

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*

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

Plaintiffs,

Honorable Richard A. Jones

v.

TRUMP, *et al.*,

Defendants

**Declaration of Matthew C. Allen**

I, Matthew C. Allen, state as follows:

**INTRODUCTION**

1. I am the Acting Deputy Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, DHS was created from some twenty-two different federal agencies. This was done in part to facilitate and enhance the sharing of information across agencies that held similar or related mandates. ICE was created in 2003 from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). Following ICE's creation, all Special Agents who formerly worked for the USCS and the INS became part of ICE. ICE is the second-largest investigative agency in the Federal Government.

Within ICE, HSI has approximately 8,260 employees, including more than 6,100 Special Agents assigned to thirty Special Agent-in-Charge (SAC) offices in cities throughout the

United States and countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity, including: the investigation of contraband and merchandise smuggling; illicit trade, travel, and finance; money laundering; fraud in both import and export transactions; and other criminal activity. HSI also has significant administrative authority over immigration and customs matters, which it exercises in conjunction with its criminal authorities.

2. I joined the USCS as an Intelligence Research Specialist (intelligence analyst) in 1986 after graduating from college and completing an agency cooperative education program. As an intelligence analyst, I received training on conducting research, critical thinking, analysis, reporting, and the structure and functions of the U.S. intelligence community. My primary area of work as an analyst was national security, in particular export enforcement. While I was an intelligence analyst, I attended one year of graduate school at Georgetown University, studying in their National Security Studies Program. I was selected to be a USCS Special Agent in 1989 and joined ICE when this agency was created in 2003. Following training to become a Special Agent, I continued to work in the national security area, conducting investigations into export enforcement violations for approximately one year. I have served HSI in a variety of roles, from Special Agent to several different leadership roles in the field and at Headquarters. I held multiple positions at ICE Headquarters from 2004 to 2008, including as Deputy Assistant Director (DAD) of the Financial, Narcotics, and Public Safety Division. In this position, I had oversight of HSI's Financial, Drug, Human Rights Violations and Public Safety (gang) programs. I also served as the DAD of the Critical Infrastructure and Fraud Division, where I had oversight of ICE's human smuggling and trafficking portfolio, worksite

enforcement, commercial fraud, intellectual property rights, and immigration document and benefit fraud programs within HSI. From August 2008 until June 2016, I served as the HSI Special Agent in Charge in Arizona. There, I had oversight of the full spectrum of ICE investigative activities in Arizona and led more than 500 personnel assigned to offices in Phoenix, Tucson, Douglas, Nogales, Sells, Casa Grande, Yuma, and Flagstaff. From June 2016 until June 2018, I served as the AD for HSI Investigative Programs, where I was responsible for programmatic oversight of HSI's strategic planning, national policy implementation, and the development and execution of operational initiatives. I hold an undergraduate degree in Criminal Justice from the John Jay College of Criminal Justice in New York, New York. In 2003, I completed the Columbia Business School's Executive Development Program as part of the USCS Leadership Development Program.

3. In June 2018, I was reassigned to serve as AD of HSI's Domestic Operations. As such, I am responsible for managing, directing, coordinating, and supporting all investigative activities of ICE HSI domestic field offices, including 30 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation, and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle terrorist and other transnational criminal organizations that threaten the security of the United States and immigration and customs violators who threaten public safety. I also oversee all major ICE HSI enforcement initiatives and the de-confliction of operations for and among ICE HSI field offices and other agencies. I am therefore well positioned to discuss the broad range of HSI's work, including its cooperation with other agencies.

4. In April 2019, I temporarily assumed the duties of the Deputy Executive Associate Director, HSI. In this role I supervise the Assistant Directors for Domestic Operations, International Operations, Investigative Programs, Operational Technology and Cyber, National Security, and Mission Support.
5. Through the exercise of my official duties, I have been briefed on the civil action *Wagafe v. Trump, et al.*, pending in the United States District Court for the Western District of Washington, Case No.: 2:17-cv-00094-RAJ. I understand the matter is proceeding in discovery, the Defendants have responded to document requests, including by producing redacted versions of the named Plaintiffs' A-files and other documents, and asserted objections over privileged and classified information and documents where appropriate. ICE is not a Defendant in this lawsuit; however, as set forth in this declaration, ICE's equities would be harmed by the release of privileged law enforcement information. I understand that, in this case, ICE has previously asserted the Law Enforcement Privilege over law enforcement sensitive information owned by or originating from ICE, first by then-AD for Domestic Operations Tatum King on March 1, 2018, April 9, 2018, and April 20, 2018, then by me on March 7, 2019, and April 23, 2019.

**SELECTION OF 64 DOCUMENTS**

6. I understand that on January 9, 2020, Plaintiffs filed a Motion to Compel challenging the government's privilege assertions in 64 documents produced to Plaintiffs during the discovery period in this litigation. Following Plaintiffs' filing, ICE was provided with documents from this group of 64 documents identified as having ICE equities, specifically the documents that begin with Bates numbers (Bates): Bates DEF-00017542; Bates DEF-00021130; Bates DEF-00044891; Bates DEF-00052177; Bates DEF-

00181890; Bates DEF-00254790; Bates DEF-00266453; and Bates DEF-00262748. The documents at issue contain law enforcement sensitive material substantively similar to law enforcement sensitive material over which ICE asserted the law enforcement privilege in this case in the declarations described in Paragraph 5. As discussed in those declarations, and as further set forth in this declaration, release of these materials could harm ongoing investigations, including those unrelated to the actions of anyone with interest in this lawsuit. The documents at issue further contain information not belonging to ICE that could impact ICE equities, including information about current or former investigations. Further, release could impede information sharing between and among U.S. Government agencies, seriously impeding ICE's ability to carry out investigations, among other harms.

7. This declaration is therefore submitted to continue to assert the Law Enforcement Privilege over selected categories of law enforcement sensitive information owned by or originating from ICE in the documents at issue. This declaration is based on my personal knowledge, my personal review and appraisal of the claims of Law Enforcement Privilege previously asserted, and the factual background of the case, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and responsibilities. I have personally reviewed the documents described in Paragraph 6 and determined that disclosure to Plaintiffs or their counsel of the privileged information therein poses an undue risk of harm to investigations, as well as the general nature of HSI law enforcement techniques and procedures; this, in turn, would directly impact public safety and national security. As set forth in this declaration and in the declarations discussed in Paragraph 5, revealing such

sensitive information, the techniques and procedures involved in acquiring such information, and the combination thereof could undermine the efforts of HSI to carry out its mission of identifying and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation, infrastructure security, and national security.

8. The documents described in Paragraph 6 contain types of information that are the same as, or substantively similar to, the documents in the A files discussed in the declarations described in Paragraph 5. This information includes the investigative steps law enforcement personnel use to carry out particular types of investigations, such as specifics as to how HSI coordinates with its institutional partners during investigations; details about open and closed nationwide initiatives; recommendations for changing the way federal agencies work together on investigations, including national security investigations; descriptions of new programs; printouts of law enforcement databases used in these investigations; checklists setting out systems to query during the course of investigations; and which field offices opened particular investigations.
9. Revealing the key details of law enforcement operations or systems undermines their utility significantly; this has a direct impact on public safety and national security. Revealing the details of investigative priorities and techniques, including specifics about coordination with other agencies, provides a roadmap for bad actors intent on harming the United States and its interests. Releasing the details of investigations or initiatives, open or closed, can lead to significant harms. Open investigations or initiatives may be thwarted if a bad actor is able to determine that he or she is the subject of the investigation and takes steps to conceal his or her activities. Release of information

about closed investigations and retired initiatives can provide valuable insights into investigative techniques and priorities. This directly threatens future investigations and initiatives. Discussions about changing the ways federal agencies coordinate on different types of investigations not only reveal the mechanics of current and past investigations, but strongly suggest which investigatory methods work and which do not. Similarly, descriptions of new programs could assist bad actors in evading law enforcement.

10. As discussed in detail in the declarations described in Paragraph 5, and particularly in my declarations of March 7, 2019, and April 26, 2019, the release of database printouts poses a very real threat to the integrity of law enforcement techniques and investigations. The fields visible in such printouts indicate what type of information is stored in which system(s), which could lead a “hacker” to focus his or her efforts on specific system(s). Checklists not yet filled out present the same lists of systems that completed checklists do, revealing steps taken in the course of some types of investigations.

11. The release of information tying particular field offices to specific investigations could increase the risk that ICE personnel in those offices would become targets of harassing or coercive inquiries for unauthorized access to information pertaining to ongoing and closed investigations, thereby compromising ICE’s law enforcement operations. In my declaration of March 7, 2019, I discussed in detail the threats posed to ICE personnel.

**CERTIFIED ADMINISTRATIVE RECORD DUPLICATES**

12. I understand that Plaintiffs’ January 9, 2020 Motion to Compel also challenges privilege assertions over information in the Certified Administrative Record (CAR) provided to Plaintiffs in this case. In addition to the documents described in Paragraph 6, ICE was provided with duplicates, or near duplicates, of CAR documents identified as having ICE



equities, specifically the documents that begin with Bates numbers (Bates): Bates DEF-00003593, Bates DEF-00095009, and Bates DEF-00116759. Like the documents described in Paragraph 6, these documents contain law enforcement sensitive material substantively similar to law enforcement sensitive material over which ICE asserted the law enforcement privilege in this case in the declarations described in Paragraph 5. As discussed in those declarations, and as further set forth in this declaration, release of these materials could harm ongoing investigations, including those unrelated to the actions of anyone with interest in this lawsuit. The documents at issue further contain information not belonging to ICE that could impact ICE equities, including current or former investigations.

