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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**PLAINTIFFS’ MOTION TO COMPEL
DOCUMENTS WITHHELD UNDER
THE LAW ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES**

**NOTE ON MOTION CALENDAR:
April 26, 2019**

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3 515 F.2d 1373 (8th Cir. 1975)3

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5 No. C13-2041, 2014 WL 5465808 (N.D. Iowa Oct. 28, 2014)3

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I. INTRODUCTION

1
2 In this lawsuit challenging the Controlled Application Review and Resolution Program
3 (“CARRP”) and related extreme vetting programs, Defendants have invoked the law
4 enforcement privilege in withholding or redacting hundreds of documents. From those, Plaintiffs
5 have identified a narrow subset of 25 that appear to be especially relevant. As to these
6 documents, the applicable balancing test weighs in favor of disclosure. Defendants also assert the
7 deliberative process privilege over three of the 25 documents, but Plaintiffs’ interests weigh in
8 favor of disclosure. Plaintiffs ask the Court to compel the production of these documents without
9 redactions, or if necessary, under an Attorneys Eyes’ Only protective order. In the alternative,
10 Plaintiffs request that the Court review the 25 documents *in camera* to determine whether
11 Defendants should produce them unredacted to Plaintiffs.

II. PROCEDURAL BACKGROUND

A. The Court Ordered the Production of Revised Law Enforcement Privilege Logs

12
13
14 On February 8, 2018, Plaintiffs filed a motion to compel challenging Defendants’
15 assertion of the law enforcement privilege with respect to the documents in Volumes 1-4 of
16 Defendants’ discovery production. Dkt. 109. Plaintiffs argued that Defendants had failed to
17 properly invoke the law enforcement privilege because they declined to provide an affidavit from
18 a department head and proper privilege logs.

19 On April 11, 2018, the Court issued an order holding in part that Defendants had failed to
20 properly invoke the law enforcement privilege. Dkt. 148 at 3. The Court also found Defendants’
21 privilege logs insufficient and ordered them to produce revised logs. *Id.* at 4-5.

B. Recent Developments

22
23 The parties have met and conferred several times regarding Defendants’ assertions of the
24 law enforcement privilege. After meeting and conferring on July 20, 2018, the parties agreed
25 they were at an impasse. *See* Declaration of Sameer Ahmed ISO the Motion to Compel (“Ahmed
26 Decl.”) ¶ 2. Plaintiffs then culled 38 documents that appeared particularly relevant to Plaintiffs’

1 claims from the hundreds of withheld or redacted documents asserting the law enforcement
2 privilege. *Id.* at ¶ 3. On October 5, 2018, Plaintiffs sent Defendants the list of 38 documents they
3 intended to request in this motion. *Id.* at ¶ 4. After meeting and conferring on October 15, 2018,
4 Defendants agreed to review and possibly reproduce those documents with fewer or no
5 redactions. *Id.* On December 5, 2018, Defendants finished reproducing all the requested
6 documents, most of which contained fewer, but still significant, redactions. *Id.* at ¶ 5. Many of
7 the documents still contain redactions in areas that appear to be relevant to Plaintiffs' claims. *Id.*
8 From the reproduced documents and after further discussions with the Defendants, Plaintiffs
9 narrowed the scope of their request to 25 documents that still include redactions in areas believed
10 to be most relevant to Plaintiffs' claims. *Id.* ¶¶ 6-7. Three of the 25 documents contain
11 deliberative process privilege redactions. *Id.* at ¶ 9. For the reasons set forth below, this motion
12 addresses the deliberative process privilege assertions contained in DEF-0094269 alone.

