

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

CASE NO. C17-0094-RAJ

RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL

**I. INTRODUCTION**

Plaintiffs have alleged that, for close to a decade, a government conspiracy cutting across three administrations of both major political parties has intentionally and unlawfully delayed processing of certain immigration benefit applications based on impermissible criteria. Relying almost exclusively on authority that pre-dates the 2015 amendments to the Federal Rules of Civil Procedure concerning the scope of discovery, Plaintiffs (i) demand that Defendants identify members of the certified classes notwithstanding that, by definition, each class member has an articulable link to a national-security ground of inadmissibility; (ii) demand Defendants search for and log classified documents; (iii) demand Defendants produce documents subject to the deliberative process privilege and Executive privilege as a class; and (iv) demand Defendants produce voluminous documents concerning individual class members that are inconsistent with Plaintiffs' facial challenges and shed no light on the legality of national

1 policy. For the reasons detailed below, Plaintiffs' demands are inconsistent with Rule 26,  
2 which limits discovery to relevant, non-privileged material that is proportional to the  
3 needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Each of the categories of information  
4 Plaintiffs seek to compel fails to meet at least one (and often more than one) of these  
5 requirements for documents to be discoverable.

## 6 **II. PROCEDURAL HISTORY**

7 On August 1, 2017, Plaintiffs served Defendants with Plaintiffs' First Requests for  
8 Production to Defendants ("Requests for Production"). *See* ECF No. 92, Ex. A. On  
9 September 5, 2017,<sup>1</sup> Defendants served Objections and Responses to Plaintiffs' First  
10 Request for Production of Documents ("Objections and Responses"). *Id.* On September  
11 11, 2017, Plaintiffs' counsel sent a letter to Defendants' counsel, outlining Plaintiffs'  
12 issues with Defendants' Objections and Responses. *Id.*, Ex. B. On September 19, 2017,  
13 via telephone conference, the Parties' counsel met and conferred to discuss Plaintiffs'  
14 counsel's September 11, 2017 letter. After the meet and confer, the Parties' counsel  
15 exchanged letters on September 22 and 27, 2017, in an attempt to resolve the issues. *Id.*,  
16 Exs. C, D. In Plaintiffs' counsel's September 27, 2017 letter, Plaintiffs' counsel  
17 requested Defendants' counsel to confirm whether the Parties had reached an impasse on  
18 four issues:

19 We also write to confirm that the parties are at an impasse on the following  
20 four issues: (1) Defendants' refusal to produce a list or other documents  
21 sufficient to identify the members of each class and documents regarding  
22 why Named Plaintiffs have been subject to CARRP; (2) Defendants'  
23 refusal to review classified documents and produce a privilege log of any  
24 such documents they seek to withhold; (3) Defendants' refusal to produce  
25 documents relating to the First and Second Executive Orders; and (4)  
26 Defendants' refusal to produce responsive documents that are not of  
27 "national applicability."

28 <sup>1</sup> Plaintiffs consented to a modest extension of time, from August 31, 2017 to September 5, 2017 to respond to their  
39 individual Requests for Production. Defendants' response to the Requests for Production was timely.

1 *Id.*, Ex. D. In Plaintiffs’ counsel’s letter of September 27, 2017, Plaintiffs’ counsel  
 2 requested a response by October 2, 2017. *Id.* On September 28, 2017, Plaintiffs filed the  
 3 instant motion to compel.<sup>2</sup>

### 4 **III. LEGAL STANDARD**

5 In describing the relevant standard under Rule 26, Plaintiffs state that “[t]he  
 6 Federal Rules of Civil Procedure authorize broad discovery ‘regarding any non-  
 7 privileged matter that is relevant to any party’s claim or defense.’” Doc. 91 at 2. That is  
 8 only part of the rule. The rest of Rule 26 provides that, in addition to privilege and  
 9 relevancy, discovery is limited to that which is:

10 proportional to the needs of the case, considering the importance of the  
 11 issues at stake in the action, the amount in controversy, the parties relative  
 12 access to the relevant information, the parties’ resources, the importance of  
 13 discovery in resolving the issues, and whether the burden or expense of the  
 proposed discovery outweighs its likely benefit.

