

EXHIBIT A



U.S. Department of Justice
Civil Division
Office of Immigration Litigation
Appellate Section

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September 21, 2018

VIA EMAIL

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Re: *Wagafe, et al., v. Trump, et al.*, No. 2:17-cv-00094-RAJ (W.D. Wash.)
Status of Production and Proposals

Dear Counsel:

As we agreed at our September 6th meet and confer, we are providing you with an update on the overall progress of discovery. As described in greater detail below, Defendants have devoted significant resources towards meeting the November 13th discovery deadline, and we will produce privilege logs shortly. However, as discussed with you at length on September 6th, we have encountered new and considerable hurdles that will need to be addressed in order to meet the deadline. The E.O.-related document review has proven more time-consuming than CARRP-related document review. In general, the E.O.-related documents are not longer than CARRP-related documents, but they are demanding more time for review given the sensitive nature of the documents and the third-party agency equities involved. In particular, as noted below, the review of the E.O.-related classified information has presented additional technological and other hurdles. Furthermore, Plaintiffs propounded several additional discovery requests *after* the parties agreed upon the November 13th discovery deadline. These unanticipated requests were not accounted for when the parties agreed upon the November 13th discovery deadline, and they have impacted our ability to meet the deadline. Accordingly, in addition to providing an update on discovery, we include two new proposals to address some of the emerging difficulties outlined during our last call.

Discovery Update

Currently, Defendants expect to complete the review of documents contained on unclassified networks related to the First RFPs (CARRP-related requests) by November 13, 2018. Recall that to facilitate production of the CARRP-related documents, Defendants split the approximately 1,000,000 documents collected in response to Plaintiffs' First RFPs into two TAR rounds. The first round of TAR identified a corpus of 82,458 unclassified documents requiring review, totaling approximately 850,000 pages. Defendants expect that total to increase by about 8,500 documents after Defendants complete the second round of TAR. As a reminder, Defendants are utilizing a layered review methodology to protect against the inadvertent disclosure of sensitive and privileged material, as well as to ensure that the documents produced are responsive to Plaintiffs' discovery requests. To date, Defendants have completed first-pass review of nearly all of the documents from the first round of TAR, and have produced approximately 7,000 documents. Approximately 10,000 documents still require second-pass review. In sum, Defendants have reviewed most of the CARRP-related documents, and not including Plaintiffs' Fifth RFPs (which were propounded in late August), we believe we are on track to complete the CARRP-related document review by November 13, 2018. However, it is important to note that the contemplated timetable for our production assumes that substantial resources will not have to be diverted to other discovery requests that Plaintiffs have recently made or might make in the future, including Plaintiffs' Fifth RFPs.

Regarding the production of documents related to the Executive Orders, the parties recently agreed to narrow the universe of potentially responsive, unclassified documents to a corpus of approximately 94,000 documents, totaling approximately 1,000,000 pages (not including documents from the DHS Executive Secretariat Portal, which Defendants address separately below). To date, Defendants have completed first-pass review of approximately 80,000 of those documents. Approximately 35,000 documents still require second-pass review. As noted above, we anticipate that second-pass review, which includes inter-agency consultation where necessary, will be significantly more challenging and slower than first-pass review has been to this point. At this time, Defendants are not in a position to state that we will be able to meet the deadline with regard to the E.O.-related document discovery absent further narrowing.

With respect to the non-custodial sources identified for RFP 24 and the second RFPs, we noted during our last meet and confer, as well as in prior communications (*see* Defendants' June 13, 2018 email; August 31, 2018 Letter), that Defendants have yet to collect and have encountered difficulty searching and extracting data from the DHS Executive Secretariat Portal. DHS and DOJ IT personnel have been unsuccessful in devising a technical solution, and efforts by the contractor that manages the Exec Sec Portal database have been similarly unavailing. With no ability to search the database, Defendants cannot determine how many potentially responsive documents it may contain. Defendants propose to address this issue with Plaintiffs' at the earliest opportunity.

