IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RANDALL CALLAHAN, *et al.*,	:	
Plaintiffs,	:	
v.	:	
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES through ALEX M. AZAR II in his official capacity as Secretary of the United States Department of Health and Human Services,	:	CIVIL ACTION NO. 1:19-CV-1783-AT
Defendants.	:	

ORDER

Before the Court are three matters:

(1) Plaintiffs' Motion to Unseal Docs. 249, 251, 256, 257, and 259 [Doc. 263]

(2) Plaintiffs' Motion for Reconsideration [Doc. 269]

(3) Plaintiffs' Request for Additional Discovery [Doc. 272].

I. Motion to Unseal

The Eleventh Circuit's opinion remanding this matter to the Court identified certain threshold factual issues for this court to resolve in the first instance, namely whether UNOS constitutes an agency within the meaning of the APA, and whether UNOS's actions in adopting the new policy must be considered state action. *Callahan v. United States Dep't of Health & Human Servs. through Alex Azar II*, 939 F.3d 1251, 1265–66 (11th Cir. 2019) ("*Callahan I*"). Because evidence probative of these issues was unlikely to be found in the administrative record, the Court permitted limited, court-supervised discovery as to these issues. (Doc. 160.) The Court granted Plaintiffs leave to expand the scope of discovery to include UNOS communications, including those regarding possible behind-the-scenes coordination with Intervenors, that could potentially bear on bad faith or predetermination in the event the Court ruled that UNOS was an agency or state actor. (Doc. 166.) On several occasions, the Court had to compel UNOS to comply with discovery requests. (Docs. 187, 233, 254.) While the Court recognized that UNOS was under tremendous pressure to comply with discovery requests under an extremely protracted timeline (due in part to the decision not to postpone the effective date of the Acuity Circles Policy[1]), the Court expressed frustration at "UNOS's course of handling its response to Plaintiff's discovery request[s]" which had "unacceptably resulted in the Court having to address this matter in two

[1] Capitalized terms have the meaning given in the Court's Memorandum Opinion. (Doc. 261.)

successive Orders addressing Plaintiffs' motions to compel relating to the same subject matter." (Doc. 233 at 2–3.)

In the second motion to compel, the Court addressed UNOS's belated assertion of the deliberative process privilege, having only made a boilerplate reservation of all privileges in its discovery objections. (*Id.*) The Court ordered production of the materials forthwith, and permitted additional briefing as a sanction. However, the Court required that all supplemental briefing related to the sanction be restricted to parties and Court users only, pending its review of the documents.

In the end, the produced materials did not reveal much in the way of coordination with Intervenors, (Doc. 257), nor did it show any bad faith, bias, or predetermination that could be traced to HHS's ultimate decision-making. *Callahan v. United States Dep't of Health & Human Servs. Through Azar*, 434 F. Supp. 3d 1319, 1356, 1364 (N.D. Ga. 2020). As a result, the Court denied supplementation of the record as to most of those documents, and excluded them from consideration as to Plaintiff's likelihood of success on the merits on its APA claim.

However, the evidence did show a number of inadvisable "hot takes" and inflammatory remarks by UNOS decisionmakers and affiliates, as well as clear preferences for policy outcomes which the Court previously characterized as "arguable evidence of bias, or at least, individuals' sporadic expressions of bad faith or agenda." *Id.* at 1356. The question before the Court now is whether,

having excluded these materials from consideration as the APA claim, they should nonetheless be unsealed to the public along with the supplemental briefing itself.

The public has a presumptive right to review and copy documents filed with the courts in civil proceedings. *Chicago Tribune v. Bridgestone/Firestone, Inc.,* 263 F.3d 1304, 1311 (11th Cir. 2001). This right is sometimes referred to as the "common law right of access." *Id.* This right of access, however, is not absolute. For example, "it does not apply to discovery and, where it does apply, may be overcome by a showing of good cause." *Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1245 (11th Cir. 2007). Determining whether good cause exists "requires 'balanc[ing] the asserted right of access against the other party's interest in keeping the information confidential.'" *Id.* at 1246 (quoting *Chicago Tribune*, 263 F.3d at 1309) (alterations in original).

> Factors to consider include
>
> > whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.

Id. (citations omitted). Furthermore, [a] party's privacy or proprietary interest in information sometimes overcomes the interest of the public in accessing the information." *Id.* (citations omitted).

