

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2011 MAR 28 PM 2: 15

DEPUTY CLERK



UNITED STATES OF AMERICA

§

v.

§

No. 5:11-CR-015-C

§

KHALID ALI-M ALDAWSARI (01)

§

§

PROTECTIVE ORDER

WHEREAS, the parties stipulate that they have a compelling interest in preventing certain sensitive but unclassified discovery materials, including materials collected pursuant to FISA that will be reviewed by or made available to the defendant or the defense team; and materials implicating the privacy interests of the defendant and third parties;

AND WHEREAS, the parties further stipulate that the Court has the power under Federal Rule of Criminal Procedure 16(d)(1) ("Rule 16") and 26.2 to grant appropriate relief to the parties where required in the interests of justice;

THEREFORE, IT IS HEREBY ORDERED that the Government's Motion for Protective Order, concurred in by the defendant and his attorney, is GRANTED;

IT IS FURTHER ORDERED pursuant to Rule 16(d) that the government shall segregate the discovery materials it produces to the defendant and his counsel of record into two categories: (1) general discovery materials, and (2) sensitive discovery materials.

The government shall clearly identify any item that constitutes sensitive discovery material;

IT IS FURTHER ORDERED that “general discovery materials” shall not be further disseminated by the defendant or his counsel of record to any individuals, organizations or other entities, other than: (I) members of the defense team (co-counsel, paralegals, investigators, translators, litigation support personnel, the defendant, and secretarial staff) and (ii) experts retained to assist in the preparation of the defense. Each of the individuals to whom disclosure is made pursuant to the above provision shall be provided a copy of this protective order and will be advised that he or she shall not further disseminate¹ the materials except by the express direction of counsel of record or co-counsel. In addition, counsel of record for the defendant, any co-counsel, and any defense investigator may show (but not provide copies of) any of such general discovery materials to witnesses or potential witnesses, if it is determined that it is necessary to do so for the purpose of preparing the defense of the case;

IT IS FURTHER ORDERED that “sensitive discovery materials”² shall not be further disseminated by the defendant or his counsel of record to any

¹“Disseminated” means to provide, show or describe to another either a particular piece of discovery or quotations, excerpts, or summaries derived therefrom.

²The category of sensitive discovery materials includes declassified information or material otherwise deemed sensitive. This category also includes materials authorized pursuant to the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. §§ 1801-1811, 1821-1829, (FISA) that are reviewed by or made available to the defendant or the defense team in this case. Declassified materials derived from FISA authority is collectively referred to as “FISA Information.” The government will clearly identify any sensitive discovery material and any FISA Information.

individuals, organizations or other entities, other than (I) members of the defense team (co-counsel, paralegals, investigators, translators, litigation support personnel, the defendant, and secretarial staff); and (ii) experts retained to assist in the preparation of the defense. Notice of proposed dissemination to defense experts shall be provided to the Court *ex parte* and under seal. Each of the individuals to whom disclosure is made pursuant to the above provision shall be provided a copy of this protective order and will be advised that he or she shall not further disseminate the materials except by the express direction of counsel of record or co-counsel. The government shall provide a hard copy of any sensitive discovery material appropriately so marked. It is expressly understood that counsel for the defendant or co-counsel may not disseminate any of such sensitive discovery materials to witnesses or potential witnesses. The defendant may seek relief from these provisions as to a particular item or items of discovery by providing notice to the Court of intent to disseminate particular identified item(s) to a witness and the purpose in doing so. The Notice shall be under seal. No disclosure of the item(s) to the witness(es) shall be made until the Court so permits. The Court, after notifying the defense, may consult with the Government regarding any dissemination requests pursuant to this paragraph;

IT IS FURTHER ORDERED that all discovery material, whether general or sensitive, is to be returned to the Government at the conclusion of the case;

IT IS FURTHER ORDERED that all declassified FISA Information

that is provided as part of the sensitive discovery materials in this case is now and will forever remain the property of the United States Government. Defense counsel will return the FISA Information, and all copies thereof, to the Government at the conclusion of the case. Defense counsel in receipt of FISA Information may only make copies of the FISA Information in accordance with this order. Defense counsel will permanently inscribe on any such copies the following notation: "U.S. Government Property; May Not Be Used Without U.S. Government Permission";

IT IS FURTHER ORDERED that all such sensitive discovery materials are to be provided to the defense, and used by the defense, solely for the purpose of allowing the defendant to prepare his defense;

IT IS FURTHER ORDERED that any papers to be served upon the Court by either party which include sensitive discovery materials or refer to the contents of sensitive discovery materials shall be filed under seal;

IT IS FURTHER ORDERED that any papers to be served upon the Court in response to papers served in conformity with the preceding paragraph also be filed under seal;

IT IS FURTHER ORDERED that counsel shall store all sensitive discovery materials, and any copies thereof, in a secure place;

IT IS FURTHER ORDERED that defense counsel store and maintain custody of the sensitive information in a secure place and use reasonable care to insure that it is not

disclosed to third persons in violation of this Protective Order. Defense counsel, or employees or experts acting under the direction of defense counsel, may transport the sensitive materials to meetings with the client and may allow the client to review the materials as necessary, so long as the review is done in the presence of defense counsel or such employees or experts. The sensitive materials, however, shall remain in the custody of defense counsel at all times and may not be left, at any time, in the custody of the client.

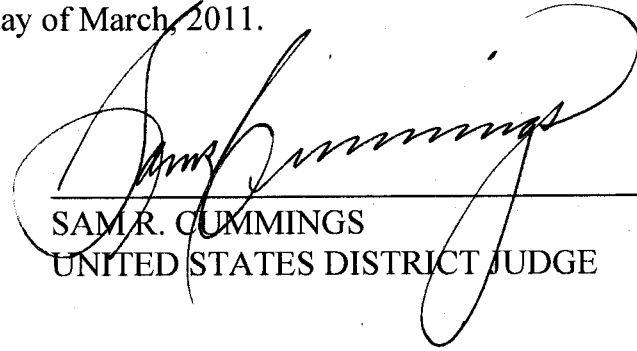
IT IS FURTHER ORDERED, pursuant to the agreement of the parties, that no objections at trial will be interposed by the defense based on variances in the rough draft translation transcripts and translation summaries and the final translation transcripts.

IT IS FURTHER ORDERED that notwithstanding any other provision of this or any other Protective Order that may be entered by the Court, the disclosure or discovery of materials that may be submitted to the Court in connection with any FISA-related litigation, including but not limited to any FISA applications, orders, or related materials, shall be governed by FISA;

IT IS FURTHER ORDERED that nothing in this Order shall preclude the government or the defendant from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material;

FINALLY, IT IS ORDERED that this Order is entered without prejudice to either party's right to seek a revision of the Order by appropriate motion to the Court.

SO ORDERED, this 28th day of March, 2011.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE