National Security Prosecutions

Protective Orders

Federal Judicial Center

February 2013

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Introduction

Assembled here are protective orders used by federal judges in criminal prosecutions in national security cases. Among the most important goals of the protective orders here is the protection of classified information. These protective orders were used in cases described in two companion publications: *National Security Case Studies: Special Case-Management Challenges* (full case studies) and *National Security Case Management: An Annotated Guide* (summary guide with case-study annotations).

These and other resources potentially helpful to judges presiding over national security cases are assembled at the following FJC Online site: http://cwn.fjc.dcn/fjconline/home.nsf/pages/1227.

These protective orders frequently refer to "court security officers," which was a term used until January 15, 2011, for information security experts provided to the courts by the Department of Justice's Litigation Security Group and now known as "classified information security officers."

United States v. Fawwaz and Bary
(S.D.N.Y. 1:98-cr-1023-15 and -17)

Protective Order **2**

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JUDGE KAPLAN'S CHAMBERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - : 98 Cr. 1023 (LAK)

KHALID AL FAWWAZ, and :
ADEL ABDEL BARY,

:

Defendants.

:

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DATE FILED: 1/11/13

PROTECTIVE ORDER
PERTAINING TO CLASSIFIED INFORMATION

This matter comes before the Court upon the Government's Motion for a Protective Order pursuant to Section 3 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 § 3, to protect against the disclosure in this case of any classified information disclosed by the Government to, or otherwise in the possession of, the Defendant or the Defense.

Pursuant to the authority granted under Sections 3 and 9 of CIPA, the Security Procedures Established Pursuant to Pub. L. No. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA § 9), Rules 16(d) and 57 of the Federal Rules of Criminal Procedure, and the general supervisory authority of the Court, and to protect the national security, the following Modified Protective Order is entered.

General Provisions

1. The Court finds that this case will involve information that has been currently classified in the interest of national security of the United States pursuant to Executive Order 13526, as amended. The storage, handling and control of this information will require special security precautions mandated by statute, executive order, and regulation, and access to which requires the appropriate security clearances, and a "need to know" determination pursuant to Executive Order 13526.

2. The purpose of this Order is to establish procedures that must be followed by the Defense and the Government, and any other person who receives access to, or otherwise is in possession of, classified information as a result of their participation in this case. These procedures will apply to all pretrial, trial, post-trial, and appellate matters concerning classified information, and may be modified from time to time by further order of the Court pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, Sections 3 and 9 of CIPA, and the Court's inherent supervisory authority to ensure a fair and expeditious trial.

Definitions

3. The following definitions shall apply to this Order:

a. The term "Defense" shall mean any counsel for the defendant, employees or contractors of counsel for the Defendant

(including, without limitation, investigators, paralegals, experts and translators), and any witnesses for the Defendant so authorized by the Court.

b. The term "classified information" shall include:

(i) Any document or information contained therein, which has been classified by any Executive Branch agency in the interests of national security pursuant to Executive Order 13526, as amended, or its predecessor orders, as "CONFIDENTIAL," "SECRET," "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" ("SCI");

(ii) Any document or information that is currently properly classified, as set forth in (i), and that has been approved by the Government or the Court for release to the Defendants. All classified information that is approved for release to the Defendant will contain an appropriate classification marking and will be marked "Releasable to Fawwaz," "Releasable to Bary," and/or "Releasable to Fawwaz and Bary," respectively;

(iii) Any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States Government that was classified, and (B) has subsequently been classified by the United States pursuant to executive order as "CONFIDENTIAL," "SECRET," "TOP SECRET," or additionally controlled as SCI;

(iv) Any document or information that the Defense knows or reasonably should know contains classified information, including information acquired or conveyed orally;

(v) Any information, regardless of place of origin, to include "foreign government information" as that term is defined in Executive Order 13526, that could reasonably be believed to contain classified information or potentially convey classified information, and that refers or relates to national security or intelligence matters; and

(vi) Any document or information as to which the Defense has been notified orally or in writing contains classified information.

c. The terms "document" and "information" shall include, but are not limited to, all written, printed, visual or audible matter of any kind, formal or informal, including originals, conforming copies, and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise). The terms "document" and "information" shall also include without limitation, notes (handwritten, oral, or electronic); letters; correspondence; memoranda; reports; summaries; photographs; maps; charts; graphs; inter-office communications; notations of any sort concerning conversations, meetings or other communications; bulletins; teletypes; telecopies; telegrams; telexes; cables; facsimiles; invoices;

worksheets and drafts; microfiche; microfilm; videotapes; sound recordings of any kind; motion pictures; electronic, mechanical or electric records of any kind, including but not limited to tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes, disks, or thumb drives and all manner of electronic data processing storage; and alterations, modifications, changes and amendments of any kind to the foregoing.

d. The term "access to classified information" shall mean having access to, reviewing, reading, learning, or otherwise coming to know in any manner classified information.

e. The term "Secure Area" shall mean a sensitive compartmented information facility ("SCIF") accredited by a Court Security Officer for the storage, handling, and control of classified information.

Classified Information, General Provisions

4. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been "declassified" by the agency or department that originated the document or information contained therein ("originating agency").

5. Any classified information provided to the Defense by the Government is to be used solely by the Defense and solely for the purpose of preparing the defense. The Defense may not

disclose or cause to be disclosed in connection with this case any information known or reasonably believed to be classified information except as otherwise provided herein.

6. The Defense may not disclose classified information to the Defendants unless that same information has been previously provided to the Defense by the Defendants. The Defense may not confirm or deny to the Defendants the assertions made by the Defendants based on knowledge the Defense may have obtained from classified information, except where that classified information has been provided to the Defendants.

7. The Defense shall not disclose classified information to any person, except to the Court, Government personnel who hold appropriate security clearances and have been determined to have a need to know that information, and those authorized pursuant to this Order.

8. Information that is classified that also appears in the public domain is not thereby automatically declassified unless it appears in the public domain as the result of an official statement by a U.S. Government Executive Branch official who is authorized to declassify the information. Individuals who by virtue of this Order or any other court order are granted access to classified information may not confirm or deny classified information that appears in the public domain. Prior to any attempt by the Defense to have such information confirmed or

denied at trial or in any public proceeding in this case, the Defense must comply with the notification requirements of Section 5 of CIPA and all provisions of this Order.

9. In the event that classified information enters the public domain, the Defense is precluded from making private or public statements where the statements would reveal personal knowledge from non-public sources regarding the classified status of the information, or would disclose that the Defense had personal access to classified information confirming, contradicting, or otherwise relating to the information already in the public domain. The Defense is not precluded from citing or repeating information in the public domain that counsel does not know or have reason to believe to be classified information, or derived from classified information.

Security Procedures

10. In accordance with the provisions of CIPA and the security procedures promulgated by the Chief Justice of the United States pursuant to that Act, this Court designates Michael P. Macisso as the Classified Information Security Officer ("CISO") and Christine E. Gunning, Jennifer H. Campbell, Branden M. Forsgren, Daniel O. Hartenstine, Joan B. Kennedy, Maura L. Peterson, Harry J. Rucker, and W. Scooter Slade as alternate CISOs for this case, for the purpose of providing security arrangements necessary to protect against unauthorized disclosure

any classified information that has been made available to the Defense in connection with this case. The Defense shall seek guidance from the CISO with regard to appropriate storage, handling, transmittal, and use of classified information.

11. The Court has been advised, through the CISO, that Assistant United States Attorneys Sean S. Buckley, Rachel P. Kovner, Stephen J. Ritchin, and their supervisors, as well as certain other Department of Justice employees ("Counsel for the Government"), have the requisite security clearances allowing them to have access to the classified information that relates to this case.

12. *Protection of Classified Information.* The Court finds that, in order to protect the classified documents and information involved in this case, no person, including the Defense, except for government attorneys, appropriately cleared Department of Justice employees, personnel of the originating agency, shall have access to the classified documents and information in this case. No defense counsel or defense counsel employee, including any translator, shall have access to any classified documents and information in this case unless that person shall first have:

a. Received from the CISO the appropriate security clearance for the level of the classified information involved in this case;

b. A "need to know" the classified information at issue in this proceeding; and

c. Signed the Memorandum of Understanding in the form attached hereto agreeing to comply with the terms of this Order. The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case, of counsel for the Defendants or any other member of the Defense, shall not release that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

13. Pursuant to Section 4 of the security procedures promulgated pursuant to CIPA, no court personnel (except for the Judge) required by this Court for its assistance shall have access to classified information involved in this case unless that person shall first has received the necessary security clearance as determined by the CISO.

14. Standard Form 86, "Questionnaire for National Security Positions," attached releases, and full fingerprints shall be completed and submitted to the CISO forthwith by all defense counsel not otherwise already cleared, all persons whose assistance the defense reasonably requires, and by such courtroom personnel as the Court requires for its assistance. The CISO shall undertake all reasonable steps to process all security clearance applications in accordance with applicable

regulations.[1]

15. Prior security clearance and a "need to know" as determined by any government entity as applying to one person does not automatically give that person the authority to disclose any classified information to any other individual, even if that individual also has a security clearance. By way of example, but not limitation, defense counsel with appropriate clearances and a need to know, as determined by the Government, are not authorized to discuss or otherwise disclose such classified information with an uncleared defendant absent approval of the Court or written permission of the Government.

