Exhibit B

PERKINSCOIE

1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099

T +1.206.359.8000
F +1.206.359.9000
PerkinsCoie.com

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Nicholas P. Gellert
NGellert@perkinscoie.com
D. +1.206.359.8680
F. +1.206.359.9680

VIA EMAIL

Aaron R. Petty, IL 6293553
US Department of Justice
Office of Immigration Litigation
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
Aaron.R.Petty@usdoj.gov

Edward S. White (NY 2088979)
Office of Immigration Litigation-District Court Section
Civil Div.,
U.S. Department of Justice
PO Box 868,
Ben Franklin Station
Washington, DC 20044
Edward.s.white@usdoj.gov

Joseph F. Carilli, Jr.
U.S. Department of Justice
PO Box 868,
Ben Franklin Station
Washington, DC 20044
joseph.f.carilli2@usdoj.gov

Re: *Wagafe et al. v. Donald Trump et al.*
United States District Court No. 17-cv-00094-RAJ

Dear Counsel:

We write in reference to Defendants' Objections and Responses to Plaintiffs' First Set of Requests for Production of Documents ("Responses"). Based on our initial review, we have several concerns that we would like to discuss at your earliest convenience. Our review of Defendants' Responses is ongoing, and we reserve the right to supplement these concerns at a later date.

As an initial matter, the proposed production timeline is unworkable. Given the complexity and breadth of this case, Plaintiffs are amenable to rolling productions over a reasonable period of time, but Defendants' proposal of rolling productions over a six-month period would put Plaintiffs dangerously close to the agreed discovery cutoff date before Plaintiffs would even receive a full production on their first set of discovery requests. This timing would make follow-up discovery requests and depositions before the discovery deadline impracticable, if not impossible. The Rules require that Defendants produce documents within 30 days after they are requested (a deadline that has already passed) or "another reasonable time specified in the response." FED. R. CIV. P. 34(b)(2)(B). A six-month timeline is not reasonable. We can offer

Defendants until October 31 to complete production of the first set of discovery requests, with weekly rolling productions between now and then—which is three full months from the date the requests were made.

Turning to the substance, Defendants' Responses include sweeping general objections and do not clearly state whether and to what extent responsive, non-privileged information will be withheld in response to each request. Defendants are required to state objections with specificity and state whether any responsive materials are being withheld on the basis of the objections. FED. R. CIV. P. 34(b)(2)(B), (C). As the Responses currently stand, Plaintiffs cannot ascertain whether and to what extent Defendants plan to withhold responsive documents based on the several broad categories outlined in Defendants' general objections.

Moreover, Defendants' objections are improper. For example:

- Privilege: Defendants' categorical assertion of several privileges, implying that unidentified categories of responsive documents will be withheld without inclusion on a privilege log, is improper. The Rules require, among other things, that Defendants individually log every document they claim is responsive but privileged, and identify (a) the persons involved with such communication, and (b) the nature of the privilege. *See, e.g.*, FED. R. CIV. P. 26(b)(5)(A).

- Executive Orders: Discovery sought in this case related to the Second Executive Order (EO) is not wedded to the issues before the Supreme Court this term. Additionally, although the First EO was rescinded, Plaintiffs seek discovery related to the consideration of the Controlled Application Review and Resolution Program (CARRP) or a similar program in connection with the First EO and, therefore, is not moot. The Court denied Defendants' motion to dismiss the claims related to the Executive Orders, which forecloses Defendants' argument that Plaintiffs are not entitled to discovery on these claims.

- Classified Documents: The mere fact that a document is classified does not automatically render it unresponsive, untraceable, and untouchable by the discovery process. Defendants' categorical refusal to search any classified documents is unacceptable. To the extent responsive documents are classified, the parties can discuss methods by which those documents can be produced to and accessed by Plaintiffs' counsel. Simply stating that Defendants will not produce them violates obligations under the Rules.

- Attorney-Related Communications: Defendants' categorical refusal to produce any communications to or from attorneys is inappropriate. Not every communication with an attorney is inherently or automatically privileged. Defendants cannot avoid their

obligation to review all potentially responsive documents and make a privilege determination for each document. Again, as outlined above, if Defendants' position is that a document is privileged, it must be included in a privilege log.

- E-mail: Defendants' categorical refusal to produce any email correspondence is unacceptable. The Court has certified two nationwide classes and has denied Defendants' motion to dismiss. E-mail is a typical (often the primary) source of document production, and the inconvenience of Defendants' chosen storage methods does not outweigh the obvious relevance of this material. The Second Amended Complaint was filed in April—Defendants have had time to obtain externally stored e-mails. To the extent Defendants have not yet requested these externally stored e-mails for purposes of this document production, we ask that Defendants do so immediately so that they can be included in weekly productions before October 31.