13. This declaration is therefore submitted to continue to assert the Law Enforcement Privilege over selected categories of law enforcement sensitive information owned by or originating from ICE in the documents at issue. This declaration is based on my personal knowledge, my personal review and appraisal of the claims of Law Enforcement Privilege previously asserted, and the factual background of the case, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and responsibilities. I have personally reviewed the documents described in Paragraph 12 and determined that disclosure to Plaintiffs or their counsel of the privileged information therein poses an undue risk of harm to investigations, as well as the general nature of HSI law enforcement techniques and procedures; this, in turn, would directly impact public safety and national security. As set forth in this and previous declarations, revealing such sensitive information, the techniques and procedures involved in acquiring such information, and the combination

thereof could undermine the efforts of HSI to carry out its mission of identifying and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation, infrastructure security, and national security.

14. The documents described in Paragraph 12 contain types information that are the same as, or substantively similar to, the information in the A files discussed in declarations described in Paragraph 5, including details about information sharing between and among HSI agents and individuals in other DHS components and federal agencies, such as the methods of communication used to share such information; what factors justify the referral of a case to HSI and the mechanics for working with ICE on priority cases; descriptions of how HSI special agents proceed from one stage of an investigation to the next; information about current and concluded law enforcement initiatives; and contact information for ICE personnel, as well as instructions for locating the contact information of other personnel.
15. As discussed in the declarations described in Paragraph 5, as well as in Paragraph 9 above, disclosure of the mechanics of investigations – whether open or closed, real or fact-based hypotheticals developed to train new personnel – reveals crucial information about the means and methods by which ICE and its partners carry out investigations. Such information provides valuable insights into investigative techniques that can aid bad actors in avoiding detection by law enforcement agencies. Similarly, understanding what triggers an HSI investigation and how such investigations proceed increases the likelihood that bad actors would be able to evade detection, making special effort to hide the indicators that they are engaged in nefarious activity. This would allow plots to

evolve more fully – perhaps even to the point of completion – prior to discovery by law enforcement.

16. As discussed in Paragraph 11 above, release of information that would allow members of the public to contact individual ICE employees could increase the risk that those employees would become targets of harassing or coercive inquiries for unauthorized access to information pertaining to ongoing and closed investigations, thereby compromising ICE's law enforcement operations. The release of these types of information poses significant risks to the effectiveness of current, former, and future investigations and to the physical safety of ICE officers and special agents.

#### **FORM OF INFORMATION**

17. The documents described in Paragraphs 6 and 12 contain some types of information that may be different in form from those described in the declarations referenced in Paragraph 5 – such as training handbooks belonging to other agencies within DHS – but that may contain the same or similar information. Release would therefore pose the same risks discussed in the declarations described in Paragraph 5, allowing bad actors to circumvent HSI's efforts to collect information and evidence to thwart serious violations that may affect public safety and national security.

#### **INFORMATION SHARING**

18. Interagency cooperation is a cornerstone in federal law enforcement, particularly in matters of national security. The types of information in the documents described in Paragraphs 6 and 12 often describes processes that occur as a result of law enforcement information sharing. Release of this information poses a significant threat to interagency collaboration, which is essential to protecting national security. This threat is detailed in


the declarations described in Paragraph 5. Releasing details about information sharing between and among agencies could diminish the effectiveness of law enforcement sensitive sources, methods, and techniques by inhibiting the current willingness – and even creating a disincentive – to share information between and among federal agencies, such that interagency information sharing could revert to a level reminiscent of that that existed prior to the attacks of September 11, 2001. That tragedy demonstrated that “need to know” had to give way to “need to share.” This new model resulted in successes in both national security and criminal investigations. The real-time information sharing permitted by this model has allowed front-line agents and officers to make informed decisions at critical junctures. When agencies and departments work in isolation, such achievements simply are not possible.

### CONCLUSION

19. Release of the information described in Paragraphs 6 and 12 poses a significant threat to interagency collaboration, which is essential to protecting national security. This threat is detailed in the declarations described in Paragraph 5, and while the documents at issue here may differ in substance and/or form from the documents discussed in prior declarations, the harm related to the release of this information is just as real and present as previously asserted. Any degradation of information-sharing relationships could lead to poor coordination of investigative efforts, potentially harming public safety and national security. It is therefore essential that this information remain protected by the law enforcement privilege.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C., this 31<sup>st</sup> day of January 2020.



Matthew C. Allen  
Acting Deputy Executive Associate Director  
Office of Homeland Security Investigations  
U.S. Immigration and Customs Enforcement

# **EXHIBIT F-1**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, et al.

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

Plaintiffs,

Honorable Richard A. Jones

v.

TRUMP, et al.,

Defendants

**DECLARATION OF TATUM KING IN SUPPORT OF DEFENDANTS' MOTION  
FOR PROTECTIVE ORDER**

I, Tatum King, state as follows:

1. I am the Assistant Director, Domestic Operations, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, ICE was created from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). As a result, all Special Agents who formerly worked for the USCS and the INS became a part of ICE. ICE is the second largest investigative agency in the Federal Government. Within ICE, HSI has approximately 8,260 employees, including over 6,100 Special Agents assigned to twenty-six (26) Special Agent-in-Charge (SAC) offices in cities throughout the United States and in countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity, which in addition to investigating violations of the country's immigration laws, includes the investigation of contraband and merchandise smuggling, fraud in both import and export transactions, criminal

DECLARATION OF TATUM KING - 1  
(2:17-cv-00094-RAJ)

UNITED STATES DEPARTMENT OF JUSTICE  
Civil Division, Office of Immigration Litigation  
District Court Section  
Ben Franklin Station, P.O. Box 868  
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finance and money laundering, alien smuggling and human trafficking, cybercrimes, and infringements upon intellectual property rights. ICE's mission is to uphold public safety and protect the United States. ICE has important roles in securing the nation's borders, ensuring economic, transportation, and infrastructure security, and preventing terrorist attacks by investigating and interdicting the people, money, and materials that support terrorist and criminal activity.

2. As the Assistant Director of HSI's Domestic Operations, I provide oversight and support to all HSI domestic field personnel, including 26 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle transnational criminal and terrorist organizations that threaten the security of the United States.

3. As ICE is the investigative arm of DHS, HSI may share sensitive law enforcement information with other agencies in furtherance of homeland security. The information can include investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety concerns. United States Citizenship and Immigration Services (USCIS) is one of the DHS Agencies to which HSI provides derogatory and investigative information. The individuals that are the subject of the information may have applications for relief or benefits pending before USCIS.

4. Based upon my understanding of the type of information ordered to be released in this case, I believe that release of the information would effectively reveal sensitive law enforcement information, in addition to revealing the general nature of HSI law enforcement



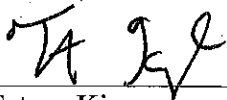
techniques and procedures, and would impact national security. Revealing such sensitive information could undermine the efforts of HSI to carry out its mission of identifying and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation and infrastructure security, and national security.

5. Given the nature of USCIS's Controlled Application Review and Resolution Program (CARRP), as described in the declaration from James W. McCament, the then-Acting Director, and now Deputy Director, USCIS, disclosure of the names of individuals in USCIS's CARRP program may reveal to those individuals that they are the subject of government inquiry and investigations. The disclosure to individuals (i) that they are the subjects of ongoing investigations and (ii) the general nature of the investigations could compromise existing investigations and endanger the lives or safety of participating law enforcement personnel by revealing the existence of such investigations. It is a critical investigative technique not to reveal to persons that they are the subjects of law enforcement investigations. Subjects who are told of on-going investigations may alter their habits and/or appearances, may alert their compatriots and co-conspirators, may go into hiding, may destroy evidence, or may anticipate the activities of federal agents and thereby put the agents, their investigations or members of the public at risk. Even if the individuals who were the subjects of the investigations were law-abiding themselves, disclosing that they were of investigative interest could alert their business associates who are involved in illegal activities that federal agencies, may have investigated individuals with whom they (the business associates) have had contact. ICE therefore can neither confirm nor deny whether any of the individuals' names provided under the Order are now or ever have been a subject of investigative interest.

6. Release of this information beyond the attorneys for the plaintiffs, could place in jeopardy the national security, as a result of disruptions to the agency's law enforcement efforts. Moreover, even the inadvertent disclosure of information to either the plaintiffs or the general public creates the risk of compromising investigative techniques, methods, and thus national security. Without directing any aspersions toward the integrity of plaintiffs or the general public, this agency simply cannot afford even a slight risk that the individuals most closely involved with this case could lose possession or control of the documents or otherwise compromise their security, leading to improper and unauthorized use of the information. This risk of disruption and serious injury to ongoing and future investigations and serious injury to the results of prior investigations that would be caused by even inadvertent release of ICE's use of these investigative techniques and methods is unacceptable to ICE for the reasons stated above.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of March, 2018.



Tatum King  
Assistant Director, Domestic Operations  
Homeland Security Investigations  
U.S. Immigration and Customs Enforcement  
500 12 St. SW, Washington, DC 20536

# **EXHIBIT F-2**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

_____	)	
ABDIQAFAR WAGAFE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:17-cv-00094-RAJ
	)	
DONALD TRUMP, President of the United	)	
States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF TATUM KING**

I, Tatum King, hereby state as follows:

1. I am the Assistant Director, Domestic Operations, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, ICE was created from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). As a result, all Special Agents who formerly worked for the USCS and the INS became a part of ICE. ICE is the second largest investigative agency in the Federal Government. Within ICE, HSI has approximately 8,260 employees, including over 6,100 Special Agents assigned to twenty-six (26) Special Agent-in-Charge (SAC) offices in cities throughout the United States and in countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity relating to illicit trade, travel, and finance, which in addition to investigating violations of the country's immigration

laws, includes the investigation of contraband and merchandise smuggling, money laundering, fraud in both import and export transactions, and other criminal activity.