16. *Secure Area for the Defense*. The CISO shall arrange for an approved Secure Area for use by the Defense. The CISO shall establish procedures to assure that the Secure Area is accessible during business hours to the Defense, and at other times upon reasonable request as approved by the CISO. The Secure Area shall contain a separate working area for the Defense and will be outfitted with any secure office equipment requested by the Defense that is reasonable and necessary to the preparation of the defense. The CISO, in consultation with counsel for the Defendants, shall establish procedures to assure

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[1] The parties note for the Court that the representatives of the Defense that have been appointed as counsel in this matter as of the date of this filing previously each have provided their respective completed Standard Form 86, as well as fingerprints to the CISO in order to obtain the necessary clearances.

that the Secure Area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the Secure Area unless so authorized by the CISO with notice provided to the Court. The CISO shall not reveal to the Government the content of any conversations he may hear among the Defense, nor reveal the nature of the documents being reviewed, or the work being generated. The presence of the CISO shall not operate to render inapplicable the attorney-client privilege.

17. *Filing of Papers by the Defense*. Any pleading or other document filed by the Defense that counsel for the Defendants knows or reasonably should know contains classified information as defined in paragraph 3(b), shall be filed as follows:

a. The document shall be filed under seal with the Court Security Officer or a designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer." The time of physical submission to the CISO (or alternate CISO designated by the CISO) shall be considered the date and time of filing. Within a reasonable time after making a submission to the CISO, the Defense shall file on the public record in the CM/ECF system a "Notice of Filing" notifying the Court that the submission was made to the CISO or a designee of his choosing who has obtained the necessary security clearance and providing a title of the document which does not disclose any potentially

classified information.

b. The CISO or a designee of his choosing who has obtained the necessary security clearance shall promptly examine the pleading or document and, in consultation with representatives of the appropriate departments or agencies, determine whether the pleading or document contains classified information. If it is determined that the pleading or document contains classified information, the CISO shall ensure that the relevant portion of the document, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all papers filed by the Defense that do not contain classified information shall be immediately unsealed by the CISO and placed in the public record. The CISO shall immediately deliver under seal to the Court and Counsel for the Government any pleading or document to be filed by the Defense that contains classified information, unless the pleading or document is an ex parte filing.

18. *Filing of Papers by the Government*. Only the portions of pleadings or documents filed by the Government that contain classified information shall be filed under seal with the Court through the CISO. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The time of physical submission to the CISO (or designee) shall be considered the date and time of filing. The CISO shall

immediately deliver under seal to the Court and counsel for the Defendants any pleading or document to be filed by the Government that contains classified information, unless the pleading or document is an ex parte filing. Within a reasonable time after making a submission to the CISO, the Government shall file on the public record in the CM/ECF system a "Notice of Filing" notifying the Court that the submission was made to the CISO or a designee of his choosing who has obtained the necessary security clearance and providing a title of the document which does not disclose any potentially classified information.

19. *Record and Maintenance of Classified Filings*. The CISO shall maintain a separate sealed record for those materials which are classified. The CISO shall be responsible for the maintaining of the secured records for purposes of later proceedings or appeal.

20. *The Classified Information Procedures Act*. Procedures for public disclosure of classified information in this case shall be those established by CIPA. The Defense shall comply with the requirements of CIPA Section 5 prior to any disclosure of classified information during any proceeding in this case. As set forth in Section 5, the Defense shall not disclose any information known or believed to be classified in connection with any proceeding until notice has been given to Counsel for the Government and until the Government has been afforded a

reasonable opportunity to seek a determination pursuant to the procedures set forth in CIPA Section 6, and until the time for the Government to appeal such determination under CIPA Section 7 has expired or any appeal under Section 7 by the Government is decided. Pretrial conferences involving classified information shall be conducted in camera in the interest of national security, be attended only by persons with access to classified information and a need to know, and the transcripts of such proceedings shall be maintained under seal.

21. *Access to Classified Information*. In the interest of the national security, representatives of the Defense granted access to classified information shall have access to classified information only as follows:

a. All classified information produced by the Government to counsel for the Defendants in discovery or otherwise, and all classified information possessed, created or maintained by the Defense, including notes and any other work product, shall be stored, maintained and used only in the Secure Area established by the CISO.

b. The Defense shall have free access to the classified information made available to them in the Secure Area established by the CISO and shall be allowed to take notes and prepare documents with respect to those materials.

c. No representative of the Defense (including, but

not limited to, counsel, investigators, paralegals, translators, experts and witnesses) shall copy or reproduce any classified information in any manner or form, except with the approval of the CISO or in accordance with the procedures established by the CISO for the operation of the Secure Area.

d. All documents prepared by the Defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in the Secure Area on word processing equipment approved by the CISO. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the Secure Area unless and until the CISO determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the Government or any other party.

e. The Defense shall discuss classified information only within the Secure Area or in an area authorized by the CISO.

f. The Defense shall not disclose, without prior approval of the Court, classified information to any person not named in this Order except the Court, Court personnel, and Government personnel identified by the CISO as having the appropriate clearances and the need to know. Counsel for the

Government shall be given an opportunity to be heard in response to any Defense request for disclosure to a person not identified in this Order. Any person approved by the Court for access to classified information under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not identified in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of counsel for the Defendant.

g. The Defense shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the Internet, or in the presence of any person who has not been granted access to classified information by the Court.

h. Any documents written by the Defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. The Defense shall not disclose classified information to the Defendants -- other than materials marked "Releasable to Fawwaz," "Releasable to Bary," and/or "Releasable

to Fawwaz and Bary," respectively -- absent leave of this Court or written permission of the Government. Counsel for the Government shall be given an opportunity to be heard in response to any Defense request for disclosure to the Defendants of such classified information.

22. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. The purpose of this Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformance with this Order.

23. All classified documents and information to which the Defense has access in this case are now and will remain the property of the United States. Upon demand of the CISO, these persons shall return to the CISO all classified information in their possession obtained through discovery from the Government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the Defense that do or may contain classified information shall remain at all times in the custody of the CISO for the duration of the case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the CISO in the presence of counsel for the Defendant.

24. Nothing contained in this Order shall be construed as a waiver of any right of the Defendants. No admission made by the Defendants or their counsel during pretrial conferences may be used against the Defendants unless it is in writing and signed by the respective Defendant. See CIPA § 2.

25. A copy of this Order shall be issued forthwith to counsel for the Defendants who shall be responsible for advising the Defendants and representatives of the Defense of this Order. Counsel for the Defendants, and any other representatives of the Defense who will be provided access to the classified information, shall execute the Memorandum of Understanding

described in paragraph 8 of this Order, and counsel for the Defendants shall file executed originals of such documents with the Court and the CISO and serve an executed original upon the Government. The execution and filing of the Memorandum of Understanding is a condition precedent for counsel for the Defendant and any other representative of the Defense to have access to classified information.

Dated: New York, New York
January 11, 2013

SO ORDERED:

HONORABLE LEWIS A. KAPLAN
United States District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

- v. - : 98 Cr. 1023 (LAK)

KHALID AL FAWWAZ, and :
ADEL ABDEL BARY,
:
Defendants.
:
- - - - - - - - - - - - - - - - - - x

MEMORANDUM OF UNDERSTANDING REGARDING RECEIPT OF CLASSIFIED INFORMATION

Having familiarized myself with the applicable statutes, regulations, and orders, related to, but not limited to, Title 18 United States Code, including unauthorized disclosure of classified information, espionage and related offenses; The Intelligence Agents Identities Protection Act, Title 50 U.S.C. Section 421;; Title 18 U.S.C. Section 641; Title 50 U.S.C. Section 783; 28 C.F.R. 17 et seq., and Executive Order 13526; I understand that I may be the recipient of information and documents that concern the present and future security of the United States and belong to the United States, and that such documents and information together with the methods and sources of collecting it are classified by the United States Government. In consideration for the disclosure of classified information and documents:

(1) I agree that I shall never divulge, publish, or reveal either by word, conduct or any other means, such

classified documents and information unless specifically authorized in writing to do so by an authorized representative of the United States Government; or as expressly authorized by the Court pursuant to the Classified Information Procedures Act and the Protective Order entered in the case of United States v. Khalid al Fawwaz & Adel Abdel Bary, 98 Cr. 1023 (LAK), Southern District of New York.

(2) I agree that this Memorandum and any other non-disclosure agreement signed by me will remain forever binding on me.

(3) I have received, read, and understand the Protective Order entered by the United States District Court for the Southern District of New York on _____, 2013, in the case of United States v. Khalid al Fawwaz & Adel Abdel Bary, 98 Cr. 1023 (LAK), relating to classified information, and I agree to comply with the provisions thereof.

