

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

 Plaintiffs,

 v.

DONALD TRUMP, PRESIDENT OF THE
UNITED STATES, *et al.*,

 Defendants.

No. 2:17-cv-00094-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiffs’ Motion to Compel Statistical Data Under Fed. R. Civ. P. 37(a)(3), Dkt. # 424, and motions to seal related briefing, Dkt. ## 423, 432, 437. Defendants oppose the motion to compel statistical data and concur in the motions to seal. Dkt. # 431. As an initial matter, the Court **GRANTS** the parties’ unopposed motions to seal, Dkt. ## 423, 432, 437, finding compelling reasons to seal and compliance with this Court’s Local Rules. Having reviewed the briefing and record with respect to the motion to compel, the Court finds that oral argument is unnecessary and **GRANTS** Plaintiffs’ motion to compel statistical data for the foregoing reasons.

II. BACKGROUND

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2 On August 1, 2017, Plaintiffs served their First Requests for Production to
3 Defendants, which included a request for “data[] or statistics related to CARRP.” Dkt.
4 # 424 at 3. Plaintiffs also requested documents reflecting demographics including
5 application processing times of immigration benefit applicants who have been subjected
6 to CARRP. *Id.* Defendants responded that they would produce responsive documents to
7 the requests. *Id.* A year later, on August 24, 2018, Plaintiffs requested information such
8 as the total number of applications referred into CARRP, median and average processing
9 times, and denial rates at various stages of the CARRP process. *Id.* On October 16,
10 2018, Defendants produced a spreadsheet with some of the statistical data requested by
11 Plaintiffs. *Id.*

12 On July 26, 2019, Defendants served Plaintiffs their first set of supplemental
13 initial disclosures, which included USCIS data summaries, and provided updated versions
14 of the USCIS Summary Data on November 24, 2019 and February 14, 2020. *Id.* at 4.
15 The parties’ statistical experts used this information when serving their initial expert
16 reports on February 28, 2020.

17 On May 15, 2020, Defendants informed Plaintiffs of an error in the USCIS
18 Summary Data they had provided, upon learning that USCIS had incorrectly “categorized
19 some CARRP cases as non-CARRP cases.” Dkt. # 431 at 7. The data had been compiled
20 using a system that tracked CARRP cases called the Fraud Detection and National
21 Security Data System (“FDNS-DS”). *Id.* at 3, 6. As a result of the error, Defendants
22 produced another version of the USCIS Summary Data, and the parties agreed that
23 Plaintiffs would conduct a Rule 30(b)(6) deposition to inquire about the data provided.
24 Dkt. # 424 at 5. The deposition would focus on “[h]ow USCIS defines and measures
25 categories of information in the new tables and underlying dataset” including “what
26 constitutes a CARRP case, as reflected in the data.” *Id.*

27 Plaintiffs conducted the Rule 30(b)(6) deposition of Defendant USCIS on August
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1 31, 2020. *Id.* at 1. Shortly thereafter, Plaintiffs contacted Defendants and asserted that
2 USCIS’ definition of a CARRP case was overbroad because “it includes cases where the
3 USCIS officer cannot confirm that the individual has a nexus to national security, as well
4 as cases where any alleged national security concern was resolved prior to adjudication.”
5 Dkt. # 431 at 7. Plaintiffs claimed that during the deposition, they “learned for the first
6 time that the statistical data that Defendants intend to rely on in this case uses an
7 overbroad and inaccurate definition of a ‘CARRP’ case.” Dkt. # 424 at 1. Plaintiffs
8 requested that Defendants remedy this by adding data fields that would enable Plaintiffs
9 to filter data by concern type and sub-status. Dkt. # 431 at 8. Defendants refused to
10 produce the data. *Id.* at 7. The parties met and conferred to resolve this matter, but to no
11 avail. *Id.* On October 15, 2020, Plaintiffs filed a redacted motion to compel statistical
12 data under federal rule of procedure 37(a)(3). Dkt. # 424. Defendants filed a timely
13 response on November October 26, 2020, Dkt. # 431, and later requested a hearing on
14 November 4, 2020, Dkt. # 440.

