

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United
States, *et al.*,

Defendants.¹

No. 2:17-cv-00094-RAJ

**DEFENDANTS' MOTION TO SEAL
EXHIBITS FILED SUPPORTING
DEFENDANTS' MOTION TO EXCLUDE
TESTIMONY AND REPORTS OF
PLAINTIFFS' EXPERTS ARASTU,
GAIRSON AND RAGLAND**

(Note on Motion Calendar for April 9, 2021)

¹ Plaintiffs sued all individual defendants only in their official capacities. *See* Dkt. No. 47 at 8-9. Pursuant to Fed. R. Civ. P. 24(d), the offices' incumbents are substituted for their predecessors.

1 **INTRODUCTION**

2 Defendants hereby move the Court to seal the unredacted Exhibits A-C and F-H,
3 supporting Defendants’ Motion to Exclude the Testimony and Reports of Plaintiffs’ Experts Dr.
4 Nermeen Arastu, Mr. Jay Gairson, and Mr. Thomas Ragland. The unredacted exhibits have been
5 filed provisionally under seal.

6 **CERTIFICATION**

7 On February 16, 2021, Defendants’ counsel notified counsel for Plaintiffs via email of
8 Defendants’ intention to file exhibits to the aforementioned motion under seal and solicited
9 Plaintiffs’ position. On March 22, 2021, the parties conducted a telephonic Meet & Confer and
10 Plaintiffs’ counsel indicated that they do not agree with the need to file exhibits under seal.

11 **LEGAL STANDARD**

12 The strong presumption of public access to court records ordinarily requires the moving
13 party to provide compelling reasons to seal a document. *Kamakana v. City & County of*
14 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But the less onerous “good cause” standard
15 applies to “sealed materials attached to a discovery motion unrelated to the merits of a case” and
16 other non-dispositive motions that are less “than tangentially related to the merits of a case.”
17 *Ctr. for Auto Safety, v. Chrysler Group, LLC*, 809 F.3d 1092, 1097, 1101 (9th Cir. 2016). Here,
18 the good cause standard applies because the sealed exhibits are related to Defendants’ Motion to
19 Exclude the Testimony and Reports of Plaintiffs’ Experts Dr. Nermeen Arastu, Mr. Jay Gairson,
20 and Mr. Thomas Ragland, which is a non-dispositive motion not related to the merits of the case.
21 *See Ctr. for Auto Safety*, 809 F.3d at 1097, 1101.

22 Under this Court’s Local Rules, a motion to seal a document must include the following:
23

1 (A) a certification that the party has met and conferred with all other parties in an
2 attempt to reach agreement on the need to file the document under seal, to
3 minimize the amount of material filed under seal, and to explore redaction
and other alternatives to filing under seal; this certification must list the date,
manner, and participants of the conference;

4 (B) a specific statement of the applicable legal standard and the reasons for
5 keeping a document under seal, including an explanation of:
6 i. the legitimate private or public interests that warrant the relief sought;
7 ii. the injury that will result if the relief sought is not granted; and
8 iii. why a less restrictive alternative to the relief sought is not sufficient.

7 LCR 5(g)(3).

8 **ARGUMENT**

9 The Court should seal Exhibits A-C and F-H in support of Defendants' Motion to
10 Exclude the Testimony and Reports of Plaintiffs' Experts Dr. Nermeen Arastu, Mr. Jay Gairson,
11 and Mr. Thomas Ragland, which have been filed provisionally under seal. There is a legitimate
12 public interest in keeping these exhibits sealed. The exhibits consist of expert reports and
13 transcripts, which have been previously marked as confidential under this Court's protective
14 orders, because they reference sensitive content from A-file and policy documents, as well as
15 information about individuals' immigration benefit applications. Dkt. Nos. 86, 183, 192.
16 Defendants drafted their Motion to Exclude the Testimony and Reports of Plaintiffs' Experts
17 Arastu, Gairson, and Ragland in a manner to allow for public filing. To the extent possible,
18 Defendants have also sought to rely on exhibits that are permissible for public filing. *See Motion*
19 *to Exclude the Testimony and Reports of Plaintiffs' Experts Arastu, Gairson, and Ragland,*
20 *Exhibits D & E; see also id., Exhibit F (filed publicly in redacted form).* Accordingly,
21 Defendants request that Exhibits A-C and F-H filed provisionally under seal in support of
22
23

1 Defendants' Motion to Exclude the Testimony and Reports of Plaintiffs' Experts Dr. Nermeen
2 Arastu, Mr. Jay Gairson, and Mr. Thomas Ragland remain sealed.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should grant Defendants' motion to seal.

5 Dated: March 25, 2021

Respectfully Submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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