_____ _____
Michael P. Macisso Date
Classified Information Security Officer

_____ _____
_____, Esq. Date
Counsel for Khalid al Fawwaz

_____ _____
_____, Esq. Date
Counsel for Adel Abdel Bary

United States v. Sedaghaty
(D. Or. 6:05-cr-60008)

Protective Order **24**

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA

v.

PIROUZ SEDAGHATY,

Defendant.

Case No. 05-cr-60008-02-HO

[~~Proposed~~] PROTECTIVE ORDER PERTAINING TO CLASSIFIED INFORMATION

This matter is before the Court upon the Government's Motion for a Protective Order Pertaining to Classified Information to prevent the unauthorized disclosure or dissemination of classified national security information and documents which may be reviewed by or made available to counsel for the defendant in this case.

Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"), requires entry of a protective order upon motion by the government. The government has moved for an order to protect against the disclosure of classified information to be disclosed by the United States to defense counsel in this case.

Pursuant to the authority granted under Section 3 of CIPA; the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following Section 9 of CIPA) ("Security Procedures"); Rule 16(d) of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

THE COURT HEREBY FINDS AND ORDERS:

1. By order dated February 26, 2010 (CR 278), the Court authorized the government to provide a classified summary of certain specific classified national security information to defense counsel. This case will therefore involve classified national security information, the storage, handling and control of which, by law or regulation, requires special security precautions, and access to which requires a security clearance and an actual need to know.

2. The purpose of this Order is to establish the procedures that must be followed by defense counsel, other counsel involved in this case, persons assisting defense counsel, other Court personnel, and all other individuals who are granted access to classified information or documents in connection with this case. It is a further purpose of this Order to ensure that those authorized by the Order to receive classified information do not divulge the classified information disclosed to them to anyone who is not authorized to receive it, or otherwise use the classified information, except in conformity with this Order or with prior written authorization from the originating agency.

3. The procedures set forth in this Protective Order and in CIPA will apply to all pretrial, trial, post-trial and appellate aspects concerning classified information in this case, and may be modified from time to time by further order of the Court acting pursuant to Fed. R. Crim. P. 16(d), CIPA, and the Court's inherent supervisory authority to ensure a fair trial.

4. Definitions. The following definitions shall apply to this Order:

a. The terms "classified national security information and documents," "classified documents and information," "classified information," and "classified documents" refer to:

/ / /

i. Any document that has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12958, as amended, as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" (SCI), and any information contained in such documents;

ii. Any document or information that the defendant or the defense know, or should reasonably know, has been derived from United States government information that was classified, regardless whether such document or information has subsequently been classified by the government pursuant to Executive Order 12958 as amended;

iii. Verbal classified information that has been disclosed by attorneys for the government or by a witness in a court proceeding to the defendant or the defense; or

iv. Any document or information, including verbal information and "foreign government information" (as that term is defined in Executive Order 12958, as amended), that the defendant or the defense has been notified is classified, unless already possessed by or known to the defendant or the defense, provided that such knowledge is not derived from materials described in subparagraph 5(a)(i),(ii), or (iii) above.

b. The words "document" and "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

i. Papers; correspondence; memoranda; notes; letters; reports, summaries; interoffice and intra-office communications; notations of any sort concerning conversations, meetings or other communications; bulletins; telexes; cables; teletypes; telegrams;

facsimiles; e-mails; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

ii. Graphic or oral records or representations of any kind, including, but not limited to, photographs, maps, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind and motion pictures;

iii. Electronic, mechanical, magnetic, optical or electric records of any kind, including, but not limited to, data stored on tapes, cassettes, CD-ROMS, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

iv. Information acquired aurally.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

d. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

e. "The defense" means any person assisting the defendant with the preparation of his defense in this case including (but not limited to) counsel for the defendant and employees of, consultants to or contractors for defense counsel.

f. "Attorneys for the government," "government counsel," and "counsel for the government" means the attorneys listed in paragraph 9.

g. "Originating agency" means the government agency, department or entity from which the classified document or the information contained therein originated.

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5. Any document or information provided by attorneys for the government to the defense referencing, mentioning, originating from, or concerning any agency, or part of an agency, that is a member of the United States "intelligence community" (as defined in Section 3.4 of the National Security Act of 1947, codified at 50 U.S.C. § 401a(4)), other than the FBI, or information in possession of such agency, or part thereof, other than the FBI, shall be presumed to fall within the meaning of classified information unless and until the Court Security Officer or an attorney for the government advises otherwise in writing.

6. All classified documents and information shall remain classified unless such document or information bears a clear indication that it has been declassified by the originating agency.

7. Information in the public domain is ordinarily not classified. However, such information may be considered classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has had access to the classified information, and that confirmation corroborated the information in question. Any attempt by the defendant or the defense to have such information confirmed or denied at trial, or in connection with any pretrial, post-trial or other proceeding in this case, shall be governed by CIPA and the provisions of this Order.

8. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Security Specialist Winfield S. "Scooter" Slade as Court Security Officer for this case and Security Specialists John D. Arszulowicz, Jennifer H. Campbell, Miguel A. Ferrer, Christine E. Gunning, Daniel O. Hartenstine, Joan B. Kennedy, Michael P. Macisso, and Maura P. Peterson as Alternate Court Security Officers (collectively "the CSO"), for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or

information to be made available in connection with this case. The defense shall seek guidance from the CSO with regard to the appropriate storage, handling, transmittal, and use of classified information.

9. The Court has been advised that the following government attorneys will be working on this case: Assistant United States Attorneys Charles F. Gorder, Jr. and Christopher L. Cardani, along with various supervisory attorneys and other attorneys specifically designated in the United States Attorney's Office, District of Oregon. The Court has also been advised that the government attorneys have the requisite security clearances to have access to the classified information which is the subject of the Court's Order of February 26, 2010 (CR 278) in this case. The government may add additional attorneys with notice to the Court and defense counsel.

10. Protection of Classified Documents and Information: The Court finds that, in order to protect the classified documents and information involved in this case, no person except the attorneys for the government, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, judicial personnel, and members of the defense, shall have access to the classified documents and information in this case.

a. Judicial personnel, other than the Court, may obtain access to classified documents or information after having been granted security clearance by the CSO.

b. No member of the defense shall have access to any classified documents or information in this case unless that person shall first have:

i. received approval for access to the particular classified documents or information from the government or, should the government reject the request, from the Court in a

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separate order, which shall not occur except upon a showing of a need to know the particular classified information and upon consideration of any responsive pleading from the government;

ii. received the necessary security clearance at the appropriate level of classification as determined by the Department of Justice Security Officer working in conjunction with the CSO; and

iii. signed a Memorandum of Understanding (a form for which is attached hereto), agreeing to comply with the terms of this Order.

c. Subject to the provisions of subparagraph b above, the following attorneys for the defendant shall be given access to classified documents and information as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case: Steven T. Wax, Lawrence Matasar, and William Teesdale.

d. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court–with prior notice to the government–an approval for access to the appropriate level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

e. The substitution, departure or removal of counsel for the defense or anyone associated with the defense as an employee, consultant, contractor, witness or otherwise shall not

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release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

f. The defendant shall not have access to any classified documents or information in this case.

11. For the purpose of establishing the security clearances necessary for access to classified documents and information that may be involved in this case, the defense, and such Court personnel as the Court requires for its assistance shall forthwith complete and submit to the CSO Standard Form 86 ("Security Investigation Data for Sensitive Position"), the necessary releases, and full fingerprints, unless such person already holds an appropriate security clearance and is approved for access to classified documents and information in this case. The CSO shall take all reasonable steps to process all security clearance applications in a timely manner. The CSO shall not disclose to government attorneys any information supplied by anyone applying for security clearance pursuant to this Order.

12. The CSO shall arrange for and maintain an appropriately approved secure area for the use of the defense. The CSO shall establish procedures to ensure that the secure area is accessible during normal business hours, and at other times on reasonable request as approved by the CSO, to the defense. The secure area will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of a defense in this case. The CSO, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from the secure area by anyone, including the defense, unless authorized by the CSO. No person, including

the defense, shall copy or reproduce any classified document or information in any form, except with the approval of the CSO or in accordance with the procedures established by the CSO for the operation of the secure area.

13. Filing of Papers by the Defense: Any pleading or other document filed by the defense that contains classified information or information that is reasonably believed to be classified shall be filed under seal with the Court through the CSO or his designee. Pleadings filed under seal with the CSO shall be marked, "Filed In Camera and Under Seal with the Court Security Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. At the time of making a physical submission to the Court Security Officer or designee, counsel shall file on the public record in the CM/ECF system a notice of filing that notifies the Court that a filing has been made. The CSO shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the CSO determines that the pleading or document contains classified information, he shall ensure that the portion of the document that contains classified information, and only that portion, is marked with the appropriate classification marking(s) and remains under seal. Any papers filed by the defense that do not contain any classified information shall be immediately unsealed by the CSO and placed in the public record. The CSO shall immediately deliver under seal to the Court and attorneys for the government any pleading or document filed by the defense that contains classified information.

