

Exhibit E

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

TRUMP, et al.,

Defendants.

No. 2:17-cv-00094-RAJ

DECLARATION OF JAMES W.
MCCAMENT IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL

I, James W. McCament, hereby make the following declaration with respect to the above captioned matter.

1. I am the Deputy Director currently serving as the Acting Director of United States Citizenship and Immigration Services ("USCIS") in the Department of Homeland Security (DHS). I began Acting in the capacity of Director on March 31, 2017.¹

2. As the Acting Director of USCIS, I am responsible for overseeing a workforce of more than 18,000 federal employees, handling approximately 8 million immigration benefit applications each year.

3. After consideration of the information available to me in my capacity as Acting Director for USCIS, the matters contained in this declaration are based upon my

¹ The new USCIS Director, Lee Francis Cissna, was confirmed by the Senate on October 5, 2017, but at the time this document was executed he had not yet been sworn in.

1 understanding of the case of *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094 in
2 the United States District Court for the Western District of Washington.

3 4. I am also aware of the Motion to Compel filed by Plaintiffs on September 28,
4 2017, where it is alleged that a USCIS officer previously confirmed, in a deposition taken
5 on behalf of the Plaintiff in the matter of *Hamdi v. USCIS et al.*, Case No. ED CV 10-
6 00894 VAP (C.D. Cal.), whether a particular case was a CARRP case.

7 5. I am aware that, pursuant to the Federal Rules of Civil Procedure 23(a) and
8 23(b)(2), the United States District Court for the Western District of Washington certified
9 two classes as plaintiffs.

10 a. A national class of all persons currently and in the future (1) who have
11 or will have an application for naturalization pending before USCIS, (2)
12 that is subject to CARRP or a successor “extreme vetting” program, and
13 (3) that has not been or will not be adjudicated by USCIS within six
14 months of having been filed.

15 b. A national class of all persons currently and in the future (1) who have
16 or will have an application for adjustment of status pending before
17 USCIS, (2) that is subject to CARRP or a successor “extreme vetting”
18 program, and (3) that has not been or will not be adjudicated by USCIS
19 within six months of having been filed.

20 6. I am aware that, in connection with this litigation, Plaintiffs requested the
21 production of certain documents described in Plaintiff’s First Request for Production to
22 Defendants, specifically,

23 a. Request for Production Number 34: All Documents sufficient to
24 identify members of the Naturalization Class, including, but not limited
25 to, any list that might exist identifying those who are or have been
26 subject to CARRP, and, where available, the following identifying
27 information for each class member: name, A-number, age, sex, country
28 of origin, country of citizenship, religion, race, ethnicity, date the

1 naturalization application was filed, and current status of the
2 naturalization application; and

3 b. Request for Production Number 35: All Documents sufficient to
4 identify all members of the Adjustment Class, including, but not limited
5 to, any list that might exist identifying those who are or have been
6 subject to CARRP, and, where available, the following identifying
7 information for each class member: name, A-number, age, sex, country
8 of origin, country of citizenship, religion, race, ethnicity, date the
9 adjustment application was filed, and current status of the adjustment
10 application.

11 7. I am aware that Defendants, in Defendants' Objections and Responses to
12 Plaintiffs' First Request for Production of Documents, objected to production of certain
13 documents on the ground that the information sought was protected from disclosure as
14 privileged. Although not specified in the Defendant's Objections and Responses to
15 Plaintiffs' First Request for Production of Documents, Defendant USCIS hereby asserts
16 that any documents that may identify the application of an individual as subject to
17 CARRP is protected from disclosure under the law enforcement privilege.

18 8. I am aware that the law enforcement privilege, also known as the investigatory
19 files privilege, protects from disclosure law enforcement techniques and procedures, and
20 other information necessary to otherwise prevent interference with a law enforcement
21 investigation. The purpose of the privilege is to protect the law enforcement process
22 because disclosure of investigatory files would undercut the government's efforts to
23 enforce the law by disclosing investigative techniques, forewarning suspects of the
24 investigation, deterring witnesses from coming forward, and prematurely revealing the
25 facts of the government's case. The law enforcement privilege applies to civil
26 enforcement agencies.

