

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 DEFENDANTS’
MOTION TO TREAT DOCUMENTS AS
HSD**

(FILED UNDER SEAL)

The Court should grant Defendants’ motion to treat Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment and Defendants’ Cross-Motion for Summary Judgment (“Opposition and Cross-Motion”), as well as certain exhibits attached thereto, as highly sensitive documents (“HSDs”), consistent with the Western District of Washington General Order No. 03-21 (the “General Order”). These documents, comprising Defendants’ Opposition and Cross-Motion, A-files excerpts, excerpts from a 30(b)(6) deposition, and a declaration of a USCIS official, contain investigative information and substantive discussions regarding whether and why the government identified specific individuals as national security concerns. Public

1 disclosure of this national security information would be “of potential value to malicious nation-
2 state actors seeking to harm the interests of the United States.” *Id.* at 1.a.

3 Designating the entirety of a document as a HSD is consistent with the Court’s General
4 Order, which directs that “documents” shall be declared HSDs and filed separately, and does not
5 anticipate filing redacted versions of HSDs on the public docket. *See* General Order at 1-4. The
6 fact that some portion of these documents may not contain highly sensitive information is not a
7 basis to reject the HSD designation, as Plaintiffs acknowledge. *See* Pls.’ Opp. at 1 n.1.

8 The documents Defendants identify as HSDs, which include Defendant’s Opposition and
9 Cross-motion, A-file excerpts, excerpts from a 30(b)(6) deposition, and a declaration of a USCIS
10 official, *see* Decl. of Jesse Busen, contain information revealing whether and why the
11 government identified specific named individuals as national security concerns, even if there is
12 no specific mention of CARRP. Publicly disclosing that information not only shows how USCIS
13 conducts its investigations, but also reveals how those investigations were conducted with
14 respect to specific individuals. Even in cases where a national security concern was resolved,
15 public disclosure of these documents, while shielding other documents, would establish which
16 particular individuals were considered a national security concern. Thus, even if these
17 documents could be considered “administrative immigration records” under the General Order,
18 the fact that they contain sensitive national security information requires Defendants to designate
19 them as HSDs. *See* General Order at 2 (stating that administrative immigration records are not
20 *generally* considered HSDs.).

21 The fact that certain information has been disclosed to Plaintiffs under a protective order
22 does not mean that the documents are not HSDs. On the contrary, it impels the opposite
23 conclusion. The General Order’s purpose is to prevent malicious actors from obtaining sensitive

1 national security information. *See* General Order at 1. That the Court has determined that
2 publicly releasing certain information in these documents could injure the United States supports
3 the conclusion that these documents should be sealed. *See* Dkt. 272 at 2 (noting that Defendants’
4 arguments that documents designated confidential contained “sensitive but unclassified
5 information about the investigative techniques of USCIS officers to . . . combat threats to public
6 safety and national security,” and “that the public release of these [documents] could cause
7 injury by allowing individuals to modify their behavior to avoid detection by authorities.”); Dkt.
8 274 at 5-6 (designating a production of Named Plaintiffs’ A-files as Attorney’s Eyes Only
9 because they would reveal information concerning whether and why their immigration benefits
10 applications were processed in CARRP); Dkt. 320 at 7-8 (recognizing USCIS’ interest in
11 preventing disclosure of “internal vetting procedures and methodologies for identifying [national
12 security] risk.”).

13 For the foregoing reasons, the Court should grant Defendants’ motion to treat
14 Defendants’ Opposition and Cross-Motion, A-files excerpts, excerpts from a 30(b)(6) deposition,
15 and a declaration of a USCIS official, as HSDs.

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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.

/s/ Jesse Busen
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