2. As the Assistant Director of HSI's Domestic Operations, I provide oversight and support to all HSI domestic field personnel, including 26 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle terrorist and other transnational criminal organizations that threaten the security of the United States.
3. As ICE is the largest investigative arm of DHS, HSI may share sensitive law enforcement information with other agencies in furtherance of homeland security. The information can include investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety concerns. ICE's mission strongly depends on the use of sensitive law enforcement and investigative techniques and methods which are not widely known to the public. The disclosure of these techniques and methods would seriously compromise ICE's ability to perform its mission to enforce the law.
4. This declaration is based on my personal knowledge, my personal review and appraisal of the claims of law enforcement privilege hereby asserted and the factual background of the case, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and responsibilities.
5. I have personally reviewed the ICE records and information that were included in the A-files produced in this case. I am making this Declaration for the purpose of asserting the law enforcement privilege with respect to that information. For the reasons set forth below, I

have determined that the disclosure of this information would be contrary to the public interest, because it would reveal ICE's confidential law enforcement techniques, methods and procedures, as further discussed below.

The documents at issue fall into the following categories:

- a. Database printouts including printouts from the Treasury Enforcement Communications Systems (TECS), the Advance Visual Abstracted Links and Name Collection Handler Engine (AVALANCHE), and the Student and Exchange Visitor Information System (SEVIS) databases; and
  - b. Emails between USCIS employees and HSI agents.
6. Based upon my personal review of the documents described above, I am formally asserting the law enforcement and deliberative process privileges over the above-referenced information. In support of this assertion I make the following statements.

7. The release of these unredacted and withheld documents described above would effectively reveal sensitive and privileged law enforcement information, in addition to revealing the general nature of ICE law enforcement techniques, procedures, and guidelines. Revealing such sensitive and privileged information could undermine the efforts of ICE to carry out its mission of identifying criminal activities and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation and infrastructure security. The release of this information could also reveal the pre-decisional decision-making process potentially resulting in a hinderance of candid discussions between federal agencies.

#### **Database Printouts**

8. Disclosure of the details in ICE databases could further enable any subject of investigation to evade investigations by disclosing the types of information ICE is interested in when the agency undertakes specific types of investigations. Disclosure of such information increases the likelihood that subjects and potential subjects of such investigations will develop methods

to obscure or alter such information and thereby circumvent the agency's efforts to collect information and evidence to thwart serious violations that may affect the national security.

9. The documents at issue are from the following databases: TECS, AVALANCHE, and SEVIS. TECS is an inter-agency database that ICE used in the course of conducting its investigations. The capabilities and functions of TECS among law enforcement officials are not generally known to members of the public. They are routinely withheld from public disclosure to protect the integrity of the data and the privileged law enforcement information that TECS contain. In addition to ICE, TECS is used by more than 40 federal law enforcement agencies, including the FBI and the Secret Service. In turn, TECS interfaces with many of the databases belonging to these federal law enforcement agencies. Information from other federal law enforcement databases were communicated to ICE law enforcement officials through TECS. AVALANCHE, an ICE system no longer in operation, provided users the capability to rapidly search across multiple databases. AVALANCHE previously searched 15 databases consisting of approximately 50 million indexed names, vehicles and addresses. AVALANCHE allowed searching by multiple fields including name, social security number, Fingerprint Identification Numbering System (FINS), Alien File Number, and date of birth. SEVIS is a critical tool in the Student and Exchange Visitor Program's mission to protect national security while supporting the legal entry of more than one million international students (F and M visa holders) and exchange visitors (J visa holders) into the United States.
10. The following types of codes appear in TECS, AVALANCHE, and SEVIS records: case/file numbers, report numbers, class numbers, source symbol numbers, case program codes, access codes, classification codes, identification numbers, investigative distribution codes,

computer function commands and other administrative codes. Some of the codes serve a dual purpose. Aside from the purposes of indexing, storing, locating, retrieving and distributing information, these codes also indicate various aspects of the investigative case, such as: the type and location of the case; whether or not the subject should undergo close inspection; and the distribution of information relating to the case, which would indicate the scope and relative size of the investigation in terms of agency resources, types of activity being investigated and location of investigative efforts. Release of these codes, along with computer function commands, could assist third parties in deciphering the meanings of the codes, which could potentially impede ongoing investigations as well as pose a danger to ICE personnel. This information was also redacted to reduce the possibility that someone would improperly gain access to any of these databases (i.e., a “hacker”) and would be able to navigate the systems that housed ICE investigative records.

11. These records also contain remarks and information which would reveal law enforcement strategies and investigation techniques. As noted above, release of this information increases the likelihood that subjects and potential subjects of such investigations will develop methods to obscure or alter such information and thereby circumvent the agency’s efforts to collect information and evidence to thwart serious violations that may affect the national security.

#### E-Mails

12. E-mail communications by and between USCIS employees and ICE agents include details of the agents’ investigative efforts. Disclosure of this information could reveal investigative techniques and procedures, as well as reveal names of individuals who were, and possibly still are, subjects of investigations. Furthermore, disclosure may inhibit the candid discussion of pre-decisional matters between agencies and/or components. Protections over



these communications is needed to promote the free flow of information, needed to make well-informed determinations.

13. Special Agents handle a myriad of tasks relating to official investigations into the criminal activities of third-parties. The agents were, and are, in positions of access to information regarding official law enforcement investigations and immigration proceedings. If their identities are released, including individual telephone numbers and addresses, they could become targets of harassing or coercive inquiries for unauthorized access to information pertaining to ongoing and closed investigations, thereby compromising ICE's law enforcement operations. Additionally, such disclosure could compromise the safety of these officials.

**Insufficiency of a protective order**

14. A protective order allowing ICE to reveal this information in this litigation is not acceptable. The safety of ICE agents involved in ICE's investigations and the national security could be placed in jeopardy as a result of disruptions to the agency's law enforcement efforts. Moreover, even the inadvertent disclosure of information by the plaintiff creates the risk of compromising investigative techniques, methods, and thus investigations. The plaintiff and his attorneys may not have the knowledge of law enforcement and investigative processes, techniques, and methods, to enable them to understand and identify the sensitive nature of the information claimed herein as protected by the law enforcement privilege. Without directing any aspersions toward the integrity of plaintiffs' attorneys, this agency simply cannot afford even a slight risk that the attorneys most closely involved with this case could lose possession or control of the documents or otherwise compromise their security, leading to improper and unauthorized use of the information. This risk of disruption and serious injury

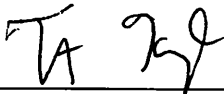
to ongoing and future investigations and serious injury to the results of prior investigations that would be caused by even inadvertent release of ICE's use of these investigative techniques and methods is unacceptable to ICE for the reasons stated above.

**Conclusion**

15. The disclosure of the information discussed herein would allow potential violators to discover or circumvent ICE investigative techniques, and endanger HSI operations and employees. Specifically, the disclosure of these techniques would enable potential violators to evade HSI investigations and law enforcement activities, thus compromising the safety of HSI agents and the public. The disclosure of this information would also jeopardize the overall effectiveness of ICE and third-party investigations.
16. Therefore, I respectfully assert the law enforcement privilege with respect to this information, for the reasons set forth above.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

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



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Tatum King  
Assistant Director, Domestic Operations  
Office of Homeland Security Investigations  
U.S. Immigration and Customs Enforcement

# **EXHIBIT F-3**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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ABDIQAFAR WAGAFE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:17-cv-00094-RAJ
	)	
DONALD TRUMP, President of the United	)	
States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF TATUM KING**

I, Tatum King, hereby state as follows:

1. I am the Assistant Director, Domestic Operations, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, ICE was created from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). As a result, all Special Agents who formerly worked for the USCS and the INS became a part of ICE. ICE is the second largest investigative agency in the Federal Government. Within ICE, HSI has approximately 8,260 employees, including over 6,100 Special Agents assigned to twenty-six (26) Special Agent-in-Charge (SAC) offices in cities throughout the United States and in countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity relating to illicit trade, travel, and finance, which in addition to investigating violations of the

country's immigration laws, includes the investigation of contraband and merchandise smuggling, money laundering, fraud in both import and export transactions, and other criminal activity.

2. As the Assistant Director of HSI's Domestic Operations, I provide oversight and support to all HSI domestic field personnel, including 26 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle terrorist and other transnational criminal organizations that threaten the security of the United States.
3. As ICE is the largest investigative arm of DHS, HSI may share sensitive law enforcement information with other agencies in furtherance of homeland security. The information can include investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety concerns. ICE's mission strongly depends on the use of sensitive law enforcement and investigative techniques and methods which are not widely known to the public. The disclosure of these techniques and methods would seriously compromise ICE's ability to perform its mission to enforce the law. Notably, such information can come from a variety of sources, including confidential informants, concerned citizens, and companies who report a suspicious purchase or request. Disclosure of the sources of that information could chill the willingness to assist HSI in its investigations and put those sources at risk.
4. This declaration is based on my personal knowledge, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and

responsibilities. I have also reviewed the April 11, 2018 court Order and have been briefed on the issues relating to class list disclosure.

5. In my review of the relevant information for this declaration, HSI compared the list USCIS provided of applicants subject to the Controlled Application Review and Resolution Program (CARRP) to HSI's records to identify HSI investigations. HSI reviewed the case files to identify the types of cases represented by the list of unnamed class members, the investigative techniques used, the sources of that information, the partners in the investigations, and the tangible risks to HSI's investigations, sources, techniques, and methods.
6. The purpose of this Declaration is to explain ICE's role in national security investigations and to explain how the April 11, 2018 court Order provides an unworkable mandate to produce sensitive investigatory records that would create a significant harm if the class list is disclosed.
7. For the reasons set forth below, I have determined that the release of this information would be contrary to the public interest, because it would reveal ICE's confidential law enforcement techniques, methods and procedures, thus compromising ongoing national security and public safety investigations as further discussed below.

**Homeland Security Investigations (HSI)**

8. ICE is the largest investigative arm of DHS and, within ICE, HSI carries out investigations under the authority vested to DHS. HSI uses its legal authority to combat criminal actors and organizations illegally exploiting America's travel, trade, financial, and immigration systems.
9. HSI also serves a crucial role in protecting the country's national security interests by working with domestic and foreign partner agencies, special agents, and program analysts to

employ a broad range of investigative techniques to identify, investigate, and disrupt national security threats against the United States.