14 Fed. R. Civ. P. 26(b)(1). Thus, the possibility that a category of documents will be  
 15 privileged (or even that many documents within a category will be privileged) is relevant  
 16 to determining whether the request is proportional to the needs of the case, and especially  
 17 whether the burden outweighs its likely benefit. *In re Blue Cross Blue Shield Antitrust*  
 18 *Litig.*, 13-cv-20000, 2017 WL 2889679, \*2 (N.D. Ala. Jul 6, 2017) (“given the likelihood  
 19 that most of the responsive documents relating to Professional Liability insurance  
 20 coverage will be subject to some privilege or work-product protection, the burden and  
 21 expense of searching for the remaining non-privileged responsive documents outweighs  
 22 the potential benefit.”); *IDS Prop. & Cas. Ins. Co v. Fellows*, No. 15-cv-2031, 2017 WL  
 23 202128, \*5 (W.D. Wash. Jan. 18, 2017) (holding potential privilege rendered discovery  
 24 request disproportionate to the needs of the case).

### 25 **IV. ARGUMENT**

26 This case raises a facial challenge to the Controlled Application Review and  
 27 Resolution Program (“CARRP”), a procedure used by U.S. Citizenship and Immigration  
 28

<sup>2</sup> Plaintiffs’ counsel did not propose the use of the Court’s expedited joint motion procedure. *See* LCR 37(a)(2).

1 Services (“USCIS”) to adjudicate some applications for immigration benefits where there  
2 is an articulable link between the applicant and a national-security related ground of  
3 inadmissibility. Specifically, Plaintiffs have challenged the lawfulness of CARRP, and  
4 any successor program. ECF No. 58, at 24 (“Plaintiffs, however, ‘do not seek damages  
5 for specific acts of discrimination against themselves,’ but rather ask only that the Court  
6 review the legality of CARRP against requirements dictated by Congress in the INA.”).  
7 The Court has agreed—“The common question here is whether CARRP is lawful. The  
8 answer is ‘yes’ or ‘no.’ The answer to this question will not change based on facts  
9 particular to each class member, because each class member’s application was (or will  
10 be) subjected to CARRP.” ECF No. 69, at 27. Given these challenges to the overall  
11 program, the discovery Plaintiffs seek is not related to the claims or defenses of any  
12 party, is not proportional to the needs of the case under Rule 26(b)(1), and much of it is  
13 privileged as well. Indeed, the likelihood that many documents or categories of  
14 documents will be privileged weighs against permitting discovery as disproportionate and  
15 burdensome. A lengthy and accurate privilege log benefits no one, least of all the Court  
16 if asked to review documents *in camera*.

17 **A. The Identity of Class Members Is Not Discoverable Under Rule**  
18 **26(b)(1)**

19 **1. The Identity of Class Members Is Not Relevant to This Rule**  
20 **23(b)(2) Class Action**

21 The specific identity of individual class members—as distinct from anonymized  
22 data that does not include names—is irrelevant to this litigation. Indeed, it is far from  
23 clear that demographic information about class members is itself relevant, as Plaintiffs  
24 claim that Defendants have acted on grounds equally applicable to the class as a whole.  
25 ECF No. 49 at 17 (noting “the conduct at issue can be enjoined or declared unlawful only  
26 as to all of the class members or as to none of them”) (internal citation omitted).  
27 Disclosing personally identifiable information (i.e., names and A-numbers) of particular  
28 individuals adds nothing to Plaintiffs’ case.

1 Plaintiffs suggest that “each individual is a potential witness or source of relevant  
 2 information.” ECF No. 91, at 4-5. But Rule 23 no longer permits discovery of  
 3 information merely “reasonably calculated to lead to the discovery of admissible  
 4 evidence.” Fed. R. Civ. P. 23(b)(1), advisory committee notes to 2015 amendments.  
 5 Moreover, witnesses who can attest only to their own situation are not—indeed, cannot—  
 6 be relevant to the claims that can be pursued by a Rule 23(b)(2) class. As noted,  
 7 Plaintiffs have alleged that Defendants “acted or refused to act on grounds that apply  
 8 generally to the class, so that final injunctive relief or corresponding declaratory relief is  
 9 appropriate respecting the class *as a whole*.” Fed. R. Civ. P. 23(b)(2) (emphasis added);  
 10 *see* ECF No. 49, at 17-18. If individual class members are relevant witnesses because  
 11 they can speak to individual “delays, unwarranted denials,<sup>3</sup> or other impacts of CARRP,”  
 12 ECF No. 91, at 5, then the class should be decertified, because injunctive relief would not  
 13 be appropriate to the class as a whole. Plaintiffs cannot have it both ways. If, as  
 14 Plaintiffs allege, Defendants acted on grounds equally applicable to all class members,  
 15 then individual hardships are irrelevant.<sup>4</sup>

