

The Honorable Lauren King

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United
States, *et al.*,

Defendants.

No. 2:17-cv-00094-LK

**PARTIES’ JOINT STATUS REPORT IN
ACCORDANCE WITH FEBRUARY 22,
2022 STIPULATED ORDER STAYING
PROCEEDINGS**

On February 11, 2022, the parties filed a joint stipulation seeking a stay of the proceedings in this matter pending an agency-wide internal review of USCIS policies and procedures for identifying and assessing national security risks presented in immigration benefit applications (Dkt. 589). This Court approved the joint stipulation on February 22 and stayed the proceedings until June 9, 2022 (“February 22 Order”) (Dkt. 592, as amended by Dkt. 594). As part of the February 22 Order, the parties are required, by July 8, 2022, to submit a joint status report “identifying any issues remaining in dispute and proposing a joint case schedule to resolve any such issue or issues. If the parties cannot agree on a proposed case schedule for the resolution of any remaining issues in dispute, they may separately set forth their own proposed case schedules for consideration by the Court.” (Dkt. 592, ¶ 9). The parties offer this joint status

1 report in satisfaction of that requirement, noting that the parties have not been able to fully agree
2 on a proposed case schedule.

3 Following the Court’s February 22 Order, Defendants apprised the Court in a May 2,
4 2022 status report that USCIS “expect[ed] to complete [its] review of [the Controlled
5 Application Review and Resolution Program (CARRP)] by May 10, 2022,” and noted that
6 “[a]ssuming final approval of the new policy by USCIS leadership,” a new policy superseding
7 CARRP would be finalized shortly thereafter. (Dkt. 596 at 1).

8 Defendants represent that while USCIS has completed its initial review of CARRP as
9 projected, and also completed substantial work drafting a new policy for agency review and
10 revision in preparation of the adoption of a new policy, it currently estimates that it will need
11 approximately 120 more days to finalize a new policy, plus additional time to implement any
12 such new policy.

13 Because it is Defendants’ position that prior to the adoption of a new policy, the draft
14 policy is protected by the deliberative process privilege, Defendants have not shared any
15 information with Plaintiffs about the draft new policy under consideration by USCIS.

16 As required by the February 22 Order, Plaintiffs sent a settlement proposal to Defendants
17 on March 1, 2022. Defendants maintain that they were unable to answer Plaintiffs’ settlement
18 demands because the new policy, which Defendants expect will substantially affect the direction
19 of settlement negotiations, has not been finalized, as was envisioned in the sequence of events
20 outlined in the stipulated order (Dkt. 592). The parties have agreed on a framework for
21 consideration of Plaintiffs’ settlement demands as USCIS works on the potential new policy.

22 The parties have not been able to narrow the issues to be addressed in this action during
23 the stay, which now has ended. Defendants maintain that the issues remaining for adjudication

1 will be narrowed or possibly resolved by USCIS' adoption and implementation of the new
2 policy, depending upon its final content. As Plaintiffs have received no information regarding
3 the content of the potential new policy, they are not in a position to agree, and moreover,
4 Plaintiffs do not expect that the new policy will fully resolve all issues remaining for
5 adjudication. Presently, the following matters remain to be addressed by the Court:

- 6 • The parties' cross-motions for summary judgment, which are noted for
7 consideration (Dkt. 595 (Plaintiffs' Motion for Summary Judgment; Defendants'
8 Opposition and Cross-Motion for Summary Judgment; Plaintiffs' Reply and
9 Cross-Opposition; and Defendant's Reply));
- 10 • The parties' outstanding motions to exclude expert witnesses (Dkt. 459, 463, 484,
11 485 (Siskin); 474, 475, 476, 489, 493, 505, 506, 507 (Kruskol); 477, 478, 480,
12 490, 496, 497, 499, 504 (Gairson, Arastu, Ragland));
- 13 • The stricken motions to seal and treat documents as highly sensitive and the
14 parties' disputes as to those documents (*See* Dkt. 587);
- 15 • Whether to set a deadline for submission of supplemental discovery; and
- 16 • A trial schedule, assuming one is necessary.

17 On the last point, the parties recommend that the Court defer calendaring this matter for
18 trial until after it has ruled on the pending cross-motions for summary judgment. The parties
19 recommend that this Court schedule a status conference with the parties at that time to set a trial
20 date, if necessary, and associated pretrial deadlines. The parties understand that the Court will
21 take up the pending motions as the Court's docket allows.

1 Both parties have identified potential supplemental authority regarding the cross-motions
 2 for summary judgment, which the parties will bring to the Court’s attention pursuant to Local
 3 Civil Rule 7(n).

4 In addition, Defendants are evaluating whether the Supreme Court’s recent decision in
 5 *Patel v. Garland*, 142 S. Ct. 1614 (2022), may impact whether this Court has subject-matter
 6 jurisdiction to adjudicate some of the claims raised in this case. Defendants will determine their
 7 position on this issue no later than July 29, 2022, and will inform the Court by that date whether
 8 Defendants intend to file a related motion to dismiss. Plaintiffs requested that Defendants
 9 commit now to a filing deadline for such a motion, but Defendants’ position is that it is
 10 premature at this time.

11 The parties offer the following proposed schedule for other items:

12 Deadline to Complete Supplemental 13 Production and Responses to Plaintiffs’ 14 Discovery Requests	Plaintiffs propose July 29, 2022. Defendants propose that no deadline is necessary or appropriate as the Court’s February 22 Order provides that “Defendants will timely supplement their discovery responses following the expiration of the stay, as appropriate, in accordance with Rule 26(e), Fed.R.Civ.Pro.” (Dkt. 589, p.3). Further, Defendants contend that they cannot complete supplemental discovery responses by July 29 as supplementation is linked with policy development and issuance.
15 16 17 18 19 Deadline to File a Joint Statement Regarding the Stricken Motions to Seal and Motions for Leave to file Highly Sensitive Documents pursuant to Dkt. 587	The parties agree on August 29, 2022.
20 21 Trial	The parties agree that this should be determined following issuance of decisions on pending motions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Dated: July 8, 2022

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice

AUGUST FLENTJE
Special Counsel
Civil Division

ETHAN B. KANTER
Chief National Security Unit
Office of Immigration Litigation
Civil Division

NICHOLAS BROWN
United States Attorney

BRIAN C. KIPNIS
Assistant United States Attorney
Western District of Washington

W. MANNING EVANS
Senior Litigation Counsel
Office of Immigration Litigation

LEON B. TARANTO
Trial Attorney
Torts Branch

Respectfully Submitted,

/s/ Anne Pogue Donohue
ANNE POGUE DONOHUE
Counsel for National Security
National Security Unit
Office of Immigration Litigation

LINDSAY M. MURPHY
Senior Counsel for National Security
National Security Unit
Office of Immigration Litigation

VICTORIA M. BRAGA
Trial Attorney
Office of Immigration Litigation

BRENDAN T. MOORE
Trial Attorney
Office of Immigration Litigation

JESSE L. BUSEN
Counsel for National Security
National Security Unit
Office of Immigration Litigation

Counsel for Defendants

s/ Jennifer Pasquarella
Jennifer Pasquarella (admitted pro hac vice)
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236
jpasquarella@aclusocal.org

s/ Matt Adams
Matt Adams #28287
Northwest Immigrant Rights Project
615 Second Ave., Ste. 400
Seattle, WA 98122
Telephone: (206) 957-8611
matt@nwirp.org

s/ Stacy Tolchin
Stacy Tolchin (admitted pro hac vice)
Law Offices of Stacy Tolchin
634 S. Spring St. Suite 500A
Los Angeles, CA 90014
Telephone: (213) 622-7450
Stacy@tolchinimmigration.com

s/ Scarlet Kim
s/ Sarah Taitz
s/ Lee Gelernt
s/ Hina Shamsi
Scarlet Kim (admitted pro hac vice)
Sarah Taitz (admitted pro hac vice)
Lee Gelernt (admitted pro hac vice)
Hina Shamsi (admitted pro hac vice)
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2616
scarletk@aclu.org scarletk@aclu.org
staitz@aclu.org
lgelernt@aclu.org
hshamsi@aclu.org

s/ Harry H. Schneider, Jr.
s/ Nicholas P. Gellert
s/ David A. Perez
s/ Heath L. Hyatt
s/ Paige L. Whidbee
Harry H. Schneider, Jr. #9404
Nicholas P. Gellert #18041
David A. Perez #43959
Heath L. Hyatt #54141
Paige L. Whidbee #55072
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
HSchneider@perkinscoie.com
NGellert@perkinscoie.com
DPerez@perkinscoie.com
HHyatt@perkinscoie.com
PWhidbee@perkinscoie.com

s/ Kristin Macleod-Ball
Kristin Macleod-Ball (admitted pro hac vice)
American Immigration Council
1318 Beacon Street, Suite 18
Brookline, MA 02446
Telephone: (857) 305-3600
kmacleod-ball@immcouncil.org

s/ John Midgley
s/ Yvonne Chin
John Midgley #6511
Yvonne Chin, #50389
ACLU of Washington
P.O. Box 2728
Seattle, WA 98111
Telephone: (206) 624-2184
jmidgley@aclu-wa.org
ychin@aclu-wa.org

1 s/ Sameer Ahmed

Counsel for Plaintiffs

2 Sameer Ahmed (admitted pro hac vice)

3 **Harvard Immigration and Refugee**

4 **Clinical Program**

5 Harvard Law School

6 6 Everett Street; Suite 3105

7 Cambridge, MA 02138

8 Telephone: (617) 495-0638

9 sahmed@law.harvard.edu

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Anne Pogue Donohue
ANNE POGUE DONOHUE
Counsel for National Security
Office of Immigration Litigation
450 5th St. NW
Washington, DC 20001
Anne.P.Donohue@usdoj.gov
(202) 305-4193