

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et al.*,

Defendants.

**No. 2:17-cv-00094-RAJ**

**RESPONSE TO PLAINTIFFS’ MOTION TO SEAL PLAINTIFFS’ REPLY TO MOTION TO COMPEL AND OPPOSITION TO DEFENDANTS’ CROSS-MOTION FOR PROTECTIVE ORDER**

Defendants do not oppose Plaintiffs’ Motion to Seal and ask the Court to grant it. *See* Dkt. 240.

**LEGAL STANDARD**

The strong presumption of public access to court records ordinarily requires the moving party to provide compelling reasons to seal a document. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But, the less onerous “good cause” standard applies to “sealed materials attached to a discovery motion unrelated to the merits of a case.” *Ctr. for Auto Safety, v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). Here, the

1 good cause standard applies because the sealed materials are related to Plaintiffs' Motion to  
2 Compel, Dkt. 221, and Defendants' Cross-Motion for Protective Order, Dkt. 226, which are both  
3 non-dispositive discovery-related motions. *See Ctr. for Auto Safety*, 809 F.3d at 1097.

4 Under this Court's Local Rules, a motion to seal a document must include the following:

5 (A) a certification that the party has met and conferred with all other parties in an  
6 attempt to reach agreement on the need to file the document under seal, to  
7 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;

8 (B) a specific statement of the applicable legal standard and the reasons for  
9 keeping a document under seal, including an explanation of:

- 10 i. the legitimate private or public interests that warrant the relief sought;  
ii. the injury that will result if the relief sought is not granted; and  
iii. why a less restrictive alternative to the relief sought is not sufficient.

11 LCR 5(g)(3). Furthermore, where the parties have entered a stipulated protective order  
12 governing the exchange in discovery of documents that a party deems confidential, a  
13 party wishing to file a confidential document it obtained from another party in discovery  
14 may file a motion to seal but need not satisfy subpart (3)(B) above. *Id.* Instead, the party  
15 who designated the document confidential must satisfy subpart (3)(B) in its response to  
16 the motion to seal or in a stipulated motion. *Id.*

17 **ARGUMENT**

18 Here, Exhibits C, D and E were produced by Defendants in discovery subject to the  
19 existing Protective Order. Dkt. 245, 246, 247; *see also* Dkt. 86. These three Exhibits satisfy the  
20 requirements of Local Rule 5(g)(3)(B) and hence should remain filed under seal. As explained  
21 in Matthew Emrich's attached declaration ("Emrich Decl."), these Exhibits are training  
22 documents created by USCIS to train officers who vet and adjudicate applications pursuant to  
23

1 CARRP policy. Emrich Decl., ¶ 5. The documents contain sensitive but unclassified  
2 information, including “for official use only (“FOUO”)” information, about investigative  
3 techniques used by USCIS officers to maintain the integrity of the legal immigration system and  
4 combat fraud, criminal activity, and other threats to public safety and national security. *Id.*, ¶ 6.  
5 Disclosure of these investigative techniques could cause nefarious individuals to modify their  
6 behavior and thereby avoid detection. *Id.*, ¶ 9. These documents should remain under seal  
7 because USCIS has a legitimate interest in protecting against their release, and public release  
8 could cause injury. *Id.*, ¶ 10. For these same reasons, there are no less restrictive alternatives  
9 than keeping the documents under seal.

10 Nevertheless, as provided under LCR 5(g)(6), because the Plaintiffs’ motion to seal  
11 pertains in part to the foregoing three exhibits produced by the Government under a protective  
12 order, should the Court deny the motion to seal as to these three documents, Defendants request  
13 that “the court withdraw the document[s] from the record rather than unseal [them].” LCR  
14 5(g)(6) (noting that a response to a motion to seal may request this alternative remedy for  
15 preserving the status quo).

16 Finally, Plaintiffs’ move to seal Exhibits F through K because “they contain confidential  
17 personal and sensitive information that cannot be redacted to comply with Local Rule  
18 5(g)(1)(B).” Dkt 240 at 4. Defendants have no basis to disagree with this assertion.  
19 Consequently, both categories of exhibits, as well as Plaintiffs’ unredacted Reply which quotes  
20 from several of the sealed exhibits, are properly filed under seal. *See Kamakana v. City and*  
21 *County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (presumption for public right of access  
22 does not apply to a sealed discovery document attached to a non-dispositive motion).

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2019, 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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