14. Filing of Papers by the Government: Any pleading or document filed by attorneys for the government that contains classified information shall be filed under seal with the Court

through the CSO or his designee. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. At the time of making a physical submission to the Court Security Officer or designee, counsel shall file on the public record in the CM/ECF system a notice of filing that notifies the Court that a filing has been made. The time of physical submission to the CSO shall be considered that date and time of filing or as otherwise determined by the CSO. The CSO shall immediately deliver under seal to the Court and the defense (unless such filing is an *ex parte* filing) any pleading or document filed by the government that contains classified information, provided that the defense has proper clearance and need-to-know to receive the pleading or document.

15. Sealing of Records: The CSO shall maintain a separate sealed record for those pleadings or documents containing classified materials. The CSO shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

16. Access to Classified Information: The defense shall have access to classified documents or information only as follows:

a. All classified documents or information produced by the government to the defense, in discovery or otherwise, and all classified documents or information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the CSO or in another area authorized by the CSO.

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b. The defense shall have free access in the secure area to the classified documents or information made available to them in accordance with this Order, and shall be allowed to take notes and prepare documents with respect to those materials.

c. All documents prepared by the defense (including pleadings or other documents intended for filing with the Court) that contain or deal in any way with classified information shall be transcribed, recorded, typed, duplicated, copied, and otherwise prepared only by persons who have received an appropriate approval for access to classified information, and only in the secure area on approved word processing and data handling equipment, and in accordance with the procedures approved by the CSO. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, and exhibits) containing classified information shall be maintained in the secure area unless and until the CSO determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government.

d. The defense shall discuss classified documents or information only within the secure area or in another area authorized by the CSO, and shall not discuss or attempt to discuss classified information over any standard commercial telecommunications system or office communication system, including, but not limited to, by facsimile and over the internet.

e. The CSO shall not reveal to the government or the Court the content of any conversation he may hear among the defense, reveal the nature of the documents being reviewed by them, or the work generated by them. In addition, the presence of the CSO shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client or work product privilege.

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17. Disclosure of Classified Information: The defense shall not disclose, without prior approval of the Court, any classified document or information to any person not authorized pursuant to this Order, except for the Court or those Court personnel, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, or attorneys for the government who have been identified by the CSO as having the appropriate clearances and the need-to-know and in accordance with the procedures of CIPA and the procedures established by the CSO. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court a Memorandum of Understanding in the form attached to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that classified documents or information be disclosed to a person not named in this Order, the CSO shall promptly seek to obtain a security clearance for such person at the request of defense counsel.

a. No person shall discuss classified documents or information in the presence of any person who has not been granted access by the Court to such classified documents or information.

b. No person shall disclose classified documents or information to the defendant.

c. Procedures for the use or the public disclosure of classified information shall be those provided in Sections 5, 6 and 8 of CIPA. These provisions, and this Order, require that:

i. Any and all items which are classified that the defense seeks to use shall be listed in the defendant's Section 5 notices.

ii. To facilitate the filing of notices required under Section 5 of CIPA, the CSO shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at any pretrial proceeding, deposition, trial or post-trial or other proceeding. Nothing submitted by the defense to the CSO pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court or so designated by the defense.

18. Any unauthorized use or disclosure of classified information may constitute a violation of United States criminal law. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any breach of this Order may also result in the termination of the person's access to classified documents and information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States and may be used to the advantage of a foreign power against the interests of the United States.

19. All classified documents and information to which the defense has access in this case are now and forever remain the property of the government. Any member of the defense who receives classified documents or information shall return all such documents and information in their possession or for which they are responsible, upon demand of the CSO. Any notes, summaries, or other documents prepared by the defense that contain classified information shall remain at all times in the custody of the CSO for the duration of this case. All such notes, summaries, and other

documents shall be destroyed by the CSO in the presence of defense counsel, should they choose to be present, (a) one year after the judgment in this case is final or (b) at the conclusion of litigation (including appeals) of any motion filed pursuant to 28 U.S.C. § 2255, if said motion was filed within one year after the judgment became final, whichever event is later.

20. A copy of this Order shall be issued to the attorneys for the government, the CSO, and counsel of record for the defendant. Counsel for the defense shall be responsible for advising any other member of the defense who should be made aware of the contents of this Order. Counsel for the defendant and any other individuals who will be provided access to classified documents or information pursuant to this Order shall execute the Memorandum of Understanding in the form attached hereto. Counsel for the defendant shall file executed originals of such documents with the Court, and serve copies of executed originals of such documents upon the CSO and the government. The execution and filing of the Memorandum of Understanding is a condition precedent for any member of the defense or any other individual to have access to classified information.

21. This Protective Order is not intended to modify, amend, or supersede the Court's Order of May 16, 2008 (CR 103) which remains in full force and effect until further order of this or another Court. In addition, this Protective Order does not cover any aspects of access to or use of the material subject to the Order of May 16, 2008. Should that Order be changed, a new Protective Order addressing that material will be required before the defense can communicate, review the material, or prepare any pleadings.

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22. The Court may amend this Protective Order and/or issue additional Protective Orders as needed.

Dated this 19th day of March 2010.

Michael R. Hogan
THE HONORABLE MICHAEL R. HOGAN
United States District Judge

Presented by:

DWIGHT C. HOLTON, OSB #09054
United States Attorney
District of Oregon

/s/ Charles F. Gorder, Jr.
CHARLES F. GORDER, JR., OSB #91287
Assistant United States Attorney

/s/ Christopher L. Cardani
CHRISTOPHER L. CARDANI
Assistant United States Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA	**Case No. 05-cr-60008-02-HO**
v.	
PIROUZ SEDAGHATY,	**MEMORANDUM OF UNDERSTANDING**
Defendant.	

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in *United States v. Pirouz Sedaghaty*, Criminal Case No. 05-cr-60008-02-HO, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the District of Oregon in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
STEVEN T. WAX
Counsel for Defendant Pirouz Sedaghaty

_____
Date

_____
Witness Name

_____
Witness Signature

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA	**Case No. 05-cr-60008-02-HO**
v.	
PIROUZ SEDAGHATY,	**MEMORANDUM OF UNDERSTANDING**
Defendant.	

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2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

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4. I have received, read and understand the Protective Order entered by the United States District Court for the District of Oregon in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
LAWRENCE MATASAR
Counsel for Defendant Pirouz Sedaghaty

_____
Date

_____
Witness Name

_____
Witness Signature

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA	**Case No. 05-cr-60008-02-HO**
v.	
PIROUZ SEDAGHATY,	**MEMORANDUM OF UNDERSTANDING**
Defendant.	

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in *United States v. Pirouz Sedaghaty*, Criminal Case No. 05-cr-60008-02-HO, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the District of Oregon in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
WILLIAM TEESDALE
Chief Investigator for Counsel for
Defendant Pirouz Sedaghaty

_____
Date

_____
Witness Name

_____
Witness Signature

United States v. Ghailani
(S.D.N.Y. 1:98-cr-1023-9)

Protective Order: Unclassified **46**

Protective Order: Classified **50**

Filing Order **71**

RECEIVED
JUL 10 2009
JUDGE KAPLAN'S CHAMBERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA :

- v. - : (S10) 98 Cr. 1023 (LAK)

AHMED KHALFAN GHAILANI, :

Defendant. :

- - - - - - - - - - - - - - - - - - x

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED #: 7/15/09

MODIFIED PROTECTIVE ORDER
PERTAINING TO UNCLASSIFIED INFORMATION

UPON application of the Government, and with consent of the defense:

IT IS HEREBY ORDERED pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure that the Government shall segregate the discovery materials it produces to the defendant and his counsel of record[1] into two categories: (1) general discovery materials and (2) particularly sensitive discovery materials. The category to which particular discovery materials belong shall be clearly identified by the Government;

IT IS FURTHER ORDERED that "general discovery materials" shall not be further disseminated[2] by the defendant or his counsel to any individuals, organizations or other entities, other than: (i) members of the defense team (co-counsel,

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[1] Counsel of record means Gregory E. Cooper, Esq., and Peter Enrique Quijano, Esq.

[2] "Disseminated" means to provide a copy of the particular piece of discovery or quotations from it.

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 directly to the Court ex parte and under seal and no dissemination to such experts shall be made until approved by the Court. 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. In addition, the attorneys 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 "particularly sensitive discovery materials" shall not be further disseminated by the defendant or his counsel 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. Notice of proposed dissemination to defense experts shall be

provided to the Court ex parte and under seal and no dissemination to such experts shall be made until approved by the Court. 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. In addition, any copies provided by counsel shall be clearly marked as sensitive discovery materials. It is expressly understood that the attorneys of record for the defendant may not show any of such particularly 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 show particular identified item(s) to a witness and the purpose in doing so. The Notice shall be filed under seal. No disclosure of the item(s) to the witness(s) shall be made until the Court so permits;

IT IS FURTHER ORDERED that all such 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 and that none of the discovery materials produced by the Government to the defense shall be disseminated to, or discussed with, the media;

IT IS FURTHER ORDERED that none of the discovery materials produced by the Government to the defense shall be disseminated to, or discussed with, the media by the Government;

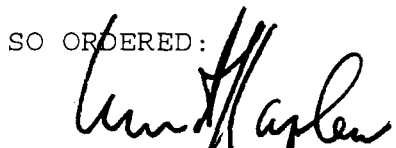
IT IS FURTHER ORDERED that any papers to be served upon the Court by either party which include discovery materials or refer to the contents of the particularly sensitive discovery materials shall be filed under seal;

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

FINALLY, IT IS ORDERED that nothing in this Order shall preclude the Government from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material.

