

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: 17-cv-00094 RAJ

**DECLARATION OF JAY GAIRSON IN
SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL AND OPPOSITION TO
DEFENDANTS' CROSS-MOTION FOR A
PROTECTIVE ORDER**

I, Jay Gairson, hereby declare:

1. I am an attorney in the State of Washington. My Washington State Bar Association number is 43365. I practice immigration and national security law.
2. As a regular and systematic part of my practice, I file Freedom of Information Act and Privacy Act requests. I file these requests both directly as the requester and indirectly as the preparer of the requests.
3. I train other attorneys on how to interact with law enforcement and how to handle immigration cases with fraud and national security issues. I am a regular presenter at the American Immigration Lawyers Association Annual Conference on these issues.

- 1 4. I represent a higher-than-normal percentage of clients, compared to other immigration
2 attorneys, whose cases are impacted by extreme vetting, CARRP, TRIG, and other
3 national security programs.
- 4 5. My immigration practice expanded into national security issues, because a substantial
5 percentage of my clients experienced immigration delays due to various fraud and
6 national security programs.
- 7 6. The common characteristic of my clients, both before and after I started working on
8 national security issues, is that almost all of them are either Muslim or from a country
9 with a significant Muslim population.
- 10 7. In my experience, the primary correlation among clients with national security issues are
11 their religious faith - Islam - or their country of origin - a country with a significant
12 Muslim population.
- 13 8. In preparation of this declaration, I reviewed a random sampling of my current and past
14 clients FOIA/PA responses including those with and without national security issues.
15 The sample size was 600 FOIA responses.
- 16 9. Of my FOIA sample set, I explicitly requested information beyond the alien file in 248
17 FOIA requests.
- 18 10. Of my FOIA sample set, I received substantial TECS data in 138 cases, FBI data in 210
19 cases, fingerprint responses in 201 cases, and name check records in 475 cases — the
20 majority of which were cases in which I requested information beyond the alien file.
- 21 11. Generally in the FOIA responses with TECS, FBI, fingerprint, or name check records,
22 segregable information was redacted and in some cases no information was redacted.
- 23 12. From my FOIA sample set with TECS, FBI, fingerprint, or name check records, I
24 extracted 41 example sets of this type of information. I did not apply any specific criteria
25 to selecting this example set, except with regards to the following named individuals:
26 Plaintiffs Abdiqafar Wagafe, Hanin Bengezi, and Mushtaq Jihad. I also included
27 information related to Hanin Bengezi's father and Mushtaq Jihad's wife. I further
28 included information about Aly Abdellatif, who is a plaintiff in a separate case: *Araujo et*

1 *al v. Department of State et al*, 1:18-cv-02958-TJK (Dist. Ct. D.C.). All unnamed
2 individuals were chosen randomly and their information was redacted to protect their
3 identities. Any information that was not redacted but should have been was not
4 intentional and should be redacted at the earliest opportunity.

5 13. It is my experience and opinion, both informally and based on my FOIA sample set, that
6 the U.S. government regularly and routinely releases TECS, FBI, fingerprint, and name
7 check records under the FOIA and Privacy Act.

8 14. In my national security immigration work, I have regularly discovered directly and
9 indirectly some of the grounds for CARRP investigations of my clients. These reasons
10 include retroactive screening studies of refugees and asylees, data errors, DOD and FBI
11 nominations for review, suspected or known associations to KST's or criminal entities,
12 decontextualized information, and apparent adjudicator bias.

13 15. With regards to the named individuals, the grounds for their CARRP nominations appear
14 to have been — at least in part — for the following reasons:

- 15 a. Abdiqafar Wagafe: National security issues due to an HSDN LHM, which was not
16 readily accessible to DHS for review. Other issues included a name check conflict
17 and the proximity of his business to a predominantly Somali mosque.
- 18 b. Hanin Bengezi: CARRP review due to the allegation that her father was “likely to
19 engage in terrorist activity”. Her father’s national security issues are allegedly the
20 result of being an acquaintance with an American KST who was his brother-in-law’s
21 neighbor.
- 22 c. Mushtaq Jihad: CARRP review due to a DOD request for a retroactive screening
23 study, which resulted in the discovery of minor conflicts in his personal story as
24 published by journalists in local newspapers that when decontextualized supported
25 further review of his case.
- 26 d. Aly Abdellatif: CARRP review due to being an ST: “suspected terrorist”. The ST
27 nomination appears to have resulted from his association with Muslim religious
28 scholars who taught classes at Islamic centers in the U.S.

