**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| JUSAMUEL RODRIGUEZ MCCREARY, *et al*., | : | **CIVIL NO: 1:17-CV-01011** |
| Plaintiffs, | : | (Judge Kane) |
| v. | : | (Chief Magistrate Judge Schwab) |
| THE FEDERAL BUREAU OF PRISONS, *et al*., | : | |
| Defendants. | : | |

**ORDER**
May 31, 2018

## I. Introduction.

Presently before the Court is the Plaintiffs' motion to file certain documents in this litigation under seal. *See doc. 52*. For the reasons set forth below, the Plaintiffs' motion will be denied.

## II. Background.

The Plaintiffs, Jusamuel Rodriguez McCreary, Richard C. Anamanya, and Joseph R. Coppola, commenced this action by filing a complaint on June 9, 2017, raising claims concerning the allegedly inadequate and unconstitutional treatment of prisoners suffering from mental illness who are housed within the Special Management Unit at the United States Penitentiary in Lewisburg, Pennsylvania

("USP Lewisburg").[1] *See doc. 1*. On October 2, 2017, the Defendants, who consist of the Federal Bureau of Prisons, its Director, Thomas R. Kane, and the Warden at USP Lewisburg, David J. Ebbert, moved to dismiss Plaintiffs' complaint or, in the alternative, moved for summary judgment on the claims contained therein. *See doc. 23*. In concert with their motion, the Defendants also filed a brief in support (*doc. 29*) and a statement of the material facts (*doc. 28*). Attached to the exhibits, which have been filed in support of the Defendants' statement of the material facts, are the Plaintiffs' medical records, and specifically, the Plaintiffs' mental health records, from when they were incarcerated at USP Lewisburg. *See docs. 31-1*, *31-2*, *31-3*. And, a few months later, on December 21, 2017, the Defendants filed another motion, this time seeking a stay on discovery until the Court rules on their motion to dismiss or, in the alternative, their motion for summary judgment. *See doc 45*.

The Plaintiffs have not only responded to the Defendants' pending motions (*see docs. 38*, *49*), but they have also filed their own motion, requesting the Court to issue an Order, which directs that their medical records be sealed and that the

[1] The Plaintiffs have not only filed the complaint, "each individually[,]" but they have also filed the complaint "on behalf of all others similarly situated[.]" *Doc. 1* at 1. And, in this regard, they have filed a motion, seeking class certification. *See doc. 14*. Notably, that motion, which has been previously stayed by the Court, is not the focus of our discussion here. *See doc. 44* (containing our order, staying the Plaintiffs' motion for class certification).

parties' additional filings to date, which describe information derived directly from those medical records, also be sealed and that the parties be required to refile redacted versions of those filings on the docket. *See doc. 52; see also docs. 53, 56*.[2] In support of their request, the Plaintiffs contend that their medical records contain sensitive and personal information that should be shielded from the public. *See doc. 53*. The Defendants have adamantly opposed the Plaintiffs' motion by filing a brief in opposition (*doc. 55*), and the Plaintiffs have since filed a reply brief (*doc. 56*).

Although all of the parties' motions have been briefed, our focus now is only on the Plaintiffs' motion to file certain documents in this litigation under seal. For the reasons set forth more fully below, we will deny that motion. But, for the benefit of the parties, we note that, in due course, we will issue a separate Report and Recommendation on the Defendants' motion to dismiss or, in the alternative, motion for summary judgment. Within that Report and Recommendation, we will also address the Defendants' motion seeking a stay on discovery.

[2] Although the parties attempted to negotiate a joint-motion to seal the medical records, their attempts proved fruitless, thus necessitating the filing of the Plaintiffs' instant motion. *See doc. 53* at 1.

**III. Discussion.**

"It is well-settled that there exists, in both criminal and civil cases, a common law public right of access to judicial proceedings and records." *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001) (citing *Littlejohn v. BIC Corporation*, 851 F.2d 673, 677-78 (3d Cir. 1988)). This right of access "extends beyond simply the ability to attend open court proceedings." *In re Cendant Corp.*, 260 F.3d at 192. It also extends to "a pervasive common law right 'to inspect and copy public records and documents, including judicial records and documents.'" *Id.* (quoting *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993)). As instructed by the United States Court of Appeals for the Third Circuit, "the right of access strengthens confidence in the courts[,]" "promotes public respect for the judicial process[,] and helps assure that judges perform their duties in an honest and informed manner." *In re Cendant Corp.*, 260 F.3d at 192 (quotations and citations omitted).

