

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.

No. 2:17-cv-00094-RAJ

**DEFENDANTS' REPLY TO PLAINTIFFS'
OPPOSITION TO THE MOTION TO
SEAL DOCUMENTS IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND CROSS-MOTION FOR
SUMMARY JUDGMENT**

Defendants have established compelling reasons in support of their request to seal certain exhibits submitted in support of Defendants' Opposition to Plaintiffs' Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment ("Opposition and Cross-Motion"). This case concerns Plaintiffs' legal challenges to the Controlled Application Review and Resolution Program ("CARRP"), a policy United States Citizenship and Immigration Services ("USCIS") employs to identify and process immigration benefits applications which may raise national security concerns. The case, by its nature, involves sensitive information that, if disclosed, could cause specific harms to national security, and thus "become a vehicle for improper purposes." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir.

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2006). Preventing such harms undoubtedly establishes a compelling reason to shield the information – which Defendants have designated as confidential under a protective order issued in this case – from public disclosure. *See* Dkt. No. 86. Accordingly, to the extent the documents Defendants filed in support of their Opposition and Cross-Motion contain such information, the documents should be sealed.

Contrary to Plaintiffs’ assertion, Defendants do provide specific factual findings to support the motion. *See* Pls.’ Opp. at 3-5. In their motion, Defendants cited to specific documents, such as training slides, guidance documents, and hypothetical fact patterns, and explained that disclosure of these documents, which “provide direct insight into how USCIS identifies and evaluates potential national security concerns, including through consultation and communication with third party law enforcement agencies” would impact national security concerns. *See* Defs.’ Mot. at 4-5. Specifically, disclosure of this information would provide targets of investigations information regarding whether and how they are being investigated, and encourage behavior changes and information concealment by national security threats intending to avoid detection. *See* Defs.’ Mot. at 4-5. Additionally, publicly disclosing details concerning USCIS’ consultation and communication with third party law enforcement agencies about CARRP cases risks damaging important information-sharing relationships essential to protecting national security.

The fact that USCIS has released some policy documents through litigation or through FOIA requests is not a valid basis to claim that *all* policy documents should be publicly available. *See* Pls.’ Opp. at 4-5. Defendants have argued, here and previously, that documents which directly discuss how USCIS identifies and evaluates national security concerns, particularly through consultation with law enforcement agencies, should remain sealed. *See*,

e.g., Dkt. 374, 436, 441, 481. Indeed, that Defendants do not seek to file all policy documents under seal establishes that they are cognizant of this Court's rule that the party should minimize the number of documents filed under seal. *See* LCR 5(g)(4). Defendants here seek only to seal a limited amount of documents that directly implicate national security concerns, and have endeavored to publicly file redacted versions of those where possible.

Contrary to Plaintiffs' assertion, the Court's protective orders do carry weight in determining whether these documents should remain sealed. *See* Pls.' Opp. at 6. In those orders, the Court addressed the very matters at issue with respect to this motion to seal, namely the harm that could occur should the documents be publicly released. *See* Dkt. 272 at 2 (noting that Defendants' arguments that documents designated confidential contained "sensitive but unclassified information about the investigative techniques of USCIS officers to . . . combat threats to public safety and national security," and "that the public release of these [documents] could cause injury by allowing individuals to modify their behavior to avoid detection by authorities."); Dkt. 320 at 7-8 (recognizing USCIS' interest in preventing disclosure of "internal vetting procedures and methodologies for identifying [national security] risk."). Clearly, in this case, the designation of information and documents as confidential and Attorney's Eyes Only bears a nexus to protecting national security, and, as discussed above, this constitutes a compelling reason to seal. *See Ground Zero*, 860 F.3d at 1262 (9th Cir. 2017); *Ressam*, 221 F.Supp.2d at 1263.

In addition, with respect to the Court's designation of certain documents as being Attorney's Eyes Only, Defendants submit that this alone is sufficient to establish compelling reasons to seal the documents. Defendants here do not rely on a "blanket protective order" as a basis to seal these documents, *see Beckman Indus, Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475-76

(9th Cir. 1992), but rather the specific findings made by this Court in its orders addressing the Attorney's Eyes Only designation. Indeed, the Court indicated that the designation is intended to afford the documents a great degree of protection. *See* Dkt. No. 183 at 2-3 (“Plaintiffs’ attorneys of record shall maintain [Attorney’s Eyes Only] information in a secure manner, i.e. in a locked filing cabinet (for any paper copy) or in a password-protected electronic file to which only authorized persons have access, and shall not transmit that information over any electronic mail or cloud-based sharing unless the method of transmission employs point-to-point encryption or other similar encrypted transmission.”); Dkt. No. 274 at 6 (“Plaintiffs’ counsel may not disclose [the Named Plaintiffs’ A-Files, designated Attorney’s Eyes Only], or the newly unredacted information contained therein (if applicable) to any other individual. The Court expects strict compliance with this directive, and *will impose severe sanctions if the parties do not follow it.*”) (emphasis added). Given the Court’s recognition that information and documents designated Attorney’s Eyes Only must be afforded the utmost protection from public disclosure, Defendants submit that an Attorney’s Eyes Only designation, in and of itself, constitutes a compelling reason to seal.

For the foregoing reasons, the Court should grant Defendants' Motion to Seal the Supporting Documents to Defendants' Opposition and Cross-Motion for Summary Judgment.

Dated: May 21, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 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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