

# Exhibit A

**From:** [Sameer Ahmed](#)  
**To:** [Brinkman, Andrew \(CIV\)](#); [Sepe, Cristina \(Perkins Coie\)](#); [Gellert, Nicholas \(Perkins Coie\)](#); [Perez, David A. \(Perkins Coie\)](#); [Jennie Pasquarella](#)  
**Cc:** [Bensing, Daniel \(CIV\)](#); [Carilli, Joseph F. \(CIV\)](#); [Julius, Derek \(CIV\)](#); [Kanter, Ethan \(CIV\)](#); [Kipnis, Brian \(USAWAW\)](#); [Moore, Brendan T. \(CIV\)](#); [Murphy, Lindsay M. \(CIV\)](#); [Taranto, Leon B. \(CIV\)](#); [Flentje, August \(CIV\)](#)  
**Subject:** RE: Wagafe - Duplicate Proposal, Motion to Reconsider  
**Date:** Tuesday, March 12, 2019 6:00:44 PM

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Drew,

Regarding the duplicate proposal, we agree with the proposal on the condition that the Bates number of the duplicate document is reflected in the DAT file of the redacted document.

Regarding your motion to reconsider, Plaintiffs do not oppose Defendants' request to reconsider the Court's statement that Defendants waived privilege over the four documents. However, Plaintiffs contend that the Court was correct to find that those four documents were "unprivileged" and to grant Plaintiffs' motion to compel to produce those four documents to Plaintiffs, at least under an Attorneys' Eyes Only protective order. See Dkt. 224 at 3. You are welcome to state Plaintiffs' position in your motion.

Sincerely,  
Sameer

Sameer Ahmed, Staff Attorney  
ACLU of Southern California  
Orange County Office  
1851 E First Street, Suite 450  
Santa Ana, CA 92705  
213.977.5284

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**From:** Brinkman, Andrew (CIV) <Andrew.Brinkman@usdoj.gov>  
**Sent:** Friday, March 8, 2019 1:39 PM  
**To:** Sepe, Cristina (Perkins Coie) <CSepe@perkinscoie.com>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Perez, David A. (Perkins Coie) <DPerez@perkinscoie.com>; Sameer Ahmed <SAhmed@aclusocal.org>; Jennie Pasquarella <JPasquarella@aclusocal.org>  
**Cc:** Bensing, Daniel (CIV) <Daniel.Bensing@usdoj.gov>; Brinkman, Andrew (CIV)

<Andrew.Brinkman@usdoj.gov>; Carilli, Joseph F. (CIV) <Joseph.F.Carilli2@usdoj.gov>; Julius, Derek (CIV) <Derek.Julius2@usdoj.gov>; Kanter, Ethan (CIV) <Ethan.Kanter@usdoj.gov>; Kipnis, Brian (USAWAW) <Brian.Kipnis@usdoj.gov>; Moore, Brendan T. (CIV) <Brendan.T.Moore@usdoj.gov>; Murphy, Lindsay M. (CIV) <Lindsay.M.Murphy@usdoj.gov>; Taranto, Leon B. (CIV) <Leon.B.Taranto@usdoj.gov>; Flentje, August (CIV) <August.Flentje@usdoj.gov>

**Subject:** Wagafe - Duplicate Proposal, Motion to Reconsider

Counsel,

First, I am writing to follow up on our duplicate proposal. I have attached our most recent correspondence on the issue. At your earliest convenience, please let us know if the proposal is acceptable to Plaintiffs.

Second, I am writing regarding the Court's February 27 Order on Plaintiffs' Motion to Compel re Deliberative Process Privilege. We intend to comply with the Court's order to submit a random sample of ten documents for *in camera* review, but we are going to ask the Court to reconsider its ruling that Defendants waived privilege over the four documents. We believe that the Court misunderstood the extensive precautions we took to protect any privilege claims, including obtaining your agreement that we did not waive privilege. In the spirit of fairness, we hope that you will join us in the motion to reconsider or state your non-opposition. Could you please let us know your position on the motion by Tuesday? If necessary, we can send you the motion before filing, and you can review it before giving your position.

Best,  
Drew

## 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, President of the United States, *et al.*,

Defendants.