In order to determine whether a document is subject to a right of public access, we apply a two-step analysis. *See In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 497 F. App'x 66, 67 (Fed. Cir. 2013) (applying the law of the Third Circuit, and opining that this Circuit applies a two-step analysis in order to determine whether a judicial record is subject to a right of public access). Initially, we must ask whether the document is a "judicial record,"

that is, whether it "has been filed with the court, or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings." *In re Cendant Corp.*, 260 F.3d at 192 (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 780-83 (3d Cir. 1994)); *cf. N. Jersey Media Grp. Inc v. United States*, 836 F.3d 421, 435 (3d Cir. 2016) (reiterating "that 'there is a presumptive right to public access to all material filed in connection with *nondiscovery* pretrial motions, whether these motions are case dispositive or not, but no such right as to discovery motions and their supporting documents." (quoting *Leucadia*, 998 F.2d at 165 (emphasis added))). But, of course, the document filed "must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document." *N. Jersey Media Grp.*, 836 F.3d at 435. And so, if the document ultimately qualifies as a "judicial record," then there is strong presumption in favor of public access, which in turn, "disallows the routine and perfunctory closing" of the judicial record. *In re Cendant Corp.*, 260 F.3d at 193-94 (citing *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)).

Next, we must ask whether that strong presumption of public access has been rebutted. *See In re Cendant Corp.*, 260 F.3d at 194 (stating that while the common law right to public access "is a recognized and venerated principle," it is "not absolute" (quotation omitted)). In order to rebut the presumption, the party seeking "the sealing of part of the judicial record 'bears the burden of showing that

the material is the kind of information that courts will protect' and that 'disclosure will work a clearly defined and serious injury to the party seeking closure.'" *Id.* (quoting *Miller*, 16 F.3d at 551); *see also Miller*, 16 F.3d at 551 (explaining that "[a] party who seeks to seal an *entire* record faces an even heavier burden." (emphasis in original)). Thus, in characterizing the injury to be prevented, "specificity is essential. Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." *In re Cendant Corp.*, 260 F.3d at 194 (internal citation omitted). And, "[a]s is often the case when there are conflicting interests, a balancing process is contemplated[:]" we must balance the strong presumption of public access against the factors which militate against such access. *Id.* The United States Court of Appeals for the Third Circuit has expressly recognized that this balancing process for and against public access is a decision that is committed to the sound discretion of the district court. *Id.* at 197.

Here, consistent with the two-step analysis set forth above, we first ask whether the documents, which the Plaintiffs seek to file under seal, qualify as judicial records. In the instant motion, the Plaintiffs are seeking to seal their medical records and other documents, which describe information that has been derived directly from those medical records. *See doc. 53* at 9. Because these records and documents have been filed with this Court, and because they are relevant to and useful in this Court's adjudicatory proceedings, we plainly

conclude that they qualify as judicial records. *See In re Cendant Corp.*, 260 F.3d at 192; *N. Jersey Media Grp. Inc.*, 836 F.3d at 435. And, because they qualify as judicial records, we further conclude that there is strong presumption in favor of public access to those records.

Next, we must ask whether the Plaintiffs have rebutted that presumption. *See In re Cendant Corp.*, 260 F.3d at 194. In other words, have the Plaintiffs shown that the judicial records contain "the kind of information that courts will protect" *and* that disclosure of those records "will work a clearly defined and serious injury to the party seeking closure." *Id.* (quotations and citation omitted). Regarding whether the documents contain the kind of information that courts will protect, we observe, and are in accord with, the Plaintiffs' contention that the United States Court of Appeals for the Third Circuit "has 'long recognized the right to privacy in one's medical information.'" *Doc. 53* at 5 (quoting *Doe v. Delie*, 257 F.3d 309, 315 (3d Cir. 2001))); *see also doc. 56* at 6 (reiterating the same contention). Indeed, the Court of Appeals has expressly stated as follows: "'[t[here can be no question that . . . medical records, which may contain intimate facts of a personal nature, are well within the ambit of materials entitled to privacy protection." *Doe*, 257 F.3d at 315 (quoting *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 577 (3d Cir. 1980)); *see also Malleus v. George*, 641 F.3d 560, 564-65 (3d Cir. 2011) (citing cases and opining that the following categories

of information are entitled to privacy protection: sexual information, medical information, and some financial information). Thus, consistent with this precedent, we conclude that the Plaintiffs have shown that their medical records contain the type of information that courts will generally protect.

