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 DAVID A. PEREZ IN SUPPORT OF PLAINTIFFS' STATUS REPORT RE PRODUCTION TIMELINES

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.35.8000
Fax: 206.359.9000

I, David A. Perez, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Trump*, No. 17-cv-00094 RAJ.

2. Attached as Exhibit A is a true and correct copy of an e-mail exchange between Plaintiffs' counsel and Defendants' counsel concerning this discovery dispute.

3. Attached as Exhibit B is a true and correct copy of an e-mail exchange between Plaintiffs' counsel and Defendants' counsel.

EXECUTED this 16th day of February, 2018, at Seattle, Washington.

/s/ David A. Perez
David A. Perez

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.35.8000
Fax: 206.359.9000

CERTIFICATE OF SERVICE

The undersigned certifies that on the dated indicated below, I caused service of the foregoing DECLARATION OF DAVID A. PEREZ IN SUPPORT OF PLAINTIFFS' STATUS REPORT RE PRODUCTION TIMELINES via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 16th day of February, 2018, at Seattle, Washington.

By: s/David A. Perez
David A. Perez #43959
Attorneys for Plaintiffs
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
Email: DPerez@perkinscoie.com

EXHIBIT

A

From:	White, Edward S. (CIV)
To:	Perez, David A. (SEA)
Cc:	Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject:	RE: Wagafe v. Trump: Plaintiffs" proposal re Discovery, Production Timeslines, and other Deadlines
Date:	Friday, February 16, 2018 7:14:42 AM

David,

We have repeatedly detailed for you the significant difficulties in meeting the timeline you have proposed. Further, the timeline from our 31 January 2018 letter that you have "adopted" as your proposal was *explicitly conditioned* on volume of documents returned by previously agreed upon search terms, as well as the scope of discovery being what we had agreed to as of 31 January – a scope which is now being *significantly expanded*.

Nevertheless, in order to determine what is realistically possible, DHS and USCIS have been working to solve as many of the practical, real-world questions that need to be answer (and there are many) as is possible in the time available. The process of figuring out what the size of the task would be and how it might be accomplished – fiscally, personnel-wise, mission-impacts, logistics, legal requirements, etc. – is neither an easy nor quick process. The main purpose of filing declarations, as I said in my email to you of yesterday evening, is to put on the record the challenges faced by the Defendants; as the declarations are being developed in parallel with the work being done to determine Defendants' ability to complete discovery on any particular timeline, their preparation in no way indicates that Defendants have the capacity to give you a counterproposal. As I told you last evening, we will communicate to you our position as soon as we are in a position to do so. I regret that you think the Defendants are "sand-bagging" you; though I don't expect you will believe me, I assure you we are not.

We will get you our position and draft of a Joint Status Report as soon as possible today.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, February 16, 2018 1:17 AM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

That's very disappointing. The Court ordered us to confer last Thursday, and you've had our

proposal for more than a week (we first outlined it at the hearing itself). Rather than give us specific feedback on the proposed timeline, you're telling us on the night before our second status update is due that you won't give us any feedback, but are instead preparing witness declarations.

Clearly if you have witness declarations in the works you have the capacity to give us a counterproposal, or at least provide specific feedback on our proposal. Sandbagging us until the status report is due with additional witness declarations purporting to outline your burdens —rather than just telling us those burdens with enough lead time for us to consider them— isn't what the Court ordered. That's the opposite of conferring.

We'll obviously take a look at and consider your feedback—whenever it is that we get it—but it sounds like we'll be proceeding with our own report, outlining these delays, and reiterating our proposal. It bears repeating, again, that our proposal on timelines is based on dates that Defendants proposed.

David

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http://www.perkinscoie.com/dperez/

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Thursday, February 15, 2018 7:46 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

Good evening. Sorry I did not write earlier; I had difficulties getting logged onto my DoJ account from home this evening.

I completely agree that we do not want to file our Friday status report late.

