

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’ MOTION TO SEAL  
REPLY AND SUPPORTING  
DOCUMENTS**

Noted for Consideration: July 23, 2021

**INTRODUCTION**

Pursuant to Local Rule 5(g), Defendants hereby move the Court to seal their “Reply in Support of Their Cross-Motion for Summary Judgement” (“Reply”) and certain exhibits submitted in support of Defendants’ Reply. 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 raising potential national security concerns. The case, by its nature, involves sensitive information that, if disclosed, could cause specific harms to national security. Preventing such harms undoubtedly establishes a compelling reason to shield the information – which Defendants have designated as confidential and Attorneys’ Eyes Only (“AEO”) under

1 protective order issued in this case – from public disclosure. *See* Dkt. No. 86. Accordingly, to  
2 the extent Defendants’ Reply, and the documents Defendants submit in support of their Reply,  
3 contain such information, the filings should be sealed.

4 **CERTIFICATION**

5 Pursuant to Local Rule 5(g)(3)(A), Defendants certify that the parties met and conferred  
6 telephonically regarding the instant motion on July 1, 2021. Jesse Busen, Victoria Braga,  
7 Lindsay Murphy, Ethan Kanter, and Leon Taranto participated on behalf of Defendants, and  
8 Heath Hyatt participated on behalf of Plaintiffs. Plaintiffs’ counsel indicated that they do not  
9 agree with relief requested in this motion.

10 **LEGAL STANDARD**

11 The strong presumption of public access to court records ordinarily requires a party  
12 seeking to seal information and documents to provide compelling reasons in support of their  
13 request to seal. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).  
14 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and  
15 justify sealing court records exist when such ‘court files might have become a vehicle for  
16 improper purposes.’” *Id.* at 1179. Potential harm to national security constitutes a compelling  
17 reason to shield information from public disclosure. *See Ground Zero Center for Non-Violent*  
18 *Action v. United States Department of Navy*, 860 F.3d 1244, 1262 (9th Cir. 2017) (“National  
19 security concerns can, of course, provide a compelling reason for shrouding in secrecy even  
20 documents once in the public domain.”); *United States v. Ressam*, 221 F.Supp.2d 1252, 1263  
21 (W.D. Wash. 2002) (recognizing “national security” as a “compelling interest . . . unusual in its  
22 ongoing nature” and sufficient to justify continued nondisclosure); *see also United States ex rel.*  
23 *Kelly v. Serco, Inc.*, No. 11CV2975 WQH-RBB, 2014 WL 12675246, at \*4 (S.D. Cal. Dec. 22,

1 2014) (granting a motion to seal various documents designated “For Official Use Only” by the  
2 United States Government because “national security interests are a compelling reason for filing  
3 documents under seal”).

#### 4 ARGUMENT

##### 5 **I. Protecting National Security Is A Compelling Reason To Seal Defendants’ Reply 6 And Certain Documents Submitted In Support Of Defendants’ Reply.**

7 With the aim of protecting national security and law enforcement interests, Defendants  
8 have designated certain information in their Reply and certain supporting documents, or portions  
9 thereof, as confidential or AEO. As further discussed below, such designations have been made  
10 pursuant to protective orders entered in this case, as well as other Court orders issued in this  
11 case. *See, e.g.*, Dkt. No. 86, Dkt. No. 183 at 2; Dkt. No. 320 at 7-8. Specifically, Defendants’  
12 Reply contains information about internal CARRP processes and procedures, including  
13 processes and procedures for coordination between USCIS and law enforcement agencies;  
14 CARRP-referral statistics implicating the information of law enforcement agencies; specific  
15 national security concern indicators; and the CARRP-status of particular individuals’  
16 immigration benefit applications. This information is sourced largely from USCIS training  
17 slides produced by Defendants in discovery, marked as “For Official Use Only” prior to this  
18 litigation, and marked as confidential and AEO for the purposes of this litigation. It is also  
19 sourced from USCIS data revealing country-specific CARRP information and implicating law  
20 enforcement agency information, and therefore not publically available. Additionally, the  
21 information is derived from the deposition testimony and declaration statements of USCIS  
22 officials and adjudicators concerning confidential and AEO information about CARRP  
23 processing and procedures. Finally, the information in Defendants’ Reply comes from the A-  
Files of particular individuals. Documents designated in part as confidential or AEO, and  
submitted in support of Defendants Reply, include a report discussing the aforementioned data,  
as well as excerpts from one of the aforementioned depositions. *See Ex. 55, 56.*