We must now consider whether the Plaintiffs have also shown that the disclosure of the information in their medical records, and any related filings, "will work a clearly defined and serious injury" to them. *See In re Cendant Corp.*, 260 F.3d at 194. In this regard, the Plaintiffs argue—rather broadly—that the information contained in those records place "their privacy interests, security, and well-being at risk." *Doc. 53* at 6. They further argue—again, rather broadly—that if this information remains on the public docket, then their privacy interests will be "irreparably harmed." *Id.* They finally argue that any further dissemination of this information may put them at risk of being targeted by other inmates due to the stigmas that surround certain medical conditions. *Id.* at 7.

The Defendants, on the other hand, contend that the Plaintiffs have failed to substantiate their claims by citing to specific examples or by offering articulated reasoning. *See doc. 55* at 5. The Defendants further contend that it was the Plaintiffs themselves who placed their mental health at issue by filing the complaint, outlining alleged deficiencies in their medical treatment. *Id.* at 3, 5-6. Thus, the Defendants argue that the Plaintiffs' medical records, which have been

filed in support of their dispositive motion, are being used in a good faith defense against the allegations that have been raised in the complaint.[3] *See id.* at 5-6.

In addition, the Defendants argue that other inmates do not have access to the medical records that were filed in support of their dispositive motion because such inmates do not have access to PACER and cannot, therefore, access the docket. *Id*. at 6. The Defendants similarly contend that the BOP monitors inmate mail and, for that reason, the BOP would be able to intercept any medical records, should someone pay to download those records from PACER and then attempt to mail those records to an inmate. *See id.* And, along those same lines, the Defendants contend that if any of the Plaintiffs' medicals records were found in another inmate's cell, those records would be routinely confiscated. *See id.* at 6-7.

Finally, the Defendants contend that while there may be some, limited circumstances in which the BOP would proactively redact portions of medical or psychology records, this case does not represent such circumstances. *Id.* at 8. For instance, the Defendants explain, if the records discussed safety or security issues, such as "HIV status or gang affiliations[,]" then the BOP would consider proactively redacting those portions. *Id.* The Defendants argue, however, that,

[3] As pointed out by the Defendants, the Plaintiffs, who have filed their complaint on the public docket, have not requested the Court to seal this pleading, either at the time it was filed or at any point in the instant motion. *Doc. 55* at 7. The Defendants contend, therefore, that the public has an interest in knowing the BOP's response to the allegations that are contained in the complaint. *Id.*

here, it would be unduly burdensome to require them to file every medical or psychology record under seal. *Id.*

Having thoroughly reviewed the parties' arguments, the underlying record, and the relevant case law, we conclude that the Plaintiffs have not adequately shown that disclosure will work a clearly defined and serious injury to them. The Plaintiffs' motion and supporting briefs have only set forth broad and conclusory statements about such an alleged injury.[4] These types of unsubstantiated claims, however, are insufficient under relevant Third Circuit case law. *See, e.g.*, *In re Cendant Corp.*, ("In delineating the injury to be prevented, specificity is essential. Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." (internal citation omitted)). Thus, we conclude that the Plaintiffs, as the movants, have not met the showing that is required to justify the perfunctory closing of the discussed judicial records. Accordingly, we will deny the Plaintiffs' motion to seal. [5]

[4] It is neither the Court's task to rummage through the medical records in order to identify the sensitive and personal information that exists in those records, nor the Court's duty to articulate a sufficient basis as to why public disclosure of that information will work a clearly defined and serious injury to the Plaintiffs.

[5] In addition to the common law right of access, the United States Court of Appeals "has held that the 'First Amendment [also] embraces a right of access to [civil] trials.'" *In re Cendant Corp*., 260 F.3d at 198 n. 13 (quoting *Publicker*, 733 F.2d at 1070). Notably, "[t]his right exists independently of the common law right of access." *In re Cendant Corp*., 260 F.3d at 198 n.13 (citation omitted). And, "[t]he general rationale behind this right is that '[p]ublic access to civil trials . . . plays an

**IV. Order.**

Based upon the foregoing, the Court concludes that the Plaintiffs have not overcome the presumption that favors the public right of access to judicial records. Thus, **IT IS HEREBY ORDERED** that the Plaintiffs' motion to seal (*doc. 52*) is **DENIED** without prejudice.

***S/Susan E. Schwab***
Susan E. Schwab
United States Chief Magistrate Judge

important role in the participation and the free discussion of governmental affairs.'" *In re Cendant Corp*., 260 F.3d at 198 n. 13 (quoting *Publicker*, 733 F.2d at 1070). Because, however, this right "requires a much higher showing than the common law right to access" (*id.*), and considering that the Plaintiffs' have not even met the showing for the common law right to access, and further considering that the parties' present dispute only focuses on the common law right to access, we need not discuss the First Amendment right of access to civil proceedings.