

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,  
  
Plaintiffs,  
  
v.  
  
TRUMP, et al.,  
  
Defendants.

No. 2:17-cv-00094-RAJ

DECLARATION OF JILL A.  
EGGLESTON IN SUPPORT OF  
DEFENDANTS' MOTION FOR A  
PROTECTIVE ORDER

I, JILL A. EGGLESTON, do hereby declare and say:

1. I am the Associate Center Director in the Freedom of Information Act ("FOIA") and Privacy Act ("PA") Unit, National Records Center ("NRC"), U.S. Citizenship and Immigration Services ("USCIS"), U.S. Department of Homeland Security ("DHS") in Lees Summit, Missouri. I have held the position of Associate Center Director since February 4, 2008.

2. As the FOIA Officer for USCIS, I supervise over 200 information access professionals who are responsible for the orderly processing of public, congressional, judicial, and inter-/intra-agency requests or demands for access to USCIS records and information pursuant to the FOIA, PA, Executive Orders, departmental directives, regulations and compulsory legal process. Through the exercise of my official duties as

1 Associate Center Director, I am personally familiar with USCIS' standard process for  
2 responding to FOIA/PA requests, including search procedures for locating agency  
3 records and FOIA/PA exemptions that exempt information from release.

4 3. The matters contained in this declaration are based upon my review of the  
5 pleadings in *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-cv-00094, now pending in the  
6 United States District Court for the Western District of Washington, and on information  
7 available to me in my capacity as the USCIS FOIA Officer.

8 4. I am aware of the Reply in Support of Motion to Compel and Opposition to  
9 Defendants' Cross-Motion for a Protective Order, filed by Plaintiffs on March 21, 2019,  
10 which incorrectly asserts that Defendants routinely disclose FBI Name Check, TECS, and  
11 other records revealing coordination between USCIS and other law enforcement  
12 agencies. Dkt. 241 at 12-15.

13 5. I reviewed Plaintiffs' Exhibit I and portions of the Exhibits A-W included in  
14 Declaration of Jay Gairson in Support of Plaintiffs' Motion to Compel and Opposition to  
15 Defendants' Cross-Motion for a Protective Order, which appear to be submitted to  
16 indicate that Defendants routinely disclose FBI Name Check, TECS, and other records  
17 revealing coordination between USCIS and other law enforcement agencies. Dkt. 243,  
18 245.

19 6. Upon review of Plaintiffs' Exhibit I, the records contained therein were  
20 processed by the USCIS FOIA/PA Unit.

21 7. I cannot confirm whether any of the records submitted in support of Mr.  
22 Gairson's declaration were processed by the USCIS FOIA/PA Unit. While Mr. Gairson  
23 states that he obtained Exhibits A-W that are attached to his declaration ("Gairson  
24 Exhibits") through FOIA and PA requests, Dkt. 243 ¶ 8, he does not identify which  
25 agency released these records. The records do not contain sufficient information to  
26 determine with certainty whether any of these records were processed by USCIS'  
27 FOIA/PA Unit.

1 8. Further, Mr. Gairson states the unnamed individuals' "information was  
2 redacted to protect their identities." *Id.* ¶ 12. However, Mr. Gairson does not identify  
3 which redactions he made, and, thus, it is unclear which redactions were made by the  
4 government or by him.

5 9. Certain redactions within the documents indicate that at least some of the  
6 records were not processed by USCIS. For instance, when USCIS processes FOIA/PA  
7 responses, the exemption citations are applied outside of the redaction box. On some of  
8 the Gairson Exhibits, exemption citations appear within the redaction box. Further,  
9 certain pages include stamps that would not have been generated by the USCIS FOIA/PA  
10 Unit, such as the "Best Available Copy" stamp on Gairson Exhibit A, page 8. The  
11 USCIS FOIA/PA Unit also refers certain types of documents that appear within the  
12 exhibits to the agency from which they originated, such as documents that originated with  
13 U.S. Immigration and Customs Enforcement ("ICE").

14 10. Further, although many of the exhibits are comprised of multiple pages, it is  
15 often difficult to discern whether those pages connote single or multiple records, and Mr.  
16 Gairson does not make distinction.