13 III. MEET AND CONFER CERTIFICATION

14 On March 29, 2019, the parties held a final telephonic meet and confer, in good faith, to
15 avoid the Court's involvement in this dispute. The parties included Andrew Brinkman, Joseph
16 Carilli, and Jesse Busen for the Defendants and Sameer Ahmed, Nicholas Gellert, Cristina Sepe,
17 and Heath Hyatt for the Plaintiffs. Ahmed Decl. ¶ 8. Plaintiffs requested that Defendants produce
18 unredacted versions of the remaining 25 documents. *Id.* ¶ 6. On April 5, 2019, Defendants
19 responded in writing refusing that request. *Id.* ¶ 7. The parties are at an impasse.

20 IV. ARGUMENT

21 A. The Defendants' Privilege Logs are Insufficient

22 The reproduced privilege logs asserting the law enforcement and deliberative process
23 privileges are insufficient because they fail to adequately describe and justify why the privileges
24 apply to these documents. Defendants have had multiple opportunities to provide satisfactory
25 privilege logs but have failed to do so. It is Plaintiffs' position that Defendants should not be
26 given any further opportunities to revise their logs.

1 **B. Legal Standard Governing the Law Enforcement Privilege**

2 Although Defendants broadly invoke a “law enforcement privilege,” neither the Supreme
3 Court nor the Ninth Circuit has recognized such a privilege. *See Shah v. Dep’t of Justice*, 714 F.
4 App’x 657, 659 n.1 (9th Cir. 2017). District courts within the Ninth Circuit have looked to other
5 courts of appeals for guidance on what the privilege might cover, assuming it exists.

6 “The so-called ‘law enforcement privilege’ is ‘a limited evidentiary privilege which
7 protects the informal investigatorial and trial-preparatory processes of regulatory agencies.’”
8 *U.S. Commodity Futures Trading Comm’n v. U.S. Bank, N.A.*, No. C13-2041, 2014 WL
9 5465808, at *8 (N.D. Iowa Oct. 28, 2014) (quoting *Stephens Produce Co., Inc. v. N.L.R.B.*, 515
10 F.2d 1373, 1376 (8th Cir. 1975)). “The privilege is ‘a very narrow one’ and the ‘mere
11 incantation’ of the stated policy behind it is not always ‘necessarily sufficient to bring the
12 privilege into effect.’” *Id.* (quoting *Stephens*, 515 F.2d at 377).

13 “The party claiming the privilege has the burden to establish its existence.” *Conan v. City*
14 *of Fontana*, No. EDCV 16-1261-KK, 2017 WL 2874623, at *4 (C.D. Cal. July 5, 2017). “To
15 prevent a document’s disclosure under this privilege, the Executive Branch must establish that
16 (1) the head of the department, who had some control over the information, made a formal claim
17 of privilege; (2) that individual had personally considered the basis for raising the privilege; and
18 (3) the information for which the privilege is claimed, described in detail, properly falls within
19 the scope of the privilege.” *In re Anthem, Inc. Data Breach Litig.*, 236 F. Supp. 3d 150, 159
20 (D.D.C. 2017). The Court confirmed in its April 11, 2018 Order that Defendants must satisfy
21 these requirements to properly invoke the privilege. *See* Dkt. 148 at 3.

22 The law enforcement privilege is qualified rather than absolute, which means that even if
23 the above elements are satisfied and the information properly falls within the scope of the
24 privilege, “[t]he public interest in nondisclosure must be balanced against the need of a particular
25 litigant for access to the privileged information.” *In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir.
26 1988). When striking the balance, courts may consider the following ten factors:

1 (1) the extent to which disclosure will thwart governmental processes by
 2 discouraging citizens from giving the government information; (2) the impact
 3 upon persons who have given information of having their identities disclosed;
 4 (3) the degree to which governmental self-evaluation and consequent program
 5 improvement will be chilled by disclosure; (4) whether the information sought is
 6 factual data or evaluative summary; (5) whether the party seeking discovery is an
 7 actual or potential defendant in any criminal proceeding either pending or
 8 reasonably likely to follow from the incident in question; (6) whether the police
 9 investigation has been completed; (7) whether any interdepartmental disciplinary
 10 proceedings have arisen or may arise from the investigation; (8) whether the
 11 plaintiff's suit is non-frivolous and brought in good faith; (9) whether the
 12 information sought is available through other discovery or from other sources;
 13 (10) the importance of the information sought to the plaintiff's case.