27 9. The electronic system USCIS uses to manage national security cases is the
28 Fraud Detection and National Security Data System (FDNS-DS). FDNS-DS is the

1 primary case management system used to record requests and case determinations
 2 involving immigration benefit fraud, public safety, and national security concerns.
 3 Identifying individuals who are being processed through CARRP would necessarily
 4 involve reviewing records in the FDNS-DS system.

5 10. In the System of Records Notice (SORN) for FDNS, the following exemption
 6 is claimed: “The Secretary of Homeland Security has exempted this system from the
 7 following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C.
 8 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the
 9 functions in this system require retrieving records from law enforcement systems. Where
 10 a record received from another system has been exempted in that source system under 5
 11 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are
 12 claimed for the original primary systems of records from which they originated and
 13 claims any additional exemptions in accordance with this rule.² 5 U.S.C. 552a(k)(2)
 14 exempts investigatory materials compiled for law enforcement purposes and 552a(j)(2)
 15 exempts records maintained by an agency pertaining to the enforcement of criminal laws.

16 11. Under the Immigration and Nationality Act, USCIS has authority to adjudicate
 17 individual benefit application for adjustment of status, 8 U.S.C. § 1255, and
 18 naturalization, 8 U.S.C. § 1421(a)³. To make an eligibility determination for an individual
 19 who has submitted an immigration benefit application, USCIS must investigate the
 20 applicant to determine whether the individual meets the statutory criteria for the
 21 immigration benefit sought.

22 12. For naturalization applicants, USCIS is required to complete full background
 23 investigation to determine whether the applicant is eligible to naturalize. *See* 8 U.S.C. §
 24 1446(a), (b); 8 C.F.R. § 335.1 (“The investigation shall consist, *at a minimum*, of a

25 _____
 26 ² See for example: DHS/CBP-011 - U.S. Customs and Border Protection TECS December 19, 2008 73 FR 77778
Final Rule for Privacy Act Exemptions, August 31, 2009 74 FR 45072; asserting exemption 522a(j)(2).

27 ³ The transfer of the former Immigration and Naturalization Service’s (“INS”) naturalization functions to the
 28 Department of Homeland Security included the transfer of the authority to naturalize from the Attorney General to
 the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No.107-296, § 1512(d), 116 Stat.
 2135, 2310 (Nov. 25, 2002)

1 review of all pertinent records, police department checks, and a neighborhood
 2 investigation in the vicinities where the applicant has resided and has been employed, or
 3 engaged in business, for at least the five years immediately preceding the filing of the
 4 application”) (emphasis added).⁴ USCIS must wait until criminal background checks are
 5 completed before scheduling an applicant for his or her naturalization interview. 8 C.F.R.
 6 § 335.2(b); Dep’t of Commerce & Related Agencies Appropriation Act, 1998, Pub. L.
 7 105-119, title I, 111 Stat. 2440, 2448-49 (Nov. 26,1997) (beginning with fiscal year 1998,
 8 no USCIS funds may be used to complete adjudication of an application for
 9 naturalization unless USCIS has received confirmation from the FBI that a full criminal
 10 background check has been completed).

11 13. For adjustment of status applicants, the applicant must be eligible to adjust
 12 status to that of a lawful permanent resident, and has the burden to demonstrate
 13 eligibility, including admissibility. 8 U.S.C. § 1255(i)(2)(a); 8 C.F.R. § 103.2(b)(1). An
 14 alien is inadmissible if any of the factual circumstances described in the law exist. For
 15 example, an alien may be inadmissible on grounds related to health, criminality, national
 16 security, and misrepresentations. 8 U.S.C. § 1182. USCIS must investigate the
 17 application submitted by the applicant, and additional information it receives, to fully vet
 18 an individual and make a final determination on the application.

19 14. CARRP is a consistent, agency-wide approach for identifying, processing, and
 20 adjudicating applications and petitions for immigration benefits that involve national
 21 security concerns. CARRP allows the investigation and vetting of applicants whose
 22 cases raise national security concerns to be adjudicated in a consistent and orderly
 23 manner.

24 15. A national security concern exists when an individual or organization has
 25 been determined to have an articulable link to prior, current, or planned involvement in,
 26 or association with, an activity, individual, or organization described in 8 U.S.C. §§
 27 1182(a)(3)(A), (B), or (F) or 1227(a)(3)(A), (B), or (F).