**No. 2:17-cv-00094-RAJ**

**DECLARATION OF ANDREW C. BRINKMAN**

I, Andrew C. Brinkman, hereby declare the following:

1. I am a member of the State Bar of Ohio. I am employed as an attorney at the U.S. Department of Justice, Civil Division, Office of Immigration Litigation, Appellate Section.

2. I represent Defendants in the above-captioned case.

3. On June 15, 2018, in an effort to resolve Plaintiffs' motion to compel without further litigation, I emailed Plaintiffs' counsel and offered to allow them to preview one of the documents contained in Paragraph 17 of the Emrich affidavit subject to the following conditions:

(1) information withheld pursuant to the law enforcement and attorney-client privileges would remain redacted, but information withheld solely pursuant to the deliberative process privilege would not be redacted; (2) Defendants did not waive any deliberative process privilege claims over the document or similar documents; (3) Plaintiffs' counsel would only share the document with attorneys of record on the case (with the exception of one attorney who was working on the

1 case but not counsel of record); and (4) shortly after previewing the document, Plaintiffs'  
2 counsel would treat the document as inadvertently-produced and take all of the steps outlined in  
3 paragraphs 4 and 7 of the Court's August 15, 2017 Stipulated Order Pursuant to Federal Rule of  
4 Evidence 502(d) (*i.e.*, destroy the document and any notes about the document).

5 4. Plaintiffs' counsel agreed to the above proposal and requested to see an additional  
6 three documents from paragraph 17 of the Emrich affidavit (which Plaintiffs' counsel identified)  
7 subject to the same conditions.

8 5. Defendants agreed to Plaintiffs' counter-proposal and allowed Plaintiffs' to  
9 preview the additional three documents, subject to the same conditions.

10 6. After previewing the four documents, Plaintiffs' counsel informed Defendants'  
11 counsel that they intended to continue pursuing this motion to compel.

12 I declare under penalty of perjury under the laws of the United States of America that  
13 the foregoing is true and correct.

14 Executed on March 13, 2019

15 /s/ Andrew C. Brinkman  
16 ANDREW C. BRINKMAN  
17 Trial Attorney  
18 Office of Immigration Litigation  
19 450 5th St. NW  
20 Washington, DC 20001  
21 Andrew.Brinkman@usdoj.gov  
22 Phone: (202) 305-7035  
23

## Exhibit C

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1 able to do so. So, you know, while things have gotten better,  
2 we still have concerns. And, you know, moving back, if we had  
3 never filed that sanctions motion and the Court didn't admonish  
4 defendants, we wouldn't be, you know, even at the place that we  
5 are today.

6 THE COURT: Okay. I think I've heard from both  
7 parties on that topic sufficiently. Let's go now to the second  
8 question as to plaintiffs' motion to compel, at Docket 152.

9 Counsel for the plaintiffs?

10 MR. AHMED: Yes, thank you, Your Honor.

11 So our understanding is that, you know, this motion to  
12 compel relates to the deliberative process privilege. And in  
13 our -- both parties' supplemental briefings, we narrowed the  
14 dispute to the documents that are listed in Paragraph 17 of the  
15 affidavit from Matthew Emrich. And it's our understanding, in  
16 both the supplemental briefs, the parties agreed for the Court  
17 to review in camera a random sample of ten of the outstanding  
18 122 documents at issue. And so we would request that  
19 defendants produce those documents to the Court as soon as  
20 possible so the Court can make a determination on whether  
21 defendants should produce those documents to plaintiffs. And  
22 so that's, you know, one aspect that's been outstanding on the  
23 deliberative process privilege.

24 The other point I just, you know, wanted to reiterate,  
25 since we haven't received privilege logs for many productions,



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1 we may have to raise the deliberative process privilege issue  
2 again, you know, once they have completed their production and  
3 have produced a privilege log.

4 THE COURT: Okay. And, Counsel for the Defense, in  
5 your response, assuming that you are in agreement to the  
6 production of the ten sample documents, I'd like to have some  
7 perspective on what volume that looks like. Because ten  
8 documents, so to speak -- I still work for the government, so  
9 to speak. I know ten documents can sometimes be thousands of  
10 pages.

11 So can Counsel for the Defense illuminate what the ten  
12 documents -- if you can give me just an average of what you  
13 think that might look like, volume-wise, in addition to your  
14 response?