14 *Ibrahim v. Dep't of Homeland Sec.*, No. C 06-00545 WHA, 2013 WL 1703367, at *4 (N.D. Cal.
 15 Apr. 19, 2013). Additionally, the existence of a protective order that safeguards confidential
 16 information weighs in favor of disclosure. *In re Anthem*, 236 F. Supp. 3d at 167.

17 **C. The Balancing Test Weighs in Favor of Disclosing Documents that are Highly
 18 Relevant to Plaintiffs' Claims**

19 Plaintiffs' need for the 25 documents identified here—a very small subset of the
 20 hundreds of documents over which Defendants have asserted the privilege—outweighs
 21 Defendants' purported interests in nondisclosure. Further, the Protective Order in this case would
 22 sufficiently mitigate the risks, if any, that may arise from disclosure. To the extent the Court
 23 determines that the Protective Order may not be sufficient, the Court may order production of the
 24 documents on an Attorneys Eyes Only (AEO) basis to further mitigate any risk of disclosure.

25 **1. The Challenged Documents**

26 The 25 documents appear highly relevant to Plaintiffs' claims. They are listed here,
 grouped into five categories:

1. Documents that discuss non-statutory indicators of alleged national security concerns:

1. CARRP Operational Guidance: Attachment A - Guidance for Identifying National Security Concerns [DEF-0094536 to DEF-0094544];
2. National Security Indicator Training, January 2017 [DEF-0094351 to DEF-0094535];
3. National Security Indicator Training, January 2017 [DEF-00095125 to DEF-00095285];
4. National Security Indicator Training, August 2017 [DEF-0094804 to DEF-0094966];
5. National Security Indicator Training, August 2017 [DEF-00095597 to DEF-00095757];

- 1 6. National Security Indicator Training, August 2017 [DEF-0094630 to DEF-0094792];
2 7. FDNS Officer Basic Training: Identification of a NS Concern [DEF-00095871-
00095962].

3 2. Documents describing CARRP’s “articulable link” requirement:

- 4 8. FDNS-DS User Guide Updates & Articulable Link Training [DEF-00095963 to DEF-
00096057].

5 3. Documents describing CARRP policies and procedures:

- 6 9. Policy Memorandum 602-XXXX [DEF-0094235 to DEF-0094252];¹
7 10. Executive Summary Re: CARRP Re-designated as Situational Review Process (SRP)
[DEF-0094269 to DEF-0094270];²
8 11. Senior Policy Council - Briefing Paper [DEF-0094275 to DEF-0094277];
9 12. CARRP Adjudicator Training - Instructor Guide [DEF-0094295 to DEF-0094348];
10 13. CARRP Policy/Guidance Questions [DEF-0094974 to DEF-0094978];³
11 14. FDNS Officer Basic Training: National Security Instructor Guide [DEF-00095760 to
12 DEF-00095870];
13 15. USCIS Shark Tank [DEF-0094994 to DEF-0095008];
14 16. CARRP Overview - Refugee Asylum, and International Operations Directorate (RAIO)
Pre-Deployment Training [DEF-0094545 to DEF-0094629];
15 17. [Redacted]: Where Do They Come From and Where Do They Go [DEF-00095123];
16 18. Where Do [Redacted] Come From? [DEF-00095124].

17 4. Documents relating to case prioritization:

- 18 19. Case Prioritization Intelligence Assessment (CPIA) [DEF-0094271 to DEF-0094274].

