UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 12 CR 723
	)	
v.	)	Hon. Sharon Johnson Coleman
	)	
ADEL DAOUD	)	

Government's Motion for a Protective Order Pertaining to the Testimony of the Undercover Employee at Trial

The United States, through its attorney, Zachary T. Fardon, United States Attorney for the Northern District of Illinois, respectfully submits this motion for a protective order authorizing the government to use certain measures to protect the identity and security of an undercover employee of the Federal Bureau of Investigation when he testifies at trial.

Introduction

At trial the government intends to call as a witness an undercover employee who was involved in the investigation that led to the arrest and prosecution of the defendant. As part of that testimony, the government plans to show to the jury audio and video recordings of meetings between the defendant and the undercover employee.

As set forth in a declaration from Michael Steinbach, Assistant Director of the FBI's Counterterrorism Division, public disclosure of the undercover employee's true identity or physical images would jeopardize other

undercover investigations and pose a risk of danger to the undercover employee and his family.[1] As such, in order to protect the undercover employee's true identity and physical images, the government requests certain security measures, consistent with measures used in other national security cases.

Background

On the evening of September 14, 2012, the defendant was arrested after attempting to detonate what he believed to be a car bomb in front of a bar in downtown Chicago, leading to charges for attempting to use a weapon of mass destruction, in violation of 18 U.S.C. § 2332a(a)(2)(D), and attempting to damage and destroy a building by means of an explosive, in violation of 18 U.S.C. § 844(i). Doc. #16.

These charges arose out of an FBI investigation that began in May 2012, when the defendant began emailing two online covert FBI employees who had responded to messages that the defendant had posted online. In June 2012, one of the online covert employees put the defendant in touch with a "cousin," a purported operational terrorist, who in fact was an FBI undercover employee. Over the next few months, the defendant met with the

[1] One of these declarations is classified and has been submitted to the Court *in camera*, *ex parte*, and under seal, due to the sensitivity of the information it contains. A public version without the law enforcement sensitive information is submitted with this motion. *See* Ex. 1.

undercover employee six times, during the course of which the defendant selected, researched, and surveilled a bar in downtown Chicago to be targeted for a terrorist attack with a bomb supplied by the undercover employee.

On September 14, 2012, the defendant and the undercover employee drove to downtown Chicago to carry out the attack. That evening, the defendant parked a Jeep packed with the purported explosive in front of the bar. He then walked to an alley about one block away, where, in the presence of the undercover employee, he attempted to detonate the bomb, after which he was taken into custody by the FBI.

About one month after the defendant's arrest, while in custody, the defendant solicited the murder of the undercover employee in retaliation for his involvement in the investigation and to prevent him from testifying against the defendant, resulting in additional charges for soliciting a crime of violence, in violation of 18 U.S.C. § 373(a), murder-for-hire, in violation of 18 U.S.C. § 1958(a), and obstruction of justice, in violation of 18 U.S.C. § 1512(a)(1)(A). Doc. #79, Ex. A. That indictment has since been consolidated with the defendant's original case. Doc. #81.

Protective Measures Sought

Based on the need to prevent disclosure of the undercover employee's true identity and physical images, so as to protect the safety of the undercover employee and his family and to avoid compromising other

investigations, the government respectfully requests the adoption of certain security measures for the testimony of the undercover employee at trial. The proposed measures, based on similar ones endorsed by other courts, are narrowly tailored: they assure that the identity of the undercover employee and the integrity of other undercover investigations will not be compromised without impairing the defendant's confrontation rights under the Sixth Amendment or the public's right of access. Specifically, the government requests the Court implement the following measures:

1. The undercover employee may testify at trial using his undercover pseudonym without publically disclosing his true identity;

2. The defense shall be prohibited from asking any questions seeking personal identifying information from the undercover employee;

3. The undercover employee may testify using a light disguise, such as changing his facial hair, hairstyle, or dress style;

4. Only the Court, essential courtroom personnel, the jury, the defendant and his counsel, and the government's trial team shall be present in the courtroom when the undercover employee testifies. The government shall arrange for contemporaneous CCTV video or similar broadcast of the courtroom proceeding while the undercover employee testifies, without the visual image of the undercover employee, which shall be made available for public viewing in another location in the courthouse;

5. The government shall be allowed to digitally obscure the facial images of the undercover employee on any recorded video footage played over the CCTV feed during court proceedings (no such measures are required for any video shown or offered by the government as an exhibit at trial and viewed only by the defendant, his counsel, the Court, the jury, and other essential court personnel);

6. No public disclosure of any audio recording, or similar reproduction of the voices or visual images of the undercover employee while testifying, shall be permitted;

7. The undercover employee shall be permitted to use a non-public entrance/exit to the courthouse and the courtroom (outside the presence of the jury);

8. All non-official recording devices shall be prohibited from being in the courtroom in which the undercover employee testifies as well as the courtroom in which the CCTV feed is shown during the undercover employee's testimony; and

9. The Protective Order sought by this motion may only be modified through a written superseding order issued by the Court.

A proposed protective order setting forth the above conditions is attached as Exhibit 2.

Argument

Protecting an officer's safety and the integrity of other ongoing investigations are compelling interests that courts have long recognized in crafting security measures for witness testimony. Courts, for example, have allowed witnesses to testify under a pseudonym and behind a screen or while otherwise concealed, concluding that those measures do not interfere with the defendant's right to a fair and public trial. That precedent readily justifies the reasonable security measures proposed here.

I. The Court Should Not Require the Disclosure of the Undercover Employee's True Identity.

The Confrontation Clause of the Sixth Amendment gives a defendant the right to confront and cross-examine the government's witnesses who testify against the defendant. *See Maryland v. Craig*, 497 U.S. 836, 846 (1990); *Smith v. Illinois*, 390 U.S. 129 (1968). The "elements of confrontation—physical presence, oath, cross-examination, and observation of demeanor by the trier or fact—serves the purposes of the Confrontation Clause by ensuring that evidence admitted against an accused is reliable and subject to rigorous adversarial testing that is the norm of Anglo-American criminal proceedings." *Craig*, 497 U.S. at 846. "The rule is that once cross-examination reveals sufficient information to appraise the witnesses' veracity, confrontation demands are satisfied." *United States v. Falsia*, 724 F.2d 1339, 1343 (9th Cir. 1983).

