1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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

REPLY IN SUPPORT OF DEFENDANTS'
MOTION TO SEAL THEIR REPLY
BRIEF AND SUPPORTING
DOCUMENTS

On July 2, 2021, Defendants moved to seal the reply brief in support of their crossmotion for summary judgment ("Reply"), along with two supporting exhibits, pursuant to Local Rule 5(g). Dkt. No. 564. Defendants' Reply and supporting exhibits filed under seal contain information that has been designated under one or more protective orders issued in this case. *See* Dkt. No. 86, 183, 192. These protective order designations are intended to prevent specific harms to national security, and personal harm to specific individuals, that could arise if the protected information were released publicly. *See, e.g.*, Dkt. No. 86 at 2. Contrary to Plaintiffs' assertions (Dkt. No. 569), Defendants *have* established compelling reasons for sealing their Reply brief and supporting exhibits. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

22

23

Defendants' Reply brief and sealed exhibits contain information that could compromise national security and public safety if disclosed publicly. In particular, the documents cite details from A-files regarding whether and why particular individuals' benefit applications may have raised national security concerns and were subject to CARRP. See Defs' Reply at 4-5, 11. They also reference protective-order-designated data and information regarding CARRP referrals based on country of origin. See Ex. 56; Defs' Reply at 7, 14, n.13. Disclosure of such information could put the national security at risk by showing how USCIS conducts its national security-related investigations, thereby enabling nefarious actors to evade detection as National Security concerns in the future. See Soghoian v. U.S. Dep't of Justice., 885 F. Supp. 2d 62, 75 (D.D.C. 2012) ("Knowing what information is collected, how it is collected, and more importantly, when it is not collected, is information that law enforcement might reasonably expect to lead would-be offenders to evade detection."). Plaintiffs are simply mistaken in their assertion that Defendants' submissions amount to no more than vague and generalized references to investigative procedures "without implicating specific people or providing substantive details." Dkt. No. 569 at 4-5; see Defs' Reply at 4-5, 11 (implicating specific identities connected with A-file information); Ex. 55 (naming a specific USCIS employee). Furthermore, while Plaintiffs broadly assert that the information Defendants seek to protect from public disclosure has been released under FOIA, they make no actual showing that any of the above information is available publicly. See Dkt. No. 569 at 6-9.

Defendants share Plaintiffs' concern for ensuring public access to court filings in this case, *see*, *e.g.*, Dkt. 569 at 5, 6, 10, and have made every effort to file as much of their submissions as possible on the public docket. Minimally-redacted versions of both sealed exhibits at issue here were filed simultaneously with their sealed, unredacted counterparts. *See* 

## Case 2:17-cv-00094-RAJ Document 575 Filed 07/23/21 Page 3 of 5

1	Dkt. Nos. 563-2, 563-3. Additionally, because Defendants' Reply was lodged with the Court as
2	a Highly Sensitive Document, and thus does not currently appear on the Court's electronic filing
3	system, the parties have filed a stipulation proposing the public filing of redacted versions of all
4	of the parties' summary judgment briefs, including Defendants' Reply. Dkt. No. 568. Because
5	Defendants have satisfied the "compelling reasons" standard for sealing a minimal amount of
6	national-security and public safety-related information in their Reply brief and supporting
7	exhibits, Defendants respectfully request that the Court grant Defendants' motion to seal.
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	

1 **CONCLUSION** 2 For the foregoing reasons, the Court should grant the motion to seal Defendants' Reply 3 brief and Supporting Documents. 4 5 Dated: July 23, 2021 Respectfully Submitted, BRIAN M. BOYNTON /s/ Lindsay M. Murphy 6 Acting Assistant Attorney General LINDSAY M. MURPHY Civil Division 7 Senior Counsel for National Security U.S. Department of Justice National Security Unit Office of Immigration Litigation 8 **AUGUST FLENTJE** Special Counsel 9 VICTORIA M. BRAGA Civil Division Trial Attorney Office of Immigration Litigation 10 ETHAN B. KANTER Chief National Security Unit BRENDAN T. MOORE 11 Office of Immigration Litigation Trial Attorney Civil Division Office of Immigration Litigation 12 **TESSA GORMAN** LEON B. TARANTO 13 Acting United States Attorney Trial Attorney Torts Branch 14 BRIAN C. KIPNIS Assistant United States Attorney 15 JESSE BUSEN Western District of Washington Counsel for National Security National Security Unit 16 W. MANNING EVANS Office of Immigration Litigation Senior Litigation Counsel 17 Office of Immigration Litigation ANNE DONOHUE Counsel for National Security 18 National Security Unit Office of Immigration Litigation 19 Counsel for Defendants 20 21 22 23

1

2

3 4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

**CERTIFICATE OF SERVICE** 

I hereby certify that on July 23, 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/ Lindsay M. Murphy

LINDSAY M. MURPHY Senior Counsel for National Security Office of Immigration Litigation 450 5th St. NW Washington, DC 20001 Lindsay.M.Murphy@usdoj.gov (202) 616-4018

REPLY IN SUPPORT OF DEFS' MOTION TO SEAL REPLY BRIEF AND SUPPORTING DOCUMENTS - 5 (2:17-CV-00094-RAJ)

UNITED STATES DEPARTMENT OF JUSTICE Civil Division, Office of Immigration Litigation Ben Franklin Station, P.O. Box 878 Washington, DC 20044