19 5. Documents relating to procedures for vetting cases with alleged national security concerns:

- 20 20. FDNS Continuous Immigration Vetting (CIV) Overview [DEF-00096101 to DEF-
21 00096104];
22 21. Operational Guidance for Vetting and Adjudicating Cases with National Security
23 Concerns [DEF-00095009 to DEF-00095054];
24 22. Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases
25 Involving National Security Concerns [DEF-0094260 to DEF-0094268];
26 23. Interim Operational Guidance Pertaining to the Vetting and Adjudication of Cases with
National Security Concerns [DEF-00096058 to DEF-00096100];

¹ Defendants did not change the scope of redactions in this document in the reproduced version. Defendants’ reproduced version now asserts the deliberative process privilege and the law enforcement privilege. Plaintiffs moved to compel this document without deliberative process privilege redactions and that motion is currently before the Court. Dkt. 194; *see* Ahmed Decl. ¶ 9. Plaintiffs request lifting the law enforcement privilege redactions here.

² Defendants did not change the scope of redactions in this document in the reproduced version. Their log asserts both the law enforcement privilege and the deliberative process privilege but their redactions now only claim the deliberative process privilege. Ahmed Decl. ¶ 9.

³ While Defendants lifted redactions on parts of this document, a number of redactions remain, all of which assert only the law enforcement privilege or both the law enforcement privilege and the deliberative process privilege. Plaintiffs move only to unredact the assertions of the law enforcement privilege at this time. Plaintiffs previously agreed to not move to compel the deliberative process privilege assertions on this document. Ahmed Decl. ¶ 9.

1 24. Refugee Adjudication Standard Operating Procedure: Cases Involving National Security
Concern [DEF-00095055 to DEF-00095076];

2 25. Operational Guidance on Vetting and Adjudicating Cases with National Security
Concerns [DEF-00095077 to DEF-00095122].

3
4 All these documents are important to Plaintiffs' case. Plaintiffs allege that CARRP
5 implements an extra-statutory, internal vetting program that discriminates on the basis of religion
6 and/or national origin and unreasonably delays and pretextually denies immigration benefits to
7 statutorily-qualified applicants. Dkt. 47 ¶¶ 35-51, 62-76. Plaintiffs therefore need to know what
8 "non-statutory indicators" Defendants are employing to determine whether an applicant raises
9 alleged national security concerns that subject an individual to CARRP. Plaintiffs also need to
10 understand how Defendants determine whether an "articulable link" exists between an applicant
11 and an activity, individual, or organization described in specific sections of the Immigration and
12 Nationality Act. *See* 8 U.S.C. § 212(a)(3)(A), (B), and (F); § 237(a)(4)(A) and (B). According to
13 Defendants, when such an "articulable link" exists, an individual is subjected to CARRP. Dkt. 74
14 ¶ 61 ("[I]f an application presents an articulable link to a national security concern, the
15 application is handled pursuant to CARRP."). Further, Plaintiffs seek information on CARRP
16 policies and procedures to determine whether the program discriminates based on religion and/or
17 national origin, and whether it indefinitely delays or pretextually denies immigration benefits to
18 statutorily-qualified applicants. Finally, documents relating to case prioritization and procedures
19 for vetting cases with alleged national security concerns would help reveal whether CARRP and
20 successor vetting programs are being applied to applicants in an arbitrary and pretextual fashion.
21 All of this information is highly relevant to Plaintiffs' claims under the Administrative Procedure
22 Act (Claim 8), the Immigration and Nationality Act (Claim 7), and the Uniform Rule of
23 Naturalization Clause (Claim 10). And to the extent this information reflects that CARRP-related
24 determinations unlawfully turn on national origin or religion, that information is plainly relevant
25 to Plaintiffs' Equal Protection claim (Claim 6).