The Confrontation Clause does not require that a jury hear a witness's true name, as the Supreme Court recognized in *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986), when it held that "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant."

In a similar vein, the Seventh Circuit has observed that "where there is a threat to the life of the witness, the right of the defendant to have the witness's true name, address, and place of employment is not absolute." *United States v. Palermo*, 410 F.2d 468, 472 (7th Cir. 1969) (citing *United States v. Varelli*, 407 F.2d 735 (7th Cir. 1969)); *see also Siegfriedt v. Fair*, 982 F.2d 14, 18 (1st Cir. 1992); *United States v. Contreras*, 602 F.2d 1237, 1239-40 (5th Cir. 1979) (where there was reasonable fear the disclosure of DEA agent's home address and frequented locations would endanger him and his family, no error in precluding cross-examination as to home address and other background information even though agent was "instrumental in defendant's arrest"); *United States v. Maso*, 2007 WL 3121986, *4 (11th Cir. Oct. 26, 2007) (*per curiam*) (unpublished) ("The district court did not violate [the defendant's] right to confront witnesses by allowing the [cooperating witness] to testify using a pseudonym."); *Brown v. Kuhlman*, 142 F.3d 529, 532 n.3 (2d Cir. 1998) (undercover detective who testified in closed courtroom due to safety concerns was permitted to testify using his badge number instead of his true name).

Courts, including those in the Seventh Circuit, have approved alias testimony in a variety of contexts. In *United States v. Abu Marzook et al.*, the court permitted witnesses from the Israel Security Agency to testify for the government at trial using the pseudonyms by which the defendant knew

them, and to testify outside the view of the public. *United States v. Abu Marzook et al.*, No. 03-cr-978, Doc. #652 at 2 (N.D. Ill. Aug. 29, 2006) (St. Eve, J.) ("[E]ven if their true identities were not classified, the safety concerns faced by these witnesses justify their use of pseudonyms when testifying.") (Attached as Ex. 2). The same measures had been used in a pretrial suppression hearing in *Abu Marzook*. *United States v. Abu Marzook et al.*, 412 F. Supp. 2d 913, 923-24 (N.D. Ill. 2006). *See also United States v. Dumeisi*, No. 03-cr-664, Doc. #83 at 1 (N.D. Ill. Jan. 2, 2004) (permitting government witness to testify under a pseudonym and appear in light disguise, and prohibiting questioning about the witness's current or former address); *United States v. El-Mezain*, 664 F.3d 467, 492 (5th Cir. 2011) (finding a "serious and clear need to protect the true identities" of the two Israel Security Agency witnesses who testified by pseudonym); *United States v. Abu Ali*, 395 F.Supp.2d 338, 344 (E.D. Va. 2005) (permitting use of pseudonyms by witnesses who testified during a pre-trial Rule 15 deposition that was conducted via satellite real-time video from Saudi Arabia to the federal courthouse in Alexandria, Virginia). More recently, similar protective measures were approved in terrorism cases in the District of Oregon and in the Middle District of Florida. *See United States v. Mohamud*, No. 10-cr-475, Doc. #341 (D. Or. Dec. 19, 2012) (Exhibit 3); *United States v. Osmakac*, No. 12-CR-45, Doc. #217 (M.D. Fla. February 12, 2014) (Exhibit 4).

The declaration from Assistant Director Steinbach lays out the compelling reasons to adopt the proposed security measures. The FBI's undercover program—which relies on a small group of personnel who are trained and certified—plays a vital role in the detection, prevention, and prosecution of national security cases. Ex. 1, ¶ 7. Members of this program are highly valuable, and the FBI has a substantial interest in their personal safety. *Id.* As such, and as further detailed in the classified materials, disclosing the undercover employee's identity would pose a risk the safety of the undercover employee and undermine the security of other undercover investigations and the integrity of the government's undercover procedures. *Id.* In light of these interests, and as further explained in the Assistant Director's declaration, the true name of the undercover employee is classified.

Balanced against these interests, the use of a pseudonym by the undercover employee will not prejudice the defendant's confrontation rights. It is the undercover employee's interactions with the defendant—not his personal identity—that makes his testimony relevant at trial. Because the defendant has only known the undercover employee by his pseudonym throughout the investigation, withholding the undercover employee's true identity will not detract from substance of the questioning on cross-examination and will not impair the defendant's Sixth Amendment right to confront the witnesses against him. The undercover employee will be present

in the courtroom, so the defendant will be able to confront him. The jury, moreover, will be able to observe and assess the undercover employee's appearance and demeanor while testifying. For the same reasons, permitting the undercover employee to testify in light disguise, such as with changes to facial hair or dress style, should be permitted and will simply serve to minimize the risk of compromising the undercover employee's true identity.

Along those same lines, the defendant should be restricted from eliciting questions that would publicly reveal any personal information about the undercover employee that would disclose the undercover employee's identity. Personal information about the undercover employee is not relevant to the charges; it is the undercover employee's contacts and communications with the defendant that matter. Public disclosure of personal information about the undercover employee, such as name and address, will compromise the undercover employee's safety and that of the undercover employee's family, as well as substantially impact other investigations. Cross-examination into completely irrelevant personal information should be prohibited.

II. The Court Should Permit the Undercover Employee to Testify Outside the View of the Public

The Sixth Amendment guarantees the right to a public trial. That right assures the defendant receives a fair trial, promotes the integrity of the fact-

finding process, preserves public confidence in the criminal justice system, and affords the community an outlet to address crime. *Waller v. Georgia*, 467 U.S. 39, 46 (1984). But the right to a public trial is not absolute—a trial judge may implement reasonable procedures to protect other compelling interests without infringing the Sixth Amendment. *Id.* at 45.