As of now, I do not have a position to communicate to you on either your proposal or a counter-proposal from my clients. As of the end of the day today, DHS and USCIS continued to work diligently to evaluate whether and how they could meet the deadlines in your proposal, or determine what deadlines they could meet. I will again be in touch with them tomorrow morning (EST), and will provide you with our position as soon as I am able to do so. I hope that by tomorrow morning your time, we will have something to discuss by telephone.

While DHS and USCIS are still working on formulating their position, I do expect that we will have some declarations to file with the Status Report, in order to put on the record the challenges that the Defendants face and the efforts required to produce the requested discovery in the time frames under consideration.

Finally, Defendants would like to clarify our position on the search of each custodian's individual network drive(s),and computer hard drive(s), if any. Defendants intend to use the same search and collection methodology used by Defendants, and consented to by Plaintiffs, for the remainder of the First RFPs. As stated in our October 6, 2017 letter, custodians, with attorney supervision, will designate locations (e.g. , folders, sub-folders, particular files) to identify potentially responsive documents for collection, processing, and upload into our review platform. If Defendants were required to apply the search terms listed in Appendix A (Dkt. No. 114-1) to each custodians' individual network drive(s) and computer hard drive(s), then all contents of the respective drive (regardless of responsiveness) would need to be collected, processed, and uploaded into our review platform for search, which would create a time and cost burden for Defendants inconsistent with Federal Rule of Civil Procedure 26(b)(1). As stated previously, and most recently during the hearing on February 8, 2018, Defendants Department of Homeland Security and U.S. Citizenship and Immigration Services have limited search capabilities and lack ESI processing capability. Specifically, Defendants Department of Homeland Security and U.S. Citizenship and Immigration Services lack the ability to search the contents of documents stored on individuals network drives and computer hard drives. Defendants therefore reserve their rights to move for a protective order if required to apply search terms to the entirety of all designated custodians' individual and hard drives. We intend to include a clarifying statement to that effect in tomorrow's Status Report.

Mindful of the court's filing deadline, we will be in touch tomorrow as soon as we are in a position to provide you Defendants' position on the proposed discovery schedule.

Good evening. Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Wednesday, February 14, 2018 7:15 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

We don't want to be in a position where we submit something to the Court late again. You have our proposal regarding the production timelines. Please send us your proposal by end of day tomorrow (Thursday). That will allow us time to consider it, and get on the phone with you Friday morning to discuss ways to come to an agreement before the 2 p.m. PST deadline.

By 11 a.m. PST on Friday, we will draft up a status report that reflects what we know at that time, so that it is ready in time for the deadline. If we need to file our own status update to meet the deadline, we will do that.

David

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 3:49 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Take a look.

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 6:37 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Clean versions

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 3:13 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines
Importance: High

David,

We think it might be most efficient if we get on the phone together. Are you available?

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 5:54 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Attached are our redlines. It clarifies a bit more where we are in disagreement, particularly with Defendants' conditional representations. We can either file this ourselves, or we authorize you to file (after accepting redlines) on behalf of the parties.

It shouldn't take you long to review. Please let us know in 10 minutes. As it stands, we're already going to be late.

David

From: Perez, David A. (SEA)
Sent: Tuesday, February 13, 2018 2:42 PM
To: 'White, Edward S. (CIV)'
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed, shortly we will be sending you our proposed redlines.

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 2:09 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines
Importance: High

David,

Sorry for the delay. Please see attached. Let me know if you have questions.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 4:36 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

We need to review the draft you told us you'd circulate as soon as possible. We are less than 90 minutes from the filing deadline. If we don't hear back by 2 p.m., we're going to put our own draft together and submit to the Court. We need more lead time.

David

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 8:44 AM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

Sorry for the late reply; I've been in meetings all morning. Our clients have not yet come to a decision on the proposal, and are continuing to discuss it. Nevertheless, I think it would still be useful for us to speak at noon/9 a.m., as planned, even if only briefly. At minimum, we'd like to discuss the phrasing of the proposal on the presidential transition materials.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Monday, February 12, 2018 1:26 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K.

(Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Let's do 9 a.m. PST tomorrow. I'll send an invite. In advance of that call (not 30 min. before, please), it would be helpful to get specific written responses to our proposal below. Keep in mind that on our end we also need to check in with others such as co-counsel and clients, regarding moving dates—so we need time, too.

On a related note, because it was briefly mentioned a few times last week, we wanted to point out that the apex doctrine doesn't apply to document productions. In some cases, it could be applied to depositions of high level witnesses, but not to collecting those witnesses' documents.

Thanks again,

David

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f: 206.359.7767
e: DPerez@perkinscoie.com
http://www.perkinscoie.com/dperez/

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Monday, February 12, 2018 7:05 AM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

We were thinking that we should talk by telephone tomorrow, Tuesday, 13 February, and propose that we set up a call for noon EST / 9 a.m., PST.

As you know, the status report ordered by the Court is due to the Court by 3 p.m., PST on the 13th, so we thought it would be prudent to talk earlier in the day, so as to leave ourselves some time for follow-up communications, if necessary, in advance of the 3 p.m. deadline.

Does 9 a.m. PST tomorrow work for you?

Ed

From: White, Edward S. (CIV)
Sent: Friday, February 09, 2018 9:40 PM
To: Perez, David A. (Perkins Coie) <DPerez@perkinscoie.com>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Thanks, David. I think it's useful to have this spelled out in writing, to reduce the risk of misunderstanding or confusion.

Have a good weekend. Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, February 09, 2018 3:00 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>
Subject: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Per your request, we are putting our proposal in writing. In the 1/31 Carilli Letter, Defendants proposed pushing their productions through April 23 for Plaintiffs' first discovery requests (except RFP 24), and through May 28 for Plaintiffs' second discovery requests and RFP 24. We were not happy with those timelines because they were inconsistent with our expectations, based on the Civil Rules and Defendants' previous representations estimating when we would get documents.

That said, we are willing to agree to a similar production schedule, in return for your agreeing to our requested custodians and search terms for RFP 24. Our understanding, based on yesterday's hearing, is that we no longer have any dispute as to RFP 23 because Defendants have now agreed to our custodians and search terms.

Our proposal regarding the production deadlines is contingent on the Court agreeing to push back the other deadlines in the Case Schedule (including the deadlines for discovery,

dispositive motions, and trial). We can discuss those deadlines at a later date if we come to an agreement on the production deadlines below.

Here is our proposal:

RFP 23 and 24: Defendants will apply Plaintiffs' requested search terms and custodians, uniformly across all custodians, and on the date ranges outlined in Plaintiffs' submission to the Court.

Defendants' Production schedule: Defendants will get an extension to produce documents.

- For documents responsive to Plaintiffs' first discovery requests, except for RFP 24, Defendants will produce all documents, in rolling productions, between March 12, 2018 through April 23, 2018.
- For documents responsive to Plaintiffs' second discovery requests, and RFP 24, Defendants will produce all documents, in rolling productions, between April 23, 2018 and May 28, 2018.
- Plaintiffs can then issue follow up requests with specific timelines to respond.

Non-Custodial Sources: By February 28, Defendants shall certify in writing that they have also searched for all other relevant non-custodial sources held by DHS. Such a search may have to be expanded should the Court rule in Plaintiffs' favor regarding ICE Custodians (e.g., such source will have to be expanded to non-custodial sources at ICE or CBP). But in the meantime, to the extent other non-custodial sources are identified in agencies which Defendants have already agreed to search, or are later ordered to search, such sources shall be included in Defendants' discovery responses.

Class list: pursuant to the Court's October 19, 2017 Order, Defendants shall produce a full class list by February 28, 2018.

A-Files: Defendants shall produce Plaintiffs' A-files by February 28, 2018.