1 Most of the withholdings that Plaintiffs challenge are training and guidance documents.
2 Training and guidance documents relating to CARRP are highly relevant to Plaintiffs' claims
3 that CARRP imposes unlawful, extra-statutory hurdles on individuals applying for residency or
4 citizenship who are alleged to have an "articulable link" to activities, entities, or individuals
5 raising national security. *See* Dkt. 47 ¶¶ 9-11, 21,55-97, 273-78, 289-93. Such documents are
6 also relevant to Plaintiffs' claim that "CARRP labels applicants national security concerns based
7 on vague and overbroad criteria that often turn on national origin or innocuous and lawful
8 activities or associations." *Id.* ¶ 76. The documents will also shed light on the criteria Defendants
9 employ in evaluating individuals for security risks and the scoring determinations thereof. For
10 example, some of the redacted information in the above documents includes indicators of
11 suspicious activities, *see* DEF-00095125 at DEF-00095207–DEF-00095211; examples of vetting
12 determinations, and possibly the rationale for those determinations, *see* DEF-00095055 at DEF-
13 00095067–DEF-00095076; and information about scores and scoring categories, *see* DEF-
14 0094994 at DEF-0095001. Lifting these redactions are important to Plaintiffs' claims.

15 2. Balancing Test

16 As an initial matter, "[i]t is important to note that this suit does not present a typical [law
17 enforcement] privilege fact pattern," as "[t]he government is not seeking to protect information
18 relating to an ongoing investigation or that would tend to reveal the identity of a confidential
19 informant." *See Ibrahim*, 2013 WL 1703367, at *5. Rather, Defendants are seeking to withhold
20 documents relating to general CARRP policies and procedures. This mismatch calls into
21 question Defendants' broad invocation of the privilege. *See In re Anthem*, 236 F. Supp. 3d at
22 166-67 ("[T]hese audit workpapers and meeting write-ups do not pertain to an ongoing or closed
23 criminal or civil investigation of a particular law violation and, therefore, fall outside the
24 heartland of the types of records the privilege is designed to protect."). At a minimum, because
25 Plaintiffs are not seeking disclosure of any information relating to an ongoing investigation,
26 many of the factors that might otherwise weigh in favor of nondisclosure are irrelevant here. In

1 *Ibrahim*, for example, the court declined to consider factors 1-3 and 5-7 because the plaintiff
2 sought only documents relating to her placement on the No Fly List and the government’s No
3 Fly List policies. *See* 2013 WL 1703367, at *5.

4 **a. Factor 1**

5 The first factor considers “the extent to which disclosure will thwart governmental
6 processes by discouraging citizens from giving the government information.” This factor weighs
7 in favor of disclosure because Plaintiffs are requesting policy documents that are not derived
8 from citizen-provided information. Any risk of chilling citizen informants would be mitigated by
9 the Protective Order in this case or an AEO protective order. *See* Dkt. 98 at 4 (“find[ing] that the
10 balance weigh in favor of disclosure” in part because “there is a protective order in place”); *see*
11 *also Kelly v. City of San Jose*, 114 F.R.D. 653, 666 (N.D. Cal. 1987); *Ibrahim v. Dep’t of*
12 *Homeland Sec.*, C 06-00545 WHA, 2009 WL 5069133, at *15 (N.D. Cal. Dec. 17, 2009),
13 *vacated and remanded on other grounds*, 669 F.3d 983 (9th Cir. 2012); *MacNamara v. City of*
14 *New York*, 249 F.R.D. 70, 88-89 (S.D.N.Y. 2008); *Nat’l Cong. for Puerto Rican Rights ex rel.*
15 *Perez v. City of New York*, 194 F.R.D. 88, 96 (S.D.N.Y. 2000).

16 **b. Factor 2**

17 The second factor inquires into “the impact upon persons who have given information of
18 having their identities disclosed.” This factor appears to be irrelevant here, but to the extent any
19 of the withheld information includes the names of confidential informants, Plaintiffs do not
20 object to the redaction of that information.

21 **c. Factor 3**

22 The third factor asks “the degree to which governmental self-evaluation and consequent
23 program improvement will be chilled by disclosure.” This factor also appears to be irrelevant. To
24 the extent it applies, the Protective Order in this case would adequately mitigate the risk that
25 disclosure would chill government deliberations. And, if the Court has additional concerns, it
26 could order production under an AEO designation to further mitigate any potential risk.