Waller provided a four-factor test for determining whether courtroom closure is appropriate:

> The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

467 U.S. 39, 48 (1984). Although the government is not seeking to close the proceedings entirely during the undercover employee's testimony, these factors remain instructive in assessing the appropriateness of the government's proposal. "The state interest in maintaining the continued effectiveness of an undercover officer is an extremely substantial interest, and . . . this interest would be seriously prejudiced by requiring the officer to testify in an open courtroom." *Ayala v. Speckard*, 131 F.3d 62, 72 (2d Cir. 1997). "It is clear that the State has an 'overriding interest' in protecting the identity of its undercover officer." *Rodriguez v. Miller*, 537 F.3d 102, 110 (2d Cir. 2008). In *Brown v. Artuz*, 283 F.3d 492, 501-02 (2d Cir. 2002), the Second

Circuit held that protecting an undercover officer's safety satisfied the first prong of the *Waller* test and was an overriding interest likely to be prejudiced if the courtroom was open to the public during the officer's testimony. Taken together, *Ayala*, *Rodriguez*, and *Brown* instruct that protecting other investigations and ensuring a law enforcement officer's safety are both compelling government interests, in satisfaction of the first *Waller* factor.

Those interests surely exist here, as explained in the Steinbach Declaration. Ex. 1, ¶ 9. The FBI and the undercover employee have serious concerns about the disclosure of the undercover employee's identity, both by name and appearance. *Id.* As this Court is no doubt aware, given the ubiquity of smart phones, it is difficult for court security to stop a spectator from taking a photograph of court proceedings; indeed, those incidents occasionally arise, despite rules barring such conduct. The government need not "prove that particular individuals likely to attend the trial will disclose the officer's identity," *Ayala*, 131 F.3d at 72, and the risk remains that anyone in the courtroom may reveal the appearance of the undercover employee to others, which would bring danger to the undercover employee and would run the risk of jeopardizing ongoing FBI investigations.

As to the second *Waller* factor, the proposed measures are no broader than necessary to protect the government's core interests. Rather than seeking the more drastic measure of closing the courtroom completely during

the testimony of the undercover employee, the government requests moderate protections against the disclosure the true identity and image of the undercover employee, while still permitting the public to hear the testimony of the undercover employee.

Specifically, when the undercover employee testifies, the Court, essential personal, the jury, the defendant and his counsel, and the government's trial team would be present in the courtroom. The government will arrange for a contemporaneous CCTV video or similar broadcast of the courtroom proceeding, without the visual image of the undercover employee, which shall be made available for public viewing in another location in the courthouse. During the undercover employee's testimony, the government anticipates offering and publishing certain exhibits, including audio and video recordings. The government will arrange for the CCTV to broadcast to the public these exhibits, except any that depict the visual image of the undercover employee. Of course, all published exhibits, including those that depict the undercover employee, will be presented to the Court, essential personnel, the jury, the defendant and his counsel, and the government's trial team. The purpose of this proposal is to protect the undercover employee's image and identity from being revealed to the public.

These same protective measures were authorized by Judge Garr King in a recent terrorism trial in the District of Oregon. *See United States v.*

Mohamed Mohamud, No. 10-CR-475, Doc. #341 (D. Or. December 19, 2012). That case involved a defendant who attempted to detonate a car bomb at a Christmas tree lighting in Portland as part of an FBI undercover operation. Among the witnesses at trial were two FBI undercover employees who similarly faced risks. With the permission of the judge, the undercover employees testified pursuant to the same protective measures as proposed here. *See* No. 10-CR-475, Doc. #341 (Ex. 3). Likewise, similar protective measures were used for an FBI undercover employee in a recent terrorism trial in the Middle District of Florida. *See* No. 12-CR-45, Doc. #217 (Ex. 4).

In this district, Judge St. Eve implemented more strict security protections in *United States v. Abu Marzook et al.*, No. 03-cr-978, Doc. #652 at 3 (N.D. Ill. Aug. 29, 2006) (Ex. 2), during the testimony of witnesses from the Israel Security Agency. At a pretrial suppression hearing earlier in that case, the court closed the courtroom entirely during the testimony of the ISA witnesses. No CCTV footage of the testimony was broadcast. *Abu Marzook*, 412 F. Supp. 2d at 919.

Under the government's proposed protective order, the transcript of the undercover employee's testimony will be available for review by the public or press, but there will be no public disclosure of any video or photographic evidence that depicts the undercover employee. *See United States v. Trofimoff*, No. 8:00-CR-197-T-24EAJ, 2001 WL 1644230 at *3 (M.D. Fla. June

12, 2011) (blurring the image of the undercover officer was "a narrow remedy carefully tailored to protect the effectiveness of the undercover agent while allowing the media access to the full substance of the video tape"). Thus, although the public will not be in the same courtroom, the public will have full access to the trial proceeding, except for the undercover employee's facial image.

The declaration submitted in support of this motion details the government's "extremely substantial" interests here in protecting the undercover employee's safety and that of his family as well as maintaining the continued effectiveness of ongoing and future undercover investigations. *See Ayala*, 131 F.3d at 72. Thus, the Court would be justified in concluding that these interests "would be seriously prejudiced by requiring the officer to testify in an open courtroom." *Id.*

Importantly, the government's proposed protective order would prevent only the public—not the defendant or the jury—from viewing the undercover employee's face during trial testimony. This procedure will not deprive the defendant of the ability to confront the undercover employee, nor will it deprive the jury of the ability to evaluate the undercover employee's demeanor. The transcript of the undercover employee's testimony would be made available to the public in its entirety after the testimony is concluded. On balance, the moderate restriction to the public pales in comparison to the

government's interest in concealing the undercover employee's identity during his continued work as an undercover employee.

Prohibiting the public dissemination of any reproduction of the audio or video of the undercover employee's testimony will not impair any Sixth Amendment rights. Federal judicial policy prohibits the taking of in-court photographs or videotape of criminal trials, in any event. Here, a written transcript of the undercover employee's testimony will be available to the public. Only the visual images of the undercover employee on the witness stand will be obscured from the public. Thus, all the measures proposed by the government are narrowly tailored to protect the important and substantial government interests at issue.

As to the last *Waller* factor, the government requests that the Court make the following findings based on the law above and the information presented in the Steinbach declaration: (1) the reasonable measures proposed by the government are necessary to protect from disclosure the true identity of the undercover employee at trial; (2) disclosure of the undercover employee's true identity would jeopardize ongoing and future undercover investigations and the government's undercover investigative procedures; and (3) the undercover employee and the undercover employee's family face a real and substantial risk of danger if the undercover employee's true identity is disclosed.

Conclusion

The government requests that the Court grant the government's motion for a protective order and adopt the government's proposed protective measures to assure the security and safety of the undercover employee and his family, other undercover investigations, and the government's undercover investigative procedures.