Specifically relevant to this case, the Eleventh Circuit noted that lack of relevancy, absent a "specific showing" that the materials were offered for an

"abusive or improper" purpose, is not a sufficient ground to seal documents. *Id.* at 1248. And even if "allowing the public access to the documents would vindicate improper motives of the plaintiffs' lawyers," courts should generally not keep documents under seal as a punishment. *Id.* at 1248.

As an initial matter, the motion to unseal is **DENIED AS MOOT** to the extent that several of the documents are already public and **GRANTED** to the extent the Court has already added several of the documents to the administrative record. The Court will provide a list of these documents in an appendix below.

Turning to the remaining documents, UNOS's first argument against unsealing the documents is that the documents, particularly the emails, are not relevant because they were excluded from consideration by the Court as to the APA claim, as noted above. (UNOS Resp. to Mot. to Unseal at 1, Doc. 268.) However, this argument is foreclosed by *Romero*. 480 F.3d at 1248 (relevancy alone not justification to seal absent abuse or improper purpose). The Court also permitted Plaintiffs to use the documents for other purposes, such as establishing whether UNOS is an agency or state actor and the factors for injunctive relief. Relatedly, UNOS argues that many of the documents were not actually relied on by Plaintiffs in their merits briefing. Under Eleventh Circuit authority, bulk discovery material, including "material filed with discovery motions is not subject to the common-law right of access, whereas discovery material filed in

connection with pretrial motions that require judicial resolution of the merits is subject to the common-law right." *Chicago Tribune*, 263 F.3d at 1312.

In response, for many of the documents, Plaintiffs point to their listing of the documents in a chart attached as an exhibit to their original Reply brief in support of their Preliminary Injunction, which represents prior requests to supplement the administrative record. (Doc. 234-4.). The Court also notes that it imposed a ten-page limit on the Supplemental Brief, which required Plaintiffs to be selective about what documents it could quote from. Plaintiffs also organized and highlighted the portions of the records they relied upon in their Supplemental Brief in an attachment to the Brief, rather than just filing bulk discovery material. The Court finds that Plaintiffs have made a sufficient showing that the documents were used in connection with merits briefing such that the public right of access attaches.

Next, UNOS argues that revealing the materials "would impair good policymaking within UNOS by creating a fear that any private communications sent by UNOS leaders or volunteer Board members could ultimately be published to the writers' colleagues, employers, potential future employers, business competitors, the public, and the press." (UNOS Resp. to Mot. to Unseal at 1, Doc. 268.) This is a redux of its argument that the deliberative process privilege should shield UNOS communications even though UNOS has argued, and the Court has held, that UNOS is not an agency. In an affidavit submitted to the Court, UNOS CEO Brian Shepard expressed his concern with releasing the materials:

> Production of these internal communications would undercut some of UNOS's core values, like unity and trust, which require the Board and Committee members to work collaboratively and respectfully to build consensus on the important policy issues we address. Candid and protected collaboration creates the appropriate environment for Board and Committee members to share their viewpoints. We have always assumed such internal communications would never be public and that assurance has allowed the Board and Committee members to thoughtfully and freely deliberate about organ allocation policies.

(Aff. Shepard ¶ 10, Doc. 223). The Court relied on this affidavit in ordering that the documents be restricted in the first place. (Doc. 233.) Moreover, in the Court's Memorandum Decision, it noted that "internal communications between UNOS employees and Executive Committee members . . . would not be part of the record even if the Court were to have held that the OPTN was an agency." 434 F. Supp. 3d at 1356 (citing *Ad Hoc Metals Coalition v. Whitman*, 227 F.Supp.2d 134, 143 (D.D.C. 2002). The Court wrote:

> While the Court has held that the deliberative process privilege was waived by UNOS for the purpose of discovery, the Court does not hold that these deliberative communications are properly part of the administrative record. While they are not part of the administrative record for the purpose of Plaintiffs' APA claim, they are still part of this Court's record, and the record on any appeal to the extent Plaintiffs' challenge this Court's ruling regarding bad faith, or whether the OPTN is an agency or state actor, or that Defendants denied Plaintiffs due process of law, as well as for the factors for injunctive relief.

Id.

Plaintiffs disagree that "the mere fact that a particular court record that may once have been subject to deliberative process protection in discovery constitutes 'good cause' for now denying the public presumptive right of access."

(Pls.' Reply Supp't Mot. Unseal at 10, Doc. 277.) However, the justifications for excluding deliberative documents from the administrative record are similar to those precluding public production of the documents; the deliberative process privilege has been held to be an exception the rule that "the public . . . has a right to every man's evidence." *Sikorsky Aircraft Corp. v. United States*, 106 Fed. Cl. 571, 575 (2012) (quoting *United States v. Nixon*, 418 U.S. 683, 709 (1974)). Even where the privilege itself does not apply, the same considerations that justify the privilege could constitute good cause to seal documents under the right circumstances.