16 Plaintiffs claim that courts “often” require disclosure of class members’ contact  
 17 information. ECF No. 91 at 5. But neither of the two cases Plaintiffs cite for this  
 18 proposition raise national security concerns. *See Barahona-Gomez v. Reno*, 167 F.3d  
 19 1227, 1238 (9th Cir. 1999) (requiring notice to class-member aliens to prevent their  
 20 deportation in violation of injunction); *Algee v. Nordstrom, Inc.*, No. 11-cv-301, 2012  
 21 WL 1575314, \*4-\*5 (N.D. Cal. May 3, 2012) (permitting discovery of contact  
 22 information for putative class members in a labor dispute to “determine whether a class  
 23 action is maintainable”). Indeed, the *Algee* court noted that, in the context of a labor

24 \_\_\_\_\_  
 25 <sup>3</sup> As Defendants have noted, *see* ECF No. 77 at 3, n.5; ECF No. 56 at 9 n.6, Plaintiffs’ repeated assertions that they  
 26 are challenging “unwarranted” or otherwise unlawful denials is inconsistent with the definitions of the certified  
 classes, and no class representative has had an application denied. The classes concern delay only.

27 <sup>4</sup> The same is true for Plaintiffs’ contention that identifying members of the Naturalization Class is relevant to  
 28 determining whether Due Process entitles them to notice and explanation of why their application was handled  
 pursuant to CARRP. ECF No. 91, at 5. Individualized anecdotal evidence is not relevant to determining whether  
 Defendants acted or refused to act on grounds applicable to the class as a whole. *See* Fed. R. Civ. P. 23(b)(2).

1 dispute, contact information for putative class members was “not particularly sensitive.”  
2 *Id.* at \*5. The same cannot be said here, where identifying class members *ipso facto*  
3 identifies aliens with an articulable connection to a national-security related ground of  
4 inadmissibility or deportability. ECF No. 94 ¶¶ 61-62; Declaration of James W.  
5 McCament (Ex. E) ¶¶ 14-15. Plaintiffs also claim they have difficulty in advising  
6 individuals who may be class members whether their interests are adequately represented.  
7 This is not relevant to whether the identity of class members is discoverable.<sup>5</sup> *See* Fed.  
8 R. Civ. P. 26(b)(1) (limiting analysis of discoverability to that which is relevant, non-  
9 privileged, and proportionate).

## 10 2. Identifying Class Members is Unreasonably Burdensome

11 Beyond this, Plaintiffs cavalierly suggest that because applicants for adjustment of  
12 status and naturalization are subjected to CARRP by Defendants, it necessarily follows  
13 that Defendants’ identification of class members cannot be unreasonably burdensome.  
14 ECF No. 91 at 5-6. But as Defendants have explained, CARRP is a method, not a status;  
15 it is a “how” rather than a “what.” ECF No. 74 ¶ 96 (“CARRP is not a ‘classification’  
16 but rather an internal handling policy to guide USCIS personnel in the thorough and  
17 consistent investigation and adjudication of immigration benefit applications that raise  
18 national security concerns.”); Ex. E ¶ 14. As such, determining the identity of class  
19 members based on the factors enumerated in the class definitions would require manual  
20 compilation of data from multiple sources, including paper records for each individual  
21 class member.

22 As USCIS Deputy Director James McCament explains in his attached declaration,  
23 USCIS employs different systems to track adjudication and national-security concerns.  
24 Declaration of James W. McCament (Ex. F) ¶¶ 7-12. Additionally, some USCIS systems  
25 require manual data entry and, like any such systems, are subject to occasional errors,  
26 omissions, and delays in data entry. *Id.* ¶ 12. Identifying all likely class members would  
27 thus require a time- and labor-intensive process requiring engagement among multiple

28 <sup>5</sup> It does highlight, however, the difficulty of certifying classes that may contain class members who lack Article III standing. *See* ECF No. 73, at 2-4.

1 components of USCIS. USCIS estimates the cost of doing so would exceed \$1.2 million.  
2 *Id.* ¶ 27. This figure does not account for changes in the composition of the class, which  
3 would occur each time an application subject to CARRP reaches the six-month mark, and  
4 when an application is adjudicated and the former class member no longer has standing.  
5 *Id.* ¶ 28.