10. To conduct such investigations and to support other agencies in operating their programs in the interest of homeland security, HSI may share sensitive law enforcement information with other agencies. Information shared includes details concerning investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety concerns.
11. U.S. Citizenship and Immigration Services (USCIS) is one of the DHS components to which HSI provides derogatory or investigative information.

**HSI and CARRP**

12. After review of the declaration submitted by Mr. Matthew Emrich, USCIS Associate Director, Fraud Detection and National Security Directorate (Exhibit A of Defendant's Motion for Limited Protective Order, filed March 1, 2018), I understand that the CARRP is a "consistent USCIS-wide approach to identify, process, and adjudicate applications and petitions for immigration benefits that involve national security concerns."
13. Based on my position and experience, my review of Mr. Emrich's declaration, I understand that USCIS references databases of existing government information when reviewing applications and petitions for immigration benefits to determine whether derogatory information exists on the applicant. These systems checks may or may not reveal an association with an ongoing national security investigation. In the event the systems checks return records, USCIS will contact the owner of the records for the context and details of the records. HSI will receive such inquiries on relevant HSI investigatory records. If the records implicate a national security concern, it is my understanding that USCIS will employ the

CARRP process on the individual. Additionally, HSI can notify USCIS of a national security concern pertaining to an individual who has a pending application with USCIS.

Accordingly, the basis for an individual's CARRP designation may or may not be the same basis as the HSI investigation.

**Effects of Class List Disclosure**

14. Based upon my personal knowledge of the case and the court's Order on the Plaintiff's Motion to Compel, I am formally asserting that the release of the unredacted class list if disclosed will directly harm the ability of HSI to identify, disrupt, and dismantle threats to national security and public safety. Given the stated intent of the Plaintiffs to contact and reveal the unnamed class members, HSI cannot rely on the attorneys to not disclose the information provided to protect the safety of the sources and HSI special agents. In that regard, no sanction, reprimand, or recourse after the fact against the attorneys would mitigate the substantial harm explained below. Further, based on Plaintiffs' previous statements, HSI cannot wait until confirmation that the information was disclosed beyond the attorneys to take precautionary steps to protect the agents and sources.
15. Producing the list of unnamed class members under Attorneys' Eyes-Only protection ordered by the court will not suffice to protect, in cases where HSI has equities, HSI's sources of information, the public at large, or the HSI investigations, because segregating individuals whose disclosure will lead to potential national security and public safety risks from the broader class list, will, in fact, confirm the identities of those individuals of concern to HSI who are national security concerns from those who are not. Further, the Order's requirement that the government include detailed explanations for Attorneys' Eyes-Only, and to maintain



that protection, compounds HSI's initial concerns by requiring a level of specificity that reveals precisely the information that needs to be protected from disclosure.

16. Specifically, I attest that release of the names of the class members will have a detrimental impact on HSI investigations, for the reasons provided below, and the inclusion of details about those investigations, with enough specificity to satisfy the Order, would exacerbate the risks and harms to HSI's investigations, the sources involved, and the unnamed class members and their families. While providing the names alone would inform the subjects and associates about an investigation, the addition of details about the investigations would expose the sources, techniques, and methods of each investigations, creating a greater risk to the sources and agents.
17. The release of the unredacted class list would reveal sensitive and privileged law enforcement information, in addition to exposing the general nature of ICE law enforcement techniques, procedures, and guidelines. Based on my training and experience in law enforcement actions, I know of investigations where the subject of an investigation was informed of an investigation and subsequently the following consequences occurred:
  - **Physical harm to sources:** These include sources whose identity is compromised by disclosure, including community members who voluntarily speak with government investigators but likely do not anticipate public disclosure. Sources are at risk of exposure because they could be recent acquaintances of the subject or one of a small set of people privy to the information which led to the investigation. A subject who learns he or she is under investigation might easily glean the source of the information to law enforcement based on the context or type of information guiding the investigation. Also, the source of information may include a concerned company that informed law enforcement of a suspicious purchase or shipment. To reveal an investigation that would implicate such a company could put them in economic and legal jeopardy. The revelation might also include HSI confidential informants. Their safety and cooperation is highly dependent upon their confidentiality. The release of information pertaining to their identities may lead to their safety being compromised by individuals who may be involved in unlawful activities.

- **Physical harm to unnamed class members:** The harm to class members is more direct than to sources, but share similar characteristics. The names of individuals on the class list which are revealed could be in danger from coconspirators and rivals. The unnamed class members and their families could become the target of retribution, if it is known that they are under investigation by the government.
- **Physical harm to law enforcement agents:** When the subject of an investigation or his or her associates becomes aware of the investigation, it puts the investigating agents at serious physical risk. Individuals may attempt to subvert the investigation or target the investigators. Notably, some investigators are operating under cover. The exposure of an undercover agent would put that agent at great risk of harm and potentially compromise the integrity of every undercover investigation that he or she is conducting, regardless of whether the targets of those investigations come under CARRP.
- **Damage to ongoing national security investigations:** By releasing the names of potential subjects of ongoing investigations, subjects may alter their behavior to avoid surveillance and detection. Ongoing investigations may also be compromised by a lack of cooperation by the sources and informants. This may also lead to a lack of cooperation from sources in new investigations, which will have a chilling effect on the use of sources. HSI will then be unable to place new sources or undercover investigators close to the subject of the investigation, because a knowing subject will be inherently distrustful of new individuals around their conspiracy. Further, individuals associated with the unnamed class members may also be made aware that they are under investigation by the government, based on affiliation with the unnamed class members in an illegal conspiracy. Lastly, a vulnerable subject, who is made known, may be excluded from an on-going conspiracy, which will eliminate HSI's exposure to the conspiracy and allow the conspiracy to continue unfettered.
- **Reduced cooperation from other law enforcement agencies and foreign partners:** HSI receives highly sensitive and confidential information from intelligence or other agency sources. Disclosure of such information could be compromised, which may dissuade partner law enforcement from sharing with HSI in the future.
- **Privacy:** Individuals who may be incidentally named as part of an investigation may be exposed. Also, the list HSI has reviewed includes a list of individuals currently under investigation. The inherent purpose of investigations is to determine the presence of illegal actions by the subject or active threat to national security. Naturally, some investigations, based on source information, will not reveal any illegality or threat on behalf of the subject. Investigations such as those are closed without prosecution or administrative action. Revealing the list of individuals with the assumption that all unnamed class members have conclusively been found to have committed illegal acts or are a threat concerning national security would be an inappropriate conclusion, in some instances, which could have repercussions to their employment and other aspects of their lives.

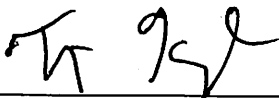
- **Danger to Communities:** The bad actors who are aware of active governmental interest in them may adjust the timeframe for their criminal/terrorist activities. This may hinder law enforcement's ability to stop criminal activity because the individual knows they are under government scrutiny and would change their habits, activities, and communications methods.

**Conclusion**

18. The disclosure of the information discussed herein would allow potential violators to discover or circumvent ICE investigative techniques, and endanger HSI operations, employees, the public, and the class members themselves and their families. Specifically, the disclosure of these class names may lead to individuals targeted by or involved in investigations to be revealed and exposed. This would enable potential violators to evade HSI investigations and law enforcement activities, thus compromising the safety of HSI agents and the public. The disclosure of this information would also jeopardize the overall effectiveness of ICE and third-party investigations.
19. Accordingly, I respectfully reiterate the grave consequences for submitting any portion of the information included in the class list, for the reasons set forth above.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C., this 20th day of April, 2018.



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Tatum King  
Assistant Director, Domestic Operations  
Office of Homeland Security Investigations  
U.S. Immigration and Customs Enforcement

# **EXHIBIT F-4**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*

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

Plaintiffs,

Honorable Richard A. Jones

v.

TRUMP, *et al.*,

Defendants

**Declaration of Matthew C. Allen**

I, Matthew C. Allen, state as follows:

**INTRODUCTION**

1. I am the Assistant Director (AD), Domestic Operations, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, DHS was created from some twenty-two different federal agencies. This was done in part to facilitate and enhance the sharing of information across agencies that held similar or related mandates. ICE was created in 2003 from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). Following ICE's creation, all Special Agents who formerly worked for the USCS and the INS became part of ICE. ICE is the second-largest investigative agency in the Federal Government. Within ICE, HSI has approximately 8,260 employees, including more than 6,100 Special Agents assigned to thirty (30) Special Agent-in-Charge (SAC) offices in

cities throughout the United States and countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity, including: the investigation of contraband and merchandise smuggling; illicit trade, travel, and finance; money laundering; fraud in both import and export transactions; and other criminal activity. HSI also has significant administrative authority over immigration and customs matters, which it exercises in conjunction with its criminal authorities.

2. I joined the USCS as an Intelligence Research Specialist (intelligence analyst) in 1986 after graduating from college and completing an agency cooperative education program. As an intelligence analyst, I received training on conducting research, critical thinking, analysis, reporting, and the structure and functions of the U.S. intelligence community. My primary area of work as an analyst was national security, in particular export enforcement. While I was an intelligence analyst, I attended one year of graduate school at Georgetown University, studying in their National Security Studies Program. I was selected to be a USCS Special Agent in 1989 and joined ICE when this agency was created in 2003. Following training to become a Special Agent, I continued to work in the national security area, conducting investigations into export enforcement violations for approximately one year. I have served HSI in a variety of roles, from Special Agent to several different leadership roles in the field and at Headquarters. I held multiple positions at ICE Headquarters from 2004 to 2008, including as Deputy Assistant Director (DAD) of the Financial, Narcotics, and Public Safety Division. In this position, I had oversight of HSI's Financial, Drug, Human Rights Violations and Public Safety (gang) programs. I also served as the DAD of the Critical Infrastructure and Fraud Division,

where I had oversight of ICE's human smuggling and trafficking portfolio, worksite enforcement, commercial fraud, intellectual property rights, and immigration document and benefit fraud programs within HSI. From August 2008 until June 2016, I served as the HSI Special Agent in Charge in Arizona. There, I had oversight of the full spectrum of ICE investigative activities in Arizona and led more than 500 personnel assigned to offices in Phoenix, Tucson, Douglas, Nogales, Sells, Casa Grande, Yuma, and Flagstaff. From June 2016 until June 2018, I served as the AD for HSI Investigative Programs, where I was responsible for programmatic oversight of HSI's strategic planning, national policy implementation, and the development and execution of operational initiatives. I hold an undergraduate degree in Criminal Justice from the John Jay College of Criminal Justice in New York, New York. In 2003, I completed the Columbia Business School's Executive Development Program as part of the USCS Leadership Development Program.

