

# Exhibit C



**U.S. Department of Justice**  
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September 22, 2017

**VIA EMAIL**

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Re: *Wagafe v. Trump*, No. 2:17-cv-00094-RAJ (W.D. Wash.)

Dear Counsel:

Thank you for taking the time on Tuesday, September 19, 2017, to discuss, during a telephone conference, Defendants' Objections and Responses to Plaintiffs' First Requests for Production (hereinafter "Responses to the RFPs") for *Wagafe v. Trump*. The conversation focused on Plaintiffs' counsel's September 11, 2017 letter to Defendants' counsel about the Responses to the RFPs. During the conversation, Plaintiffs' counsel reviewed the content of the September 11, 2017 letter and requested Defendants to reconsider the Responses to the RFPs. As promised, we are writing to follow up on that conversation. We do not intend in this letter to address every point raised in your September 11th letter or during our September 19th telephone conference, but rather just those matters on which we said we would follow up with you.

1. United States Citizenship and Immigration Services ("USCIS") informed counsel that the non-custodial source "FDNS ECN," listed in Defendants' September 11, 2017 ESI Disclosures (hereinafter "ESI Disclosures"), includes FDNS's CARRP materials that are stored on the ECN. On our call, we referred to that as the CARRP SharePoint site, but that is not a term that USCIS uses. There are also CARRP materials on the ECN sites of other directorates/offices listed on the ESI disclosures. FDNS's ECN site, however, has the most extensive CARRP documents. Defendants intend to prioritize the responsiveness and privilege review (hereinafter "review") of the documents from that non-custodial source, because that non-custodial source is the *best* source of discoverable information. Once the review is complete, Defendants intend to prioritize the review of the remaining non-custodial sources listed in the ESI Disclosures because

*Wagafe v. Trump*, No. 2:17-cv-00094-RAJ

those non-custodial sources are the most likely sources to contain discoverable information relevant to the claims and defenses at issue in this matter.

2. As discussed during the telephone call, Defendants have commenced the review of the CARRP documents contained on the FDNS ECN site. Additionally, Defendants are working diligently to continue to transfer documents from USCIS to our review platform as quickly as possible. That said, after discussing the collection, review, and production timeframe with USCIS, Defendants and counsel continue to believe that a production timeline of less than six months is unrealistic. Once Defendants have loaded the documents contained in all of the non-custodial sources listed in the ESI Disclosures into the review platform, Defendants may be in position to re-assess the six month production timeline; however, this still will not account for documents collected from Custodians.

a. During our phone conversation, Plaintiffs' counsel stated multiple times that Defendants were obliged to produce responsive materials within 30 days of the request. Defendants respectfully disagree with that reading of the Federal Rules of Civil Procedure. Defendants have complied with our obligation under Federal Rule Of Civil Procedure 34(b)(2) to respond in writing within thirty days.<sup>1</sup> Rule 34(b)(2) further states that the documents requested must be produced by the responding party "no later than the time . . . specified in the request *or another reasonable time specified in the response.*" Fed. R. Civ. P. 34(b)(2)(B) (emphasis added). Defendants assert that the timeline delineated in our Responses to the RFPs is reasonable. That said, Defendants intend to produce documents on a rolling basis, and Defendants will endeavor to complete, if able, production in less than six (6) months.

b. Additionally, to the extent Plaintiffs' counsel are concerned that Plaintiffs will be unable to complete additional discovery if Defendants' take six months to complete their production of documents responsive to the First RFPs, Defendants continue to propose a joint motion to the Court to extend the discovery period (and all other associated dates), so that both sides have adequate time to work through discovery in this case.

3. After consulting with USCIS, Defendants propose to prioritize the search, collection, review, and production from the Custodians identified in Defendants' ESI Disclosures, as follows:

- a. Christopher Heffron
- b. Ronnie Thomas
- c. Jaime Benevides
- d. Ronald Atkinson
- e. Cristina Hamilton
- f. Susan Knafla
- g. Mark Freeman
- h. Markus Montezemolo

Please inform counsel if Plaintiffs agree or prefer a different prioritization. You also requested that Defendants identify the "main architects" of CARRP. Various individuals have worked on

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<sup>1</sup> Defendants recognize that the response occurred 35 days after service, based on Plaintiffs' consent.

*Wagafe v. Trump*, No. 2:17-cv-00094-RAJ

CARRP, and until there has been a thorough search and review of materials, any attempt to identify the key individuals involved in the development of CARRP would be based on any individual's potentially incomplete recollections. Defendants believe the people identified above are the key custodians of potentially discoverable information, but as production of the documents responsive to the First RFPs progresses, Plaintiffs can make their own assessment of who was key. Further, respectfully, your request for us to provide the key individuals involved in the development of the CARRP policy is not appropriately raised through a Request for Production.

4. Ronald A. Atkinson was the Chief of the National Security Adjudications Unit within the National Security Branch of FDNS when CARRP was developed, and was involved in planning its operational implementation. He is listed in Defendants' ESI Disclosure. He has identified at least one meeting invitation from January 2008 with the subject "CARRP policy memo" that has 20 invitees. He believes there would have been additional staff who were working technical, legal, coordination, and other issues, which led to the estimate in Defendants' Response to the RFPs that "40 to 50 people" were involved in the creation of CARRP.