17 11. Given that some of the records are anonymized and do not include a FOIA  
18 request number, there is no way to determine with certainty which, if any of these  
19 records, were released through the USCIS FOIA/PA Unit. Although it is unknown who  
20 processed these records and under what circumstances, it appears that some were  
21 redacted in accordance with USCIS' policy and procedures. In other instances, certain  
22 information was released that is not consistent with USCIS policy and procedure.

### 23 **Overview of the USCIS FOIA Process**

24 12. FOIA requests submitted to USCIS are processed at the NRC. The NRC  
25 processes FOIA requests in compliance with DHS implementing regulations found at 6  
26 C.F.R. Part 5 and Management Directive No. 0460.1. When the NRC receives a FOIA  
27 request from an individual seeking his or her immigration records, that request is first  
28 assigned to a USCIS FOIA/PA Assistant to conduct a search for, and to retrieve,

1 responsive records. When those responsive records are located and received by the NRC,  
2 the request is then assigned to a USCIS Government Information Specialist to conduct a  
3 review of the responsive records, to determine what records, if any, are subject to release,  
4 and what records are exempt from release, and to generally respond to the FOIA request  
5 in accordance with applicable law and regulation.

6 13. Under the FOIA, there are nine exemptions under which Agency records may  
7 be exempt from release, as well as certain factors that must be considered in determining  
8 whether to apply any of these exemptions. Additional exemptions may apply under the  
9 PA. If, after fully considering these factors, it is determined that responsive information  
10 is exempt from release, the Government Information Specialist redacts that information.  
11 After the review and processing of the responsive records is complete and the NRC has  
12 determined that reasonably segregable, non-exempt information has been collected, the  
13 production is sent to the requestor.

14 14. USCIS has agreements to redact certain information on behalf of other  
15 agencies; in other instances, USCIS refers that information to the appropriate agency.

#### 16 **USCIS FOIA Processing Guide**

17 15. The current USCIS FOIA Processing Guide (“Processing Guide”) describes  
18 the general USCIS policies and guidelines in processing FOIA and PA requests. USCIS  
19 FOIA Processing Guide, U.S. Citizenship and Immigration Services (August 1, 2018).  
20 The USCIS FOIA Information Bulletin provides periodic updates, between updates to the  
21 USCIS FOIA Processing Guide, on FOIA policy.

22 16. USCIS information specialists are required to follow the Processing Guide in  
23 examining FOIA and PA requests and determining how to apply exemptions in any given  
24 case.

25 17. In pertinent part, the Processing Guide instructs that FOIA exemption b(7)  
26 “protects records or information compiled for law enforcement purposes.” *Id.* at 17.  
27 Documents that may be withheld under subsection b(7)(e) include “law enforcement  
28

1 systems checks, manuals, checkpoint locations, surveillance techniques, and various  
2 other documents.” *Id.*

3 18. For TECS or Interagency Border Inspection System (“IBIS”) records, the  
4 Processing Guide instructs that certain FOIA and PA exemptions apply. It explains,  
5 “[TECS/]IBIS is not a protected system, yet we withhold certain results, .e.g. positive,  
6 negative.” *Id.* at 24. Therefore, TECS/IBIS pages are not withheld in full; rather targeted  
7 redactions are made for exempted information.

8 19. FBI personnel and FBI results are also withheld under FOIA and PA  
9 exemptions. For instance, FBI results such as “IDENT, I, NON-IDENT, POSITIVE,  
10 POS, P, NEGATIVE, NEG, No Record: NR, ND, or NP, Positive Response: PR, DS, RP,  
11 OC or RF, Unknown Response: UN, or Pending Hit: H or I” should all be withheld.” *Id.*  
12 Additional FBI information that should be withheld are Joint Terrorism Task Force  
13 (“JTTF”) information and certain National Crime Information Center (“NCIC”) results.  
14 *Id.* at 24-25.