October 3, 2014

Respectfully submitted,

ZACHARY T. FARDON
United States Attorney

By: s/*William E. Ridgway*
WILLIAM E. RIDGWAY
BARRY JONAS
BOLLING W. HAXALL
Assistant U.S. Attorneys
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604

LOLITA LUKOSE
Trial Attorney
Counterterrorism Section
National Security Division, DOJ

testimony. Though not pictured in the photograph, the Court will arrange for the prosecution to have a counsel table in the space typically occupied by the witness stand in courtroom 10B, such that it will be perpendicular to the defense table and across from and facing the jury. The podium for the questioning lawyer will be placed between counsels' tables along with the presentation cart. (Contrary to the picture, the podium would be moved farther to the right and closer to the defense table so as not to obscure the prosecution's view of the witness.) Also, the defense team will have their chairs turned facing the gallery, so that they will have a better vantage point from which to view the witness. As positioned, the screen blocks all gallery observers from viewing the witness, who, as noted, will enter and exit the courtroom when it is closed to all but Court security cleared personnel and both trial teams and the Defendant.

f. Any unaltered video recorded footage admitted as evidence and presented during the trial that includes the unobscured face of the UCE shall only be viewed by the Court and its security cleared personnel, the jury, the Defendant and the Defendant's trial team, and the Government's trial team. Such video recorded footage shall not be visible to the public. The Government has advised that it can adequately synchronize a pixelated version of the video feed during the testimony. As such, a pixelated version will be played simultaneously on the display screen in the courtroom so that it can, to

some extent, be viewed by the public. Unfortunately, the witness screen as positioned will likely obscure the view of the display screen at certain positions (especially those on the north side of the courtroom sitting closest to the screen). If additional jury display carts are available, the Court will attempt to accommodate those viewers. In any event, the public, including the media, will be allowed to hear any audio recorded with the video footage. Further, the Government has agreed to provide access to the Tribune of the pixelated version of any video recorded footage of the UCE admitted into evidence during the trial. It would appear that the Government does not oppose the republication by the media of the pixelated version of the video, which obscures the UCE's face**. If that is not the case, the Government and/or the Defendant shall be prepared to address this issue at the status conference.**

g. No recording devices shall be allowed in the courtroom, except for the devices used by the official security cleared court reporter.

h. Because there will be no recording made of the UCE during testimony, no public disclosure of such non-existent audio and/or video recording shall be permitted. The Government advises that it will make the transcript of the UCE's testimony available for the media and the public. That accommodation will require daily copy of that portion of the trial to be ordered and paid for by the Government. To that end, the Government shall contact the official security cleared court

reporter, Claudia Spangler-Fry, to make appropriate logistical and financial arrangements.

i. Finally, because of the accommodations that will be required for this witness, the Government shall call the UCE as its first witness or call the UCE on the first day of the second week of trial. This is necessary to allow the Court's IT personnel to adjust the courtroom to facilitate the Government's requested accommodations. **The Government shall advise the Court at the status conference which of these two alternatives it selects.**

DONE and **ORDERED** in Tampa, Florida, this 12th day of February 2014.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All Counsel of Record
All *Pro Se* parties

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA

v.

MOHAMED OSMAN MOHAMUD,

Defendant.

Case No. 3:10-CR-00475-KI

[redacted] PROTECTIVE ORDER PERTAINING TO THE TESTIMONY OF UNDERCOVER EMPLOYEES AT TRIAL

Upon motion of the United States, the Court being advised as to the nature of this case and having considered the position of the parties including any objections, it is hereby

ORDERED that, the following procedures will be utilized to protect the true identities of the undercover Federal Bureau of Investigation employees (UCEs) at trial:

1. The UCEs may testify under the UCEs' undercover pseudonyms when testifying at trial, without disclosing publicly the true identities of the UCEs;

2. The defense is prohibited from asking any questions seeking personal identifying information from the UCEs;

3. The UCEs may testify using a light disguise, such as changing the UCEs' facial hair, hairstyle, or dress style;

4. When the UCEs testify, only the Court, essential personnel, the jury, defendant and his counsel, and the government's trial team shall be present in the courtroom. The government shall provide a contemporaneous CCTV video or similar broadcast of the courtroom proceeding, without the visual images of the UCEs, while the UCEs are testifying, which shall be made available for public viewing in an adjacent courtroom;

5. The government be allowed to digitally obscure the facial images of the UCEs on any recorded video footage played over the CCTV feed during court proceedings (no such measures are required for any video shown or offered by the government as an exhibit at trial and viewed by defendant, his counsel, the Court, the jury, and other essential court personnel);

6. No public disclosure of any audio recording, or similar reproduction of the voices or visual images of the UCEs while testifying, shall be permitted;

7. The UCEs be permitted to use a non-public entrance/exit to the courthouse and the courtroom;

8. All non-official recording devices are prohibited from being in the courtroom in which the UCEs testify as well as the courtroom in which the CCTV feed is shown during the UCEs' testimony;

9. All unpixelated video or photographs showing the true facial images of the UCEs provided to defendant pursuant to the Protective Order for use as trial evidence shall be returned to the government at the conclusion of this case. Defendant shall retain no copies of any

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discovery material provided by the government that shows the true facial images or identities of the UCEs; and

10. This Protective Order may only be modified through a written superseding order issued by this Court.

Dated this 19 day of ~~October~~ DECEMBER 2012.

GARR M. KING
United States District Judge

Presented by:

S. AMANDA MARSHALL, OSB #95347
United States Attorney
District of Oregon

s/ Pamala R. Holsinger
ETHAN D. KNIGHT, OSB #99298
PAMALA R. HOLSINGER OSB #89263
Assistant United States Attorneys
(503) 727-1000

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 CR 978 - 2,3	DATE	8/29/2006
CASE TITLE	USA vs. Muhammad Salah and Abdelhaleem Ashqar		

DOCKET ENTRY TEXT

The government's motion for application of measures to ensure witness safety at trial [587] is granted in part and denied in part.

■[For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

The trial of Defendants Muhammad Salah and Abdelhaleem Ashqar is scheduled to commence on October 12, 2006. The government has requested the imposition of certain procedures at the trial to ensure the safety of the Israeli Security Agency ("ISA") witnesses. The government's motion is granted in part and denied in part.