5. As we discussed, Defendants will search, collect, review, and produce (or withhold and log on a privilege log), e-mail messages from the Custodians identified in the ESI Disclosures that are journaled. In the Response to the RFPs, Defendants stated that, as of August 1, 2014, USCIS began "journaling" its e-mail messages, whereas an e-mail message sent or received prior to that date may not have been migrated to the "journal" and may only be accessible, if at all, on back-up tapes, which would be expensive and time-consuming to restore, making recovery unduly burdensome and disproportionate.

a. To clarify the Response to the RFPs, Custodians may currently have access to e-mail messages older than August 1, 2014, dependent on how individual Custodians maintained their e-mail messages. Therefore, the search of e-mail messages available to Defendants without restoring the back-up tapes may produce e-mail messages older than August 1, 2014, even without searching the backup tapes.

b. Defendants continue to maintain that restoring and searching email on backup tapes would be unduly burdensome, excessively expensive, and disproportionate to the needs of this case, as described in Defendants' ESI Disclosures. As delineated in the Response to the RFPs, Defendants will consider a focused request. After receiving the request, Defendants will determine whether the request significantly reduces burden and expense, but Defendants reserve the right to object to those specific requests pursuant to the Federal Rules of the Civil Procedure.

6. With respect to RFPs, 29, 30, and 31, USCIS confirmed they have no responsive documents. As discussed during the telephone call, USCIS counsel inquired with those officials knowledgeable about the history, development, and implementation of CARRP, and USCIS's vetting programs, policies, and procedures, and were told that, at least since the time CARRP came into being in 2008, USCIS has had no programs, policies, or procedures to identify, screen, vet, or adjudicate naturalization or adjustment-of-status applications based on national origin, religion, race, or ethnicity. Of course, there was a time in U.S. history when U.S. immigration law imposed nationality-based quotas, but those were eliminated by the Immigration and

*Wagafe v. Trump*, No. 2:17-cv-00094-RAJ

Nationality Act of 1965. Defendants had not presumed that Plaintiffs seek documents relating to the consideration of nationality, ethnicity, or national origin in the context of administering those pre-1965 immigration quotas. Defendants respectfully decline to provide a written declaration about how USCIS determined the response to the RFPs. Plaintiffs may, of course, inquire further about the response, if and when, Plaintiffs depose the knowledgeable agency officials.

7. USCIS has informed counsel that, putting aside individual case files/application adjudications, there are no classified documents relating to CARRP on a programmatic level. Therefore, there is no need to search for classified documents, as conducting a search for documents that do not exist is unduly burdensome and disproportionate.

8. With respect to communications between Department of Justice (“DoJ”) attorneys and USCIS, Plaintiffs recognized that the communications between DoJ attorneys representing USCIS in litigation and USCIS is protected under the attorney-work-product (“AWP”) doctrine but argued that DoJ attorneys may have communicated with USCIS about CARRP or “extreme vetting” outside of a litigation context. Defendants agree that Defendants will search and collect communications between DoJ attorneys and USCIS that are not related to any DoJ representation of USCIS in, or in anticipation of, litigation. To the extent Defendants identify responsive material that is privileged, whether under the AWP doctrine or some other privilege, Defendants will log the information on a privilege log. That said, Defendants continue to maintain that Defendants have no obligation to search DoJ records for such communication (or for material responsive to any other RFP), as DoJ is not a defendant in this case. Consequently, any such communications would have to be found in the possession, custody, or control of Defendants.

9. At this point, counsel think that the April 11, 2017 date in the response to RFP No. 26 is a typographical error, as the RFPs and the responses refer, in multiple other places, to April 11, 2008. Consequently, Defendants will treat that date limitation in the response to RFP No. 26 as April 11, 2008, rather than April 11, 2017.


10. With respect to whether Defendants need to search the Office of the Secretary of Homeland Security, counsel has confirmed that agency counsel has consulted with knowledgeable officials within both DHS Headquarters and USCIS Headquarters, and those knowledgeable officials have reported that they believe it is unlikely the Office of the Secretary of Homeland Security would have any documents responsive to Plaintiffs’ First Request for Production (as Defendants have interpreted those requests, as explained in Defendants’ Responses to the RFPs). Consequently, given the unlikelihood of finding responsive documents in the Office of the Secretary, Defendants continue to assert that it would be unduly burdensome and disproportionate for Defendants to undertake a formal search of the Office of the Secretary.

If there are any other matters that require further response or discussion, or Plaintiffs’ counsel desires to discuss the content of this letter, please let me know.

*Wagafe v. Trump*, No. 2:17-cv-00094-RAJ

Finally, as we move forward with the collection and search of the custodial sources identified in Defendants' ESI Disclosures, we would welcome discussing with Plaintiffs' counsel proposed search terms. Please let me know when you would like to have any such discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward S. White". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EDWARD S. WHITE  
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