All that said, a number of reasons militate against keeping the documents under seal in this case. First, as the Court noted, while the challenged documents are not part of the administrative record, the Court held that they are part of the court record for other purposes. As part of the court record, they are presumptively subject to the common law right of access. Second, HHS, not UNOS, is the holder of the deliberative process privilege. *Sikorsky Aircraft*, 106 Fed. Cl. at 577 (2012). It is worth mentioning that HHS has taken no position on unsealing the records. (Doc. 267.) Lastly, while the Court sympathizes with UNOS's argument that unsealing the documents would chill open deliberations, the Court agrees with Plaintiffs that this generalized notion cannot overcome the presumptive public interest nature of these documents. UNOS has not identified specific harm to specific persons within the ambit of Rule 26(c) that would occur absent sealing the records.

As a last ditch argument, UNOS contends that Plaintiffs obtained these documents under false pretenses, arguing that they misrepresented that "UNOS Board member Alexandra Glazier and others were actually 'New York-Affiliated Individuals,' to create the misimpression that internal UNOS deliberations were actually external, partisan, bad-faith lobbying on behalf of the Intervenors." (UNOS Resp. to Mot. Unseal at 8, Doc. 8.) While it is easy to say in hindsight that the emails do not reveal much of a "New York" affiliation, the Court cannot say that this result bespeaks malice on the part of the Plaintiffs in having made the request in the first place. Even assuming the worst case scenario, that Plaintiffs made the requests for discovery and to unseal the documents out of a desire to harm their ideological opponents having lost their earlier appeal, the Eleventh Circuit has held that sealing materials subject to the common law right of access is generally not a proper sanction for misconduct. *Romero*, 480 F.3d at 1248.

The Court will not order unsealing in its entirety without redactions. Several of the documents, particularly those related to the RFP and bid protest process, contain materials subject to protection under Rule 26(c)(1)(G), and one document contains matters potentially prejudicial to third party transplant programs. The Court will indicate generally by category which documents must be redacted and leave it to the parties in the first instance to redact. As to the briefs, Plaintiffs and UNOS already filed redacted versions of the briefs. However, to the extent a redaction quotes or cites materials which are being unsealed, such

redactions must be removed and filed anew. HHS's and Intervenors briefs will be unsealed in their entirety.

The following procedure will apply to unsealing documents under this Order, based on the directives in the attached Appendix:

1. The Court will not direct the clerk to unseal the briefs until at least three days after this Order becomes non-appealable. No party shall disclose any document unsealed by this Order until three business days after this Order becomes non-appealable.[2]
2. UNOS is directed to serve proposed redactions consistent with this Order on Plaintiff 30 days after this Order becomes non-appealable. Plaintiff shall provide specific objections to any redactions it contends are inconsistent with this Order 15 days after being served with UNOS's redactions. In the event UNOS and Plaintiff cannot agree as to a redaction, they shall confer via a video teleconferencing platform that enables screen sharing such that the documents in question can be seen by all parties simultaneously and shall discuss each contested redaction individually, document-by-document and

[2] In the event that Plaintiffs need to reveal sealed or confidential documents to witnesses to prepare affidavits to support or oppose a motion for summary judgment, the Parties may work out reasonable agreements to permit access to these documents without further Order of the Court. In the event the Parties cannot agree on terms for accessing these documents, the Court may by subsequent Order accommodate these issues. Any brief, statement, or exhibit that relies on a document covered by this order shall be filed redacted publicly and unredacted under seal simultaneously, subject to being unsealed when this order becomes non-appealable.

page-by-page, and shall certify that such discussion occurred, prior to bringing the matter before the Court by joint statement.

3. Once all redactions are resolved and this order has become non-appealable, Plaintiffs shall file all unsealed and redacted documents along with an index identifying the name and document number of the sealed version.