3. In June 2018, I was reassigned to serve as AD of HSI's Domestic Operations. As such, I am responsible for managing, directing, coordinating, and supporting all investigative activities of ICE HSI domestic field offices, including 30 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation, and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle terrorist and other transnational criminal organizations that threaten the security of the United States and immigration and customs violators who threaten public safety. I also oversee all major ICE HSI enforcement initiatives and the de-confliction of operations for and among ICE HSI field offices and other agencies. I

am therefore well positioned to discuss the broad range of HSI's work, including its cooperation with other agencies.

4. Through the exercise of my official duties, I have been briefed on the civil action *Wagafe v. Trump, et al.*, pending in the United States District Court for the Western District of Washington, Case No.: 2:17-cv-00094-RAJ. I understand the matter is proceeding in discovery, and that Plaintiffs have served document requests on the Defendants. The Defendants have responded to the document requests, including by producing redacted versions of the named Plaintiffs' A-files, and asserted objections over privileged and classified information and documents where appropriate. ICE is not a Defendant in this lawsuit; however, as set forth in this declaration, ICE's equities would be harmed by the release of such information. USCIS provided ICE with selected information from each of the named Plaintiffs' A-files for our review. The named Plaintiffs' A-files contain significant amounts of law enforcement sensitive material over which ICE has asserted, and continues to assert, Law Enforcement Privilege. The named Plaintiffs' A-files further contain information, not belonging to ICE, that could impact ICE equities, including current or former investigations. While only the named Plaintiffs' A-files have been produced at this time, I understand that additional documents pertaining to the named Plaintiffs are still being reviewed. If such documents contain ICE information, ICE would review those documents and would assert any applicable privileges at the appropriate time. As further set forth in this declaration, release of these materials could harm ongoing investigations, including those unrelated to the actions of anyone with interest in this lawsuit. Indeed, as explained further below, it could harm ICE



investigations across the U.S. Government because of the risk that it could impede information-sharing, among other harms.

5. This declaration is therefore submitted to support ICE's continuing assertion of Law Enforcement Privilege, first asserted by then-AD for Domestic Operations Tatum King on April 9, 2018, over law enforcement sensitive information owned by or originating from ICE contained in the A-files pertaining to the five named Plaintiffs in *Wagafe*. This declaration is based on my personal knowledge, my personal review and appraisal of the claims of Law Enforcement Privilege previously asserted, and the factual background of the case, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and responsibilities. I have personally reviewed the ICE records and information that were included in the A-files of the five named Plaintiffs that were produced in this case. I have determined that disclosure of the privileged information that was redacted from the A-files produced to Plaintiffs' counsel poses an undue risk of harm to individual investigations, as well as the general nature of HSI law enforcement techniques and procedures; this, in turn, would directly impact public safety and national security. As set forth below in this declaration, revealing such sensitive information, the techniques and procedures involved in acquiring such information, and the combination thereof could undermine the efforts of HSI to carry out its mission of identifying and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation, infrastructure security, and national security. This declaration will address the nature of HSI's operations and the harms to existing and future investigations that could follow the release of this information. It will

also address the prospective harm posed to ICE personnel by the release of information contained in the named Plaintiffs' A-files.

### **HSI OPERATIONS**

6. HSI, the largest investigative arm of DHS, holds broad criminal and administrative investigative authorities, which it employs to disrupt national security and transnational criminal threats to the United States. HSI is authorized to conduct, and does conduct, both criminal and administrative investigations into national security and public safety threats related to immigration and transnational crime. In many cases, the final disposition of an investigation depends on the evidence gathered; it can be impossible to know in the early stages whether the ultimate result will be criminal prosecution, administrative proceedings, both, or neither. If the investigation reveals criminal activity that may be prosecuted under United States law, HSI works with the relevant United States Attorney's Office, as well as any other participating Federal agency, to prosecute the subject or subjects of the investigation. In some investigations, HSI may present evidence to state, local, or tribal prosecutors for charges in their jurisdictions. Common charges include naturalization fraud, visa fraud, and aggravated identity theft. If administrative proceedings are more appropriate – either because the evidence does not indicate criminal wrongdoing or because evidence necessary to criminal prosecution is classified, or its use otherwise restricted – HSI uses administrative processes to seek removal of an individual from the United States. An investigation may also result in evidence that indicates neither criminal nor administrative proceedings are appropriate at that time.

7. HSI also represents ICE on the Federal Bureau of Investigation-led national Joint Terrorism Task Force (JTTF), as well as local JTTFs nationwide, and therefore plays a critical role in national security operations throughout the country. Often, national security cases follow the approach outlined above, using a combination of criminal and administrative authority. However, in some cases, a national security or public safety threat will develop rapidly, making it necessary to act to prevent or disrupt the threatened harm before criminal charges can be developed. In those instances, HSI works with partner agencies to identify places to disrupt the dangerous behavior using its administrative authorities. This cooperative technique has resulted in the prevention of serious crimes and threats to national security.
8. Since the terrorist attacks of September 11, 2001, and the creation of DHS and ICE in 2003, many federal agencies' information sharing culture has evolved from one centered on the principle of "need to know" to one that fosters a principle of "need to share," which recognizes that protecting our nation requires the cooperation and sharing of information among a network of agencies that work on national security and transnational crime issues. HSI is no exception. In developing cases to protect public safety and safeguard national security, HSI routinely shares sensitive law enforcement information with other components of DHS, as well as with Federal, state, local, and tribal law enforcement agencies. The information can include specific details about investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety implications. Although sometimes transmitted in person, a great deal of critical law enforcement information is shared through integrated government databases, including

those discussed below. This relationship among law enforcement agencies is reciprocal. ICE, in seeking to carry out its mission, benefits significantly from other agencies' willingness to share information about their own investigations. Without such information from law enforcement partners, HSI Special Agents would be unable to engage in real-time decision-making related to national security, criminal law enforcement, and administrative investigations.

9. In carrying out its mission, ICE depends on the use of sensitive law enforcement and investigative techniques, methods, and procedures not widely known to the public. The disclosure of the law enforcement sensitive information contained in the named Plaintiffs' A-files illustrates some of these techniques. The release of this information to the public would seriously compromise ICE's ability to perform its mission.

#### **CONSEQUENCES OF RELEASE**

10. Disclosure of law enforcement sensitive information could provide those who wish to harm the United States with valuable information about how the U.S. Government detects, investigates, and thwarts criminal and terrorist activity. The redacted information in the named Plaintiffs' A-files may contain internal case handling procedures used during investigations, including sensitive information about investigative processes. This type of information often reveals the methods and techniques used to uncover or elicit information by parties intent on harming the United States. Disclosure of information related to investigative processes, coordination with law enforcement partners, and insight into the types of sensitive information that law enforcement checks may contain could significantly undermine future law enforcement efforts, as further discussed in this declaration. As set forth in this declaration, providing bad actors with the information

they need to evade or otherwise thwart U.S. law enforcement efforts has potentially grave consequences for national security and public safety.

### **Harm to Ongoing or Closed Investigations**

11. The A-files of the named Plaintiffs may contain information related to specific investigations. I have reviewed this information and determined that if the subjects of these investigations were to obtain this investigative information, they could identify the types of information that are of interest to federal law enforcement, the sources of the information, and/or the methods that the U.S. Government used to gather the information. Such knowledge could allow bad actors to change their behavior in order to evade law enforcement. Even the date on which an investigation began provides valuable insight, in that it can alert an individual to an event that may have triggered the interest of law enforcement.
12. Additionally, the existence of an investigation into one individual may reveal investigative interest in other subjects, which could reasonably be expected to alert those individuals that they are of interest to law enforcement. Disclosure of the details of any investigation is particularly dangerous where associates of the individuals are under investigation. If such information were contained in the named Plaintiffs' requested A-files, its release would reveal the existence of open and/or closed investigations, potentially harming investigations that may be ongoing or revealing crucial information about investigations that have already been closed – as even closed investigations can provide valuable insights into investigative techniques that can aid bad actors in avoiding detection by law enforcement agencies. This is not to cast aspersions on the named Plaintiffs. Even if they were to make a deliberate effort not to reveal any information

contained in their A-files, they might very well change the nature or frequency of their interactions with any associates. This could alert those individuals to the existence of investigations, and possibly the methods the government has used to obtain the specific derogatory information.

13. Similarly, the records in an A-file may also indicate when an investigation has reached the conclusion that there is no national security concern. This demonstrates the benefit of a thoroughly documented investigation. Agencies with access to the A-file or the records contained therein are on notice that the subject in question has been investigated and cleared. But it is impossible to share that information with the subject without also providing information that has the potential to harm other ongoing investigations, or to jeopardize the safety of ICE personnel.