1 **d. Factor 4**

2 The fourth factor is whether the information sought is factual data or an “evaluative
3 summary.” Plaintiffs seek factual data regarding how CARRP works. There does not appear to
4 be evaluative data in the redacted documents. To the extent the withheld material includes an
5 evaluative summary, that does not necessarily weigh against disclosure. In *Kelly v. City of San*
6 *Jose*, for example, the court rejected the concern that officers performing internal investigations
7 “would not express their views honestly if they knew their words might be used against
8 individual officers or the police department by a civil rights plaintiff.” 114 F.R.D. at 664.
9 According to the court, there was “no empirical support for the contention that the possibility of
10 disclosure would reduce the candor of officers who contribute to internal affairs investigations”
11 and “solid reasons to believe that that possibility might have the opposite effect (improving
12 accuracy and honesty).” *Id.* at 666. The same reasoning applies here—since disclosing
13 evaluations of CARRP would likely promote greater honesty and accuracy in future evaluations,
14 this factor is either neutral or favors disclosure. *See also Anderson v. Marion Cty. Sheriff’s*
15 *Dep’t*, 220 F.R.D. 555, 566 (S.D. Ind. 2004) (noting that courts typically “require reports
16 containing both factual and evaluative materials to be disclosed in civil rights actions”).

17 **e. Factor 5**

18 The fifth factor asks “whether the party seeking discovery is an actual or potential
19 defendant in any criminal proceeding either pending or reasonably likely to follow from the
20 incident in question.” None of the named Plaintiffs is an actual or potential defendant in any
21 criminal proceeding. And, Plaintiffs seek documents relating to CARRP policies and procedures,
22 which have no connection to any particular criminal case. This factor weighs in favor of
23 disclosure.

24 **f. Factor 6**

25 The sixth factor is “whether the police investigation has been completed.” The
26 investigations into the named Plaintiffs’ immigration applications have been completed. And The

1 documents requested by Plaintiffs here relate to general policies and procedures that presumably
2 are not specific to any particular investigation.

3 **g. Factor 7**

4 The seventh factor asks “whether any interdepartmental disciplinary proceedings have
5 arisen or may arise from the investigation.” This factor appears irrelevant.

6 **h. Factor 8**

7 The eighth factor asks “whether the plaintiff’s suit is non-frivolous and brought in good
8 faith.” It is. Plaintiffs’ claims have survived a motion to dismiss, and weighty constitutional
9 issues of vital public importance are at stake.

10 **i. Factor 9**

11 The ninth factor is “whether the information sought is available through other discovery
12 or from other sources.” With respect to this factor, the government bears the burden of
13 “show[ing] that information of comparable quality is as efficiently available from alternative
14 sources.” *Kelly*, 114 F.R.D. at 667; *see also id.* (“It is difficult to imagine how plaintiffs, who
15 generally will not know what is in confidential police files, could satisfy a court who demanded
16 that they prove the negative, i.e., that there were no practicable alternative routes to the same
17 information.”). The government has not shown that, so this factor weighs in favor of disclosure.

18 **j. Factor 10**

19 The tenth factor concerns “the importance of the information sought to the plaintiff’s
20 case.” As discussed above, most of the documents are for training and guidance purposes and are
21 important to Plaintiffs’ case.

22 On balance, these factors indicate definitively that Defendants’ assertion of the law
23 enforcement privilege lacks merit and that disclosure is warranted here.