Dated: New York, New York
July 14, 2009

SO ORDERED:



HON. LEWIS A. KAPLAN
United States District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED #: 7/21/09

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UNITED STATES OF AMERICA :

- v. - : (S10) 98 Cr. 1023 (LAK)

AHMED KHALFAN GHAILANI, :

Defendant. :

- - - - - - - - - - - - - - - - - - x

MODIFIED PROTECTIVE ORDER
PERTAINING TO CLASSIFIED INFORMATION

This matter comes before the Court upon the Government's Motion for a Modified Protective Order pursuant to Section 3 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 § 3, to protect against the disclosure in this case of any classified information disclosed by the Government to, or otherwise in the possession of, the Defendant or the Defense.

Pursuant to the authority granted under Sections 3 and 9 of CIPA, the Security Procedures Established Pursuant to Pub. L. No. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA § 9), Rules 16(d) and 57 of the Federal Rules of Criminal Procedure, and the general supervisory authority of the Court, and to protect the national security, the following Modified Protective Order is entered.

General Provisions

1. The Court finds that this case will involve information that has been currently in the interest of national security of

the United States pursuant to Executive Order 12958, as amended.[1] The storage, handling and control of this information will require special security precautions mandated by statute, executive order, and regulation, and access to which requires the appropriate security clearances, and a "need to know" determination pursuant to Executive Order 12958.

2. The purpose of this Order is to establish procedures that must be followed by the Defense and the Government, and any other person who comes into possession of classified information as a result of their participation in this case. These procedures will apply to all pretrial, trial, post-trial, and appellate matters concerning classified information, and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure a fair and expeditious trial.

Definitions

3. The following definitions shall apply to this Order:

a. The term "Defense" shall mean any counsel for the defendant, employees or contractors of counsel for the Defendant (including, without limitation, investigators, paralegals,

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[1] Executive Order 12958 was amended by Executive Order 13292. See E.O. No. 13292, 68 Fed. Reg. 15315 (Mar., 28, 2003). All citations to E.O. 12958 are to that Executive Order as amended by E.O. 13292. See E.O. 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435, note at 180 (Supp. 2007).

experts and translators), and any witnesses for the Defendant so authorized by the Court.

b. The term "classified information" shall include:

(i) Any document or information contained therein, which has been classified by any executive agency in the interests of national security pursuant to Executive Order 12958, as amended, or its predecessor orders, as "CONFIDENTIAL," "SECRET," "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" ("SCI");

(ii) Any document or information that is currently properly classified, as set forth in (i), and that has been approved by the Government or the Court for release to the Defendant. All classified information that is approved for release to the Defendant will contain an appropriate classification marking and will be marked "Releasable to Ghailani";

(iii) Any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States Government that was classified, and (B) has subsequently been classified by the United States pursuant to executive order as "CONFIDENTIAL," "SECRET," "TOP SECRET," or additionally controlled as SCI;

(iv) Any document or information that the Defense knows or reasonably should know contains classified information,

including information acquired or conveyed orally;

(v) Any information, regardless of place of origin, to include "foreign government information" as that term in defined in Executive Order 12958, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters; and

(vi) Any document or information as to which the Defense has been notified orally or in writing contains classified information, including but not limited to the following four areas of classified information, which may be at issue in this case, and for which the Defense has received notice of its classified nature:

(a) Information that would reveal or tend to reveal the foreign countries in which the Defendant was held from on or about July 25, 2004 through September 6, 2006;

(b) The names, identities, and physical descriptions of any officers responsible for the capture, transfer, detention, or interrogation of the Defendant from on or about July 25, 2004 through June 9, 2009;

(c) The Enhanced Interrogation Techniques that were applied to the Defendant from on or about July 25, 2004 through September 6, 2006, including descriptions of the techniques as applied, the duration, frequency, sequencing, and limitations of those techniques; and

(d) Descriptions of the Defendant's conditions of confinement from on or about July 25, 2004 through June 9, 2009.

c. The terms "document" and "information" shall include, but are not limited to, all written, printed, visual or audible matter of any kind, formal or informal, including originals, conforming copies, and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise). The terms "document" and "information" shall also include without limitation, notes (handwritten, oral, or electronic); letters; correspondence; memoranda; reports; summaries; photographs; maps; charts; graphs; inter-office communications; notations of any sort concerning conversations, meetings or other communications; bulletins; teletypes; telecopies; telegrams; telexes; cables; facsimiles; invoices; worksheets and drafts; microfiche; microfilm; videotapes; sound recordings of any kind; motion pictures; electronic, mechanical or electric records of any kind, including but not limited to tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes, disks, or thumb drives and all manner of electronic data processing storage; and alterations, modifications, changes and amendments of any kind to the foregoing. In addition, the term "information" shall include without limitation observations and experiences of the Defendant

with respect to matters set forth in subparagraphs (3)(b)(vi)(a)-(d), above.

d. The term "access to classified information" shall mean having access to, reviewing, reading, learning, or otherwise coming to know in any manner classified information.

e. The term "Secure Area" shall mean a sensitive compartmented information facility ("SCIF") accredited by a Court Security Officer for the storage, handling, and control of classified information.

Classified Information, General Provisions

4. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been "declassified" by the agency or department that originated the document or information contained therein ("originating agency").

5. Any classified information provided to the Defense by the Government is to be used solely by the Defense and solely for the purpose of preparing the defense. The Defense may not disclose or cause to be disclosed in connection with this case any information known or reasonably believed to be classified information except as otherwise provided herein.

a. The Defense may not disclose classified information to the Defendant unless that same information has been previously provided to the Defense by the Defendant. The

Defense may not confirm or deny to the Defendant the assertions made by the Defendant based on knowledge the Defense may have obtained from classified information, except where that classified information has been provided to the Defendant.

b. The Defense shall not disclose classified information to any person, except to the Court, Government personnel who hold appropriate security clearances and have been determined to have a need to know that information, and those authorized pursuant to this Order.

c. Information that is classified that also appears in the public domain is not thereby automatically declassified unless it appears in the public domain as the result of an official statement by a U.S. Government Executive Branch official who is authorized to declassify the information. Individuals who by virtue of this Order or any other court order are granted access to classified information may not confirm or deny classified information that appears in the public domain. Prior to any attempt by the Defense to have such information confirmed or denied at trial or in any public proceeding in this case, the Defense must comply with the notification requirements of Section 5 of CIPA and all provisions of this Order.

d. In the event that classified information enters the public domain, the Defense is precluded from making private or public statements where the statements would reveal personal

knowledge from non-public sources regarding the classified status of the information, or would disclose that the Defense had personal access to classified information confirming, contradicting, or otherwise relating to the information already in the public domain. The Defense is not precluded from citing or repeating information in the public domain that counsel does not know or have reason to believe to be classified information, or derived from classified information.

Security Procedures

6. In accordance with the provisions of CIPA and the security procedures promulgated by the Chief Justice of the United States pursuant to that Act, this Court designates Michael P. Macisso as Court Security Officer("CSO") and Joan B. Kennedy, Christine E. Gunning, James P. Londergan, Barbara J. Russell, Nathaniel Johnson, Miguel Ferrer, Jennifer H. Campbell, Daniel O. Hartenstine, Charline Dasilva, and Erin Hogarty as alternate CSOs for this case, for the purpose of providing security arrangements necessary to protect against unauthorized disclosure any classified information that has been made available to the Defense in connection with this case. The Defense shall seek guidance from the CSO with regard to appropriate storage, handling, transmittal, and use of classified information.

7. The Court has been advised, through the CSO, that the Assistant United States Attorneys David Raskin, Leslie C. Brown,

and Nicholas J. Lewin (collectively, "Counsel for the Government"), as well as certain other Department of Justice employees, have the requisite security clearances allowing them to have access to the classified information that relates to this case.

8. No Defendant or representative of the Defense shall have access to classified information at issue in this case unless the person shall first have:

a. Received from the CSO the appropriate security clearance for the level of the classified information involved in this case;

b. A "need to know" the classified information at issue in this proceeding; and

c. Signed the Memorandum of Understanding in the form attached hereto agreeing to comply with the terms of this Order. The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case, of counsel for the Defendant or any other member of the Defense, shall not release that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.[2]

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[2] The sole exception to the requirements set forth in this paragraph is that, pending receipt of the necessary security clearances, defense counsel Gregory E. Cooper, Esq., Peter Enrique Quijano, Esq., and Michael K. Bachrach, Esq., shall be permitted access to classified information known to the Defendant

9. Pursuant to Section 4 of the security procedures promulgated pursuant to CIPA, no court personnel (except for the Judge) required by this Court for its assistance shall have access to classified information involved in this case unless that person shall first has received the necessary security clearance as determined by the CSO.