Defendants further note that search, collection, and review of E.O.-related documents held on classified systems presents additional challenges, including technical hurdles and setting up appropriate facilities for the review to take place. Because the classified nature of the documents requires all reviewers to have the proper security clearances, the pool of personnel

available to review these documents is limited. Defendants are committed to meeting the Court's requirement to log the classified information, but also believe that the scope of this material should be narrowed further, as discussed below with respect to the potentially irrelevant unclassified E.O.-related documents. Absent further narrowing of the document pool, Defendants are not in a position to state that we will be able to meet the current deadline for producing those logs.

As for the production of privilege logs, Defendants expect to produce the privilege logs for production volumes 006B, 12, and 13 by September 27, 2018, and for volumes 14 through 22 by October 31, 2018.

New Proposals

1. As discussed with you on September 6, 2018, one burdensome issue involves the prevalence of duplicates at the document level as opposed to the family level. Accordingly, Defendants propose that if a responsive document is a 100% textual duplicate of an already-produced document (as identified in Relativity), Defendants may redact the document in full and mark it as "Duplicate: DEF-XXXXXXXX," where "DEF-XXXXXXXX" is the beginning Bates number of the already-produced document. Please let us know if you agree with this proposal by next Friday, September 28, 2018.

2. The information provided above demonstrates that E.O.-related discovery has become far more burdensome than CARRP-related discovery. To this point, the Court has allowed discovery into E.O.-related vetting programs because it determined that Plaintiffs' requests are "reasonably targeted at searching for evidence of 'extreme vetting' programs that 'embody CARRP in all but name.'" *See* Dkt. 104 at 5; *see also* Dkt. 148 at 8 ("the RFPs are targeted at certain programs that may encompass a successor program to CARRP"). Defendants have repeatedly stated that any E.O.-related vetting programs are not successors to CARRP, and Defendants firmly believe that any discovery into E.O.-related vetting programs will ultimately prove irrelevant to this case. Defendants are formulating a separate proposal to exclude from review documents related to some, if not all, of the E.O.-related vetting programs. In furtherance of this proposal, Defendants will provide Plaintiffs with information sufficient to show that these programs are not successors to CARRP. Defendants are currently assembling such information and we will update you as soon as it becomes available.

Sincerely,

/s/ Ethan B. Kanter
ETHAN B. KANTER
Chief
National Security Unit
Office of Immigration Litigation

EXHIBIT B

IX. Resolution: National Security Concerns (CARRP)

- A. CARRP Policy and Operational Guidance
- B. **Definition of NS Concern**
 - 1. Known or Suspected Terrorist (KST)
 - 2. Non-KST NS Concern
 - 3. Non National Security (NNS)
- C. Four Step Approach to Cases with National Security Concerns
- D. Employment and Travel Authorization Applications with NS concerns
- E. Form I-90 with NS Concerns
- F. Santillan (EOIR Grants) with NS Concerns
- G. Request for Assistance to HQFDNS National Security Branch (NSB)

At any stage of the screening or adjudicative processes, an officer may identify an indicator of an NS concern with respect to an individual or organization.

An NS concern exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act (the Act). This includes, but is not limited to, terrorist activity; espionage; sabotage; and the illegal transfer of goods, technology, or sensitive information.

When deciding whether an NS concern exists:

- Consider the activities, individuals, and organizations described in sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act.
- Need not consider satisfying the legal standard used in determining admissibility or removability.
- Consider the totality of circumstances to determine whether an articulable link exists between the individual or organization and prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

A NS concern can be either a Known or Suspected Terrorist (KST) or Non-KST NS Concern.

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FILED UNDER SEAL

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EXHIBIT H
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EXHIBIT I
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EXHIBIT J
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EXHIBIT K
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EXHIBIT L

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. EDCV 10-0894-VAP (DTBx)

Date: November 16, 2011

Title: Tarek Hamdi v. United States Citizenship and Immigration Services, et al.
DOCKET ENTRY

PRESENT:

HON. DAVID T. BRISTOW, UNITED STATES MAGISTRATE JUDGE

Deb Taylor
Deputy Clerk

n/a
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:
None present

ATTORNEYS PRESENT FOR DEFENDANTS:
None present

**PROCEEDINGS: PLAINTIFF’S MOTION TO COMPEL FURTHER
DISCOVERY RESPONSES (DKT. NO. 52)**

On April 28, 2011, plaintiff filed a Motion to Compel and defendants filed a Motion for Protective Order regarding plaintiff’s Request for Production of Documents and the depositions of certain individuals. Following briefing, the Court held, *inter alia*, that the deliberative process privilege and the law enforcement privilege did not appear to apply to the documents at issue, subject to the Court’s in camera review of the documents, and that the policies, procedures, practices, and training pertaining to naturalization applications generally were not relevant in this action. (Dkt No. 40.) On July 8, 2011, plaintiff filed a Motion for Reconsideration with respect to the Court’s finding regarding the policies, procedures, practices, and training pertaining to naturalization applications. (Dkt. No. 44.) After additional briefing and oral argument, on July 21, 2011, the Court granted in part and denied in part plaintiff’s motion. Specifically, the Court concluded that the policies, procedures, practices, and training that address or relate to defendants’ interpretations of the terms “association(s),” “membership(s),” and “affiliation(s)” could reasonably lead to the discovery of admissible evidence and, as such, plaintiff was entitled to discovery regarding this information. (Dkt. No. 55.)

On July 18, 2011, after an in camera review of the documents withheld by defendants on the basis of the deliberative process privilege and/or the law enforcement privilege, the Court concluded that the privileges did not apply to the majority of the documents at issue. (Dkt No. 50.)

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Thereafter, on July 29, 2011, and August 8, 2011, respectively, defendants filed Motions for Review of the Court’s findings regarding (1) the application of the deliberative process privilege and the law enforcement privilege and (2) the discovery of information regarding the policies, procedures, practices, and training as they related to the interpretation of the terms “association(s),” “membership(s),” and “affiliation(s).” (Dkt. Nos. 56, 62.) On September 28, 2011, the District Judge issued a Minute Order granting in part and denying in part defendants’ first Motion for Review and granting defendants’ second Motion for Review.

In the interim, on July 25, 2011, plaintiff filed a Motion to Compel Further Discovery Responses seeking further answers to deposition questions and plaintiff’s First Set of Interrogatories (“Motion”). On the same date, the parties filed a Joint Stipulation (“Jt. Stip.”) reflecting their respective positions. On August 1, 2011, the Court conducted a telephonic conference and ordered the parties to further meet and confer regarding their discovery dispute. On August 4, 2011, the Court denied the parties’ Joint Stipulation to shorten the time to hear the Motion and advised the parties that the Motion would be taken under submission as of the date the Reply was due and/or filed and would be decided on the papers without oral argument. (Dkt No. 61.) On August 9, 2011, the parties filed a “Joint Stipulation on Plaintiff’s Motion to Compel Discovery Re Limiting Issues in Dispute and Briefing Schedule” (“8/9/11 Jt. Stip.”), advising the Court that the parties had resolved some of their discovery issues. (Dkt No. 65.) Thereafter, on August 11, 2011, defendants filed a “Memorandum of Law in Opposition to Plaintiff’s Second Motion to Compel” (“Opp.”), and plaintiff filed a Reply on August 15, 2011 (“Reply”).

Following the District Judge’s September 28, 2011 Minute Order, on October 11, 2011, the Court ordered further briefing solely addressing the impact of the District Judge’s September 28, 2011 ruling on the pending Motion. (Dkt No. 80.) On October 25, 2011, in accordance with the Court’s Order, each party submitted a Supplemental Brief regarding this issue.

Thus, this matter is now ready for decision. For the reasons discussed below, particularly in light of the District Judge’s September 28, 2011 Minute Order, plaintiff’s Motion is GRANTED in part and DENIED in part.