The Second Superseding Indictment (the "Indictment") charges Defendants Salah and Ashqar with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), in violation of 18 U.S.C. § 1962(d) (Count I); Defendant Salah with knowingly providing and attempting to provide material support and resources to a Foreign Terrorist Organization, namely, Hamas, in violation of 18 U.S.C. § 2339B (Count II); both Defendants with obstructing justice, in violation of 18 U.S.C. § 1503 (Counts III & IV), and Defendant Ashqar with refusing to comply with a Compulsion Order when appearing before the Grand Jury, in violation of 18 U.S.C. § 401(3). The charges are premised upon and related to Defendants' alleged support of the Hamas terrorist organization, both prior to and after the United States designated Hamas as a Specially Designated Terrorist Organization and a Foreign Terrorist Organization. The Indictment alleges that Hamas has called for violent terrorist attacks, and engaged in numerous terrorist attacks aimed at Israeli military personnel, police officers, and civilians. It alleges that Defendant Salah has provided material support to Hamas, including recruiting and training new Hamas leaders and disbursing money to support Hamas activities. It further alleges that Defendant Ashqar has acted as a conduit for Hamas for the transfer of money and communications, and has stored and disseminated Hamas-related documents.

During the trial, the government anticipates calling certain ISA agents to testify regarding their dealings with Defendant Salah and Defendant Salah's statements to them when he was in custody in Israel. *See United States v. Salah*, 435 F.Supp.2d 708 (N.D. Ill. 2006) (ruling regarding the admissibility of Salah's statements). Citing concerns for the safety of these witnesses, the government has asked the Court for the following measures at trial: 1) an order that the ISA agents do not have to disclose their true identities, which constitute classified information; 2) an order permitting the ISA agents to testify outside the view of the

STATEMENT

public; 3) permission for the ISA agents to testify in light disguise and to have their testimony heard in another courtroom via a live audio feed; and 4) private access for the ISA agents to enter the courtroom. In support of the safety concerns, the government relies on the Affidavit from a high- ranking member from the Headquarters of the ISA's Security Division, (R. 367-1, Ex. A), and the classified affidavit of the Federal Bureau of Investigation's ("FBI") Assistant Director for Counterintelligence David W. Szady. (*Id.*, Ex. B.) The Court approved some of these measures during the suppression hearing where the ISA officers testified. *United States v. Salah*, 412 F.Supp.2d 913 (N.D. Ill. 2006).

On August 11, 2006, the Court granted the Center for Constitutional Rights' ("CCR") motion to intervene. (R. 638-1.) The CCR, a group of 21 organizations and 11 individuals, opposes any closure of the courtroom for the testimony of the ISA agents, as well as the ISA agents' use of light disguise. (R. 643-1.) The Court addresses the Intervenors' arguments below.

I. Courtroom Security

As an initial matter, the Court notes that district court judges are "responsible for ensuring 'the safe, reasonable and orderly progress of trial.'" *United States v. Durham*, 287 F.3d 1297, 1303 -1304 (11th Cir. 2002), quoting *United States v. Theriault*, 531 F.2d 281, 284 (5th Cir. 1976). As the Seventh Circuit has made clear, a district court judge has wide discretion in determining necessary security measures in the courtroom[1]. *United States v. Brooks*, 125 F.3d 484, 502 (7th Cir. 1997). *See also Durham*, 287 F.3d at 1303-04 ("Trial judges are to be accorded reasonable discretion to balance the interests involved and to decide which measures are necessary to ensure the security of the courtroom.").

II. True Identities

The government has moved to have the ISA agents' true names and identities remain undisclosed to the public and Defendants. The ISA agents' true identities are classified information – even the government prosecutors do not know the agents' true identities. The government seeks to have these agents testify using the pseudonyms under which the ISA agents conduct all of their ISA affairs. Both Defendants have objected to this procedure. The Intervenors do not object to this procedure.

As the court previously noted:

> In Israel, it is a criminal violation to disclose the true identity of an ISA agent because of the sensitive and dangerous nature of the agent's work. (R. 367-1, Ex. A, ¶¶ 4, 19, 20.) This Israeli law is similar to the law in this country which penalizes disclosure of identifying information of a covert agent. *See* 50 U.S.C. § 421(a). Under Israeli law, the true identities of these agents – including their names, identifying information, and physical characteristics – are classified. (R. 367-1, Ex. A. ¶ 4.) Their names are therefore classified under Executive Order 12958. The government thus has met its burden of proving that these identities constitute classified information. (*Id.*, Exs. A, B.)

Salah, 412 F.Supp.2d at 923-24.

Because the identities of these ISA agents remain classified, the Court grants the government's request to allow them to testify using their pseudonyms that they use in connection with their work. Defendants may not question these witnesses regarding their true identities.

Furthermore, even if their true identities were not classified, the safety concerns faced by these witnesses justify their use of pseudonyms when testifying. The Seventh Circuit has held that "where there is a threat to the life of the witness, the right of the defendant to have the witness' true name, address and place of employment is not absolute." *United States v. Palermo*, 410 F.2d 468, 472 (7th Cir. 1969). *See also United States v. Contreras*, 602 F.3d 1237, 1239-40 (5th Cir. 1979). As set forth in the Court's prior opinion, the government has established that the ISA agents face significant and legitimate issues of personal safety.

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See Salah, 412 F.Supp.2d at 923-24, 926. *See also* (R. 367-1, Exs. A & B). Accordingly, the Court grants the government's request to permit them to testify using the pseudonyms that they use in their official capacity and by which Defendant Salah knew them. *See United States v. Lonetree*, 35 M.J. 396 (CMA 1992) (military appeals court affirming non disclosure of the identity of an intelligence officer); *United States v. Ellis*, 468 F.2d 638 (9th Cir. 1972) (affirming ruling precluding cross examination into undercover agent's name and address).

