

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)
)
) 1:16 mj 355
 v.)
)
 NICHOLAS YOUNG)

JOINT MOTION FOR ENTRY OF A STIPULATED PROTECTIVE ORDER

The United States of America and the defendant, by his undersigned counsel, respectfully move this Honorable Court for entry of the attached stipulated Protective Order, pursuant to Federal Rule of Criminal Procedure 16(d)(1) and Federal Rule of Evidence 502(d). In support thereof, the parties state as follows:

1. During the course of the investigation, the United States has gathered or generated documents, including electronic records, which contain sensitive information relating to national security. The United States intends to produce these documents and electronic records in accordance with the Federal Rules of Criminal Procedure and relevant case law.

2. Fed.R.Crim.P. 16(d)(1) provides that the Court may, for good cause, deny, restrict or defer discovery or inspection, or grant other appropriate relief. The proposed Protective Order regulates discovery in this case by restricting the use and dissemination of documents and electronic records containing sensitive information relating to national security. In essence, the proposed Protective Order prohibits the dissemination of these documents and electronic records and the information contained therein to third parties, other than as necessary for the defendant's investigation of the allegations and the preparation of his defenses.

3. The defendant and his counsel have reviewed this Motion and the Protective Order, and have agreed to its terms.

WHEREFORE, the undersigned respectfully request that the Court enter the proposed Protective Order.

Respectfully submitted,

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/s/

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PROTECTIVE ORDER

Before the Court is the parties’ Joint Motion for Entry of a Protective Order restricting the disclosure and dissemination of the documents, electronic records, and other identifying information produced by the United States to the defendant as part of the government’s discovery obligations in this case. The United States further seeks to protect from unauthorized disclosure any personal identifiers of Confidential Human Sources (“CHS”) or Undercover Employees (“UCE”).

Protection of Sensitive Discovery Materials

These documents, electronic records, and other information, shall be subject to the following Order:

1. The government may designate certain discovery materials that relate to national security interests as sensitive (“Sensitive Discovery Materials”). The Sensitive Discovery Materials shall be identified as such.
2. The government shall disclose Sensitive Discovery Materials to the defendant as part of its discovery obligations, in accordance with the Federal Rules of Criminal Procedure and relevant case law. Where Sensitive Discovery Materials are produced electronically on disc, only the physical disc (and not the individual electronic files) must be labeled “SENSITIVE DISCOVERY MATERIALS.”

3. The disclosure or provision of documents or materials by the government to the defendant shall not operate as a waiver as to any third parties of any privilege or protection that could or may be asserted by the holder of any such privilege or protection.

4. Access to Sensitive Discovery Materials shall be restricted to persons authorized by this Order, namely, the defendant, the defendant's attorney(s) of record in this case, and the employees of the attorney(s) of record who are performing work on behalf of the defendant, including experts and interpreters engaged by the defendant to assist in the representation.

5. The following restrictions are placed on the defendant, defendant's attorneys, and the above-designated individuals, unless and until further ordered by the Court. The defendant, defendant's attorneys, and the above-designated individuals shall not allow any other person to read Sensitive Discovery Materials, or use the Sensitive Discovery Materials or information contained therein for any purpose other than preparing to defend against the criminal charges in this matter.

6. Prior to the disclosure of any Sensitive Discovery Materials to a person not identified in Paragraph 5 of this Order, counsel for the defendant must first receive permission from the Court for such disclosure. Such permission may be requested *ex parte*.

7. Defendant's attorney(s) shall inform any person to whom disclosure may be made pursuant to this Order of the existence and terms of this Order. The defense counsel shall maintain a list of persons to whom materials are disclosed.

8. Nothing in this Order shall restrict use by the defendant's counsel of Sensitive Discovery Materials or information contained therein during the defendant's investigation of the allegations and preparation of his defenses or introduction as evidence at trial, except that any documents, papers, or pleadings filed with the Court that: (a) quote directly from Sensitive Discovery Materials; (b) summarize or refer to the contents of Sensitive Discovery Materials; or

(c) attach copies of Sensitive Discovery Materials, shall be filed under seal, unless the parties agree to the public filing of such information, or such information has already been publicly disclosed, or the Court rules that it may be filed on the public docket.

Protection of CHS or UCE Identifiers

9. If any declassified information about the actual or cover personal identifiers of a CHS or UCE are included in any discovery materials, they should be treated as Sensitive Discovery Materials in accordance with paragraphs 1-9 above, and the following additional protections will apply:

10. The defendant and counsel will not publicly disclose the actual or cover names of any CHS or UCE in any pretrial filing or at any pretrial hearing in open court.

11. The defendant and counsel will not disseminate any declassified information about a CHS or UCE except to the defendant's attorney(s) of record in this case, and the employees of the attorneys of record who are performing work on behalf of the defendant, including experts and interpreters engaged by the defendant to assist in the representation. 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 the counsel of record or co-counsel.

12. All audio recordings in which a CHS or UCE can be heard or is discussed shall be numbered and marked with "Do not duplicate," and must be signed for by the defense counsel upon receipt. Recordings shall not be copied or reproduced in any way unless (a) the defendant provides advance notice to the United States, and (b) the defendant moves the Court for authorization to make such copies and reproductions. Notice must be given sufficiently in advance of the contemplated motion so as to permit briefing and argument on the propriety of such motion.

Copies may ONLY be provided to members of the defense team (as defined in paragraph 12), and may only be provided to further the legitimate investigation and preparation of this case.

13. All audio recordings in which a CHS or UCE can be heard or is discussed must be maintained at the office of defense counsel, and removed from such offices only by members of the defense team (as defined in paragraph 12).

General Provisions

14. Any classified information will be governed by the applicable laws and rules applying to the disclosure and handling of classified information, the Classified Information Procedures Act, 18 U.S.C. App. 3 § 1 *et seq.*, and a different Order of this Court.

15. Upon conclusion of the above-captioned case, all discovery materials, including, but not limited to Sensitive Discovery Materials, as well as any CHS and UCE materials, and all copies and derivative materials thereof shall either be destroyed or returned to the United States, to the extent that this order is not inconsistent with defense counsel's ethical obligations. If counsel chooses to destroy the materials, counsel shall provide written confirmation that the materials have been destroyed. Additionally, all audio recordings in which a CHS or UCE can be heard or is discussed, and any copies thereof, shall be returned to the United States.

16. If any party believes an exception should be made to this Protective Order, the parties will confer and then seek guidance from the Court as necessary. The parties will advise the Court of any exceptions that they believe should be made to the Protective Order.

17. 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.

IT IS SO ORDERED.

Date: _____
Alexandria, Virginia