24 **D. Deliberative Process Privilege**

25 Three of the 25 redacted documents contain redactions asserting the deliberative process
26 privilege: DEF-0094235, DEF-0094974, and DEF-0094269. Ahmed Decl. ¶ 9. The deliberative

1 process privilege claim in DEF-0094235 is already before the Court. *See* Dkt. 194. DEF-
2 0094974 contains redactions under both the deliberative process and law enforcement privileges.
3 For the reasons set forth above, Plaintiffs at this time move to lift only the redactions in DEF-
4 0094974 under the law enforcement privilege. Plaintiffs' need for the third document, DEF-
5 0094269, outweighs the Government's interest in withholding it. *See* Dkt. 189.

6 **1. Legal Standard**

7 The deliberative process privilege is a qualified, not an absolute, privilege. *FTC v.*
8 *Warner Commc'ns*, 742 F.2d 1156, 1161 (9th Cir. 1984). A party may obtain disclosure of
9 deliberative materials if it can establish that the need for the materials is to allow for accurate
10 fact-finding outweighs the government's interest in non-disclosure. *Id.* In deciding whether the
11 qualified privilege should be overcome, a court may consider "1) the relevance of the evidence;
12 2) the availability of other evidence; 3) the government's role in the litigation; and 4) the extent
13 to which disclosure would hinder frank and independent discussion regarding contemplated
14 policies and decisions." *Id.*; Dkt. 189 at 7-8.

15 **2. Plaintiffs' Interest in DEF-0094269 Outweighs the Government's Interest in** 16 **Non-Disclosure.**

17 Defendants' assertion of the deliberative process privilege regarding DEF-0094269 lacks
18 merit. First, the deliberative process privilege does not apply to DEF-0094269 because the
19 government's decision-making process is itself at issue here. *See In re Subpoena Duces Tecum*
20 *Served on Office of Comptroller of Currency*, 145 F.3d 1422, 1424-25 (D.C. Cir.) ("Subpoena
21 I"), *on reh'g in part*, 156 F.3d 1279 (D.C. Cir. 1998). DEF-0094269 is a memorandum that
22 outlines updates to USCIS policy regarding the handling of cases involving purported national
23 security concerns. Defendants have redacted nearly all of the substantive information in the
24 document. While Defendants assert that the "policy was not adopted," the privilege log
25 accompanying the document states that the memorandum discusses how USCIS should consider
26 intelligence gathered by law enforcement in cases posing national security concerns and USCIS'

1 “vetting techniques for cases involving national security concerns.” Ahmed Decl. ¶ 11, Ex. A
2 (Production Volume 25 Privilege Log). Those subjects are squarely relevant to Plaintiffs’ claims.
3 See Second Am. Compl., Dkt. 47 ¶¶ 9-11, 21, 55-97, 273-78, 289-93. Draft policy documents,
4 moreover, may provide important insights into the motivations behind CARRP as a whole. As
5 the Court has already noted, “the Government plays a central role in this case,” and “the basis
6 for its action is a central issue in the litigation.” Dkt. 189 at 7 (quoting *Ariz. Dream Act Coal. v.*
7 *Brewer*, No. CV-12-02546-PHX-DGC, 2014 WL 171923, at *3 (D. Ariz. Jan. 15, 2014)).

8 Finally, any risk that disclosure would hinder frank and independent discussion regarding
9 contemplated policies and decisions is substantially mitigated by the parties’ stipulated
10 Protective Order or an AEO protective order should the Court deem it necessary. See *Rodriguez*
11 *v. City of Fontana*, No. EDCV 16-1903-JGB (KKx), 2017 WL 4676261, at *4 (C.D. Cal. Oct.
12 17, 2017). Plaintiffs therefore request that the Court order disclosure of DEF-0094269 without
13 redactions.

14
15 **V. CONCLUSION**

16 Plaintiffs respectfully request an order compelling Defendants to produce the 25
17 documents identified in this motion unredacted. Plaintiffs alternatively ask that the Court review
18 the 25 documents *in camera* to determine whether disclosure is warranted.

1 Respectfully submitted,

DATED: April 11, 2019

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, I caused service of the foregoing document via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 11th day of April, 2019, at Seattle, Washington.

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