Defendant Ashqar's reliance on *Smith v. Illinois*, 390 U.S. 129, 88 S.Ct. 748 (1968), is misplaced. In *Smith*, the Supreme Court reversed a conviction where the court found that a witness who had purchased drugs from the defendant with marked money provided by two Chicago police officers did not have to give his real name or address when testifying. First, in his concurring opinion in *Smith*, Justice Stevens recognized an exception for those "inquiries which tend to endanger the personal safety of a witness." *Id.* at 133-134, 88 S.Ct. at 751. Second, the Seventh Circuit has recognized the limited holding in *Smith*. *See United States v. Olson*, 978 F.2d 1472, 1476 (7th Cir. 1992) (denial of the true name and address of a witness may be justified based on several factors, including the safety of the informant); *United States v. Saletko*, 452 F.2d 193, 196 (7th Cir. 1971) (recognizing "specific exception" to general rule of disclosing name and address where the "personal safety" of the witness is at issue); *Palmero*, 410 F.2d at 472 (noting that courts cannot make decisions regarding disclosure of witness's personal information in a vacuum, and instead must assess evidence regarding personal safety of the witness).

Defendant Salah states that he cannot be certain that the ISA agents are actually who they claim to be without knowing their true identities. This argument is strained because Defendant Salah dealt with these individuals face to face in Israel, thus he will know if they are the same individuals.

Defendant Salah further argues that failure to disclose the true identities of these witnesses will preclude him from investigating their backgrounds and obtaining impeachment information. While a defendant has a right under the Sixth Amendment to discover information about a witness's background, as noted above, the right to discovery of a witness's true identity information is not absolute. The ISA witnesses testified during the suppression hearing that they are known in their professional capacities by their pseudonyms only. Defendant, therefore, can investigate them in this capacity based on these names. As Judge Sentelle noted in *United States v. Lonetree*, "the real world setting and environment of John Doe at the time of this trial and of all events about which he testified is better reflected in his pseudonym and in his identification as an intelligence agent than in anything connected with his 'true identity.'" *Id.*, 35 M.J. at 410. Given the safety issues inherent in revealing the ISA agents' true identities, the government has met its burden that it need not disclose this identifying information. Further, the government has represented that it has provided Defendants with all *Giglio* and *Brady* information regarding these witnesses. Finally, Defendant is free to cross examine these witnesses for bias and other relevant impeachment topics.

III. Testifying Outside the View of the Public

Given the safety issues pertaining to the ISA agents, the government seeks to have the ISA agents either 1) testify in a closed courtroom with a contemporaneous audio feed of their testimony provided to the public in a second open courtroom, or 2) testify behind a screen or drape. The government argues that such measures are essential to protect the ISA agents' identities, to avoid recognition of them, to prevent their appearances from being described, to prevent their pictures from being taken, and to preclude any sketches of them being drawn.

Defendants and the Intervenors argue that these measures violate their respective rights under the Sixth Amendment and the First Amendment of the United States Constitution. They argue that "the Sixth and First Amendments rights to a public trial create a robust presumption in favor of keeping criminal proceedings open to the public." (R. 607-1, at 10.)

The Sixth Amendment provides a defendant with a right to a public trial, and the First Amendment

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provides the public with that same right. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). "The First Amendment presumes that there is a right of access to proceedings and documents which have 'historically been open to the public' and where the disclosure would serve a significant role in the functioning of the process in question." *United States v. Eppinger*, 49 F.3d 1244, 1253 (7th Cir. 1995), quoting *Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994), quoting *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1984). "[T]his fundamental premise is grounded in three important policy concerns. 'Public scrutiny over the court system serves to (1) promote community respect for the rule of law, (2) provide a check on the activities of judges and litigants, and (3) foster more accurate fact finding.'" *In re Associated Press*, 162 F.3d 503, 506 (7th Cir. 1998) (quoting *Grove Fresh*, 24 F.3d at 897); *Eppinger*, 49 F.3d at 1252-53 (same). Similarly, "the Sixth Amendment right of the accused [to a public trial] is no less protective of a public trial than the implicit First Amendment right of the press and public." *Waller v. Georgia*, 467 U.S. 39, 46, 104 S.Ct. 2210, 2215, 81 L.Ed.2d 31, 38-39 (1984).

Neither the Sixth nor the First Amendment rights to a public trial, however, are absolute. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606, 102 S.Ct. 2613, 2619, 73 L.Ed. 2d 248, 256-57 (1982). Indeed, "[w]hile open criminal proceedings give assurances of fairness to both the public and the accused, there are some limited circumstances in which the right of the accused to a fair trial might be undermined by publicity." *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 9-10, 106 S.Ct. 2735, 2740-41, 92 L.Ed.2d 1 (1986). The Supreme Court has therefore held that the presumption of public access to a trial "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Press-Enterprise*, 464 U.S. at 510, 104 S.Ct. at 824 (citations and quotations omitted). *See also Walton v. Briley*, 361 F.3d 431, 433 (7th Cir. 2004).

Here, the Court finds that an overriding interest in preserving the safety of the ISA witnesses justifies imposing certain limited security measures. Based on the evidence set forth in detail in Exhibit A, these ISA agents and their families face a serious, legitimate risk of grave danger if they are publicly identified. (R. 367-1, Ex. A ¶¶ 8-14; Ex. B.) Terrorist organizations have targeted ISA agents. (*Id.* Ex. A ¶¶ 9-14.) One example of the danger these ISA agents face is illustrated by the various internet sites that post descriptions and sketches of ISA agents so that the agents can be identified and targeted. (*Id.*, Ex. A ¶¶ 10, 20.) At least one internet site has offered a cash reward for information regarding the true identities of ISA agents. (*Id.*, Ex. A ¶¶ 10, 20.) Certain protective measures to ensure the safety of these witnesses are thus warranted and appropriate. *See, e.g., United States v. Abuhamra*, 389 F.3d 309, 324 (2d Cir. 2004) ("The government's strong and legitimate interest in protecting confidential sources from premature identification is undeniable. Identification not only compromises the government's ability to use such sources in other investigations, it may expose them to retaliation by those against whom they have cooperated."); *Sevencan v. Herbert*, 316 F.3d 76, 84 (2d Cir. 2002) (in habeas context, finding that trial court's closing of courtroom comported with *Waller* where closing protected safety of the undercover officer); *Brown v. Artuz*, 283 F.3d 492, 501 (2d Cir. 2002) (in habeas context, finding that officer's safety justified closing courtroom).

Consistent with the mandates of *Press-Enterprise*, the Court will impose witness safety measures that are narrowly tailored to address the security concerns surrounding these ISA witnesses. Specifically, the ISA witnesses will testify in the courtroom closed to the public, with a live video feed of their testimony (not a recording of the testimony, just a video transmission of it) into a separate courtroom. Only Defendants, their attorneys, the government, the jury, court personnel, and immediate family members of each Defendant may be present during the live testimony of the ISA witnesses.