II. Motion to Reconsider Dismissal of Count I

Count I of Plaintiffs' Complaint alleges, among other things, that "HHS violated the APA when it failed to comply with the legal procedures required for adopting a significant policy," specifically that Section 121.4(b)(2) of the Final Rule mandates that the Secretary 'will' refer 'significant' proposed policies to the Advisory Committee on Organ Transplantation [("ACOT")] and publish them in the Federal Register for public comment." (Compl. ¶¶ 193, 94.) On January 21, 2020, the Court granted in part and denied in part UNOS's Motion to Dismiss based on the Eleventh Circuit's decision in *Callahan I*, which unambiguously held that Section 124.1(b) did not, as a matter of regulatory construction, require Secretary Azar to refer the Acuity Circles Policy to the ACOT nor did it require him to publish the policy in the Federal Register. (Doc. 262) (citing 939 F.3d at 1251). In so holding, the Court of Appeals adopted "defendants' interpretation of § 121.4(b)" which it determined was "demonstrably superior to plaintiffs'" and which it paraphrased as follows:

> Under defendants' reading, the significant-proposed-policies sentence's referral and publication requirements are triggered only in the two circumstances specified in § 121.4(b)(2)'s opening clauses: (1) when the policy at issue is one that the OPTN's Board "recommends to be enforceable"—we'll call this (more than a little clunkily) the "recommends to be enforceable" sentence—or (2) when the policy at issue is one that relates to "such other matters as the Secretary directs"—here, the "as the Secretary directs" sentence. Because it's undisputed that neither of those two conditions obtained here, defendants contend,[3] the Secretary wasn't required to refer the policy to the Advisory Committee or publish it in the Federal Register.

Id. at 1258. The Court of Appeals thus characterized the dispute between the parties as a plain question of law:

> The central question we face is one of regulatory construction. In particular, we must determine whether 42 C.F.R. § 121.4(b) required the Secretary of HHS to take two procedural steps that all agree he did not: (1) referral of the new liver-allocation policy to an entity called the Advisory Committee on Organ Transplantation and (2) publication of the new policy in the Federal Register for public comment. **We hold that the Secretary was not required to do so**, and we therefore affirm—at least in that regard—the district court's denial of plaintiffs' preliminary-injunction motion.

Id. at 1254 (emphasis added).

Plaintiffs attempt to breathe new life into their claim by arguing that the Secretary *was* required to do exactly what the Eleventh Circuit held he was not

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[3] Plaintiffs contend that it was a disputed issue. (Pls.' Br. Supp't Mot. Reconsider. at 10) (citing *Callahan I* Oral Argument at 33:20 and Br. Appellant at 9 n.4). The footnote cited is reproduced as follows:

> As the district court noted, the Secretary directed the OPTN to develop a proposed policy, which ultimately became the New Policy. Doc. 72 at 6.

The Court has reviewed the oral argument recording. Plaintiffs' counsel does indicate her disagreement with the Defendant's characterization that there is "no dispute" that either one of the so called "funnels" or sentences applied, because the Secretary directed the OTPN to develop a new policy. Nonetheless, Plaintiffs attempt to reframe the meaning of "directs" in the regulation is barred by the law of the case doctrine for the reasons that follow.

required to do, this time under the "as the Secretary directs" sentence. Plaintiffs argue that because the July 2018 Letter (HHS_00004991) "directed" UNOS to develop a policy that eliminates the use of DSA's, the section 121.4(b) framework applies. Not only does this argument tread on the Eleventh Circuit's mandate by advocating for a result directly contrary to the bottom-line outcome of that court's decision on Count I, it also argues for an interpretation of section 121.4(b) barred by the law of the case doctrine *and* the binding law of this circuit.

"The [law of the case] doctrine operates to preclude courts from revisiting issues that were decided explicitly or by necessary implication in a prior appeal." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1291 (11th Cir. 2005) (citing *Luckey v. Miller*, 929 F.2d 618, 621 (11th Cir.1991); *see also id.* at 1292 ("Because our previous decision was published, the prior panel precedent rule also applies to any holdings reached in the earlier appeal."). "The fact that the earlier panel opinion in this case was decided during the preliminary injunction stage does not impact the applicability of the law-of-the-case doctrine in this case." *This That And The Other Gift And Tobacco, Inc. v. Cobb Cty., Ga.*, 439 F.3d 1275, 1284 (11th Cir. 2006).

In addition to holding that Plaintiffs were not likely to succeed on the merits of Count I entirely, and holding that the Secretary was not required to refer the Acuity Circles Policy to the ACOT and publish it in the Federal Register, the Eleventh Circuit's opinion interpreted "direct" in the statute in a way that contradicts Plaintiffs' purported reading. The court noted that "the regulation's

plain text makes clear—the Secretary can always 'direct' OPTN's Board of Directors to provide him with a proposed policy 60 days in advance of its implementation, thereby bringing it within § 121.4(b)(2)'s ambit." 939 F.3d at 1264. But the appeals court determined that this was not what occurred in this case. Instead, it concluded was that "what happened here . . . was pursuant to the Secretary's § 121.4(d) authority . . . [under which] HHS decided that the current liver-allocation policy—the one that plaintiffs favor—'cannot be justified' under the Final Rule and must be replaced," an option the court described as "wholly separate[]" from the procedure under 121.4(b). *Id.* at 1264–1265.