6 Furthermore, compiling a list of likely class members would have detrimental  
7 consequences for USCIS, and in particular FDNS, “to conduct its core mission to  
8 enhance the integrity of the legal immigration system by leading USCIS’s efforts to  
9 identify threats to national security and public safety, detect and combat immigration  
10 benefit fraud, and remove systematic and other vulnerabilities.” *Id.* at 29. In short, the  
11 burden on Defendants to identify class members—both monetary and by degrading  
12 USCIS’s law-enforcement capability—far outweigh the utility of providing Plaintiffs  
13 with a list of class members that may be outdated as soon as it is created. *See Fed. R.*  
14 *Civ. P. 23(b)(1).*

### 15 **3. The Identities of Class Members Are Privileged**

16 In any event, the identities of class members are privileged. The law enforcement  
17 privilege protects from dissemination information contained in both criminal and civil  
18 investigatory files. *See Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1136,  
19 1341 (D.C. Cir. 1984); *United States v. McGraw-Hill Cos. Inc.*, No. 13-cv-779, 2014 WL  
20 1647385, \*6 (C.D. Cal. Apr. 15, 2014). The privilege acknowledges the strong public  
21 interest in safeguarding the integrity of investigations, *In re Sealed Case*, 856 F.2d 268,  
22 272 (D.C. Cir. 1988), and it may be invoked to protect the ongoing or future effectiveness  
23 of investigatory techniques, *Shah v. Dep’t of Justice*, 89 F. Supp. 3d 1074, 1080 (D. Nev.  
24 2015).

25 As more fully explained in the attached declaration, disclosure of whether a  
26 particular individual application is subject to CARRP could cause substantial harm to law  
27 enforcement investigations and intelligence activities. Ex. E ¶ 18. Acknowledging that a  
28 particular individual has an articulable link to national-security related grounds of



1 inadmissibility or removability, 8 U.S.C. §§ 1182(a)(3)(A), (B), (F) or 1227(a)(3)(A),  
 2 (B), (F), could understandably cause the individual, or his associates, to seek out means  
 3 to avoid detection, or frustrate an on-going investigation by revealing to the individual  
 4 that the government has information linking him or her to a national security ground of  
 5 inadmissibility or removability. *Id.* Because disclosure of the identities of individuals  
 6 subject to CARRP could naturally and directly impede the effectiveness of ongoing and  
 7 future investigations, the identities of class members are protected from disclosure by the  
 8 law enforcement privilege. *See Shah*, 89 F. Supp. 3d at 1080.

9 Plaintiffs observe that the law enforcement privilege can be overcome in certain,  
 10 limited instances upon a showing of necessity. *See* ECF No. 91, at 4. But the “key” to  
 11 evaluating necessity is “the extent to which adequate alternative means could have  
 12 substituted.” *United States v. Cintolo*, 818 F.2d 980, 1003 (1st Cir. 1987) (internal  
 13 quotation omitted). Here, there is no need to personally identify the class members.  
 14 Defendants have offered to provide, if requested, class members’ anonymized  
 15 biographical data reasonably available to Defendants in electronic systems, which goes to  
 16 the crux of Plaintiffs’ theory that class members are being unlawfully discriminated  
 17 against because of their religion or national origin. Because names and other personally  
 18 identifying information add nothing to Plaintiffs’ case, the privilege cannot be  
 19 overcome.<sup>6</sup>

20 Plaintiffs suggest that in other contexts Defendants have disclosed information  
 21 concerning specific applications subject to CARRP. ECF No. 91, at 4. But, as discussed  
 22 in separate declarations, any such disclosures were made by mistake. Ex. E ¶ 19  
 23 (documents released in litigation); Declaration of Jill A. Eggelston (Ex. G) ¶¶ 13-26  
 24 (documents released pursuant to FOIA request). Moreover, the Government’s mistaken  
 25 “release of a document only waives these privileges for the document or information  
 26 specifically released, and not for related materials.” *In re Sealed Case*, 121 F.3d 729, 741

27 \_\_\_\_\_  
 28 <sup>6</sup> To the extent that the Court requires disclosure of class-wide demographics despite the burden it places on  
 Defendants, for what should be obvious reasons the Court should not require Defendants to disclose the identities of  
 individual class members.



1 (D.C.Cir.1997); *see also Smith v. Cromer*, 159 F.3d 875, 880 (4th Cir.1998) (explaining  
2 that “disclosure of factual information does not effect a waiver of sovereign immunity as  
3 to other related matters”); *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50,  
4 66 (1st Cir. 2007).

### 5 **B. No Relevant Classified Documents Exist**

6 Plaintiffs next demand that Defendants search for and log classified information.  
7 Defendants previously indicated that responsive classified documents may exist.  
8 Defendants’ investigation has now progressed to the point that Defendants are confident  
9 there are no classified documents that pertain to the CARRP policy.

