

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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

**DECLARATION OF HEATH HYATT IN
SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL DOCUMENTS WITHHELD
UNDER THE LAW ENFORCEMENT
AND DELIBERATIVE PROCESS
PRIVILEGES**

I, Heath Hyatt, 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. Trump*, No. 17-cv-00094 RAJ.

2. Plaintiffs culled 84 documents asserting the law enforcement privilege and/or deliberative process privilege that appeared particularly relevant to Plaintiffs' claims from the hundreds of withheld or redacted documents asserting the law enforcement and deliberative process privileges.

3. On December 18, 2019, in an effort to avoid the Court's involvement, counsel for Plaintiffs sent Defendants a list of 83 documents plus noted redactions in the Certified

1 Administrative Record that Plaintiffs sought to challenge. Plaintiffs later added one additional
2 document.

3 4. On December 31, 2019, counsel for both Plaintiffs and Defendants met and
4 conferred regarding reproducing documents and the Certified Administrative Records without
5 redactions. During the meet and confer, Defendants agreed to review the documents Plaintiffs
6 sought to challenge but took the position that Defendants properly privileges asserted in the
7 Certified Administrative Record. Defendants also notified Plaintiffs that they sought to claw
8 back several documents that Plaintiffs had presented to them.

9 5. Participants in this meet and confer included Michelle Slack, Brian Kipnis, Ethan
10 Kanter, Victoria Braga, Leon Taranto, and Brendan Moore for the Defendants and Cristina Sepe
11 and myself for the Plaintiffs.

12 6. In subsequent communications, Defendants agreed to re-produce some documents
13 with fewer or no redactions, but refused to re-produce other documents. With respect to the
14 Certified Administrative Record, Defendants directed Plaintiffs to identical or nearly identical
15 versions of previously documents over which Defendants contend they properly asserted the
16 privilege.

17 7. In early January, Defendants sent Plaintiffs a list of documents that Defendants
18 now seek to claw back.

19 8. On January 6, 2020, Defendants informally re-produced a subset of documents
20 with fewer, but still significant, redactions. Many of the redacted sections appear relevant to
21 Plaintiffs' claims.

22 9. After reviewing the documents and Defendants' privilege logs, Plaintiffs culled
23 the list of squarely relevant documents to 64.

24 10. Attached as **Exhibit 1** is a list of all documents where Plaintiffs challenge
25 redactions asserting the Law Enforcement Privilege and/or the Deliberative Process Privilege.
26

1 11. Because the subset of documents Defendants informally re-produced on January 6
2 do not yet have Bates numbers, Plaintiffs chose not to attach the documents challenged in this
3 motion to this Declaration for the sake of limiting confusion. Plaintiffs intend to file under seal
4 these redacted documents with the Court at an appropriate time, after Defendants have formally
5 re-produced the documents with Bates numbers.

6 12. Attached as **Exhibit 2** is a true and correct copy of an excerpt of the original
7 production of document beginning at Bates No. DEF-00065590: pages marked DEF-00065590
8 (the first page of the document) and DEF-00065762.

9 13. Attached as **Exhibit 3** is a true and correct copy of an excerpt from the new,
10 lesser redacted version of the document beginning at Bates No. DEF-00065590 that Defendants
11 re-produced on January 6, 2020.

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

13 EXECUTED this 9th day of January, 2020, at Washington, D.C.

14 /s/ Heath Hyatt

15 Heath Hyatt

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused service of the foregoing document via the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

DATED this 9th day of January, 2020, at Washington, D.C.

/s/ Cristina Sepe
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EXHIBIT 1
FILED UNDER SEAL

EXHIBIT 2
FILED UNDER SEAL

EXHIBIT 3
FILED UNDER SEAL