#### **Harm to Future Investigations**

14. Revealing the Law Enforcement Privileged material in the named Plaintiffs' A-files has the potential to do harm beyond any investigations indicated therein. The named Plaintiffs' A-files contain printouts from several databases containing ICE data: TECS, the Advance Visual Abstracted Links and Name Collection Handler Engine (AVALANCHE), Student and the Student and Exchange Visitor Information System (SEVIS), ENFORCE, and ENFORCE Alien Removal Module (EARM).
15. TECS, an interagency database that ICE uses in the course of conducting its investigations, is used by more than 40 federal law enforcement agencies, including the FBI and the Secret Service. In turn, TECS interfaces with many of the databases belonging to these federal law enforcement agencies. Information from other federal law enforcement databases is communicated to ICE law enforcement officials through TECS,

which stores that information. The capabilities, functions, and uses of TECS among law enforcement officials are not generally known to members of the public. They are routinely withheld from public disclosure to protect the integrity of the data and the privileged law enforcement information that TECS contain. Data in TECS is also withheld to protect the privacy of subjects of records, as well as third parties mentioned in other subjects' records. AVALANCHE, an ICE system no longer in operation, provided law enforcement personnel with the capability to rapidly search across 15 databases consisting of approximately 50 million indexed names, vehicles, and addresses. It allowed searching by multiple fields including by sensitive personally identifiable information, such as name, social security number, Fingerprint Identification Numbering System (FINS), Alien File Number, and date of birth. SEVIS is a critical tool in the Student and Exchange Visitor Program's mission to protect national security and public safety while supporting the legal admission of more than one million international students (F and M visa holders) and exchange visitors (J visa holders) into the United States. ENFORCE and EARM provide a comprehensive view of a subject's detention and removal status, including information about immigration history and criminal history. They also include biographical, descriptive, biometric, and encounter-based data about subjects, including aliases. This often includes details about their encounters with law enforcement officers, including personally identifiable information about those officers.

16. HSI Special Agents rely on data contained in these databases in the course of their investigations, both criminal and administrative. Most of these databases could indicate whether a subject is under investigation by HSI or another law enforcement agency. TECS records often indicate the reasons for an investigation, such as revocation of a visa



by the Department of State. TECS records can also indicate whether HSI's Counterterrorism and Criminal Exploitation Unit (previously the Compliance and Enforcement Unit) has initiated an investigation based on a revocation. The details of such investigations are law enforcement sensitive.

17. EARM records may indicate, among other things, the reason an individual encountered by immigration officials was deemed inadmissible to the United States or is otherwise of interest to those officials. Among the possible reasons are the grounds of inadmissibility found at INA § 212(a)(3)(B), 8 U.S.C. §§ 1182(a)(3), Security and Related Grounds. These grounds of inadmissibility are highly specific, including types of terrorist activities and the ways in which an individual might engage in them. Because of the specific nature of the grounds of inadmissibility, if an individual is informed of which ground(s) the government seeks to apply to him or her, he or she could become aware of how the government learned of the information. This could mean that the individual would learn details about investigative methods, or even the source of the information, which the individual could then use to thwart or impede the investigation.
18. Learning the specifics of any investigation or series of investigations will allow subjects, or simply interested third parties, to evade such scrutiny by disclosing the types of information ICE is interested in when the agency undertakes specific types of investigations. Individuals who learn that they are being investigated can often deduce the methods the government is using to monitor them, or the sources the government used to uncover their terrorist or criminal activity. Disclosure of such information increases the likelihood that subjects and potential subjects of such investigations will develop and employ methods to obscure or alter such information and thereby circumvent



the agency's efforts to collect information and evidence of serious violations that may affect national security and public safety. The release of seemingly small details, such as the date on which an investigation commenced, or when the subject of the investigation used a particular alias, can also have significant effect by making clear what information had been detected at any given point in an investigation. To release this information, particularly in multiple cases, tends to indicate what will trigger the initiation of such an investigation, as well as the methods and processes used during the investigation. This allows an individual the opportunity to change his or her behavior, jeopardizing the techniques and procedures used during a particular investigation.

19. Even the release of the database codes and record locator numbers contained within the databases could seriously damage law enforcement operations. The following types of codes appear in TECS, AVALANCHE, SEVIS, ENFORCE, and EARM records: case/file numbers, report numbers, class numbers, source symbol numbers, case program codes, access codes, classification codes, identification numbers, investigative distribution codes, computer function commands, and other administrative codes. Some of the codes can serve a dual purpose. Aside from the purposes of indexing, storing, locating, retrieving, and distributing information, these codes also indicate various aspects of the investigative case, such as: the type and location of the case; what unit or type of unit is investigating the case; whether or not the subject should undergo close inspection; what other procedures law enforcement should take upon encountering the subject; and the distribution of information relating to the case, which would indicate the scope and relative size of the investigation in terms of agency resources, types of activity being investigated, and location of investigative efforts. Each of the named Plaintiffs' A-

files could contain multiple records that meet the descriptions above. When reviewed together, the risk is that an individual could extrapolate details about investigations, including the government's understanding of activities at any given time, to include methods of communication, techniques for evading law enforcement detection, and aliases being used.

20. Codes contained within a TECS record may include whether an individual is the subject of a counterterrorism investigation; the focus of that investigation (*e.g.*, financial or otherwise); the location where the investigation originated; the existence of a terrorism-related record in a database owned by another Federal agency, primarily Terrorist Identities Data Mart Environment (TIDE) and Terrorist Screening Database (TSDB); and Watchlist status. The release of multiple TECS records would establish the development of a case over time, specifically, when an individual is added to the TSDB or has a change in Watchlist status. The release of that information would permit a potential subject to reconstruct the sources and methods used to gather information that led to such classification.
21. AVALANCHE may contain codes tied to the admission into the United States of a particular subject. SEVIS contains locator numbers for individual schools and students. EARM may contain various file locations, event numbers, case numbers, and operation indicators. Again, when multiple files are reviewed together, it begins to become clear what various codes, prefixes, and other indicators mean. Additionally, release of these codes, along with computer function commands, could assist third parties in deciphering the meanings of the codes. Release of this information could permit someone (*e.g.*, a

hacker) to improperly gain access, or attempt to gain access, to any of these databases and to navigate the systems that housed ICE investigative records.

22. Access to the various database codes can also provide subjects with an insight into law enforcement techniques. Records contained in the databases discussed in this declaration may contain remarks and information that would reveal law enforcement strategies and investigation techniques. As noted above, release of this information increases the likelihood that subjects and potential subjects of such investigations will develop methods to obscure or alter such information and thereby circumvent HSI's efforts to collect information and evidence to thwart serious violations that may affect public safety and national security.

23. Nor is the information contained in databases the only source of concern. E-mail communications by and between USCIS employees and ICE Special Agents, which also commonly appear in A-files, often include details of the agents' investigative efforts including the priority of specific investigations and the ways that different agencies cooperate to carry out a joint investigation. Disclosure of this information risks revealing both investigative techniques and procedures and the names of individuals who potentially were, and possibly still are, subjects of investigations. Furthermore, disclosure may inhibit the candid discussion and sharing of pre-decisional, law enforcement sensitive information between agencies and/or DHS components. Protections over these communications is needed to promote the free flow of information, which permits law enforcement personnel to make well-informed determinations.

### **Risk to ICE Personnel**

24. Special Agents handle a myriad of tasks relating to official investigations into the criminal activities of third parties. The agents are in positions to access information regarding official law enforcement investigations and immigration proceedings. Printouts from databases often contain the username of the individual who viewed and printed the record. These can contain names or parts of names or other personal identifiers, including Social Security Numbers. Release of information tying particular employees to specific investigations could increase the risk that those employees would become targets of harassing or coercive inquiries for unauthorized access to information pertaining to ongoing and closed investigations, thereby compromising ICE's law enforcement operations.
25. Additionally, in my experience I have encountered or learned of individuals who believe they are under investigation that have taken affirmative steps to thwart law enforcement, including by engaging in counter-surveillance. If unredacted A-files were released, it could alert the subjects of investigations to the existence of those investigations. The subjects could then engage in such tactics, making even routine investigatory steps potentially contentious. This would increase the risk that HSI or other law enforcement personnel will come into direct contact with subjects who are aware that they are under investigation, which places them at greater of risk of harm. At the extreme, if an individual who was planning a violent attack learned that they were under investigation, they may accelerate their plans.
26. Release of the information may also pose a danger to ICE personnel. Emails reveal email addresses and may also contain full names, specific field offices, and phone numbers. If

this information is released, the safety of ICE personnel could very well be compromised. The current environment reveals the risk public disclosure of personally identifiable information can pose to ICE personnel. For example, in the summer of 2018 during the height of the “abolish ICE” movement, dozens of ICE employees, including agents, officers, attorneys, and mission support personnel, were the subject of “doxing” attacks in which their personally identifiable information was publicized and, in some cases, the public was encouraged to target them for violence because of their affiliation with ICE and its mission. In many cases the employee’s personally identifiable information was harvested from the social media site LinkedIn and then published in doxing attacks. In one case, an individual used the Twitter social media site to offer \$500 to anyone who would murder an ICE agent. That subject was identified, arrested and prosecuted by the Department of Justice as a result of their conduct. ICE cannot take the risk of even inadvertent disclosure, given the high stakes and potential danger to HSI Special Agents if this information were disclosed.

### **Impediment to Information Sharing**

27. The release of the redacted information in the named Plaintiffs’ A-files could diminish the effectiveness of law enforcement sensitive sources, methods, and techniques by inhibiting the current willingness – and even creating a disincentive – to share information between and among federal agencies, such that interagency information sharing could revert to a level reminiscent of that that existed prior to the attacks of September 11, 2001. That tragedy demonstrated that “need to know” had to give way to “need to share.” This new model resulted in successes in both national security and criminal investigations. The real-time information sharing permitted by this model has

allowed front-line agents and officers to make informed decisions at critical junctures. When agencies and departments work in isolation, such achievements simply are not possible.