10 Matthew D. Emrich, the Associate Director of the Fraud Detection and National  
11 Security Directorate of USCIS, is unaware of any classified information that was used or  
12 consulted in developing, drafting, revising, or modifying CARRP; does not believe that  
13 any relevant classified CARRP policy, guidance, or training exists; does not believe that  
14 any CARRP policy, training, or guidance has been discussed over classified email; and,  
15 accordingly, is not aware of any places that classified information concerning CARRP  
16 might be found. Declaration of Matthew D. Emrich (Ex. H) ¶¶ 10-13. Although there are  
17 likely classified communications related to the specific case and circumstances of  
18 individual class members, as explained above, such case-specific information is not  
19 relevant to the facial CARRP challenge being raised in this case. As the individual  
20 responsible for the relevant directorate is unaware of any classified information or data  
21 sources likely to contain documents pertaining to CARRP, there is nowhere to search and  
22 nothing to log.

### 23 **C. Discovery Concerning the Executive Orders Is Improper**

24 Plaintiffs next contend that “there is a recognized potential connection between  
25 CARRP and the ‘extreme vetting’ policies instituted by the First and Second EOs.” ECF  
26 No. 91 at 8-9. This “potential connection” is merely an allegation. The Court permitted  
27 claims related to the Executive Orders to move beyond the pleading stage because “they  
28 include allegations of a possible future and unlawful program that would embody

1 CARRP in all but name.” ECF No. 69 at 15. The Court cautioned, however, that “[t]he  
2 main thrust of this case is the legality of CARRP.” *Id.* As described in the attached  
3 declaration, however, there is no actual connection between CARRP and the Executive  
4 Orders. The CARRP policy and any EO-related policies are distinct. Declaration of Julie  
5 H. Farnam (Ex. I) ¶ 10.

6 In its Order, the Court construed “Plaintiffs’ allegations regarding an ‘extreme  
7 vetting’ program as a safeguard against the Government doing away with CARRP and  
8 reinstating a substantially similar program under a different name.” ECF No. 69, at 23.  
9 That has not happened. *Id.* ¶¶ 8-9. Thus, any discovery into the rationale behind  
10 Executive Orders that have neither affected Plaintiffs nor superseded CARRP is neither  
11 related to the claims currently at issue nor proportionate to the needs of the litigation. It  
12 is, at a minimum, wildly premature. As the Court indicated, discovery would be  
13 appropriate only if and when CARRP is replaced by a new program pursuant to  
14 Executive Order. But no such plans are currently under consideration. *Id.*

15 Moreover, regardless of whether Defendants can assert a categorical deliberative-  
16 process privilege over materials related to the EOs before searching and logging  
17 documents, Defendants can show, simply based on the language of Request for  
18 Production No. 23, that any responsive documents are virtually assured to be privileged  
19 under the deliberative-process privilege, Executive privilege, or both. *See* Ex. A, Request  
20 for Production No. 23 (requesting “[a]ll documents referring or relating to any  
21 consideration of or reference to CARRP during the planning, drafting, or issuing of the  
22 First and Second EOs”). The burden of searching for, reviewing, and logging  
23 documents—virtually all of which are assured to fall under the deliberative-process  
24 privilege simply by virtue of being part of the “planning” or “drafting” process—is  
25 disproportionate to the needs of the case under Rule 26(b)(1).

26 Beyond this, as the President is not subject to suit for injunctive relief in the  
27 performance of his official duties and the potential benefit of responding to discovery  
28 demands is exceedingly slight as compared to the burden of conducting the search and

1 the intrusion on the Executive. The Supreme Court requires Plaintiffs to make a  
2 heightened showing of need before they can require a search for, and force the  
3 government to determine whether to formally assert privileges with respect to, discovery  
4 sought from the President or his close advisers. *See Cheney v. U.S. Dist. Ct. for the Dist.*  
5 *of Columbia*, 542 U.S. 367 (2004) (reversing court of appeals decision that the Vice  
6 President and other executive officials must first formally assert privilege before the  
7 Court may address their separation-of-powers objections to discovery requests).