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DISCUSSION

I. Deposition Questions

Plaintiff seeks to compel further answers to deposition questions. Specifically, on April 13, May 3, and May 11, 2011 respectively, plaintiff took the depositions of United States Citizenship and Immigration Service (“USCIS”) Officers Roberto Osuna and Cecil Clark, and USCIS Fraud Detection and National Security (“FDNS”) Immigration Officer Elias Valdez. (Jt. Stip. at 4.) At these depositions, defendants objected to numerous questions, citing the deliberative process privilege and/or the law enforcement privilege, and instructing the witnesses not to answer. (Id.) The District Judge’s September 28, 2011 Minute Order directly addressed these issues, and therefore, this portion of the dispute is largely resolved by the District Judge’s September 28, 2011 ruling.¹

A. Deliberative process privilege

The Court has reviewed the deposition questions in which defendants instructed the witnesses not to respond on the basis of the deliberative process privilege. The questions at issue relate to the evaluation of plaintiff’s naturalization application and the analysis of naturalization applications generally. As the District Judge found that defendants have properly invoked the deliberative process privilege with respect to the USCIS’s evaluation of plaintiff’s naturalization application (see Dkt No. 78 at 3-7), this Court is bound by such determination. As such, defendants have properly invoked this privilege with respect to those questions dealing with the evaluation of plaintiff’s naturalization application.

¹ In the Joint Stipulation, the parties organized the deposition testimony into categories. Following a meet and confer, the parties narrowed the categories of information sought, and plaintiff notified the Court that he no longer sought further testimony regarding categories XII, XIII, XIV, and XV as identified in the Joint Stipulation. (See 8/9/11 Jt. Stip.)

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Although the Court finds that some of defendants' objections on the basis of the deliberative process privilege were not justified with respect to a few of the more general questions, see Lahr v. Nat'l Transp. Safety Bd., 569 F.3d 964, 979-80 (9th Cir. 2009), the Court concludes that this information was not discoverable on the basis of relevance, as discussed, *supra*.

B. Law enforcement privilege

Defendants also invoked the law enforcement privilege in response to many of the deposition questions. The law enforcement privilege² is a qualified privilege designed "to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent inference with an investigation." In re the City of N.Y., 607 F.3d 923, 941 (2d Cir. 2010) (quoting In re Dep't of Investigation of the City of N.Y., 856 F.2d 481, 484 (2d Cir. 1988)); Bernat v. City of Cal. City, No. 1:10-cv-00305 OWW JLT, 2010 WL 4008361, at *5 (E.D. Cal. Oct. 12, 2010) (citing In re Dep't of Investigation of City of N.Y.); Ibrahim v. Dep't of Homeland Sec., No. C 06-00545 WHA, 2009 WL 5069133, at *14 (N.D. Cal. Dec. 17, 2009) (citing In re Dep't of Investigation of City of N.Y.). The burden of invoking the privilege rests with the party seeking its benefits. Kelly v. City of San Jose, 114 F.R.D. 653, 662 (N.D. Cal. 1987); see generally Cheney v. U.S. Dist. Ct. for the Dist. of Columbia, 542 U.S. 367, 383, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). "The privilege must be formally asserted and delineated in order to be raised properly, and the party opposing disclosure must state with specificity the rationale of the claimed privilege." Howard, 2011 WL 2182441, at *1 (internal quotation marks and citation omitted). Further, "[s]ince privileges derogate

² The law enforcement privilege also has been referred to as the official information privilege, the government privilege, and the executive privilege. See, e.g., Brooks v. Cnty. of San Joaquin, 275 F.R.D. 528, 532 (E.D. Cal. 2011); Howard v. Cnty. of San Diego, No. 09-CV-2416-IEG (WVG), 2011 WL 2182441, at *1 n.1 (S.D. Cal. June 3, 2011).