15 MR. KANTER: Yes. Let me respond first, and then  
16 I'll ask Andrew Brinkman to address the -- Your Honor's  
17 detailed question about volume, the size of these documents,  
18 which is to say that, generally, we agree with plaintiffs  
19 regarding the ten documents, which I thought the proposal was  
20 to select them randomly. So that might impact the question --  
21 your question, Your Honor, on -- they need to be selected  
22 randomly, and then we can report on the volume.

23 But I might propose just one approach here, which is to  
24 say, in keeping with the -- and, again, it may be -- in keeping  
25 with the productive communication we've been having with the

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1 plaintiffs on various issues, what we might do is either select  
2 the ten randomly and see what kind of volume those documents  
3 are, or potentially agree on a narrower subset to be reviewed  
4 by the Court in camera. Because as you note, Your Honor, ten  
5 documents could be quite, quite large.

6 So I just -- I just want to throw that out there. We  
7 could do that fairly quickly, this week, to see if the parties  
8 could agree on a narrower subset, and then present that to the  
9 Court as here are the whatever, three, four documents that  
10 we've agreed could be reviewed in camera in order to resolve  
11 this dispute.

12 THE COURT: And, Counsel, I assume that you accept  
13 that the randomization of the document production will include  
14 some form of certification to verify the process that you've  
15 utilized, to actually declare that they're randomly selected.

16 MR. KANTER: Absolutely, yes, Your Honor. Consistent  
17 with the last random selection that was presented in camera, we  
18 will include an affidavit by the individual administering that  
19 selection, certifying the randomness of the selection.

20 THE COURT: So in that, do you have a proposed date,  
21 or have the parties had an opportunity to discuss a proposed  
22 date for the production of the in camera documents, or the  
23 discussion about the subset of documents, or narrowing down to  
24 an agreed number of documents?

25 MR. KANTER: I do not believe so, but we can -- I

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1 think we can confer this week and answer each of those  
2 questions for the Court.

3 THE COURT: Okay. All right. Anything further on  
4 that topic, Counsel?

5 MR. AHMED: No, Your Honor. This is Sameer Ahmed,  
6 from the plaintiffs. We would agree with meeting and  
7 conferring and trying to narrow down the documents.

8 I will note that I believe in their brief that they noted  
9 that the sample of ten documents would be approximately 200  
10 pages, so I just wanted to note that for the record.

11 THE COURT: Total or per document?

12 MR. AHMED: I believe it was total. It says -- I'm  
13 just looking at their brief. It says, "To minimize the burden  
14 on the Court, defendants suggest it would be most efficient to  
15 present the Court with a randomly selected sample of ten draft  
16 policy memoranda for review, which would include approximately  
17 200 pages." So my understanding is, what the parties agreed on  
18 in their briefing, it would be approximately 200 pages. But,  
19 you know, plaintiffs are more than willing to discuss with  
20 defendants the ability to narrow down that further, as  
21 possible.

22 THE COURT: Well, what I don't want the parties to do  
23 is to put in your search mechanism something that winds up  
24 being 200 documents. I want this to be truly a random  
25 sampling. I'm just curious as to what the volume looks like.

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1 I'm not ordering it has to be 200. And I want to make sure  
2 that we have consistency in the randomization, okay?

3 MR. KANTER: Understood, Your Honor.

4 THE COURT: Okay. All right. If there's nothing  
5 further on that topic, then the last is as to the parties'  
6 stipulated motion at Docket 210.

7 Are the discovery motions contemplated by either party in  
8 any way duplicative of prior motions to compel or motions for  
9 sanctions? In other words, is there any overlap of previous  
10 motions, or will these motions, if they are to be filed, be  
11 completely separate?

12 MR. AHMED: Your Honor, this is Sameer Ahmed, for the  
13 plaintiffs.

14 As I previously mentioned, the one duplicative issue is  
15 the issue that, you know, defendants have failed to produce  
16 information regarding why named plaintiffs have been subjected  
17 to CARRP, which the Court ordered them produced in its  
18 October 2017 order, and, as I mentioned, we believe should be  
19 addressed.

20 Originally, with respect to our sanctions motion, I think  
21 if the Court agreed with our position, then there would be no  
22 further briefing on that issue. The Court would order, you  
23 know, defendants, once again, to produce that information. As  
24 I mentioned, we're even willing to compromise further and have  
25 it be subject to an attorneys'-eyes-only protective order.