8 Courts have thus applied *Cheney* to require a heightened showing of need before  
9 imposing the burden of responding to discovery, as the consideration and assertion of  
10 applicable privileges in these circumstances must be a “last resort.” *United States v.*  
11 *McGraw-Hill Companies, Inc.*, No. 13-cv-0779, 2014 WL 8662657, at \*8 (C.D. Cal.  
12 Sept. 25, 2014); *see also Dairyland Power Co-op v. United States*, 79 Fed. Cl. 659, 662  
13 (2007) (“The Court agrees with the Government that, in the case of a discovery request  
14 aimed at the President and his close advisors, the White House need not formally invoke  
15 the presidential communications privilege until the party making the discovery request  
16 has shown a heightened need for the information sought.”).

17 A showing of heightened need is necessary because, as the Supreme Court has  
18 recognized, the separation of powers under our Constitution is directly implicated by  
19 subjecting the President to judicial process in matters arising out of the performance of  
20 his official duties. *Nixon v. Fitzgerald*, 457 U.S. 731, 748-55 (1982); *cf. Mississippi v.*  
21 *Johnson*, 71 U.S. 475, 501 (1866). This is motivated not solely by the concern for  
22 maintaining Presidential confidentiality and preventing the need to address difficult  
23 separation of powers issues, but also with the distractions created by the burden of  
24 responding to discovery requests, and evaluating documents for the assertion of privilege,  
25 in light of the President’s official duties. *See Cheney*, 542 U.S. at 382, 385, 389-90.  
26 Plaintiffs have not made this showing.

1           **D.     Only Documents of Nationwide Applicability Are Relevant to**  
2           **Nationwide Classes**

3                   **1.     Producing Documents From Over 100 Locations Is Unduly**  
4                   **Burdensome**

5           If USCIS were compelled to conduct an agency-wide domestic search for  
6 documents referring or relating to CARRP, it could potentially involve collection from  
7 85 field offices, 26 district offices, and 5 service centers, regardless of whether they  
8 issued national-level policy or processed the types of immigration benefit applications at  
9 issue in this litigation, as well as certain directorates and program offices within USCIS  
10 headquarters. Moreover, as written, the relevant Requests for Production would require  
11 Defendants to search for, review, and produce or log documents relating to CARRP  
12 solely in the context of adjudication of specific benefit applications. As explained above,  
13 searching for, reviewing, and producing or logging documents that shed no light on the  
14 legality of national policy are beyond the claims that can be pursued by the two  
15 nationwide classes. Plaintiffs' request is therefore not related to their claims or defenses  
16 and is clearly disproportionate to the needs of the litigation.

17                   **2.    Plaintiffs Have Challenged CARRP on Its Face, Not As Applied**

18           Finally, Defendants insist that Plaintiffs produce documents to include "regional  
19 or individual communications about CARRP's application to specific categories of  
20 applications or people." ECF No. 91 at 12. Plaintiffs contend that this information is  
21 necessary to uncover "any discriminatory application of CARRP by local offices  
22 adjudicating applications for adjustment of status and naturalization." This rationale is  
23 inconsistent with Plaintiffs' claims and the scope of the certified classes.

24           Plaintiffs have framed their case as a challenge to "the legality of CARRP against  
25 requirements dictated by Congress in the INA." ECF No. 58 at 24. And, as noted above,  
26 the Court has observed that the "common question here is whether CARRP is lawful.  
27 The answer is 'yes' or 'no.' The answer to this question will not change based on facts  
28 particular to each class member, because each class member's application was (or will  
be) subjected to CARRP." ECF No. 69 at 27. As such, application of CARRP to specific

1 types of applications, categories of people, or specific individuals—including Plaintiffs’  
 2 demand for discovery into information regarding “discriminatory application of CARRP  
 3 by local offices,” ECF No. 91 at 12—is beyond the purview of the classes certified by the  
 4 Court. *See* Fed. R. Civ. P. 23(b)(2); ECF No. 69, at 30 (“Here, Plaintiffs allege that  
 5 CARRP is unlawful and ask the Court to enjoin the Government from submitting putative  
 6 class members’ immigration application to CARRP. A single ruling would therefore  
 7 provide relief to each member of the class.”).

8 Plaintiffs sought—and were granted—permission to represent two nationwide  
 9 classes. Remedies for discriminatory application at regional or local offices is  
 10 inconsistent with the relief that can be provided to a nationwide class certified under Rule  
 11 23(b)(2). The scope of discovery must now align with the certified classes and exclude  
 12 documents not relevant to whether the Court can grant relief on a national class-wide  
 13 basis.

## 14 **V. CONCLUSION**

15 The Court should deny Plaintiffs’ Motion to Compel Production of Documents.

16 Dated: October 10, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 10, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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