15 III. DISCUSSION

16 Under Federal Rule of Civil Procedure 37(a)(3), a party may move to compel
17 disclosure if another party fails to make a disclosure required by Rule 26(a). Fed. R. Civ.
18 P. 37(a)(3)(A). A party may move to compel production if another party fails to produce
19 documents requested under Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv). “[A]n evasive or
20 incomplete disclosure, answer, or response must be treated as a failure to disclose,
21 answer, or respond.” Fed. R. Civ. P. 37(a)(4). Rule 26(e) governs supplementing
22 disclosures and responses to discovery requests. Fed. R. Civ. P. 26(e). Specifically, a
23 party who had made a disclosure under Rule 26(a) or who has responded to a request for
24 production “must supplement or correct its disclosure or response” if the party learns that
25 the disclosure or response is incomplete or incorrect in some material respect or “as
26 ordered by the court.” Fed. R. Civ. P. 26(e)(1).

27 Plaintiffs here allege that Defendants are obligated to supplement the data they had

1 produced as a disclosure under Rule 26(a). Dkt. # 424 at 9. They claim that the
2 requested data is also responsive to several requests for production and an interrogatory
3 because they include “statistics related to CARRP [], application processing times of
4 individuals subject to CARRP,” as well as “median and average processing times and
5 denial rates at various states of in the CARRP process,” and other requested categories of
6 information. *Id.* Plaintiffs allege that Defendants’ overly broad and incorrect definition
7 of CARRP cases “improperly includes two categories of applicants that Defendants have
8 previously represented are not subjected to CARRP.” *Id.* at 10. By including these two
9 categories of applicants, Defendants “have improperly skewed the USCIS Summary
10 Data, including the processing times and approval rates of applications purportedly
11 subjected to CARRP,” according to Plaintiffs. *Id.* at 11. Plaintiffs assert that this use of
12 data is misleading and diminishes the harm caused by CARRP. *Id.* Rectifying this
13 misleading data would be relatively simple, Plaintiffs say, and USCIS “admitted that it
14 could update the data to include these fields and identified no burden in doing so.” *Id.* at
15 12.

16 Defendants contend, however, that Plaintiffs are seeking discovery well past the
17 deadline. Dkt. # 431 at 2. Defendants further argue that such a request for discovery is
18 improper because under Rule 26(a) a party is required to identify only the evidence on
19 which it intends to rely on in support of its case and because “Defendants have no
20 intention or need to rely” on the evidence Plaintiffs have requested. *Id.* Plaintiffs
21 respond to the untimeliness argument by noting that they were unaware of how the data
22 defined a CARRP case until the Rule 30(b)(6) deposition on August 31, 2020. Dkt.
23 # 424 at 12. Plaintiffs also note that Defendants rely on the data in an attempt to
24 undermine Plaintiffs’ claims and question why Defendants would refuse to provide “a
25 more complete and accurate understanding of the data [presented] by adding the Concern
26 Type and Sub-status fields.” Dkt. # 438 at 5.

27 In reviewing the briefing, the Court has similar questions about Defendants’

1 refusal to provide Plaintiffs with updated data. The Court does not find a compelling
2 reason to preclude supplementation of data that had been requested in discovery and that
3 does not pose a burden on Defendants. Indeed, the burden of discovery does not appear
4 to outweigh the benefits.

5 **IV. CONCLUSION**

6 Based on these reasons, the Court **GRANTS** Plaintiffs' Motion to Compel
7 Statistical Data Under Fed. R. Civ. P. 37(a)(3). Dkt. # 424. The Court also **GRANTS**
8 Plaintiffs' motion to seal the motion to compel statistical data, Dkt. # 423, Plaintiffs'
9 motion to seal its reply in support of the motion to compel statistical data, Dkt. # 437, and
10 Defendants' motion to seal its exhibits, Dkt. # 432.

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12 DATED this 1st day of December, 2020.

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16 The Honorable Richard A. Jones
17 United States District Judge
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