28 ⁴ A USCIS district director may waive neighborhood investigation may be waived. 8 C.F.R. § 335.1.

1 16. When USCIS identifies a national security concern and begins its
2 investigative and vetting process, it is crucial that the individual not be prematurely
3 notified that the individual is suspected of not being statutorily eligible for the
4 immigration benefit. An individual who becomes aware of an investigation prematurely
5 may alter his or her behavior, conceal evidence of wrongdoing, or attempt to influence
6 witnesses. Further, USCIS interviewers may be unable to sufficiently probe an applicant
7 through the interview process if the applicant is aware that a specific action or behavior is
8 under investigation.

9 17. In addition, to determine whether an application presents a national security
10 concern, specifically to determine whether an articulable link exists, a USCIS
11 immigration services officer adjudicating an immigration benefit application shall check
12 and review the records held by law enforcement agencies and/or the intelligence
13 community, to include, but not limited to:

- 14 • **FBI Name Check:** The records maintained in the FBI name check
15 process consist of administrative, applicant, criminal, personnel and
16 other files compiled by law enforcement.
- 17 • **FBI Fingerprint Check:** The FBI fingerprint check provides information
18 relating to criminal background within the United States.
- 19 • **Treasury Enforcement Communications Systems/Inter-Agency Border**
20 **Inspection System (TECS/IBIS):** A multiagency effort with a central
21 system that combines information from multiple agencies, databases and
22 system interfaces to compile data relating to national security risks,
23 public safety issues and other law enforcement concerns.
- 24 • **United States Visitor and Immigrant Status Indicator Technology (US-**
25 **VISIT)/Automated Biometrics Identification System (IDENT):** IDENT
26 is a DHS-wide electronic record system for the collection and
27 processing of biometric and limited biographic information in
28 connection with the national security, law enforcement, immigration,

1 intelligence, and other mission-related functions of DHS, as well as for
2 any associated testing, training, management reporting, planning and
3 analysis, or other administrative uses.

4 18. While the existence of CARRP itself is known, I understand
5 that disclosure of whether any particular application is subject to CARRP may cause
6 substantial harm to the law enforcement investigative and intelligence gathering interests
7 of federal and state agencies. Public confirmation that a particular application is subject
8 to CARRP would necessarily alert an individual that he/she may be the subject of an
9 investigation, or at least that the government possesses information that creates an
10 articulable link to a national security ground of inadmissibility. By alerting an individual
11 that he or she is subject to an investigation and the types of records consulted, that
12 individual might learn the focus of these investigations. The individual could then, for
13 example, alter his or her behavior, conceal evidence of wrongdoing, or attempt to
14 influence witnesses or adjust his or her means of communication or financial dealings to
15 avoid detection of the very behavior that the law enforcement and intelligence
16 community have determined may be indicative of a national security threat, and which
17 form the core of pending investigative efforts.


18 19. I am aware that Plaintiffs have alleged in the Motion to Compel that USCIS
19 has previously revealed whether a case was processed through CARRP during prior
20 litigation. For example I am aware that during the deposition of USCIS immigration
21 officer Elias Valdez, Jr. in the Hamdi case, *Hamdi v. USCIS et al.*, Case No. ED CV 10-
22 00894 VAP (C.D. Cal.), Officer Valdez confirmed that Hamdi was processed through
23 CARRP. This statement should not have been made. The law enforcement privilege
24 applies to information about whether an application or petition was processed under
25 CARRP; accordingly, USCIS officers may not reveal this information.

26 20. I am familiar with the CARRP process and submit this declaration as the
27 formal assertion invoking the law enforcement privilege for the information contained in
28 these withheld documents. Revealing whether a specific individual is being processed in

1 CARRP would necessarily involve revealing law enforcement and investigatory
2 techniques. Disclosure of such information would reveal investigatory techniques and
3 procedures and would impair the law enforcement investigative process.

4 21. Based on the reasons set forth above, I invoke the law enforcement privilege
5 for the requested information that the Government seeks to withhold. I declare under
6 penalty of perjury that the foregoing is true and correct.

7 Executed this 6th day of October, 2017 at Washington, D.C.

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10 James W. McCament
11 Acting Director
12 U.S. Citizenship and Immigration Services
13 Washington, D.C.
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