Finally, the fact that UNOS, not HHS, moved to dismiss Count I is no bar to this Court dismissing the count as to all parties. Plaintiffs were on notice that UNOS sought dismissal of Count I based on its legal insufficiency and they had been heard on the matter. (Pls.' Resp. to UNOS Mot. to Dismiss, Doc. 111) ("Although the current motion was brought solely by UNOS to dismiss the claims against it, UNOS's memorandum of law also addresses the merits of Count I of Plaintiffs' APA claim against HHS.") While Plaintiffs claimed in their response to UNOS's Motion to Dismiss that "[i]n the interests of judicial economy, Plaintiffs respond only briefly to these irrelevant arguments in this Response, and reserve the right to make fuller responses to any arguments pertaining to Count I, or more broadly to the propriety of HHS's action or inaction, if later raised by HHS" (*id.* at 7 n.1), no purpose would be served by allowing further argument in light of

the clear applicability of the law of the case doctrine. The Motion for Reconsideration (Doc. 269) is **DENIED**.

III. Request for Additional Discovery

On January 21, 2020, the Court directed the parties to confer and file a joint notice regarding their views on how the case should proceed following the denial of Plaintiffs' Renewed Motion for Preliminary Injunction (Doc. 215), including whether the parties would stipulate to entry of final judgment based on the Court's ruling on the preliminary injunction motion under Rule 65(a)(2).

The Parties filed their joint notice on February 6, 2020. (Doc. 270.) Plaintiffs declined to consent to entry of judgment, instead requesting further discovery. The Court entered a second order on February 7, 2020 requesting Plaintiffs clarify by letter brief the subjects on which they seek additional discovery. (Doc. 271.) Plaintiffs filed their letter brief on February 11, 2020, seeking discovery on three subjects: (1) UNOS's agency status,[4] (2) further supplementation of the administrative record,[5] and (3) bad faith. The Court asked for briefing on the question of what discovery remained outstanding on UNOS's agency status by subsequent Order. (Doc. 273.) The Court also stayed the deadlines for Defendants to file motions or responsive pleadings. (*Id.*)

Plaintiffs seek discovery on two general subjects pertaining to UNOS's status as an agency: (1) UNOS's "informal enforcement mechanisms" which it

[4] Throughout this process, Plaintiffs filed clippings of statements by Secretary Azar that purportedly supported their position that UNOS wields governmental authority.
[5] HHS filed a notice on February 20, 2020 certifying that the administrative record is complete. (Doc. 279.)

allegedly uses to "cut off" institutions and patients' access to organs, and (2) evidence that HHS has ceded substantial governmental authority to UNOS. (Doc. 278.) UNOS filed its responsive brief, arguing that "extensive" discovery has taken place thus far and that Plaintiffs proposed subjects would not yield any new information. (Doc. 281.)

While prior discovery that has taken place has been expedited and on limited subjects in the preliminary injunction posture, it is far from clear that Plaintiffs are entitled to a broadened scope for merits discovery. As the Court has noted before, "[t]he case law regarding the propriety of allowing extra-record discovery for constitutional claims asserted alongside APA claims is unsettled." *Mayor & City Council of Baltimore v. Trump*, 429 F. Supp. 3d 128, 138 (D. Md. 2019); *accord State v. U.S. Dep't of Homeland Sec.*, 19-CV-04975-PJH, 2020 WL 1557424, at *14 (N.D. Cal. Apr. 1, 2020) ("The broad spectrum of opinions demonstrates a tension and broad disagreement in the reasoning and outcomes in these types of cases. This is exacerbated by the lack of controlling authority and usually results in a case-by-case approach to discovery.") UNOS has already, by Plaintiffs own admission, produced "thousands of documents," in one-sided, non-reciprocal discovery (Pls.' Reply to Mot. Unseal at 10–11 n.7, Doc. 277), and Plaintiffs have had at least two opportunities to compel UNOS to remedy any discovery deficiencies.

