

The Honorable Richard A. Jones

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. 2:17-cv-00094-RAJ

**DEFENDANTS' MOTION
TO RECONSIDER**

(Note On Motion Calendar for:
February 16, 2021)

I. INTRODUCTION

Defendants respectfully ask the Court to reconsider portions of its February 1, 2021 order. *See* Dkt. Nos. 451, 451-1. In the sealed portion of the order, the Court notes that it was unable to view some information under redactions jointly proposed by the parties for the Court's *in camera* review. *See* Dkt. No. 451-1 at 3-8, 10. The Court made "no ruling" on those redactions. *Id.* Having apprised Court staff of where and how to access the unredacted versions of the information on which the Court was unable to rule previously, Defendants now ask the Court to rule on the propriety of Defendants' redactions over that information. Defendants also ask the Court, in light of the Court's consideration of this information that the Court did not consider previously, to reconsider portions of its February 1, 2021 order overruling certain of Defendants' redactions.

II. BACKGROUND

The parties have long disputed the scope of the law enforcement and deliberative process privileges as they apply in this case. *See* Dkt. No. 451 at 1. Throughout the litigation, Plaintiffs

1 have challenged the propriety of Defendants' redactions pursuant to these privileges in the Named
2 Plaintiffs A Files, a supplemental file for one of the Named Plaintiffs, and various policy documents,
3 all of which Defendants produced in discovery. And the Court has issued multiple orders
4 concerning what information Defendants may redact under these privileges. *See, e.g., id.* at 1 (citing
5 Dkt. No. 274).

6 Most recently, in August 2020, following a negotiation period of several months, the parties
7 and the Court agreed that the Court should conduct an *in camera* review of a sample of A File,
8 supplemental file, and policy document redactions for the purpose of addressing the propriety of the
9 final redactions which Plaintiffs continue to challenge. *See* Dkt. No. 451 at 2; *see also* Dkt. No. 394
10 at 4-33; Dkt. No. 396 (sealed) at 4-33. Accordingly, Defendants submitted transparently-redacted
11 versions of the A Files, the supplemental file, and certain policy documents to the Court. *See* Dkt.
12 No. 451 at 2; *see also* 394 at 2-3; Dkt. No. 396 at 2-3.

14 On February 1, 2021, the Court issued an order following the Court's *in camera* review. The
15 Court either sustained or overruled each redaction in the parties' proposed sample, and directed
16 Defendants to "apply the Court's rulings" to the larger set of challenged redactions. *See* Dkt. No.
17 451-1 at 2; *see also* Dkt. No. 394 at 20-21, 32-33. In a number of instances, the Court could not see
18 the information under a redaction, or a portion of a redaction, and thus made "no ruling on" those
19 redactions. *See* Dkt. No. 451-1 at 3-8, 10.

21 Following the Court's order, Defendants contacted Court staff and explained how the Court
22 could access and view information the Court was previously unable to review. Defendants now
23 respectfully request that the Court review the sample redactions that the Court previously did not
24 review, and either sustain or overrule these redactions.¹

26
27 ¹ [REDACTED]

1 **III. LEGAL STANDARDS**

2 Though motions for reconsideration are disfavored, reconsideration is appropriate when
3 facts, incapable of earlier presentation through reasonable diligence, are brought to the attention of
4 the Court. LCR 7(h)(1). A motion to reconsider shall “point out with specificity the matters which
5 the movant believes were overlooked or misapprehended by the Court, any new matters being
6 brought to the Court’s attention for the first time, and the particular modifications being sought in
7 the [C]ourt’s prior ruling.” LCR 7(h)(2).
8

9 **IV. ARGUMENT**

10 Defendants assert that the information the Court previously did not review constitutes “new
11 facts” making reconsideration of some of the Court’s rulings appropriate. *See* LCR 7(h)(1).

12 Specifically, [REDACTED]

13 [REDACTED]

14 [REDACTED] The information that the Court was previously unable to review on these pages gives
15 context to the redactions on these pages that the Court overruled. As Defendants stated in the
16 parties’ August 5, 2020 joint filing, the information on these pages [REDACTED],
17 including the information that the Court previously did not review, [REDACTED]
18 [REDACTED]

19 [REDACTED]

20 [REDACTED] Accordingly, in light of the Court’s review of information on these pages that
21 the Court previously did not review, Defendants ask the Court to sustain all of Defendants’
22 redactions on these pages. *See* [REDACTED]
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26

27 [REDACTED]

28 [REDACTED]

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court review the redactions in the parties’ proposed sample that the Court was previously unable to review. Furthermore, and in light of this review, Defendants respectfully ask the Court to reconsider portions of the February 1, 2021 order overruling certain redactions.

Dated: February 16, 2021
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Counsel for Defendants

CERTIFICATE OF CONFERENCE

1 I HEREBY CERTIFY that on February 16, 2021, I notified Plaintiffs' counsel via email of
2 Defendants' intention to file the foregoing motion and solicited their position on it. On February 16,
3 2021, counsel for Plaintiffs indicated that Plaintiffs do not agree with the relief requested in this
4 motion.
5

6 Dated: February 16, 2021

/s/ Victoria M. Braga
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CERTIFICATE OF SERVICE

1
2 I hereby certify that on February 16, 2021, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system, which will send notification of such filing to all counsel of
4 record.

5
6 /s/ Victoria M. Braga
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