28. It is possible that other federal law enforcement agencies – the FBI and others – would continue to share information with HSI due to its ability to disrupt plots using its administrative authorities. However, those same agencies would likely prohibit the further dissemination of that information, particularly to USCIS. This could put ICE in an untenable position – in order to continue to conduct criminal investigations in cooperation with the FBI or other federal law enforcement agencies, HSI could face the prospect, in many cases, of being unable to fully utilize its administrative authorities in the immigration arena. In some cases, information discovered during the course of a criminal or administrative investigation is key to a determination later made by USCIS. An inability to share information significantly increases the likelihood that USCIS would grant benefits to individuals who are ineligible to receive them, including to individuals of national security concern. If and when the FBI was able to clear the information for use in administrative proceedings, DHS would need to work to rescind or terminate the benefits inappropriately granted, including to any beneficiaries or derivatives. Thus, in addition to harming government deliberations, this would be the equivalent of locking the barn door after the horse has fled.

29. Nor would the disruption be limited to information sharing across departments. Even within DHS, it would likely constrain communication between two of the three DHS immigration components. HSI Special Agents would be more cautious before recording information learned in the course of their investigations, lest USCIS be forced to provide

it to individuals who are or have been under investigation. This is precisely the sort of divide that DHS was created to prevent.

**Additional Randomly Selected A-files**

30. I have been informed that Plaintiffs have requested that the government produce 100 additional, randomly selected A-files as part of discovery. The same types of law enforcement privileges and otherwise sensitive information discussed above would be found in the randomly selected A files as well. Therefore, if the government were required to furnish these A-files and the law enforcement privileged material within them, the risks described above would be magnified proportionally. Such information released from the A-files of other members of the certified classes would potentially reveal the existence of open and/or closed investigations and could harm those that may be ongoing or reveal information about closed investigations. Such a release could also pose the other risks discussed in this declaration, also proportionally. The more records are released, the greater the cumulative impact to public safety and national security.

**INSUFFICIENCY OF A PROTECTIVE ORDER**

31. A protective order allowing ICE to reveal this information in this litigation is not acceptable. The safety of HSI Special Agents involved in ICE's investigations and the national security could be placed in jeopardy as a result of disruptions to the agency's law enforcement efforts. Moreover, even the possibility of an inadvertent disclosure of information by the Plaintiffs' attorneys creates the risk of compromising investigative techniques, methods, and thus investigations. The Plaintiffs and their attorneys would not necessarily have sufficient knowledge of law enforcement and investigative

processes, techniques, and methods, to enable them to understand and identify the sensitive nature of the information claimed herein as protected by the Law Enforcement Privilege. Without directing any aspersions toward the integrity of the plaintiff's attorneys, this agency simply cannot afford even a slight risk that the attorneys most closely involved with the case could, as has been known to happen, inadvertently lose possession or control of the documents or otherwise compromise their security, leading to improper and unauthorized use of the information. This risk of disruption and serious injury to ongoing and future investigations and serious injury to the results of prior investigations that would be caused by even an inadvertent release of ICE's use of these investigative techniques and methods is unacceptable to ICE.

## CONCLUSION

32. Therefore, the information contained in the A-files of the named Plaintiffs Law Enforcement Privileged and must be protected by the claimed privilege, as discussed in this declaration.
33. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. this 4th day of March, 2019.



Matthew C. Allen  
Assistant Director, Domestic Operations  
Office of Homeland Security Investigations  
U.S. Immigration and Customs Enforcement



# **EXHIBIT F-5**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*

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

Plaintiffs,

Honorable Richard A. Jones

v.

TRUMP, *et al.*,

Defendants

**Declaration of Matthew C. Allen**

I, Matthew C. Allen, state as follows:

**INTRODUCTION**

1. I am the Acting Deputy Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE), an agency in the Department of Homeland Security (DHS). Following the enactment of the Homeland Security Act of 2002, DHS was created from some twenty-two different federal agencies. This was done in part to facilitate and enhance the sharing of information across agencies that held similar or related mandates. ICE was created in 2003 from elements of several legacy agencies, including the criminal investigations staffs of the former U.S. Customs Service (USCS) and the former Immigration and Naturalization Service (INS). Following ICE's creation, all Special Agents who formerly worked for the USCS and the INS became part of ICE. ICE is the second-largest investigative agency in the Federal Government. Within ICE, HSI has approximately 8,260 employees, including more than 6,100 Special Agents assigned to thirty (30) Special Agent-in-Charge (SAC) offices in cities throughout

the United States and countries around the world. Special Agents have a wide array of responsibilities relating to the investigation of criminal activity, including: the investigation of contraband and merchandise smuggling; illicit trade, travel, and finance; money laundering; fraud in both import and export transactions; and other criminal activity. HSI also has significant administrative authority over immigration and customs matters, which it exercises in conjunction with its criminal authorities.

2. I joined the USCS as an Intelligence Research Specialist (intelligence analyst) in 1986 after graduating from college and completing an agency cooperative education program. As an intelligence analyst, I received training on conducting research, critical thinking, analysis, reporting, and the structure and functions of the U.S. intelligence community. My primary area of work as an analyst was national security, in particular export enforcement. While I was an intelligence analyst, I attended one year of graduate school at Georgetown University, studying in their National Security Studies Program. I was selected to be a USCS Special Agent in 1989 and joined ICE when this agency was created in 2003. Following training to become a Special Agent, I continued to work in the national security area, conducting investigations into export enforcement violations for approximately one year. I have served HSI in a variety of roles, from Special Agent to several different leadership roles in the field and at Headquarters. I held multiple positions at ICE Headquarters from 2004 to 2008, including as Deputy Assistant Director (DAD) of the Financial, Narcotics, and Public Safety Division. In this position, I had oversight of HSI's Financial, Drug, Human Rights Violations and Public Safety (gang) programs. I also served as the DAD of the Critical Infrastructure and Fraud Division, where I had oversight of ICE's human smuggling and trafficking portfolio, worksite

enforcement, commercial fraud, intellectual property rights, and immigration document and benefit fraud programs within HSI. From August 2008 until June 2016, I served as the HSI Special Agent in Charge in Arizona. There, I had oversight of the full spectrum of ICE investigative activities in Arizona and led more than 500 personnel assigned to offices in Phoenix, Tucson, Douglas, Nogales, Sells, Casa Grande, Yuma, and Flagstaff. From June 2016 until June 2018, I served as the AD for HSI Investigative Programs, where I was responsible for programmatic oversight of HSI's strategic planning, national policy implementation, and the development and execution of operational initiatives. I hold an undergraduate degree in Criminal Justice from the John Jay College of Criminal Justice in New York, New York. In 2003, I completed the Columbia Business School's Executive Development Program as part of the USCS Leadership Development Program.

3. In June 2018, I was reassigned to serve as AD of HSI's Domestic Operations. As such, I am responsible for managing, directing, coordinating, and supporting all investigative activities of ICE HSI domestic field offices, including 30 SACs with responsibility for more than 200 offices. In this capacity, I am responsible for strategic planning, national policy implementation, and the development and execution of operational initiatives. The offices under my direction are responsible for leading HSI's effort to identify, disrupt, and dismantle terrorist and other transnational criminal organizations that threaten the security of the United States and immigration and customs violators who threaten public safety. I also oversee all major ICE HSI enforcement initiatives and the de-confliction of operations for and among ICE HSI field offices and other agencies. I am therefore well positioned to discuss the broad range of HSI's work, including its cooperation with other agencies.

4. In April 2019, I temporarily assumed the duties of the Deputy Executive Associate Director, HSI. In my current position I supervise the Assistant Directors for Domestic Operations, International Operations, Investigative Programs, Operational Technology and Cyber, National Security and Mission Support.
5. Through the exercise of my official duties, I have been briefed on the civil action *Wagafe v. Trump, et al.*, pending in the United States District Court for the Western District of Washington, Case No.: 2:17-cv-00094-RAJ. I understand the matter is proceeding in discovery, and that Plaintiffs have served document requests on the Defendants. The Defendants have responded to the document requests and asserted objections over privileged material as appropriate. ICE is not a Defendant in this lawsuit; however, as set forth in this declaration, ICE's equities would be harmed by the release of such information. USCIS provided ICE with documents they identified as having ICE equities, specifically the documents that begin with the Bates numbers (Bates): DEF-00095009, DEF-0094536, DEF-00095077, DEF-00095760, and DEF-00096058. The documents at issue contain significant amounts of law enforcement sensitive material over which ICE has asserted the law enforcement privilege. These documents further contain information not belonging to ICE that could impact ICE equities, including current or former investigations. I understand that additional documents are still being reviewed as part of the discovery process. If such documents contain ICE information, ICE would review those documents and would assert any applicable privileges at the appropriate time. As further set forth in this declaration, release of these materials could harm ongoing investigations, including those unrelated to the actions of anyone with interest in this lawsuit. Indeed, as explained further below, it could harm ICE

investigations across the U.S. Government because of the risk that it could impede information sharing, among other harms.

6. This declaration is therefore submitted to assert the Law Enforcement Privilege over selected categories of information and over which ICE has equities in the documents at issue. In this case, ICE has previously asserted the Law Enforcement Privilege over law enforcement sensitive information owned by or originating from ICE, first by then-AD for Domestic Operations Tatum King on April 9, 2018, then by me on March 4, 2019.
7. This declaration is based on my personal knowledge, my personal review and appraisal of the claims of Law Enforcement Privilege previously asserted, and the factual background of the case, as well as information conveyed to me by my staff and other knowledgeable ICE personnel in the course of my official duties and responsibilities. I have personally reviewed documents containing ICE equities (specifically Bates: DEF-00095009, DEF-0094536, DEF-00095077, DEF-00095760, and DEF-00096058) and determined that disclosure to Plaintiffs or their counsel of the privileged information therein poses an undue risk of harm to investigations, as well as the general nature of HSI law enforcement techniques and procedures; this, in turn, would directly impact public safety and national security. As set forth below in this declaration, revealing such sensitive information, the techniques and procedures involved in acquiring such information, and the combination thereof could undermine the efforts of HSI to carry out its mission of identifying and eliminating vulnerabilities that pose a threat to our nation's borders, as well as ensuring economic, transportation, infrastructure security, and national security. This declaration will address the nature of HSI's operations and the harms to existing and future investigations that could follow the release of this information.