10. Standard Form 86, "Questionnaire for National Security Positions," attached releases, and full fingerprints shall be completed and submitted to the CSO forthwith by all defense counsel not otherwise already cleared, all persons whose assistance the defense reasonably requires, and by such courtroom personnel as the Court requires for its assistance. The CSO shall undertake all reasonable steps to process all security clearance applications in accordance with applicable regulations.

11. Prior security clearance and a "need to know" as determined by any government entity as applying to one person does not automatically give that person the authority to disclose any classified information to any other individual, even if that individual also has a security clearance. By way of example, but not limitation, defense counsel with appropriate clearances and a

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by virtue of his observations and experiences, as described in subparagraphs (3)(b)(vi)(a)-(d). The Government agrees to this exception based on counsel's commitment to abide by the Special Administrative Measures; the Government's expectation that counsel will soon receive security clearances; and to promote effective representation of the Defendant.

need to know, as determined by the government, are not authorized to discuss or otherwise disclose such classified information with an uncleared defendant absent approval of the Court or written permission of the Government.

12. *Secure Area for the Defense*. The CSO shall arrange for an approved Secure Area for use by the Defense. The CSO shall establish procedures to assure that the Secure Area is accessible during business hours to the Defense, and at other times upon reasonable request as approved by the CSO. The Secure Area shall contain a separate working area for the Defense and will be outfitted with any secure office equipment requested by the Defense that is reasonable and necessary to the preparation of the defense. The CSO, in consultation with counsel for the Defendant, shall establish procedures to assure that the Secure Area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the Secure Area unless so authorized by the CSO with notice provided to the Court. The CSO shall not reveal to the Government the content of any conversations he may hear among the Defense, nor reveal the nature of the documents being reviewed, or the work being generated. The presence of the CSO shall not operate to render inapplicable the attorney-client privilege.

13. *Filing of Papers by the Defense*. Any pleading or other

document filed by the Defense that counsel for the Defendant knows or reasonably should know contains classified information as defined in paragraph 3(b), shall be filed under seal with the Court Security Officer or a designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer." The time of physical submission to the CSO (or alternate CSO designated by the CSO) shall be considered the date and time of filing. The CSO shall promptly examine the pleading or document and, in consultation with representatives of the appropriate departments or agencies, determine whether the pleading or document contains classified information. If it is determined that the pleading or document contains classified information, the CSO shall ensure that the relevant portion of the document, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all paper filed by the Defense that do not contain classified information shall be immediately unsealed by the CSO and placed in the public record. The CSO shall immediately deliver under seal to the Court and Counsel for the Government any pleading or document to be filed by the Defense that contains classified information, unless the pleading or document is an ex parte filing. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, if the title itself would not tend to reveal classified information, the date

it was filed, and the fact that it has been filed under seal with the CSO.

14. *Filing of Papers by the Government.* Only the portions of pleadings or documents filed by the Government that contain classified information shall be filed under seal with the Court through the CSO. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The time of physical submission to the CSO (or designee) shall be considered the date and time of filing. The CSO shall immediately deliver under seal to the Court and counsel for the Defendant any pleading or document to be filed by the Government that contains classified information, unless the pleading or document is an ex parte filing. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, if the title itself would not tend to reveal classified information, the date it was filed, and the fact that it has been filed under seal with the CSO.

15. *Record and Maintenance of Classified Filings.* The CSO shall maintain a separate sealed record for those materials which are classified. The CSO shall be responsible for the maintaining of the secured records for purposes of later proceedings or appeal.

16. *The Classified Information Procedures Act.* Procedures for public disclosure of classified information in this case

shall be those established by CIPA. The Defense shall comply with the requirements of CIPA Section 5 prior to any disclosure of classified information during any proceeding in this case. As set forth in Section 5, the Defense shall not disclose any information known or believed to be classified in connection with any proceeding until notice has been given to Counsel for the Government and until the Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedures set forth in CIPA Section 6, and until the time for the Government to appeal such determination under CIPA Section 7 has expired or any appeal under Section 7 by the Government is decided. Pretrial conferences involving classified information shall be conducted in camera in the interest of national security, be attended only by persons with access to classified information and a need to know, and the transcripts of such proceedings shall be maintained under seal.

17. *Access to Classified Information.* In the interest of the national security, representatives of the Defense granted access to classified information shall have access to classified information only as follows:

a. All classified information produced by the Government to counsel for the Defendant in discovery or otherwise, and all classified information possessed, created or maintained by the Defense, including notes and any other work

product, shall be stored, maintained and used only in the Secure Area established by the CSO.

b. The Defense shall have free access to the classified information made available to them in the Secure Area established by the CSO and shall be allowed to take notes and prepare documents with respect to those materials.

c. No representative of the Defense (including, but not limited to, counsel, investigators, paralegals, translators, experts and witnesses) shall copy or reproduce any classified information in any manner or form, except with the approval of the CSO or in accordance with the procedures established by the CSO for the operation of the Secure Area.

d. All documents prepared by the Defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in the Secure Area on word processing equipment approved by the CSO. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the Secure Area unless and until the CSO determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the Government or any other party.

e. The Defense shall discuss classified information only within the Secure Area or in an area authorized by the CSO.

f. The Defense shall not disclose, without prior approval of the Court, classified information to any person not named in this Order except the Court, Court personnel, and Government personnel identified by the CSO as having the appropriate clearances and the need to know. Counsel for the Government shall be given an opportunity to be heard in response to any Defense request for disclosure to a person not identified in this Order. Any person approved by the Court for access to classified information under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not identified in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of counsel for the Defendant.

g. The Defense shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the Internet, or in the presence of any person who has not been granted access to classified information by the Court.

h. Any documents written by the Defense that do or

may contain classified information shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. The Defense shall not disclose classified information to the Defendant -- other than materials marked "Releasable to Ghailani" -- absent leave of this Court or written permission of the Government. Counsel for the Government shall be given an opportunity to be heard in response to any Defense request for disclosure to the Defendant of such classified information.

18. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests

of the United States. The purpose of this Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformance with this Order.

19. All classified documents and information to which the Defense has access in this case are now and will remain the property of the United States. Upon demand of the CSO, these persons shall return to the CSO all classified information in their possession obtained through discovery from the Government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the Defense that do or may contain classified information shall remain at all times in the custody of the CSO for the duration of the case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the CSO in the presence of counsel for the Defendant.

20. Nothing contained in this Order shall be construed as a waiver of any right of the Defendant. No admission made by the Defendant or his counsel during pretrial conferences may be used against the Defendant unless it is in writing and signed by the Defendant. See CIPA § 2.

21. A copy of this Order shall be issued forthwith to counsel for the Defendant who shall be responsible for advising the Defendant and representatives of the Defense of this Order. Counsel for the Defendant, and any other representatives of the Defense who will be provided access to the classified information, shall execute the Memorandum of Understanding described in paragraph 8 of this Order, and counsel for the Defendant shall file executed originals of such documents with the Court and the CSO and serve an executed original upon the Government. The execution and filing of the Memorandum of Understanding is a condition precedent for counsel for the Defendant and any other representative of the Defense to have access to classified information.

Dated: New York, New York
July 21, 2009

SO ORDERED:

HON. LEWIS A. KAPLAN
United States District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

- v. - : (S10) 98 Cr. 1023 (LAK)

AHMED KHALFAN GHAILANI, :

Defendant. :

- - - - - - - - - - - - - - - - - - x

MEMORANDUM OF UNDERSTANDING REGARDING RECEIPT OF CLASSIFIED INFORMATION

Having familiarized myself with the applicable statutes, regulations, and orders, related to, but not limited to, Title 18 United States Code, including unauthorized disclosure of classified information, espionage and related offenses; The Intelligence Agents Identities Protection Act, Title 50 U.S.C. Section 421;; Title 18 U.S.C. Section 641; Title 50 U.S.C. Section 783; 28 C.F.R. 17 et seq., and Executive Order 12356; I understand that I may be the recipient of information and documents that concern the present and future security of the United States and belong to the United States, and that such documents and information together with the methods and sources of collecting it are classified by the United States Government. In consideration for the disclosure of classified information and documents:

(1) I agree that I shall never divulge, publish, or reveal either by word, conduct or any other means, such classified documents and information unless specifically

authorized in writing to do so by an authorized representative of the United States Government; or as expressly authorized by the Court pursuant to the Classified Information Procedures Act and the Protective Order entered in the case of United States v. Ahmed Khalfan Ghailani, (S10) 98 Cr. 1023 (LAK), Southern District of New York.

(2) I agree that this Memorandum and any other non-disclosure agreement signed by me will remain forever binding on me.