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the search for the truth they are supposed to be narrowly construed.” Kelly, 114 F.R.D. at 659 (citing United States v. Nixon, 418 U.S. 683, 710, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974)). Assertion of the law enforcement privilege requires: “(1) [A] formal claim of privilege by the ‘head of the department’ having control over the requested information; (2) assertion of the privilege based on actual personal consideration by that official; and (3) a detailed specification of the information for which the privilege is claimed, with an explanation why it properly falls within the scope of the privilege.” Landry v. F.D.I.C., 204 F.3d 1125, 1135 (D.C. Cir. 2000) (citing In re Sealed Case, 856 F.2d 268, 271 (D.C. Cir. 1988)); see also Howard, 2011 WL 2182441, at *1 (“The affidavit must contain, *inter alia*, “a specific identification of the governmental or privacy interests that would be threatened by disclosure of the material to plaintiff and/or his lawyer,” “a description of how disclosure subject to a carefully crafted protective order would create a substantial risk of harm to significant governmental or privacy interests,” and “a projection of how much harm would be done to the threatened interests if the disclosure were made.”) (quoting Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995)). The official claiming the privilege must “have seen and considered the contents of the documents and himself have formed the view that on grounds of public interest they ought not to be produced and state with specificity the rationale of the claimed privilege.” Kerr v. U.S. Dist. Ct. for the N. Dist. of Cal., 511 F.2d 192, 198 (9th Cir. 1975) (citing United States v. Reynolds, 345 U.S. 1, 8 n.20, 73 S. Ct. 528, 97 L. Ed. 727 (1953)), affirmed by 426 U.S. 394, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976); Howard, 2011 WL 2182441, at *1. A general claim of harm to the public interest is insufficient to overcome the burden placed on the party seeking to shield material from disclosure. Miller v. Pancucci, 141 F.R.D. 292, 300 (C.D. Cal. 1992); Howard, 2011 WL 2182441, at *2.

After considering the declaration submitted by Jane Arellano, District Director of the USCIS, the Court concludes that defendants have not satisfied their burden of invoking the law enforcement privilege. Director Arellano’s identification of harm is couched in general terms and does not identify any specific governmental interest or harm at issue. (Declaration of Jane Arellano (“Arellano Decl.”) at ¶8 (“Disclosure of such information would reveal investigatory techniques and procedures and would impair the agency’s law enforcement investigative process.”).) Indeed, Director

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Arellano's declaration is substantially similar to the one previously submitted by defendants with respect to plaintiff's Motion to Compel the production of documents. The Court previously determined that declaration was insufficient to invoke the law enforcement privilege, a finding that was confirmed by the District Judge in the September 28, 2011 Minute Order. Specifically, the District Judge held, "[d]efendants did not, as they were required to do, submit a declaration or affidavit from the appropriate head of the department, stating inter alia, with specificity the rationale of the claimed privilege." (Dkt No. 78 at 8.) Although defendants appear to identify more specific harm in the Joint Stipulation, this does not alleviate their burden of complying with the specific requirements for asserting this privilege. There has been no showing that Director Arellano, after reviewing information at issue, concluded that any specific harm would result or how much harm would be done or threatened. See Bernat, 2010 WL 4008361, at *6; see also Howard, 2011 WL 2182441, at *1. As such, defendants have not properly invoked this privilege. Accordingly, defendants may not withhold the information sought on the basis of the law enforcement privilege.

C. Relevance

Defendants further contend that, regardless of an asserted privilege, the information at issue is not relevant and thus, plaintiff's Motion should be denied on this basis. (See Jt. Stip. at 6-8; defendants' Supplemental Letter Brief dated October 25, 2011 at 2-5.) Preliminarily, defendants did not object to the deposition testimony on this basis nor file a motion for a protective order. Nevertheless, a discovery request must be relevant to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). Pursuant to this Court's previous findings and the District Judge's September 28, 2011 Minute Order, information regarding the polices, procedures, practices, and training pertaining to naturalization applications generally are not relevant and not likely to lead to the discovery of admissible evidence. Accordingly, most of the deposition testimony at issue is not discoverable.

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Nevertheless, there remains a limited number of questions which sought to elicit information regarding plaintiff's specific naturalization application and to which the only objection raised was based of the law enforcement privilege, which the Court has determined was not properly invoked. As such, plaintiff's Motion to compel further deposition testimony regarding the following topics shall be granted as such subject matter specifically related to plaintiff's naturalization application:

1. Valdez Deposition
 - a. Whether plaintiff's case was a national security case (Jt. Stip. at 21 (Valdez Depo. at 137:22-138:3).)
 - b. Why plaintiff's case was a CARRP case (Jt. Stip. at 21 (Valdez Depo. at 177:23-178:4).)
 - c. Why there was a "positive response" in plaintiff's case (Jt. Stip. at 56 (Valdez Depo. at 157:22-158:3).)
 - d. When was the last time that Mr. Valdez had a conversation with certain Federal Bureau of Investigation ("FBI") agents regarding plaintiff (Jt. Stip. at 56 (Valdez Depo. at 175:13-17).)
 - e. Mr. Valdez's understanding as to whether FBI agents were investigating plaintiff (Jt. Stip. at 56 (Valdez Depo. at 178:19-179:3).)
 - f. The purpose of speaking to FBI agents regarding plaintiff's case (Jt. Stip. at 57 (Valdez Depo. at 181:22-183:24).)
 - g. Whether an investigation regarding plaintiff remains ongoing (Jt. Stip. at 57 (Valdez Depo. at 181:22-183:24).)
 - h. The purpose of speaking to Mr. Clark regarding plaintiff's case (Jt. Stip. at 73 (Valdez Depo. at 189:8-12).)
 - I. Whether the grounds for removability were based on a national security issue (Jt. Stip. at 83 (Valdez Depo. at 185:18-186:25).)
 - j. The work Mr. Valdez did on plaintiff's case (Jt. Stip. at 83-84 (Valdez Depo. at 190:18-192:4).)
 - k. What databases Mr. Valdez checked with regard to plaintiff's case (Jt. Stip. at 84 (Valdez Depo. at 190:18-192:4).)

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- l. Whether Mr. Valdez requested any information from any other law enforcement agencies regarding plaintiff (Jt. Stip. at 84 (Valdez Depo. at 190:18-192:4).)
 - m. Why Mr. Valdez attended plaintiff's hearing (Jt. Stip. at 84-85 (Valdez Depo. at 190:18-192:4).)
 - n. Documents establishing that plaintiff was moving at the time of his interview (Jt. Stip. at 86 (Valdez Depo. at 201:16-204:24).)
 - o. How Mr. Valdez determined whether plaintiff lived at a certain residence (Jt. Stip. at 87 (Valdez Depo. at 201:16-204:24).)
 - p. What questions Mr. Caputo asked plaintiff during his interview (Jt. Stip. at 91 (Valdez Depo. at 172:22-173:3).)
 - q. The responses plaintiff gave during his interview with Mr. Caputo (Jt. Stip. at 91 (Valdez Depo. at 172:22-173:33).)
 - r. What documents Mr. Valdez reviewed regarding an exchange between Mr. Caputo and plaintiff (Jt. Stip. at 92 (Valdez Depo. at 219:9-220:10).)
 - s. Declaration concerning plaintiff and the source of the information contained in the declaration (Jt. Stip. at 92-93 (Valdez Depo. at 228:23-229:16).)
 - t. Any investigations Mr. Valdez conduct regarding Mr. Caputo's interview (Jt. Stip. at 93 (Valdez Depo. at 228:23-229:16).)
2. Clark Deposition
 - a. Information received from the FBI (Jt. Stip. at 58-59 (Clark Depo. at 121:11-122:20).)
3. Osuna Deposition
 - a. Whether Mr. Osuna met with FBI personnel or spoke to them on the telephone regarding plaintiff's application (Jt. Stip. at 59 (Osuna Depo. at 91:10-16).)

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- b. The difference between a background check and administrative check in the context of plaintiff's case (Jt. Stip. at 67 (Osuna Depo. at 87:10-88:9).)

As to the following questions, it appears that plaintiff's counsel was seeking information regarding plaintiff's naturalization application. As such, to the extent that these questions were seeking information regarding plaintiff's naturalization application, such information is relevant. On the other hand, to the extent plaintiff's counsel was seeking information regarding the polices, procedures, practices, and training of naturalization applications generally, such information is not discoverable.

1. Valdez Deposition

- a. The purpose of speaking with Mr. Osuna (Jt. Stip. at 73 (Valdez Depo. at 189:7-17).)
- b. A conversation with Mr. Clark regarding the grounds for ineligibility (Jt. Stip. at 74 (Valdez Depo. at 243:11-15).)
- c. The purpose of talking to Mr. Caputo (Jt. Stip. at 91 (Valdez Depo. at 172:22-173:3).)