- 1 16. With regards to individuals whose PII I have redacted, but whose case was held for fraud
2 or national security reasons, their nominations appear to have been — at least in part —
3 for some of the following reasons:
- 4 a. A client was nominated for extreme vetting because the attorney who prepared her
5 earlier application for lawful permanent residence was suspected of fraud.
 - 6 b. A disabled teenager had an encounter with the police that was dismissed, but it
7 resulted in USCIS applying extreme vetting which showed a partial name hit with a
8 national security hit. It took over two years for USCIS to deconflict an obvious
9 mismatch of information.
 - 10 c. A client's naturalization case continues to be held due to accusations of child
11 abduction made by his ex-wife which were found false in family court and by state
12 law enforcement.
 - 13 d. A client had obtained a commercial drivers license that was subject to revocation as
14 part of a state investigation into CDL's issued to Somalis that included hazardous
15 material certification. Some of the Somalis had provided false information and as a
16 result all CDL's issued during that period were revoked. This resulted in extreme
17 vetting of the client's immigration case.
 - 18 e. Several clients were suspected of using multiple identities to obtain immigration and
19 government benefits, which when paired with their country of nationality or their
20 religion resulted in extreme vetting.
- 21 17. Understanding the data that supported nomination of an immigrant's application or
22 petition for extreme vetting is important, because it often reveals that the nomination was
23 based on data errors, bias, decontextualized information, and fallacious reasoning. The
24 vast majority of these cases do not warrant extended review that lasts years and in some
25 cases decades beyond the normal processing time.
- 26 18. The mere act of holding an immigration case in abeyance more than two standard
27 deviations beyond normal processing times is a clear indicator to the petitioner or
28 applicant that a fraud or national security review is occurring.

- 1 19. A true fraud or national security threat would readily recognize that the delay in case
2 adjudication shows a law enforcement investigation is ongoing. As a result, a true threat
3 would know merely by the adjudication delays to change her behavior to avoid further
4 detection and review.
- 5 20. The release of information regarding the basis for extreme vetting is more likely to reveal
6 government and agency embarrassment due to data errors, bias, decontextualized
7 information, and fallacious reasoning, than to reveal techniques that are not already
8 public knowledge.
- 9 21. Included with my declaration are the following described exhibits, each from a different
10 individual's FOIA responses, that are lettered as below:
- 11 A. TECS KST Associate;
 - 12 B. Client of lawyer suspected of fraud;
 - 13 C. TECS Information;
 - 14 D. Aly Abdellatif;
 - 15 E. TECS Allegations of child abduction;
 - 16 F. TRIG Unit;
 - 17 G. TECS and FBI Name Check responses;
 - 18 H. Abdiqafar Wagafe;
 - 19 I. BCU Reports;
 - 20 J. TECS for CDL HazMat cases;
 - 21 K. FBI and TECS response;
 - 22 L. FBI response;
 - 23 M. FBI multiple identities;
 - 24 N. CARRP review;
 - 25 O. TECS and FBI responses;
 - 26 P. FBI and TECS responses;
 - 27 Q. TECS for DOD person of interest;
 - 28 R. Hanin Bengezi and her father;

- 1 S. Mushtaq Jihad and his wife;
- 2 T. TECS responses;
- 3 U. TECS responses;
- 4 V. FBI responses;
- 5 W. TECS responses showing data error.

6
7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 EXECUTED this 21st Day of March 2019 in Seattle, Washington.

10 s/ Jay Gairson
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