

The Honorable Lauren King

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of
himself and other similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United
States, *et al.*,

Defendants.

CASE NO. C17-00094-LK

**JOINT SUBMISSION SEEKING
CLARIFICATION ON MATERIAL
TO BE SEALED PER COURT'S
ORDER OF SEPTEMBER 7, 2023**

INTRODUCTION

Pursuant to the Court's Orders of September 7 and September 27, 2023 (Dkt. 626 & 630), the parties have conferred regarding matters on which to seek clarification from the Court and hereby submit their positions below. Copies of the documents with matters for clarification highlighted in red have been submitted as sealed attachments to this filing.

CLARIFICATION REQUESTS

Doc. 31 – Siskin Responsive Expert Report (Oct. 2020) (duplicates at Docs. 45, 59, & 185):

Defendants’ Position: In ruling on redactions to this document, the Court did not authorize Defendants’ request to seal references to numbers of CARRP referrals by country appearing on pages 36, 68, and 69. *See* Dkt. 626-1, Court’s Determinations for Docs. 31 & 185 (permitting redactions only on p. 37). The Court’s Order nevertheless permits redaction of “country-specific data.” Dkt. 626 at 16. Furthermore, the Court authorized the redaction of CARRP referrals by country in other, similar documents. *See* Dkt. 626-1, Court’s Determination for Doc. 43, p. 18, and for Doc. 55 ¶ 67. Defendants thus ask for clarification of the Order to unseal country-specific data in Doc. 31, and Defendants renew their request for permission to apply redactions to the red-highlighted portions of pages 36, 68, and 69 of the document.

Plaintiffs’ Position: The Court’s ruling on Doc. 31 is clear. Following a line-by-line review, the Court concluded that Defendants had not established a compelling interest in concealing the red-highlighted text on pages 36, 68, and 69; therefore, the public’s presumptive right of access to that portion of the record is not overcome. Dkt. 626-1 at 4. No clarification is necessary.

Doc. 75 – Lombardi Deposition Excerpt:

Defendants’ Position: In its ruling on this document, the Court authorized redactions only as to pages 9-10, which reference a specific feature of CARRP case processing, the details of which may allow applicants to infer that their applications were reviewed under CARRP. *See* Dkt. 626-1, Court’s Determination for Doc. 75. The same details are included on page 8, lines 8-19 of the document, but Defendants’ proposed redactions on this page were not authorized. *See id.* The Court’s Order provides that “detailed explanations of how CARRP is applied on an individualized basis” may be protected (Dkt. 626 at 16). The parties therefore seek clarification of the Court’s rulings, and Defendants request permission to redact the red-highlighted information on page 8.

Plaintiffs’ Position: The Court’s ruling on Doc. 75 is clear. Following a line-by-line review of Doc. 75, the Court concluded that Defendants had not established a compelling interest in concealing the red-highlighted text on page 8, lines 8–19; therefore, the public’s presumptive right of

1 access to that portion of the record is not overcome. Dkt. 626-1 at 10. No clarification is necessary.
2 For the avoidance of doubt, Plaintiffs disagree with Defendants' contention that the red-highlighted
3 text on page 8, lines 8–19 contains the “same details” as the redacted text on pages 9–10; the
4 redacted text on pages 9–10 contains greater detail and appears in a passage providing additional
5 context.

6
7 Doc. 150 – Johansen-Mendez Expert Report:

8 **Defendants' Position:** The Court's ruling did not authorize the redaction of paragraph 67,
9 n.1, which describes a detailed, hypothetical application of CARRP used in the training of USCIS
10 officers. *See* Dkt. 626-1, Court's Determination for Doc. 150. In light of the Court's Order
11 permitting redaction of “detailed explanations of how CARRP is applied on an individualized basis”
12 (Dkt. 626 at 16), Defendants seek clarification of the ruling as to Doc. 150, and Defendants request
13 permission to seal the red-highlighted text of paragraph 67, n.1.

14 **Plaintiffs' Position:** The Court's ruling on Doc. 150 is clear. Following a line-by-line
15 review of Doc. 150, the Court concluded that Defendants had not established a compelling interest in
16 concealing the red-highlighted text of paragraph 67, n.1; therefore, the public's presumptive right of
17 access to that portion of the record is not overcome. Dkt. 626-1 at 15. No clarification is necessary.
18 For the avoidance of doubt, Plaintiffs disagree with Defendants' contention that the red-highlighted
19 text of paragraph 67, n.1—which consists of a single sentence paraphrasing a hypothetical factual
20 scenario presented to CARRP officers in a training module—contains a “detailed explanation[] of
21 how CARRP is applied on an individual basis.” Dkt. 626 at 16.

22
23 Doc. 165 – “Studies in National Security, Articulate Link Writing 101”:

24 **Defendants' Position:** The Court ruled that this document can be filed publicly in its
25 entirety. Dkt. 626-1, Court's Determination for Doc. 165. The document consists of four
26 hypothetical examples detailing how an articulable link to a national security concern can be
27 established. The Court's ruling appears to be inconsistent with its order that Defendants may seal
28 “detailed explanations of how CARRP is applied on an individualized basis” (Dkt. 626 at 16), as

1 well as with the Court’s rulings protecting hypothetical applications of CARRP in other documents.
2 *See, e.g.*, Dkt. 626-1, Court’s Determination for Doc. 101, pp. 52-57 (protecting hypothetical
3 examples of how to establish an articulable link to an NS concern). Defendants therefore request
4 clarification of the Court’s ruling as to Doc. 165, and Defendants renew their request to redact the
5 red-highlighted text.

6 **Plaintiffs’ Position:** The Court’s ruling on Doc. 165 is clear. Following a line-by-line
7 review of Doc. 165, the Court determined that Defendants had not established a compelling interest
8 in concealing any of the record’s contents; therefore, the public’s presumptive right of access to the
9 record is not overcome. Dkt. 626 at 15; Dkt. 626-1 at 17. No clarification is necessary. For the
10 avoidance of doubt, Plaintiffs disagree with Defendants’ contention that the red-highlighted text of
11 Doc. 165—which consists of hypothetical examples of how CARRP officers might draft brief
12 explanations of articulable links during one phase of the CARRP process—contains “detailed
13 explanations of how CARRP is applied on an individual basis.” Dkt. 626 at 16.

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15 Respectfully Submitted,

Dated: November 13, 2023

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CERTIFICATE OF SERVICE

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I hereby certify that on November 13, 2023, I electronically filed the foregoing via the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

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