## **HSI OPERATIONS**

8. HSI, the largest investigative arm of DHS, holds broad criminal and administrative investigative authorities, which it employs to disrupt national security and transnational criminal threats to the United States. HSI is authorized to conduct, and does conduct, both criminal and administrative investigations into national security and public safety threats related to immigration and transnational crime. In many cases, the final disposition of an investigation depends on the evidence gathered; it can be impossible to know in the early stages whether the ultimate result will be criminal prosecution, administrative proceedings, both, or neither. If the investigation reveals criminal activity that may be prosecuted under United States law, HSI works with the relevant United States Attorney's Office, as well as any other participating Federal agency, to prosecute the subject or subjects of the investigation. In some investigations, HSI may present evidence to state, local, or tribal prosecutors for charges in their jurisdictions. Common charges include naturalization fraud, visa fraud, and aggravated identity theft. If administrative proceedings are more appropriate – either because the evidence does not indicate criminal wrongdoing or because evidence necessary to criminal prosecution is classified, or its use otherwise restricted – HSI uses administrative processes to seek removal of an individual from the United States. An investigation may also result in evidence that indicates neither criminal nor administrative proceedings are appropriate at that time.
9. HSI also represents ICE on the Federal Bureau of Investigation-led (FBI) national Joint Terrorism Task Force (JTTF), as well as local JTTFs nationwide, and therefore plays a critical role in national security operations throughout the country. Often, national

security cases follow the approach outlined above, using a combination of criminal and administrative authority. However, in some cases, a national security or public safety threat will develop rapidly, making it necessary to act to prevent or disrupt the threatened harm before criminal charges can be developed. In those instances, HSI works with partner agencies to identify places to disrupt the dangerous behavior using its administrative authorities. This cooperative technique has resulted in the prevention of serious crimes and threats to national security.

10. Since the terrorist attacks of September 11, 2001, and the creation of DHS and ICE in 2003, many federal agencies' information sharing culture has evolved from one centered on the principle of "need to know" to one that fosters a principle of "need to share," which recognizes that protecting our nation requires the cooperation and sharing of information among a network of agencies that work on national security and transnational crime issues. HSI is no exception. In developing cases to protect public safety and safeguard national security, HSI routinely shares sensitive law enforcement information with other components of DHS, as well as with Federal, state, local, and tribal law enforcement agencies. The information can include specific details about investigations into active criminal enterprises and national security threats, including counterterrorism, counter-proliferation, and visa violations with national security or public safety implications. Although sometimes transmitted in person, a great deal of critical law enforcement information is shared through integrated government databases, including those discussed below. This relationship among law enforcement agencies is reciprocal. ICE, in seeking to carry out its mission, benefits significantly from other agencies' willingness to share information about their own investigations. Without such



information from law enforcement partners, HSI Special Agents would be unable to engage in real-time decision-making related to national security, criminal law enforcement, and administrative investigations.

11. In carrying out its mission, ICE depends on the use of sensitive law enforcement and investigative techniques, methods, and procedures not widely known to the public. The release to the public of the law enforcement sensitive information in the documents at issue could seriously compromise ICE's ability to perform its mission.

### **CONSEQUENCES OF RELEASE**

12. Disclosure of law enforcement sensitive information could provide those who wish to harm the United States with valuable information about how the U.S. Government detects, investigates, and thwarts criminal and terrorist activity. The redacted information in the documents at issue contain information about internal case handling procedures used during investigations, including sensitive information about investigative processes. This type of information often reveals the methods and techniques used to uncover or elicit information by parties intent on harming the United States. Disclosure of information related to investigative processes, coordination with law enforcement partners, and insight into the types of sensitive information that law enforcement checks may contain could significantly undermine future law enforcement efforts, as further discussed in this declaration. As set forth in this declaration, providing bad actors with the information they need to evade or otherwise thwart U.S. law enforcement efforts has potentially grave consequences for national security and public safety.

### **Harm to Investigations**

13. Two of the documents at issue (specifically Bates: DEF-00095760 and DEF-00096058) contain information related to the investigative process. I have reviewed this information and determined that if subjects of investigations or other bad actors were to obtain this type of information, they could potentially identify areas of interest to federal law enforcement and/or the methods that the U.S. Government used to gather that information. Such knowledge could allow bad actors to change their behavior in order to evade law enforcement or thwart law enforcement activities. Similarly, the documents at issue reveal methods by which U.S. Government personnel indicate the progress and status of an investigation. Indeed, material in the documents at issue could reveal how to determine what public safety or national security concerns would cause the U.S. Government to initiate an investigation and what developments would resolve such concerns.
14. Revealing the Law Enforcement Privileged material in the documents at issue has the potential to do significant harm. These documents (specifically Bates: DEF-00095009, DEF-0094536, DEF-00095077, DEF-00095760, and DEF-00096058) contain information from or related to various systems used by ICE and those that may contain ICE data: TECS, the Advance Visual Abstracted Links and Name Collection Handler Engine (AVALANCHE), and Interagency Border Inspection System (IBIS). They also contain references to other key databases and programs into which ICE information may be entered. TECS, an interagency database that ICE uses in the course of conducting its investigations, is used by more than 40 federal law enforcement agencies, including the FBI and the Secret Service. In turn, TECS interfaces with many of the databases

belonging to these federal law enforcement agencies. Information from other federal law enforcement databases is communicated to ICE law enforcement officials through TECS, which stores that information. The capabilities, functions, and uses of TECS among law enforcement officials are not generally known to members of the public. They are routinely withheld from public disclosure to protect the integrity of the data and the privileged law enforcement information that TECS contain. AVALANCHE, an ICE system no longer in operation, provided law enforcement personnel with the capability to rapidly search across 15 databases consisting of approximately 50 million indexed names, vehicles, and addresses. It allowed searching by multiple fields including by sensitive personally identifiable information, such as name, social security number, Fingerprint Identification Numbering System, Alien File Number, and date of birth. IBIS contains lookouts, warrants, arrest, and convictions from more than 20 agencies, including the FBI. When reviewed together, the risk is that bad actors could extrapolate details about investigations, including the government's understanding of activities at any given time, to include methods of communication, techniques for evading law enforcement detection, and aliases being used.

15. The following types of codes appear in TECS, AVALANCHE, and IBIS records: case program codes, access codes, classification codes, investigative distribution codes, computer function commands, and other administrative codes. Release of these codes, along with computer function commands, could assist third parties (*e.g.*, a hacker) in improperly gaining access, or attempting to gain access, to any of these databases and to navigate the systems that housed ICE investigative records. Such access would reveal, among other things, how U.S. Government personnel determine whether someone is the

subject of a counterterrorism investigation; the focus of such an investigation (*e.g.*, financial or otherwise); how to determine the existence of a terrorism-related record in a database owned by another Federal agency (primarily Terrorist Identities Data Mart Environment (TIDE) and Terrorist Screening Database (TSDB); and Watchlist status); what procedures law enforcement should take upon encountering different types of subjects; whether a subject should undergo close inspection; and the distribution of information relating to different types of cases. The documents at issue (specifically Bates: DEF-00095009, DEF-0094536, DEF-00095077, DEF-00095760, and DEF-00096058) contain references to and instructions on use of the records systems described above, including by providing database commands and formulating queries.

16. Access to the various database codes can also provide subjects with an insight into law enforcement techniques. HSI Special Agents rely on data contained in these databases in the course of their investigations, both criminal and administrative. Release of this information increases the likelihood that subjects and potential subjects of such investigations will develop methods to obscure or alter such information and thereby circumvent HSI's efforts to collect information and evidence to thwart serious violations that may affect public safety and national security. Interested parties can learn to evade scrutiny by deducing the types of information ICE is interested in when the agency undertakes specific types of investigations. Disclosure of such information increases the likelihood that subjects and potential subjects of such investigations will develop and employ methods to obscure or alter such information and thereby circumvent the agency's efforts to collect information and evidence of serious violations that may affect national security and public safety.

17. Nor is the information about the databases the only source of concern. Instruction manuals and guidances (specifically Bates: DEF-00095009, DEF-0094536, DEF-00095077, DEF-00095760, and DEF-00096058, designed to train U.S. Government personnel about the processes used in investigations, may also be used by nefarious individuals to learn how to evade these very investigations. The documents at issue (specifically Bates: DEF-0094536 and DEF-00095760) indicate particular operations by name and by subject matter. Revealing these names to the public, or even under a protective order, risks the operational security of the investigations and of the individuals conducting them. Additionally, some of the documents in question (specifically Bates: DEF-00095760 and DEF-00096058) contain instructions on when and how to share information with other government agencies, and the permissible ways to make use of other agencies' information.

### **Impediment to Information Sharing**

18. The release of the redacted information in the documents at issue could diminish the effectiveness of law enforcement sensitive sources, methods, and techniques by inhibiting the current willingness – and even creating a disincentive – to share information between and among federal agencies, such that interagency information sharing could revert to a level reminiscent of that that existed prior to the attacks of September 11, 2001. That tragedy demonstrated that “need to know” had to give way to “need to share.” This new model resulted in successes in both national security and criminal investigations. The real-time information sharing permitted by this model has allowed front-line agents and officers to make informed decisions at critical junctures. When agencies and departments work in isolation, such achievements simply are not possible. Release of the information

in the documents at issue could result in various agencies reevaluating their interagency partnerships and operations. Any degradation of information-sharing relationships could lead to poor coordination of investigative efforts, potentially harming public safety and national security.

**CONCLUSION**

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. this 23rd day of April 2019.

A handwritten signature in blue ink, appearing to read 'Matthew C. Allen', with a long horizontal stroke extending to the right.

Matthew C. Allen  
Acting Deputy Executive Associate Director  
Office of Homeland Security Investigations  
U.S. Immigration and Customs Enforcement