(3) I have received, read, and understand the Protective Order entered by the United States District Court for the Southern District of New York on _____, 2009, in the case of United States v. Ahmed Khalfan Ghailani, (S10) 98 Cr. 1023 (LAK), relating to classified information, and I agree to comply with the provisions thereof.

_____ _____
Court Security Officer Date

_____ _____
Gregory E. Cooper, Esq. Date
Counsel for Ahmed Khalfan Ghailani

_____ _____
Peter Enrique Quijano, Esq. Date
Counsel for Ahmed Khalfan Ghailani

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-against-

AHMED KHALFAN GHAILANI,

Defendant.
----------X

DNY
MENT
CONICALLY FILED
LED #: 10/27/09

98 Cr. 1023 (S-10) (LAK)

ORDER

LEWIS A. KAPLAN, *District Judge*.

Pursuant to, inter alia, the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 §§ 1-16, and the Classified Information Protective Order, dated, July 21, 2009 (Document No. 765, herein), the following procedures shall govern the electronic filing (i.e., "ECF" filing) of material related to classified information in the instant case:

(1) Three unredacted copies of the filing must be provided to ~~a~~ the Courtroom Security Officer ("CSO"), or his/her designee.

(2) The CSO (or his/her designee) must possess the necessary security clearance required to be permitted to transport or review said files.

(3) The Court ~~recognizes~~ understands that CSO Michael Macisso possesses the necessary security clearance required by CIPA and this Order.

(4) The CSO (or his/her designee) must then deliver one copy of the unredacted filing directly to a cleared member of chambers staff and one unredacted copy directly to the United States Attorney's Office, specifically an Assistant United States Attorney (or his/her designee) who is assigned to this case and who possesses the necessary security clearance required to be permitted to transport or review said files.

(5) The CSO (or his/her designee) must then deliver the final unredacted copy of the filing to a separate "review team" composed of members of the United States intelligence community who review the unredacted document(s) for potential classified information and redact any information that is determined to be classified.

(6) For each document that is provided by the defendant to the CSO (or his/her designee) for filing, a self-redacted copy of the filing must also be immediately filed by ECF. This self-redacted copy is referred to as a

"half-sheet" and may only contain the cover-page and/or caption of the document itself. For example, if the defendant intends to file a 30-page memorandum containing potentially classified information, only the cover page is filed by ECF to ensure that only non-classified material is electronically filed. The purpose of filing the half-sheet by ECF is to alert the public that the filing occurred, and to make a public record of when it occurred, but at the same time protecting the integrity of the potentially classified information.

(7) In order to alert the Clerk's Office that a half-sheet is being filed in conjunction with this Order, a stamp indicating that a copy was "Filed With The Court Security Officer" should be affixed to the document. The stamp stating that a copy was "Filed With The Court Security Officer" may be placed on half-sheets as well as on other appropriate documents as determined by the CSO.

(8) Once the unredacted filing has been thoroughly reviewed ~~for~~ and appropriately redacted by the "review team", a redacted copy ~~is~~ shall be provided to the defendant for public filing via ECF.

(9) The version of the document that has been returned to the defendant after review for redaction by the "review team" ~~is~~ shall be then filed by the defendant via ECF, with a notation that it relates to the previously filed half-sheet.

(10) The final version of the document may or may not contain redactions, depending on the determinations of the "review team".

(11) At no time, however, is any person permitted to possess, file, or review the unredacted copy of the filing prior to its review and release by the "review team", unless that person has ~~received~~ the necessary security clearance required to be permitted to possess or review said document(s).

SO ORDERED

Dated: New York, New York
October 27, 2009

Lewis A. Kaplan
United States District Judge

United States v. Shnewer
(D.N.J. 1:07-cr-459)

Protective Order **74**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 07-459 (RBK)
	:	
MOHAMAD IBRAHIM SHNEWER,	:	
DRITAN DUKA,	:	
a/k/a "Tony Duka,"	:	
ELJVIR DUKA,	:	
a/k/a "Sulayman,"	:	
SHAIN DUKA,	:	
a/k/a "Shaheen,"	:	
and	:	
SERDAR TATAR	:	

PROTECTIVE ORDER FOR CLASSIFIED MATERIALS

This matter is before the Court upon the Government's motion for a protective order to prevent the unauthorized disclosure or dissemination of classified national security information in this case. Having considered the Government's motion and proposed protective order, the Court finds:

Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. III, ("CIPA") requires entry of a protective order upon motion by the Government. The Government has moved for an order to protect against the disclosure of classified information disclosed by the United States to the defense in this case.

The Government has demonstrated the need to safeguard national security information at all phases of this criminal proceeding, including any appellate proceedings. While the following order in no way binds the appellate courts, it does control and govern the conduct of all individuals granted access to classified information during this case at <u>all times</u> unless and until it is superseded

by a protective order under CIPA issued by an appellate court.

The Government's participation in any decision that the Court[1] may be asked to make concerning requests by defense counsel to share classified information with either a defendant or a third party is necessary and appropriate. First, the Government's participation is required to ensure that the Executive Branch maintains control over the dissemination of classified information in accordance with CIPA. Second, the Government is uniquely situated to advise the Court on the risks involved in disseminating classified information, whether because of the nature or source of the information or because of the individual with whom it is to be shared.

THEREFORE, pursuant to the authority granted under Section 3 of CIPA; the Security Procedures Established Pursuant To Pub. L. 96-456, 94 Stat. 2025, By The Chief Justice Of The United States For The Protection Of Classified Information (reprinted following Section 9 of CIPA) ("Security Procedures"); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

THE COURT HEREBY FINDS AND ORDERS:

1. This case will involve classified national security information, the storage, handling and control of which, by law or regulation, requires special security precautions, and access to which requires a security clearance and an actual need to know.

2. The purpose of this Order is to establish the procedures that must be followed by the Defendants, defense counsel, other counsel involved in this case, persons assisting defense counsel, other Court personnel, and all other individuals who are granted access to classified information or

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[1] "Court" refers to both the District Court and the Magistrate Court insofar as this Order delegates authority (see ¶ 4, below).

documents in connection with this case. It is a further purpose of this Order to ensure that those authorized by the Order to receive classified information do not divulge the classified information disclosed to them to anyone who is not authorized to receive it, or otherwise use the classified information, except in conformity with this Order or with prior written authorization from the originating agency.

3. The procedures set forth in this Protective Order and in CIPA will apply to all pretrial, trial, post-trial and appellate aspects concerning classified information in this case, and may be modified from time to time by further order of the Court acting pursuant to Fed. R. Crim. P. 16(d), CIPA, and the Court's inherent supervisory authority to ensure a fair trial.

4. The Court may refer pretrial matters involving classified information to the Magistrate Judge for review and consideration consistent with this and any other applicable orders that may be issued by the Court pursuant to CIPA or any other applicable law. In the event of a referral, this Protective Order, and any other applicable orders, shall remain in effect and binding upon each of the parties and shall govern all proceedings that are held before the Magistrate Judge until such further order of this Court. The Magistrate Judge shall have the full authority to hear and determine any referred pretrial matter that is granted pursuant to 28 U.S.C. § 636 or any other applicable law. Because of the possibility of referrals, all references below to "the Court" shall include the Magistrate Court.

5. Definitions. The following definitions shall apply to this Order:

a. The terms "classified national security information and documents," "classified documents and information," "classified information," and "classified documents" refer to:

i. Any document that has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12,958, as amended, as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" (SCI), and any information contained in such documents;

ii. Any document or information that the defendants or the defense know, or should reasonably know, has been derived from United States Government information that was classified, regardless whether such document or information has subsequently been classified by the Government pursuant to Executive Order 12,958 as amended;

iii. Verbal classified information that has been disclosed by attorneys for the Government or by a witness in a court proceeding to the defendants or the defense; or

iv. Any document or information, including verbal information and "foreign government information" (as that term is defined in Executive Order 12,958, as amended), that the Defendants or the defense have been notified is classified, unless already possessed by or known to the Defendants or the defense, provided that such knowledge is not derived from materials described in subparagraph 5(a)(i),(ii), or (iii) above.

b. The words "document" and "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

i. Papers; correspondence; memoranda; notes; letters; reports, summaries; interoffice and intra-office communications; notations of any sort concerning conversations, meetings or other communications; bulletins; telexes; cables; teletypes; telegrams;

facsimiles; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

ii. Graphic or oral records or representations of any kind, including, but not limited to, photographs, maps, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind and motion pictures;

iii. Electronic, mechanical, magnetic, optical or electric records of any kind, including, but not limited to, data stored on tapes, cassettes, CD-ROMS, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

iv. Information acquired aurally.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

d. "Secure Area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

e. "The defense" means any person assisting the Defendants with the preparation of their defense in this case including (but not limited to) counsel for the Defendants and employees of, consultants to or contractors for defense counsel.

f. "Attorneys for the Government," "Government counsel," and "counsel for the Government" means the attorneys listed in paragraph 10 herein and their respective supervisors.

g. "Originating agency" means the government agency, department or entity from which the classified document or the information contained therein originated.