Transition Documents: by February 16, 2018, Defendants shall identify those custodians who also served on the transition team and clarify whether Defendants believe such custodian(s) may have created or received responsive documents during the transition which Defendants believe are outside their control (e.g., in the control of the PETT). Defendants shall disclose the e-mail address associated with any such custodian that Defendants believe may have documents responsive to Plaintiffs' requests so that Plaintiffs can determine how and whether to proceed in obtaining those documents (either from Defendants or from the PETT). But for any documents a custodian has brought over to any federal agency (i.e., not kept separate by the PETT), Defendants shall produce those documents on the production schedule outlined above, pursuant to Defendants' representations to the Court.

Best,

David

David A. Perez | Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
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http://www.perkinscoie.com/dperez/

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EXHIBIT

B

From: White, Edward S. (CIV)
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs" proposal re Discovery, Production Timeslines, and other Deadlines
Date: Friday, February 16, 2018 12:13:43 PM

O.K., understood.

Ed

-----Original Message-----
From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, February 16, 2018 3:10 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: Re: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed, as I mentioned below, we're submitting our own report.

On Feb 16, 2018, at 12:05 PM, White, Edward S. (CIV) <Edward.S.White@usdoj.gov> wrote:

David,

Attached is our draft Joint Status Report and the DHS Declaration we intend to submit. I am still waiting to receive the final, signed declarations from USCIS. I will send those as soon as I get them.

If you do not intend to use this joint vehicle to submit your views, but rather intend to submit a separate report, then please advise us in sufficient time for us to convert the attached draft into a Defendants' solo submission and file it by 2 p.m. PST.

Thanks.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, February 16, 2018 2:27 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG) <JPasquarella@ACLUSOCAL.ORG>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG) <SAhmed@ACLUSOCAL.ORG>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com>; Matt Adams (matt@nwirp.org) <matt@nwirp.org>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Please send us your feedback as soon as possible. But at this point we'll be filing our own report, per my e-mail on Wednesday that we'd be doing so if we didn't get something concrete from you by 11 a.m. PST today. Sounds like now we won't get anything until next week, which we believe is inconsistent with the Court's order.

We'll be on the lookout for what you send.

David

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Friday, February 16, 2018 11:12 AM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

1. I should have our draft of the Joint Status Report ready to send to you shortly. I'm drafting it to have section for Defendants' comment and section for Plaintiff's comments.

2. In the meantime, I can tell you that Defendants will be stating that they are unable to agree to the Plaintiffs' proposed timelines, given just the volume of material requiring review that is known at this point. Further, they are unable, at this time, to offer a counter-proposal with an alternate schedule, as there remain a large number of unknowns concerning the volume of data that will require review, and without knowing the size of the task, it is impossible to provide an accurate proposal for how long they would need to complete the task.

3. I expect we will ask the Court to refrain from entering an order with dates certain at this point, and instead to permit Defendants additional time to finish the searches and collections - so that we can get our arms around the size of the review and production tasks - before issuing any order with production deadlines. I expect we will propose that the Court require another status report in a week to take stock of where we are in the effort to obtain reliable numbers on the amount of data needing review.

Regards, Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Wednesday, February 14, 2018 7:15 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

We don't want to be in a position where we submit something to the Court late again. You have our proposal regarding the production timelines. Please send us your proposal by end of day tomorrow (Thursday). That will

allow us time to consider it, and get on the phone with you Friday morning to discuss ways to come to an agreement before the 2 p.m. PST deadline.

By 11 a.m. PST on Friday, we will draft up a status report that reflects what we know at that time, so that it is ready in time for the deadline. If we need to file our own status update to meet the deadline, we will do that.

David

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 3:49 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Take a look.

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 6:37 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Clean versions

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 3:13 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines
Importance: High

David,

We think it might be most efficient if we get on the phone together. Are you available?