This procedure is less restrictive than the live audio feed proposed by the government, yet satisfies the overriding need of protecting the safety of the ISA witnesses. The live video feed of the testimony will not

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only allow the public to hear the entirety of the proceedings, it will also permit the public to observe those in the courtroom except the ISA witnesses. This procedure will satisfy the goal of providing "a check on the activities of judges and litigants." *In re Associated Press,* 162 F.3d at 506. By allowing the public to hear the entirety of the proceedings, the procedure will give the public necessary assurances of fairness. Moreover, the presence of each Defendant's immediate family will address the concern about potential prejudice in front of the jury from the absence of family members. If any members of the public want access to a transcript of the proceedings from the testimony of the ISA witnesses, the Court will also make one available upon request.

Additionally, the courtroom will only be partially restricted to the public during the testimony of the ISA agents. The remaining witnesses will testify in an open courtroom, and the attorneys' opening statements and closing arguments will be public. Thus, the vast majority of Defendants' trial will remain fully open to the public.

Defendants' reliance on *Hamdan v. Rumsfeld,* __ U.S. ___, 126 S.Ct. 2749, 2798 (2006), is misplaced. *Hamdan* deals with a distinct legal issue that is not currently before the Court here, namely, whether the President's use of certain military commissions "[complies] with the American common law of war, but also with the rest of the UCMJ itself, insofar as applicable, and with the rules and precepts of the law of nations, including, inter alia, the four Geneva Conventions signed in 1949." *Hamdan*, 126 S.Ct. at 2786 (internal citation and quotation omitted).

Furthermore, a contemporaneous video feed of the testimony will not present the same jury issues as a screen or drape in front of the witness when he testifies. From a practical standpoint, the Court's measures will ensure that those in the courtroom – including the jury, defendants and lawyers – will be able to view the witnesses without obstruction. If a screen is used, their views might be obscured. The Court will have a video camera in the courtroom throughout the trial. The Court will instruct the jury that the video camera will remain in the courtroom in case a second courtroom is needed to accommodate the public. The camera will only remain on when such a courtroom is necessary. If Defendants want to propose any additional jury instructions regarding this procedure, the Court will consider them.

Finally, Defendants have argued that it will be very suspect that the courtroom will not be full of spectators during the ISA agents' testimony. Defendant Salah argues that "these procedures would communicate to the jury the false impression that someone in the courtroom poses a danger to the witness, and any instruction to the jury by the court would not operate to cure the prejudice." (R. 607-1, at 10.) He expresses concern that a full courtroom that is suddenly empty during the ISA agents' testimony would "speak loudly to the jury that there is danger afoot." (*Id.*) During the open portion of the suppression hearing, however, very few spectators came to observe the testimony of the witnesses. Based on this low attendance and the relatively small number of observers at some of the status hearings, the Court does not anticipate a full courtroom during all of the trial. If the courtroom is full during the rest of the trial and relatively empty when the ISA agents testify, the Court will entertain an appropriate jury instruction.

IV. Light Disguise

The government seeks permission to have the ISA agents testify in light disguise "in a manner that minimizes disclosure of their identity while still permitting credibility assessments of their mannerisms and affect." (R. 587-1 at 11.) Defendants and the Intervenors oppose this measure.

Because the jury and members of Defendants' families will be present during the testimony of the ISA agents, light disguise is appropriate to avoid compromising the identity of the ISA agents. *See, e.g., Morales v. Artuz,* 281 F.3d 55 (2d Cir. 2002) (witness permitted to testify using light disguise because of safety concerns); *United States v. Dumeisi*, No. 03 CR 664, R. 367-1, Ex. C (witness may appear in light disguise when testifying); *United States v. George*, Nos. 9100521, 92-0215, 1992 WL 200027 (D.D.C. July 29, 1992). Such disguise, however, may not obstruct the jury's ability to assess the witnesses' demeanor and

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mannerisms. The witnesses may not, for example, wear dark sunglasses that would interfere with the jury's ability to assess their credibility. Nor can the witnesses apply "heavy latex molds," as suggested by Defendant Salah. Further, if the disguise interferes with the ability to assess credibility, the Court will direct the witnesses to modify it.

V. Private Access to the Courtroom

The government has moved for permission for the ISA witnesses to have private access to the courthouse and the courtroom. Defendant Salah does not object to this request as long as his witnesses can use the same private access, if desired. Defendant Ashqar, however, objects to this request.

The ISA witnesses may use a private entrance to the courthouse and the courtroom. *See Salah,* 412 F.Supp.2d at 928; *George*, 1992 WL 200027, at *3 (permitting undercover CIA witnesses to "enter and exit the courthouse and the courtroom without using the public entrances"). This procedure will assist in protecting the identity of these witnesses and ensuring their safety. They may not, however, do so in the presence of the jury. The Court will have them enter the courtroom prior to the jury entering the courtroom. If Defendant Salah wishes to have any particular witnesses use a private entrance, he can make such a request at the appropriate time.

Accordingly, the Court grants the government's request for the ISA agents to use a private entrance to the courthouse and courtroom. The government is directed to coordinate the private access procedures with the United States Marshals Service.

1. Defendant Salah objects in his response to several security measures employed by the Court in this case, including defense counsel (like the general public) passing through metal detectors before entering the courtroom. As Defendant knows, **prior** to the filing of his response and almost immediately after counsel brought it to the Court's attention, the Court granted counsel's request that defense counsel not have to proceed through the metal detector before entering the courtroom. Given this relief, it is curious that Defendant Salah still complains about this procedure. Further, contrary to Defendant's suggestion, the Court has confirmed with the United States Marshals Service and the Court Security Officers in charge of screening at the courtroom door that no person has been searched by "trained dogs." (R. 607-1, at n.1.) During the suppression hearing, the Court approved the use of a bomb-sniffing dog for the courtroom and for any packages that anyone sought to bring into the courtroom. The Court further notes that it has invited Defendant Salah to submit evidence of any potential prejudice these security measures have caused, yet Defendant has not submitted any such evidence.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	Case No. 12 CR 723
v.	)	
ADEL DAOUD,	)	

DECLARATION
OF MICHAEL STEINBACH,
ASSISTANT DIRECTOR, COUNTERTERRORISM DIVISION,
FEDERAL BUREAU OF INVESTIGATION

I, Michael Steinbach, hereby declare and say:

1. I am the Assistant Director of the Counterterrorism Division, Federal Bureau of Investigation ("FBI"), United States Department of Justice. I am responsible for, among other things, directing the conduct of FBI counterterrorism investigations. As the Assistant Director, I have official supervision and control over the files and records of the Counterterrorism Division, FBI, Washington, D.C.

