F.R.D. at 640 ("if because of this case, members of government agencies acting on behalf of the public at large are reminded that they are subject to scrutiny, a useful purpose will have been served").

*Fifth*, "the desirability of accurate fact-finding weighs in favor of disclosure" in every case. *N. Pacifica*, 274 F. Supp. 2d at 1124. And here, "the interest in accurate judicial fact finding is heightened because equal protection rights are at stake." *Id.*; *see also Newport*, 200 F.R.D. at 639 (agreeing with plaintiffs' assertion "that the possibility of discrimination favors disclosure"). The public has a strong interest in learning whether Defendants created a secret government program that discriminates against individuals based on their faith or national origin.

*Sixth*, this case is far from frivolous. The Court denied Defendants' motion to dismiss, and the parties are engaged in discovery. Moreover, weighty constitutional issues of vital public importance are at stake.

*Seventh*, Plaintiffs' claims of government misconduct should weigh heavily in favor of disclosure. *See* cases cited in Section III.A, *supra*; *see also United States v. Irvin*, 127 F.R.D.



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169, 174 (C.D. Cal. 1989) ("Here the decision-making process is not swept up into the case, it *is* the case.") (quotation marks and citations omitted).

*Eighth*, "the federal interest in the enforcement of federal constitutional rights weighs in favor of disclosure." *N. Pacifica*, 274 F. Supp. 2d at 1123; *see also Newport*, 200 F.R.D. at 640 (noting that § 1983 claims serve a vital public interest); *cf. Grossman v. Schwarz*, 125 F.R.D. 376, 381 (S.D.N.Y.1989) ("In a civil rights action where the deliberative process of State or local officials is itself genuinely in dispute, privileges designed to shield that process from public scrutiny must yield to the overriding public policies expressed in the civil rights laws.").

Taken together, the interests in favor of disclosure far outweigh any interest in non-disclosure.

**C. Defendants Have Not Satisfied The Elements Of The Deliberative Process Privilege.**

Even if the privilege applied here, Defendants have failed to invoke it properly. "The party asserting the privilege must properly invoke the privilege by making a substantial threshold showing." *Rodriguez*, 2017 WL 4676261, at *3 (quotation marks omitted). "The party must file an objection and submit a declaration or affidavit from a responsible official with personal knowledge of the matters attested to by the official." *Id.* "The affidavit or declaration must include (1) an affirmation that the agency has generated or collected the requested material and that it has maintained its confidentiality, (2) a statement that the material has been personally reviewed by the official, (3) a description of the governmental or privacy interests that would be threatened by disclosure of the material to the plaintiff or plaintiff's attorney, (4) a description of how disclosure under a protective order would create a substantial risk of harm to those interests, and (5) a projection of the harm to the threatened interest or interests if disclosure were made." *Id*. (quotation marks omitted). Defendants must also specify in detail "the information for which



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the privilege is claimed, with an explanation why it properly falls within the scope of the privilege." *Thomas*, 715 F. Supp. 2d at 1019.[3]

As an initial matter, Defendants have failed to submit any "declaration or affidavit, under oath and penalty of perjury, from a responsible official within the agency who has personal knowledge of the principal matters to be attested to in the affidavit or declaration." *Kelly*, 114 F.R.D. at 669. Defendants were required to provide this declaration or affidavit "at the time [they] file[d] and serve[d] [their] response to the discovery request." *Id*. The Court recently considered the same issue with respect to Defendants' assertion of the law enforcement privilege. As the Court explained in its April 11, 2018 Order, Defendants' argument that they need not satisfy the requirements for invoking the privilege before "formally" invoking it—*i.e.*, "that the Government may somehow claim the privilege without actually claiming it—defies logic." Dkt. # 148 at p. 3. In the context of the law enforcement privilege, the Court concluded that the "Government did not properly claim this privilege because it refused to abide by the first and second prongs; that is, a department head did not claim the privilege and therefore did not assert such privilege based on actual personal consideration." *Id*. That conclusion applies equally to the government's assertion of the deliberative process privilege.

Moreover, the privilege logs must (i) state that the requested material has been kept confidential; (ii) describe how governmental interests would be threatened by disclosure of the material to plaintiffs or their attorneys; (iii) explain how disclosure under a protective order would create a substantial risk of harm to governmental interests; (iv) project the harm to the threatened interests if disclosure were made; and (v) provide a detailed description of the information and an explanation why it falls within the scope of the privilege. But Defendants either fail to provide this information (the logs do not address the confidentiality of the information or the existence of the protective order, for example) or rely on boilerplate descriptions such as: "Deliberative, pre-

[3] *See also Landry v. F.D.I.C.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000); *Mir v. Med. Bd. of California*, No. 12CV2340-GPC (DHB), 2016 WL 3406118, at *3 (S.D. Cal. June 21, 2016).



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decisional document about the adjudication of applicant's immigration benefit application." Perez Decl. Ex. 6.[4] As the Court explained in its April 11 Order, the "Government's privilege log is insufficient" because it fails to "specifically identify the documents that fall within this privilege." Dkt. # 148 at p. 4. Such "precise distinctions" are necessary "to ensure that the Government's blanket affidavit is not being used in an unbridled sense." *Id*.

Because Defendants failed to submit the requisite affidavit or detailed privilege logs, Defendants did not properly invoke the deliberative process privilege.

## IV. CONCLUSION

Plaintiffs respectfully request that the Court order Defendants to produce the withheld material without redactions. In the alternative, Plaintiffs request that the Court order Defendants to invoke the privilege properly by (1) submitting a declaration from a responsible official with personal knowledge formally invoking the privilege, and (2) providing a proper privilege log that will allow Plaintiffs to evaluate Defendants' invocation of the privilege.

[4] Defendants include some additional boilerplate statements relevant to the *law enforcement privilege* (*e.g.*, that disclosure of the information "might reveal sensitive information about potential investigations").



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DATED: April 19, 2018

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date indicated below, I caused service of the foregoing PLAINTIFFS' MOTION TO COMPEL RE DELIBERATIVE PROCESS PRIVILEGE via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 19th day of April, 2018, at Seattle, Washington.

By: s/*David A. Perez*

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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

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RE DELIBERATIVE PROCESS PRIVILEGE**



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THE COURT, having considered Plaintiffs' Motion to Compel Re Deliberative Process Privilege, the papers submitted by the parties in support of and in opposition to the motion, and the files and pleadings in this case, hereby ORDERS that Plaintiffs' motion is GRANTED.

It is further ORDERED that within 21 days from the issuance of this order, Defendants shall produce unredacted versions of the documents for which Defendants have asserted the deliberative process privilege. The privilege does not apply in this case because Defendants' decision-making process is itself at issue. Plaintiffs have alleged that Defendants created an extra-statutory internal vetting program that discriminates on the basis of religion and/or national origin by indefinitely delaying or pretextually denying immigration benefits to statutorily-qualified applicants. Because Defendants' intent in creating this extra-statutory vetting program is central to Plaintiffs' claims, the privilege is inapplicable.

DATED this _____ day of _____, 2018.

_____
HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE



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DATED this 19th day of April 2018, at Seattle, Washington.

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