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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. 2:17-cv-00094-RAJ

**ORDER ON LCR 37 SUBMISSION
REGARDING REQUESTS FOR
PRODUCTION NOS. 23 & 24**

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2 This matter comes before the Court on a joint submission made to the Court
3 pursuant to the expedited procedure for resolution of discovery disputes set forth in Local
4 Rule W.D. Wash. LCR 37(a). Dkt. # 103.

5 **I. BACKGROUND**

6 On October 19, 2017, the Court granted in part and denied in part Plaintiffs'
7 motion to compel production of documents. Dkt. # 98. The Court required the
8 Government to produce a privilege log for any documents related to the Executive Orders
9 over which it wished to assert a deliberative-process privilege. *Id.* at 5. The Court
10 further ordered the parties to meet and confer to discuss whether alternative custodians or
11 non-custodial sources were available to produce documents relating extreme vetting
12 programs to two Executive Orders. *Id.*

13 The parties met and conferred and reached an impasse. Dkt. # 103 at 2. The
14 disputed discovery requests that are the subject of this Rule 37 Joint Motion are
15 referenced below:

16 REQUEST FOR PRODUCTION NO. 23: All Documents
17 referring or relating to any consideration of or reference to
18 CARRP during the planning, drafting, or issuing of the First
19 and Second EOs.

20 REQUEST FOR PRODUCTION NO. 24: All Documents
21 referring or relating to “extreme vetting” or any other
22 screening, vetting, or adjudication program, policy, or
23 procedure connected to the First or Second EOs. This request
24 includes, but is not limited to, programs that reference, relate
25 to, or expand upon CARRP.
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2 **II. LEGAL STANDARD**

3 The Court has broad discretion to control discovery. *Hallett v. Morgan*, 296 F.3d
4 732, 751 (9th Cir. 2002); *see also Avila v. Willits Env'tl. Remediation Trust*, 633 F.3d 828,
5 833 (9th Cir. 2011), *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988). That
6 discretion is guided by several principles. Most importantly, the scope of discovery is
7 broad. A party must respond to any discovery request that is not privileged and that is
8 “relevant to any party’s claim or defense and proportional to the needs of the case,
9 considering the importance of the issues at stake in the action, the amount in controversy,
10 the parties’ relative access to relevant information, the parties’ resources, the importance
11 of the discovery in resolving the issues, and whether the burden or expense of the
12 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

13 **III. ANALYSIS**

14 **A. Request for Production No. 23 (“Request No. 23”)**

15 Defendants contend that the dispute regarding Request No. 23 is premature and
16 should not be before this Court. Dkt. # 103 at 9. Specifically, Defendants argue that no
17 documents exist with regard to Request No. 23. *Id.* at 4. Defendants also argue that the
18 only issue they agreed to present to this Court is how the parties should understand the
19 scope of “extreme vetting”-related discovery. *Id.* at 8-9. Because Plaintiffs have
20 presented the alternative custodian/non-custodial issue to the Court, Defendants aver that
21 there is a disagreement on the scope of this Rule 37 Joint Motion and therefore it is
22 improperly before the Court. *Id.*

23 The Court disagrees with Defendants. In its prior Order, the Court ordered the
24 parties to discuss alternative custodians and non-custodial sources of information that
25 link any kind of “extreme vetting” program to the Executive Orders. Dkt. # 98 at 5.
26 Defendants now respond that they conferred internally regarding Request No. 23 only to
discover that CARRP was not referenced or considered in the drafting and adoption of

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2 the two Executive Orders and therefore no discovery production is necessary, obviating
3 the need to discuss alternative custodians or non-custodial sources. Dkt. # 103 at 3.

4 To reach their conclusion, Defendants infer that they used a definition of “extreme
5 vetting” that may differ from the one used by Plaintiffs, suggesting that the parties need
6 to further meet and confer on the issue. *Id.* at 8-9. The Court does not accept this
7 response, in part due to the targeted nature of Request No. 23, which seeks documents
8 specifically related to CARRP. *See id.* at 4 (Request No. 23 seeks documents “referring
9 or relating to any consideration of or reference to CARRP”). Defendants’ argument that
10 the parties are facing a terminology misunderstanding is therefore disingenuous.

11 In addition, the Court disagrees that the issue is premature or that the motion is
12 improper due to a lack of mutual consent. Even if the Court were to find issue with the
13 parties’ mutual consent, then the remedy would be for Plaintiffs to file a motion to
14 compel. But Plaintiffs have already filed a motion to compel on this issue, and the Court
15 will not require Plaintiffs to file duplicitous motions to compel. *See* Dkt. # 91. The
16 scope of discovery is broad, and Plaintiffs are entitled to Defendants’ good faith review
17 of its records. *See* Dkt. # 103 at 3 (stating that USCIS official familiar with the agency’s
18 efforts responded, “to the best of their knowledge information, and belief” that neither
19 Executive Order impacted CARRP; Defendants do not contend that they searched or
20 reviewed any records).

21 The Court orders the parties to meet and confer within twenty-one (21) days from
22 the date of this Order to discuss alternative custodians, non-custodial sources, search
23 terms, and other means of review that Defendants will use to search for relevant
24 documents. Defendants shall conduct their search of the records within ten (10) days of
25 the parties’ meeting. Defendants will then have thirty (30) days to produce relevant
26 records, if any exist, to Plaintiffs or, in the alternative, to produce a privilege log.

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2 **B. Request for Production No. 24 (“Request No. 24”)**

3 Defendants argue that the Court narrowly construed Plaintiffs’ “extreme vetting”-
4 related claims in its Order on the motion to dismiss. *See* Dkt. ## 103 at 11, 69 at 15.
5 Defendants contend that because the terms “extreme vetting” have been narrowed,
6 Plaintiffs’ Request No. 24 is too broad in its current form. Plaintiffs argue that
7 Defendants are attempting to “narrow[] this case to CARRP and CARRP alone.” *Id.* at 7.

8 The Court agrees, in part, with Defendants that “[t]he main thrust of this case is
9 the legality of CARRP.” Dkt. # 69 at 15. However, the scope of discovery is necessarily
10 broad, and Plaintiffs’ Request No. 24 is reasonably targeted at searching for evidence of
11 “extreme vetting” programs that “embody CARRP in all but name.” *See* Dkt. # 69 at 15.

12 The Court orders the parties to meet and confer within twenty-one (21) days from
13 the date of this Order to discuss search terms and other means of review, as well as
14 alternative custodians and non-custodial sources, if necessary, that Defendants will use to
15 search for relevant documents. Defendants shall conduct their search of the records
16 within ten (10) days of the parties’ meeting. Defendants will then have thirty (30) days to
17 produce relevant records, if any exist, to Plaintiffs or, in the alternative, to produce a
18 privilege log.

19 Dated this 10th day of January, 2018.
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24 The Honorable Richard A. Jones
25 United States District Judge
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