2. As the Acting Assistant Director of the FBI's Counterterrorism Division, I have been delegated original classification authority by the Director of the FBI. See Executive Order 13526, Section 1.3(c). As a result, I am responsible for the protection of classified information within the Counterterrorism Division, including the sources and

methods used by the FBI in the collection of information in national security investigations. To that end, I have been authorized by the Director of the FBI to execute declarations and other affidavits in order to protect such classified information.

3. (U) The matters stated herein are based upon my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information furnished by Special Agents, or other employees of the FBI. My conclusions have been reached in accordance therewith.

4. This declaration is submitted in support of the Government's Motion for a Protective Order Pertaining to the Testimony of the Undercover Agents at Trial. Specifically, the Government's Motion seeks a Protective Order to exclude from discovery certain information that would identify the Undercover Employee ("UCE") utilized in this case (e.g., name, contact information, and/or physical characteristics). In addition, the Government's Motion requests the court to put measures in place while the FBI undercover employee (UCE) testifies, in order to prevent the disclosure of his true identity and limit the disclosure of his physical appearance. I understand that the Government seeks narrowly tailored security measures in order to (1) prevent the compromise of several national security investigations in which the UCE has been, or is currently involved; (2) ensure that the UCE may be used in future investigations, which could prevent future terrorist attacks; and (3) protect the safety of the UCE and his family from potential threats or terrorist attacks by individuals sympathetic to terrorist organizations.

5. Specifically, I understand that the Government seeks to (1) allow the UCE to testify under a pseudonym, (2) prohibit the defense from asking the UCE questions

that reveal personally identifiable information or could lead to the UCE's identity, (3) allow the UCE to wear a light disguise, (4) have the UCE testify in a courtroom with only essential personnel while the public and press observe from a second courtroom via Closed Circuit Television (CCTV) that does not show the UCE, (5) allow that any videos or photographs that are shown to the public or press via CCTV that depict the UCE have the face of the UCE obscured or pixilated, (6) prohibit the disclosure of any audio recording, or similar reproduction of the voice or visual image of the UCE, (7) allow the UCE to use non-public entrances and exits to the courthouse and courtroom, and (8) prohibit all non-official recording and photographic devices from the courtroom in which the UCE testifies as well as the courtroom in which the CCTV feed is shown during the UCE's testimony.

I. THE FBI's UNDERCOVER PROGRAM

6. The use of the undercover technique is an important tool in the detection, prevention, and prosecution of numerous investigations that are central to the FBI's national security and law enforcement missions. The services rendered by FBI UCEs provide important information that the United States government needs to serve these missions, often at great danger to the personal safety of the UCE and to his/her family.

7. The successful use of the undercover technique in FBI investigations is dependent upon a small group of personnel who are trained and certified as UCEs. The FBI expends substantial financial resources and effort to select, train and protect its UCEs. The certification process is rigorous and multi-tiered, thus emphasizing the need to select only those individuals who can perform safely and effectively in an undercover capacity. UCEs are highly valuable and non-fungible assets and therefore the FBI goes to great

lengths to protect their true identities due to significant, legitimate fears of retaliation against each UCE or that UCE's family.

8. Thus, the FBI has an extremely substantial interest in the integrity of its undercover program and perhaps more importantly in the personal safety of the UCE and his family. The program could be seriously prejudiced by requiring the UCE to testify in any manner that could reveal his true identity.

II. CONSEQUENCES OF FAILING TO PUT PROTECTIVE MEASURES IN PLACE

9. For the reasons described below, failure to put in place the requested protective measures could reasonably compromise several national security investigations involving the UCE, could prevent the UCE from future participation in undercover roles, and perhaps most importantly could put the UCE and his family in jeopardy of physical harm. If the identity of the UCE is revealed and concomitantly his position as an FBI UCE, then any investigation involving him could be compromised. A terrorist organization could use a UCE's true identity to obtain pictures of the UCE either from the internet or by using the identity to locate and photograph the UCE. Using the internet, the terrorist organization could widely circulate the picture of the UCE to its operatives. The FBI has concerns that in such a scenario the UCE and his family could be threatened, harmed, or killed in an effort to thwart the investigation, retaliate against the UCE, or dissuade other FBI personnel from participating in the undercover program. In addition, if the true identity and physical characteristics or appearance are revealed then the UCE will not be able to participate in any future investigation, as he will no longer be able to act in an "undercover" role. Since the UCE involved with this investigation has very

unique abilities and skills, the consequences of his inability to participate in future investigations cannot be underestimated. The FBI would be left without an important resource to fulfill its mission. Finally, and perhaps mostly importantly, if the UCE's true identity is disclosed then his physical safety and that of his family will be put in significant jeopardy.

10. These conclusions are not idle speculation. The UCE has already been threatened as a result of his undercover activities in this counter terrorism investigation. The concern regarding the UCE's vulnerability of being targeted for harm and exposure has been heightened considerably by the increasing availability of personal information on the Internet. Indeed, several web sites exist which encourage the posting and dissemination of the identities and personal information about law enforcement undercover agents/officers. With the simple click of a mouse, personally-identifying information about or a photograph of a UCE – like the valuable law enforcement officers in this case– can be transmitted instantly to adversaries. The Justice Department and other law enforcement agencies have argued that the dissemination of such information on the internet not only compromises pending or future investigations, but also places undercover agents in potentially grave danger. That is certainly the case here; the vulnerability of the UCE and his family to personal attack is substantially greater if the UCE's true identity and physical characteristics are disclosed.

11. Accordingly, and consistent with my responsibilities, I am submitting this declaration to support the government's request that this Court order certain security measures to protect against the disclosure of the true identity and physical characteristics of the UCE.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2014

_____

Michael Steinbach
Assistant Director
Counterterrorism Division
Federal Bureau of Investigation