15 20. Other FBI information may be released. For instance, National Namecheck  
16 Program and NCIC responses that do not indicate any result (such as “error” or  
17 “rejected”) are releasable. *Id.* at 24-25. Similarly, FBI RAP sheets with criminal  
18 background check results, with the exception of certain information such as an FBI  
19 agent’s name, are not exempt from release. *Id.* at 25.

20 21. Similarly, Controlled Application Review and Resolution Program  
21 (“CARRP”) “worksheets and coversheets are held with (b)(7)(e).” *Id.* at 25.

22 22. The Processing Guide further details all information that should be redacted  
23 from various databases owned by USCIS and other agencies. *Id.* at 28-29. It also details  
24 the process for referring certain information to third agencies for their review and release.  
25 *Id.* at 31-35.

26 23. The current Processing Guide was released in August 2018, but prior versions  
27 had similar instructions about handling information from databases, third agency  
28 information, and CARRP materials. Given that some of the Gairson Exhibits are

1 anonymous and none include a FOIA request number, it is impossible to know which  
2 guide was in place when the documents in question were released, and further, whether  
3 USCIS released these documents, as opposed to another government agency.

4 24. Any release by USCIS through FOIA or the PA that is contrary to the  
5 instructions in the Processing Guide at the time of the release is in contravention of  
6 USCIS policy and would have been released in error.

7 **FOIA Documents Referenced in Plaintiffs' Motion to Compel**

8 25. The FOIA/PA Unit has substantively reviewed portions of the Gairson  
9 Exhibits and Plaintiffs' Exhibit I. As noted previously, it is not clear whether USCIS or a  
10 different government agency released the Gairson Exhibit records pursuant to FOIA or  
11 the PA. Further, it is unclear if the documents within each exhibit relate to one or  
12 multiple FOIA or PA requests or when they were processed.

13 26. Certain documents have markings that the USCIS FOIA/PA Unit does not  
14 make (such as text within the redaction box). The USCIS FOIA/PA Unit does not  
15 process certain types of records that appear within the exhibits (such as documents that  
16 originate with ICE) and the Processing Guide does not address them. Given these issues,  
17 for the purposes of this declaration, the USCIS FOIA/PA Unit did not substantively  
18 review Exhibits A-C, D1-D4, D6 or E to determine if they were processed consistently  
19 with the Processing Guide.

20 27. Although I cannot say with certainty which government agency released the  
21 records contained within Exhibits D5, D7-D8, and F-W, such records have markings  
22 consistent with USCIS' FOIA/PA Unit and the Processing Guide addresses how to  
23 handle them. Thus, for purposes of this declaration, the USCIS FOIA/PA Unit  
24 substantively reviewed these exhibits, which totaled 242 pages of records (excluding  
25 exhibit title pages).

26 28. Within these pages, 202 pages (83.5 percent) were redacted consistently with  
27 the Processing Guide, and 40 pages (16.5 percent) were not redacted consistently with the  
28 Processing Guide.



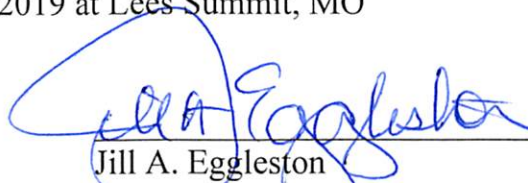


1           35. Given that it is impossible to know with certainty that USCIS' FOIA/PA Unit  
2 processed any of the Gairson Exhibits, when, or under what circumstances, I cannot  
3 confirm that any of those pages were released in error. However, it appears that about  
4 16.5 percent of the pages that the USCIS FOIA/PA Unit reviewed for the purposes of this  
5 declaration were not processed consistently with the 2018 version of the USCIS FOIA  
6 Processing Guide.

7           36. Inadvertent releases of exempted information, such as those in Plaintiffs'  
8 Exhibit I or any records that were exempt in the Gairson Exhibits, do not change the fact  
9 that such information is exempt from disclosure and should have been redacted.

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

11 Executed this 4<sup>th</sup> day of April, 2019 at Lees Summit, MO

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14 Jill A. Eggleston  
15 Associate Center Director  
16 Freedom of Information Act &  
17 Privacy Act Unit  
18 U.S. Citizenship and Immigration Services  
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