

1 **CERTIFICATION**

2 On April 9, 2021, counsel for the parties conducted a telephonic Meet & Confer, during
3 which counsel for Defendants advised of their intention to file unredacted versions of
4 Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Exclude Testimony of
5 Sean M. Kruskol, and supporting exhibits, under seal. Plaintiffs' counsel indicated that they
6 disagreed with the need to file the unredacted motion and supporting exhibits under seal.

7 **LEGAL STANDARD**

8 The strong presumption of public access to court records ordinarily requires the moving
9 party to provide compelling reasons to seal a document. *Kamakana v. City & County of*
10 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But the less onerous "good cause" standard
11 applies to "sealed materials attached to a discovery motion unrelated to the merits of a case" and
12 other non-dispositive motions that are less "than tangentially related to the merits of a case."
13 *Ctr. for Auto Safety, v. Chrysler Group, LLC*, 809 F.3d 1092, 1097, 1101 (9th Cir. 2016). Here,
14 the good cause standard applies because the sealed materials are related to Defendants' Reply to
15 Plaintiffs' Opposition to Defendants' Motion to Exclude Testimony of Sean M. Kruskol, and
16 supporting exhibits, which is a non-dispositive motion not related to the merits of the case. *See*
17 *Ctr. for Auto Safety*, 809 F.3d at 1097, 1101.

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

19 (A) a certification that the party has met and conferred with all other parties in an
20 attempt to reach agreement on the need to file the document under seal, to
21 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;

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

DEFENDANTS' MOTION TO SEAL DEFENDANTS'
REPLY TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF
SEAN M. KRUSKOL, AND SUPPORTING EXHIBITS - 2

(2:17-CV-00094-RAJ)

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division, Office of Immigration Litigation
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- 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.

LCR 5(g)(3).

ARGUMENT

The Court should seal Defendants’ Unredacted Reply to Plaintiffs’ Opposition to Defendants’ Motion to Exclude Testimony of Sean M. Kruskol, and supporting exhibits, which Defendants will file herewith. There is a legitimate public interest in keeping the unredacted version of the reply brief sealed. The motion extensively references portions of deposition testimony previously marked as confidential under this Court’s protective order. *See* Dkt. No. 86. The unredacted motion and unredacted sealed exhibits contain content concerning USCIS’ database for tracking and addressing national security concerns associated with individuals’ immigration benefit applications and sensitive information concerning the processing and adjudication of CARRP cases, and related policy documents. To be as transparent as possible, Defendants will file a minimally redacted version of the reply brief on the Court’s public docket accompanied by two exhibits with the fewest possible redactions. However, in order to protect national security interests, the information in the unredacted brief and exhibits, although not rising to the level of privileged, cannot be made public. *See* Dkt. No. 274 at 5; Dkt. No. 320 at 6-8. Accordingly, for the same reasons that such information has been protected throughout this litigation, Defendants request that Defendants’ Reply to Plaintiffs’ Opposition to Defendants’ Motion to Exclude Testimony of Sean M. Kruskol, and supporting exhibits, be sealed.

DEFENDANTS’ MOTION TO SEAL DEFENDANTS’
REPLY TO PLAINTIFFS’ OPPOSITION TO
DEFENDANTS’ MOTION TO EXCLUDE TESTIMONY OF
SEAN M. KRUSKOL, AND SUPPORTING EXHIBITS - 3

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CONCLUSION

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

Dated: April 9, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 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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