- Non-USCIS Documents: The President of the United States and the Department of Homeland Security are Defendants in Plaintiffs' Second Amended Complaint, which the Court has ruled adequately pleads several claims for relief. As such, the same discovery obligations attach to these entities as attach to the named USCIS entities. Defendants' purported refusal to produce any documents from non-USCIS entities is improper. Further, even if it were correct that injunctive relief is not available against the President (which Plaintiffs do not concede under the circumstances), the Second Amended Complaint also seeks declaratory relief and thus Defendants' objection to participating in discovery from the President on the basis that an injunction cannot be sought is without merit.

- Documents Outside of USCIS: Plaintiffs are entitled to discovery from all Defendants of documents within Defendants' possession, custody, or control, not just those stored at or generated by USCIS. Defendants' assertion to the contrary is without merit.

Plaintiffs accordingly request clarification on the scope and application of these general objections, including a discussion of how each general objection will apply to Defendants' production of documents responsive to Plaintiffs' requests for production.

In addition, Plaintiffs also note several substantive issues with Defendants' responses to individual RFPs. For example:

- Identification of Class Members (RFPs 13, 15, 17, 19, 21, 34, 35): The Court has certified two nationwide classes represented by the five named Plaintiffs. In order to pursue their claims regarding CARRP, the named Plaintiffs need to know whether they were in fact subjected to CARRP. With respect to persons who are not named plaintiffs but who are subjected to CARRP, they have a right to know whether they are Plaintiffs

and part of these certified classes. (Please note that for class members who are not named plaintiffs we are not requesting information on why they were subjected to CARRP.) Defendants' vague and categorical assertion that this information is privileged is unacceptable.

- FOIA Documents (RFP 39): Defendants' assertion that two of the FOIA exemptions—(5) and (7)(E)—are categorically privileged does not appear to have any legal justification and defies the plain text of the exemptions.

- No Responsive Documents Assertion (RFPs 29, 30, 31): Plaintiffs do not understand how Defendants can assert that there are "no documents responsive" to these RFPs before they have searched for such responsive documents, produced those that are not privileged, and logged those they claim are privileged. If such a search has occurred and no responsive documents were located, Plaintiffs request Defendants provide information regarding the breadth of what was searched and how the search was conducted.

- Documents Relating to Development of CARRP (RFP 1): The development of CARRP is central to all of Plaintiffs' claims. Defendants' outright refusal to identify who was involved in CARRP's development and collect documents from those custodians is inappropriate. These documents are highly relevant and the average and expected burden of identifying custodians and producing documents from those custodians cannot outweigh this relevance.

- Documents of "National Applicability" (throughout): Throughout the Responses, Defendants limit their production to documents of "national applicability." This term is unclear, though the implication is that Defendants intend to limit any document production to formal documents stored centrally at USCIS headquarters. As stated above, Defendants cannot avoid the identification of custodians and production of responsive, non-privileged documents from those custodians' files.

- Documents Dated Before April 11, 2017 (RFP 26): RFP 26 asks for "all Documents referring or relating to 'extreme vetting' or any other program, policy or procedure to identify, screen, vet, or adjudicate naturalization or adjustment of status applications where a National Security Concern is present." In response, Defendants contend, without reason or justification, that they will only produce responsive documents "that are dated on or after April 11, 2017." There is no reason for this arbitrary deadline, and Defendants are required to produce all responsive documents before that date.

- Documents Produced by the U.S. Department of Defense, U.S. Department of Justice, U.S. Department of State, and the Office of the Director of National Intelligence (RFPs

3, 4, 5): Defendants contend that they will not produce responsive documents from these federal agencies because they were not explicitly named as Defendants in the Second Amended Complaint. As explained above, to the extent any documents produced by these federal agencies are in the possession, custody, or control of named Defendants (the President, the Department of Homeland Security, USCIS, etc.), they are responsive and must be produced.

- Documents with respect to any other immigration benefits that are subject to CARRP (throughout): Defendants contend that because the certified classes address only applicants for naturalization and adjustment of status that any other programs are irrelevant. This is incorrect for several reasons—including, (1) the fact that the implementation of CARRP as to other immigration benefits may directly impact applicants' ability to adjust or naturalize (e.g., the application of CARRP to visa petitions, or application of CARRP to I-751's, depriving persons of the opportunity to move forward with naturalization applications); and (2) policies clarifying the processing of CARRP may have been initially directed at other programs.

Finally, Plaintiffs would like to discuss the process for agreeing on search terms to be used in Defendants' document production. Plaintiffs request that, on or before September 18, Defendants propose search term strings on an RFP-by-RFP basis, complete with a catalogue of the document hits that accompany each string. Plaintiffs will review and suggest modifications by September 22.

Please let us know a time on Thursday or Friday (September 14 or 15) when you can meet and confer on these items.

Very truly yours,

Nicholas P. Gellert

cc: Jennie Pasquarella
Sameer Ahmed
David Perez
Laura Hennessey