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 5:54 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>)

<JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Attached are our redlines. It clarifies a bit more where we are in disagreement, particularly with Defendants' conditional representations. We can either file this ourselves, or we authorize you to file (after accepting redlines) on behalf of the parties.

It shouldn't take you long to review. Please let us know in 10 minutes. As it stands, we're already going to be late.

David

From: Perez, David A. (SEA)
Sent: Tuesday, February 13, 2018 2:42 PM
To: 'White, Edward S. (CIV)'
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed, shortly we will be sending you our proposed redlines.

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 2:09 PM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines
Importance: High

David,

Sorry for the delay. Please see attached. Let me know if you have questions.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Tuesday, February 13, 2018 4:36 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie)

<LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

We need to review the draft you told us you'd circulate as soon as possible. We are less than 90 minutes from the filing deadline. If we don't hear back by 2 p.m., we're going to put our own draft together and submit to the Court. We need more lead time.

David

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Tuesday, February 13, 2018 8:44 AM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

Sorry for the late reply; I've been in meetings all morning. Our clients have not yet come to a decision on the proposal, and are continuing to discuss it. Nevertheless, I think it would still be useful for us to speak at noon/9 a.m., as planned, even if only briefly. At minimum, we'd like to discuss the phrasing of the proposal on the presidential transition materials.

Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Monday, February 12, 2018 1:26 PM
To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Let's do 9 a.m. PST tomorrow. I'll send an invite. In advance of that call (not 30 min. before, please), it would be helpful to get specific written responses to our proposal below. Keep in mind that on our end we also need to check in with others such as co-counsel and clients, regarding moving dates-so we need time, too.

On a related note, because it was briefly mentioned a few times last week, we wanted to point out that the apex doctrine doesn't apply to document productions. In some cases, it could be applied to depositions of high level witnesses, but not to collecting those witnesses' documents.

Thanks again,

David

David A. Perez | Perkins Coie LLP
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f: 206.359.7767
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http://www.perkinscoie.com/dperez/

From: White, Edward S. (CIV) [mailto:Edward.S.White@usdoj.gov]
Sent: Monday, February 12, 2018 7:05 AM
To: Perez, David A. (SEA)
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>); Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>); Gellert, Nicholas (SEA); Carilli, Joseph F. (CIV); Hennessey, Laura K. (SEA); Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>); Petty, Aaron (CIV)
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

David,

We were thinking that we should talk by telephone tomorrow, Tuesday, 13 February, and propose that we set up a call for noon EST / 9 a.m., PST.

As you know, the status report ordered by the Court is due to the Court by 3 p.m., PST on the 13th, so we thought it would be prudent to talk earlier in the day, so as to leave ourselves some time for follow-up communications, if necessary, in advance of the 3 p.m. deadline.

Does 9 a.m. PST tomorrow work for you?

Ed

From: White, Edward S. (CIV)
Sent: Friday, February 09, 2018 9:40 PM
To: Perez, David A. (Perkins Coie) <DPerez@perkinscoie.com<mailto:DPerez@perkinscoie.com>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Subject: RE: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Thanks, David. I think it's useful to have this spelled out in writing, to reduce the risk of misunderstanding or confusion.

Have a good weekend. Ed

From: Perez, David A. (Perkins Coie) [mailto:DPerez@perkinscoie.com]
Sent: Friday, February 09, 2018 3:00 PM

To: White, Edward S. (CIV) <edwhite@CIV.USDOJ.GOV<mailto:edwhite@CIV.USDOJ.GOV>>; Carilli, Joseph F. (CIV) <jcarilli@CIV.USDOJ.GOV<mailto:jcarilli@CIV.USDOJ.GOV>>; Petty, Aaron (CIV) <apetty@CIV.USDOJ.GOV<mailto:apetty@CIV.USDOJ.GOV>>
Cc: Jennie Pasquarella (JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>) <JPasquarella@ACLUSOCAL.ORG<mailto:JPasquarella@ACLUSOCAL.ORG>>; Sameer Ahmed (SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>) <SAhmed@ACLUSOCAL.ORG<mailto:SAhmed@ACLUSOCAL.ORG>>; Gellert, Nicholas (Perkins Coie) <NGellert@perkinscoie.com<mailto:NGellert@perkinscoie.com>>; Hennessey, Laura K. (Perkins Coie) <LHennessey@perkinscoie.com<mailto:LHennessey@perkinscoie.com>>; Matt Adams (matt@nwirp.org<mailto:matt@nwirp.org>) <matt@nwirp.org<mailto:matt@nwirp.org>>
Subject: Wagafe v. Trump: Plaintiffs' proposal re Discovery, Production Timeslines, and other Deadlines

Ed,

Per your request, we are putting our proposal in writing. In the 1/31 Carilli Letter, Defendants proposed pushing their productions through April 23 for Plaintiffs' first discovery requests (except RFP 24), and through May 28 for Plaintiffs' second discovery requests and RFP 24. We were not happy with those timelines because they were inconsistent with our expectations, based on the Civil Rules and Defendants' previous representations estimating when we would get documents.

That said, we are willing to agree to a similar production schedule, in return for your agreeing to our requested custodians and search terms for RFP 24. Our understanding, based on yesterday's hearing, is that we no longer have any dispute as to RFP 23 because Defendants have now agreed to our custodians and search terms.

Our proposal regarding the production deadlines is contingent on the Court agreeing to push back the other deadlines in the Case Schedule (including the deadlines for discovery, dispositive motions, and trial). We can discuss those deadlines at a later date if we come to an agreement on the production deadlines below.

Here is our proposal:

RFP 23 and 24: Defendants will apply Plaintiffs' requested search terms and custodians, uniformly across all custodians, and on the date ranges outlined in Plaintiffs' submission to the Court.

Defendants' Production schedule: Defendants will get an extension to produce documents.

* For documents responsive to Plaintiffs' first discovery requests, except for RFP 24, Defendants will produce all documents, in rolling productions, between March 12, 2018 through April 23, 2018.

* For documents responsive to Plaintiffs' second discovery requests, and RFP 24, Defendants will produce all documents, in rolling productions, between April 23, 2018 and May 28, 2018.

* Plaintiffs can then issue follow up requests with specific timelines to respond.

Non-Custodial Sources: By February 28, Defendants shall certify in writing that they have also searched for all other relevant non-custodial sources held by DHS. Such a search may have to be expanded should the Court rule in Plaintiffs' favor regarding ICE Custodians (e.g., such source will have to be expanded to non-custodial sources at ICE or CBP). But in the meantime, to the extent other non-custodial sources are identified in agencies which Defendants have already agreed to search, or are later ordered to search, such sources shall be included in Defendants' discovery responses.

Class list: pursuant to the Court's October 19, 2017 Order, Defendants shall produce a full class list by February 28, 2018.

A-Files: Defendants shall produce Plaintiffs' A-files by February 28, 2018.

Transition Documents: by February 16, 2018, Defendants shall identify those custodians who also served on the transition team and clarify whether Defendants believe such custodian(s) may have created or received responsive

documents during the transition which Defendants believe are outside their control (e.g., in the control of the PETT). Defendants shall disclose the e-mail address associated with any such custodian that Defendants believe may have documents responsive to Plaintiffs' requests so that Plaintiffs can determine how and whether to proceed in obtaining those documents (either from Defendants or from the PETT). But for any documents a custodian has brought over to any federal agency (i.e., not kept separate by the PETT), Defendants shall produce those documents on the production schedule outlined above, pursuant to Defendants' representations to the Court.

Best,

David

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_____

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<FINAL DHS HQ OGC COS Palmer Declaration - Wagafe - 02162018.pdf>
<2018-02-16 Joint Status Report (Court LCR 37 Order) (Draft to Plaintiffs).docx>

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