2. Clark Deposition

- a. Information Mr. Clark received from the FBI (Jt. Stip. at 58 (Clark Depo. at 118:12-16).)
- b. What the "positive" designation meant on plaintiff's Exh. 18 (Jt. Stip. at 62-63 (Clark Depo. at 85:7-86:2).)
- c. What the term "unclass" meant on plaintiff's Exh. 43 (Jt. Stip. at 64 (Clark Depo. at 93:21-94:10).)
- d. What the term "non-ident" meant on plaintiff's Exh. 43 (Jt. Stip. at 64-65 (Clark Depo. at 94:12-21).)
- e. What the term "reassign" meant on a particular file (Jt. Stip. at 65 (Clark Depo. at 95:9-96:16).)
- f. What the phrase "CMI Jane" meant on a particular file (Jt. Stip. at 65 (Clark Depo. at 95:9-96:16).)

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II. Interrogatory No. 10³

By way of Interrogatory No. 10, plaintiff sought information regarding all naturalization applications that defendants have denied in the last five years “because the applicant failed to disclose, in response to questioning about their organizational ‘associations,’ any or all of the organizations to which they have made donations.” (Jt. Stip. at 139.) Defendants objected on the grounds that the interrogatory was overbroad, unlimited in scope, unduly burdensome, irrelevant, and may seek information protected by the attorney-client, deliberative process, and law enforcement privileges. (Jt. Stip. at 139-40.)

The District Judge’s September 28, 2011 Minute Order has resolved this discovery issue. Specifically, the District Judge held that this action is “one solely for relief under 8 U.S.C. § 1421(c), naturalization by the District Court.” (Dkt. No. 78 at 10.) Because the District Judge will review plaintiff’s naturalization application de novo, neither the process nor the outcome of the USCIS hearing or appeal are at issue in this action. (Id.) Likewise, defendants’ denial of other applications regarding the question of association would not be discoverable. As previously explained, in its review, the District Judge makes its own findings of fact and conclusions of law. United States v. Hovsepian, 359 F.3d 1144, 1162 (9th Cir. 2004) (en banc). As such, given that such information is not relevant and considering the substantial burden of producing this information, plaintiff’s Motion to compel further responses to Interrogatory No. 10 is denied.⁴

³ Plaintiff originally sought further responses to Interrogatory Nos. 1, 9, 10, and 13. However, pursuant to the parties’ August 9, 2011 Joint Stipulation, the parties resolved their discovery dispute as to Interrogatory Nos. 1 and 9. (8/9/11 Jt. Stip. at 1.) Thereafter, defendants also supplemented their response to Interrogatory No. 13. (Opp. at 6.) As such, plaintiff clarified in his Reply that he now only seeks to compel a further response to Interrogatory No. 10. (Reply at 1 n.1.)

⁴ Plaintiff appears to concede that the District Judge’s September 28, 2011 Minute Order likely resolved this issue in defendants’ favor. (See plaintiff’s

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CENTRAL DISTRICT OF CALIFORNIA

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Accordingly, plaintiff's Motion to compel further responses to Interrogatory No. 10 is denied.

CONCLUSION AND ORDER

For the foregoing reasons, IT IS THEREFORE ORDERED AS FOLLOWS:

(1) Plaintiff's Motion to compel further responses to deposition questions is GRANTED in part and DENIED in part. Within 14 days of the service date of this Minute Order, defendants are ordered to produce Messers. Osuna, Clark, and Valdez for their depositions on the limited information described above. In all other respects, plaintiff's Motion to compel further deposition testimony is DENIED.

(2) Plaintiff's Motion to Compel a further response to Interrogatory No. 10 is DENIED.

The Court is mindful of the District Judge's cautionary comment that: "Neither side will be permitted at trial to introduce or otherwise rely on evidence it has not previously disclosed in discovery, particularly any evidence as to which it has claimed the shield of privilege, unless such evidence can be identified properly as rebuttal evidence, a very narrow category indeed." (Dkt No. 78 at 10.)

Supplemental Letter Brief dated October 25, 2011 at 1-2.)