Upon reviewing Plaintiffs brief, the Court finds that Plaintiffs have failed to make a showing that further document discovery is necessary or appropriate. At

this point, the Court believes that Defendants' proposed course of action, permitting the filing of motions for summary judgment without reopening discovery, to be the more prudent course of action.[6] Accordingly, the request for more discovery is **DENIED**.

IV. Conclusion

Plaintiffs' Motion to Unseal Docs. 249 , 251 , 256 , 257 , and 259 [Doc. 263] is **GRANTED IN PART** as set forth in the attached appendix. The Clerk is **DIRECTED** to take no action related to unsealing the documents until further direction of the Court.

Plaintiffs' Motion for Reconsideration [Doc. 269] is **DENIED**. Plaintiffs' Request for Additional Discovery [Doc. 272] is **DENIED**.

Defendants are **DIRECTED** to file an answer or motion for summary judgment 30 days from the date of entry of this Order. Plaintiffs may also file a motion for summary judgment no later than that date.

IT IS SO ORDERED this 29th day of September, 2020.

Amy Totenberg
United States District Judge

[6] Plaintiffs may comply with the Rule 56(d) procedure to the extent that they assert that they cannot present facts essential to justify their opposition to a summary judgment, but the filing of a declaration under that rule will not stay the deadline for responding to any such motion.

APPENDIX*

A. Public Documents

The Motion to Unseal is **DENIED AS MOOT** as to the following:

UNOS_0000001
UNOS_0003659
UNOS_0012654

B. Administrative Record Documents

The Motion to Unseal is **GRANTED** as to the following:

UNOS_0011693
UNOS_0011694
UNOS_0012047
UNOS_0012220
UNOS_0013155
UNOS_0013167
UNOS_0013311

C. Materials Related to RFP and Bid Protest

The Motion to Unseal is **DENIED** as to the following:

UNOS_0004456

The Motion to Unseal is **GRANTED IN PART** as to the following documents. UNOS may redact information relating to trade secrets or other confidential research, development, or commercial information which would place it at a competitive disadvantage in a future RFP process, but not UNOS's arguments as to the structure or status of the OPTN generally.

UNOS_0012654

* Documents are indicated based on the Bates number of the first page of the document. Unless specified otherwise, the directives apply to the entire document, not just the first page. Matters which have already been redacted due to attorney-client privilege (e.g. UNOS_0017652–54) shall remain redacted unless specifically ordered otherwise.

UNOS_0002905
UNOS_0002922
UNOS_0002889
UNOS_0002899
UNOS_0012664

D. Materials Prejudicial to Third Parties

The Motion to Unseal is **GRANTED IN PART** as to the following documents. UNOS may redact all information which would identify any intestine transplant programs discussed as well as the entirety of the minutes' exhibits.

UNOS_0006330

E. Materials Relied on in Merits-Related Briefing or at Hearing

The Motion to Unseal is **GRANTED** as to the following:

UNOS_0001672
UNOS_0013155
UNOS_0013158
UNOS_0013160
UNOS_0013174
UNOS_0013281
UNOS_0013282
UNOS_0013296
UNOS_0013300
UNOS_0013344
UNOS_0013396
UNOS_0014467
UNOS_0014614
UNOS_0014793
UNOS_0015064
UNOS_0015095
UNOS_0016030
UNOS_0016108
UNOS_0016280
UNOS_0017366
UNOS_0017368
UNOS_0017551

UNOS_0017652
UNOS_0017698
UNOS_0017746
UNOS_0017799
UNOS_0017912
UNOS_0017920
UNOS_0018006
UNOS_0018069
UNOS_0018140
UNOS_0018163
UNOS_0018183
UNOS_0018205
UNOS_0018207
UNOS_0018314
UNOS_0018324
UNOS_0018382
UNOS_0018418
UNOS_0018435
UNOS_0018441
UNOS_0018491
UNOS_0018504
UNOS_0018508
UNOS_0018527
UNOS_0018529
UNOS_0018566
UNOS_0018602
UNOS_0018611
UNOS_0018627
UNOS_0018655
UNOS_0018739
UNOS_0018810
UNOS_0018949
UNOS_0018994
UNOS_0019003
UNOS_0019009
UNOS_0019049
UNOS_0019158
UNOS_0019307
UNOS_0020362
UNOS_0020365
UNOS_0020368

UNOS_0020369
UNOS_0020564
UNOS_0022374
UNOS_0022387
UNOS_0022389
UNOS_0022427
UNOS_0022622
UNOS_0022760
UNOS_0022766
UNOS_0022803
UNOS_0022956
UNOS_0023000
UNOS_0028619
UNOS_0033649