1 As Defendants have explained before, the confidential and AEO information in this case,  
2 if disclosed, could be used for improper purposes, which establishes a compelling reason to seal  
3 the information. *See Kamakana*, 447 F.3d at 1179. Specifically, revealing information  
4 implicating the information of law enforcement agencies would tend to harm beneficial,  
5 collaborative communication and coordination between USCIS and these agencies, which is  
6 essential for the CARRP program – designed to identify and vet potential national security  
7 concerns – to work efficiently and effectively. *See* Dkt. No. 274 at 5 (indicating that the  
8 disclosure of law enforcement agency information “could harm cooperation . . . and implicate  
9 ongoing investigations”). Furthermore, revealing publicly what constitutes an indicator of a  
10 national security concern, and moreover revealing the CARRP-status of particular individuals’  
11 immigration benefit applications, could signal to an immigration benefit applicant that he is, or  
12 might become, an investigative target. It could also influence an immigration benefit applicant  
13 to change his behavior, or conceal certain details about his behavior, in an effort to avoid USCIS’  
14 detection of a national security indicator in his case. This could result in adverse consequences  
15 to national security. *See Elhady v. Kable*, 993 F.3d 208, 215 (4th Cir. 2021) (noting that the  
16 reason for not disclosing information is “apparent” where “[d]isclosure would disrupt and  
17 potentially destroy counterterrorism investigations because terrorists could alter their behavior,  
18 avoid detection, and destroy evidence”). Based on this clear articulation of specific harms to  
19 national security resulting from the public disclosure of certain information in Defendants’ Reply  
20 and supporting exhibits, Defendants have established a compelling reason to seal these filings.  
21 *See Ground Zero*, 860 F.3d at 1262 (9th Cir. 2017); *Ressam*, 221 F.Supp.2d at 1263.  
22 Furthermore, Defendants have filed public versions of each of their sealed exhibits with all  
23 protective-order-designated information redacted. *See* Ex. 55, 56.

1       **II. The Court Has Recognized Protecting National Security As The Interest**  
2       **Underlying Confidentiality and Attorneys' Eyes Only Designations, And Sealing**  
3       **Documents On The Basis Of These Designations, In This Case.**

4           The Court has entered various orders in this case directing that the types of information  
5       and documents discussed above be designated as confidential or AEO, and therefore filed under  
6       seal. *See, e.g.*, Dkt. No. 86, Dkt. No. 183 at 2; Dkt. No. 320 at 7-8. Indeed the Court's orders  
7       addressing the AEO designation indicate that it is intended to afford the documents a great  
8       degree of protection. *See* Dkt. No. 183 at 2-3 ("Plaintiffs' attorneys of record shall maintain  
9       [AEO] information in a secure manner, i.e. in a locked filing cabinet (for any paper copy) or in a  
10      password-protected electronic file to which only authorized persons have access, and shall not  
11      transmit that information over any electronic mail or cloud-based sharing unless the method of  
12      transmission employs point-to-point encryption or other similar encrypted transmission."); Dkt.  
13      No. 274 at 6 ("Plaintiffs' counsel may not disclose [the Named Plaintiffs' A-Files, designated  
14      AEO], or the newly unredacted information contained therein (if applicable) to any other  
15      individual. The Court expects strict compliance with this directive, and *will impose severe*  
16      *sanctions if the parties do not follow it.*") (emphasis added). Given the Court's recognition that  
17      information and documents designated AEO must be afforded the utmost protection from public  
18      disclosure, an AEO designation, in and of itself, constitutes a compelling reason to seal.

19           Second, the Court has indicated that, in this case, the purpose of both confidential and  
20      AEO designations is to protect information that, if released, could harm law enforcement  
21      interests and/or national security. For example, when considering a prior motion to seal, the  
22      Court noted Defendants' arguments that documents designated confidential contained "sensitive  
23      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]

1 could cause injury by allowing individuals to modify their behavior to avoid detection by  
2 authorities.” *See* Dkt. No. 272 at 2. The Court then agreed that protecting national security was  
3 a sufficient justification for keeping the documents designated confidential under seal. *Id.* As  
4 another example, after reviewing a “sampling of case-by-case determinations regarding  
5 individual national security threats as they appear on the class list,” the Court ordered that the  
6 class lists be produced under an AEO designation. *See* Dkt. No. 183 at 2. Likewise, when  
7 contemplating a production of the Named Plaintiffs’ A-Files that would reveal information  
8 concerning whether and why the Named Plaintiffs’ immigration benefits applications were  
9 processed in CARRP, the Court specified that such a production be designated AEO. *See* Dkt.  
10 No. 274 at 5-6. Additionally, recognizing USCIS’s interest in preventing disclosure of “internal  
11 vetting procedures and methodologies for identifying [national security] risk,” the Court has  
12 ordered that such material bear an AEO designation. *See* Dkt. No. 320 at 7-8. Perhaps most  
13 tellingly, when the Court recently spoke in an order about the types of information discussed  
14 above, the Court sealed the order *sua sponte*. *See* Dkt. Nos. 451, 454-1. Clearly, in this case, the  
15 designation of information and documents as confidential and AEO bears a nexus to protecting  
16 national security, and therefore constitutes a compelling reason to seal. *See Ground Zero*, 860  
17 F.3d at 1262 (9th Cir. 2017); *Ressam*, 221 F.Supp.2d at 1263.

**CONCLUSION**

For the foregoing reasons, the Court should grant Defendants’ motion to seal Defendants’  
Reply and Supporting Documents.

Dated: July 2, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 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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