6. Any document or information provided by attorneys for the Government to the

Defendants or the defense referencing, mentioning, originating from, or concerning any agency, or part of an agency, that is a member of the United States "intelligence community" (as defined in Section 3.4 of the National Security Act of 1947, codified at 50 U.S.C. § 401a(4)), or information in possession of such agency, or part thereof, shall be presumed to fall within the meaning of classified information unless and until the Court Security Officer or an attorney for the Government advises otherwise in writing.

7. All classified documents and information shall remain classified unless such document or information bears a clear indication that it has been declassified by the originating agency.

8. Information in the public domain is ordinarily not classified. However, such information may be considered classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has had access to the classified information, and that confirmation corroborated the information in question. Any attempt by the Defendants or the defense to have such information confirmed or denied at trial, or in connection with any pretrial, post-trial or other proceeding in this case, shall be governed by CIPA and the provisions of this Order.

9. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Jennifer H. Campbell as Court Security Officer for this case and Christine E. Gunning, Michael P. Macisso, Daniel O. Hartenstine, Erin E. Hogarty, James P. Londergan, Barbara J. Russell, Joan B. Kennedy, Nathaniel A. Johnson, Charline A. DaSilva, and Miguel A. Ferrer as Alternate Court Security Officers (collectively "the CSO"), for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. The defense shall seek guidance from

the CSO with regard to the appropriate storage, handling, transmittal, and use of classified information.

10. The Court has been advised that the following Government attorneys will be working on this case: Deputy United States Attorney William E. Fitzpatrick, Assistant United States Attorney Michael A. Hammer, and U.S. Department of Justice Trial Attorney John W. Van Lonkhuyzen, along with various supervisory attorneys. The Court also has been advised that the Government attorneys have the requisite security clearances to have access to the classified information in this case. The Government may add additional attorneys with notice to the Court and defense counsel.

11. Protection of Classified Documents and Information: The Court finds that, in order to protect the classified documents and information involved in this case, no person except the attorneys for the Government, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, judicial personnel, members of the defense, and the Defendants (subject to paragraphs 11(d) and 19(b)) shall have access to the classified documents and information in this case.

a. Judicial personnel, other than the Court, may obtain access to classified documents or information after having been granted security clearance by the CSO.

b. No member of the defense shall have access to any classified documents or information in this case unless that person shall first have:

i. received approval for access to the particular classified documents or information from the Government or, should the Government reject the request, from the Court in a separate order, which shall not occur except upon a showing of a need to know the particular classified information and upon consideration of any responsive pleading from the Government;

ii. received the necessary security clearance at the appropriate level of classification as determined by the Department of Justice Security Officer working in conjunction with the CSO; and

iii. signed a Memorandum of Understanding (a form for which is attached hereto), agreeing to comply with the terms of this Order.

c. The substitution, departure or removal of counsel for the defense or anyone associated with the defense as an employee, consultant, contractor, witness or otherwise shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

d. The Defendants shall not have access to any classified documents or information in this case except pursuant to paragraph 19(b).

12. For the purpose of establishing the security clearances necessary for access to classified documents and information that may be involved in this case, the defense, and such Court personnel as the Court requires for its assistance shall forthwith complete and submit to the CSO Standard Form 86 ("Security Investigation Data for Sensitive Position"), the necessary releases, and full fingerprints, unless such person already holds an appropriate security clearance and is approved for access to classified documents and information in this case. The CSO shall take all reasonable steps to process all security clearance applications in a timely manner. The CSO shall not disclose to Government attorneys any information supplied by anyone applying for security clearance pursuant to this Order.

13. The CSO shall arrange for and maintain an appropriately approved secure area for the use of the defense. The CSO shall establish procedures to ensure that the secure area is

accessible during normal business hours, and at other times on reasonable request as approved by the CSO, to the defense, the Defendants (if such access should be determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and witnesses authorized to access classified information pursuant to paragraph 19 herein (hereafter "authorized witnesses") who are accompanied by defense counsel. The secure area will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of a defense in this case. The CSO, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from the secure area by anyone, including the defense, unless authorized by the CSO. No person, including the defense, shall copy or reproduce any classified document or information in any form, except with the approval of the CSO or in accordance with the procedures established by the CSO for the operation of the secure area.

14. If, upon the entry of a separate order of the Court as provided in paragraph 19(b), it becomes necessary for the Defendants to discuss classified matters, review classified documents or information, or otherwise meet with defense counsel regarding classified matters, this will only occur in the Secure Area and under appropriate supervision, which the CSO will coordinate with the U.S. Marshals Service, to ensure that the Defendants do not escape, cause physical injury to themselves or others, or remove, copy, alter or destroy classified documents or information or obtain access to classified documents or information that the Defendants are not authorized to review, and to ensure that the Defendants do not use the opportunity to review the classified materials to circumvent any applicable security restrictions and other orders of this Court governing discovery

in this case.

15. Filing of Papers By the Defense: Any pleading or other document filed by the defense shall be filed under seal with the Court through the CSO or her designee, unless defense counsel has obtained permission from the CSO, specific to a particular pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or under seal, to file the pleading or document not under seal. Pleadings filed under seal with the CSO shall be marked, "Filed In Camera and Under Seal with the Court Security Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. The time of physical submission to the CSO shall be considered the date and time of filing. The CSO shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the CSO determines that the pleading or document contains classified information, she shall ensure that the portion of the document that contains classified information, and only that portion, is marked with the appropriate classification marking(s) and remains under seal. All portions of all papers filed by the defense that do not contain classified information shall be immediately unsealed by the CSO and placed in the public record, unless otherwise ordered by the Court. The CSO shall immediately deliver under seal any pleading or document filed by the defense that contains classified information to the Court and, except for *ex parte* pleadings and documents, to attorneys for the Government. The Court shall then direct the Clerk of Court to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the CSO.

16. Filing of Papers by the Government: Any pleading or document filed by attorneys for the Government that contains classified information shall be filed under seal with the Court through the CSO or her designee. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. The time of physical submission to the CSO shall be considered the date and time of filing. The CSO shall immediately deliver any pleading or document filed by the Government that contains classified information, under seal to the Court and, except for *ex parte* pleadings and documents, to the defense, provided that the defense has proper clearance to receive the pleading or document. The Court shall then direct the Clerk of Court to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the CSO.

17. Sealing of Records: The CSO shall maintain a separate sealed record for those pleadings or documents containing classified materials. The CSO shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

18. Access to Classified Information: The defense, the Defendants (if such access should be determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses when accompanied by defense counsel shall have access to classified documents or information only as follows:

a. All classified documents or information produced by the Government to the defense, in discovery or otherwise, and all classified documents or information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area

established by the CSO or in another area authorized by the CSO.

b. The defense and authorized witnesses when accompanied by defense counsel shall have free access in the secure area to the classified documents or information made available to them in accordance with this Order, and shall be allowed to take notes and prepare documents with respect to those materials.

c. All documents prepared by the defense, the Defendants or authorized witnesses (including pleadings or other documents intended for filing with the Court) that contain or deal in any way with classified information shall be transcribed, recorded, typed, duplicated, copied, and otherwise prepared only by persons who have received an appropriate approval for access to classified information, and only in the secure area on approved word processing and data handling equipment, and in accordance with the procedures approved by the CSO. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, and exhibits) containing classified information shall be maintained in the secure area unless and until the CSO determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the Government.

d. The defense, the Defendants (if access to classified information is determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses shall discuss classified documents or information only within the secure area or in another area authorized by the CSO, and shall not discuss or attempt to discuss classified information over any standard commercial telecommunications system or office communication system, including, but not limited to, by facsimile and over the internet.

e. The CSO shall not reveal to the Government the content of any conversation

she may hear among the defense, reveal the nature of the documents being reviewed by them, or the work generated by them. In addition, the presence of the CSO shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client or work product privilege.

19. Disclosure of Classified Information: The defense, the Defendants (if access to classified information is determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses shall not disclose, without prior approval of the Court, any classified document or information to any person not authorized pursuant to this Order, except for the Court or those Court personnel, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, or attorneys for the Government who have been identified by the CSO as having the appropriate clearances and the need-to-know and in accordance with the procedures of CIPA and the procedures established by the CSO. Counsel for the Government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court a Memorandum of Understanding in the form attached to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that classified documents or information be disclosed to a person not named in this Order, the CSO shall promptly seek to obtain a security clearance for such person at the request of defense counsel.

a. No person shall discuss classified documents or information in the presence of any person who has not been granted access by the Court to such classified documents or information.

b. No person shall disclose classified documents or information to any of the Defendants without prior concurrence of counsel for the Government (in consultation with the originating agency) or, absent such concurrence, an order of the Court, which shall not occur except upon a showing of a need to know the particular classified document or information. Counsel for the Government shall be given an opportunity to be heard in response to any defense request for disclosure to the Defendants of any classified document or information.

c. Procedures for the use or the public disclosure of classified information shall be those provided in Sections 5, 6 and 8 of CIPA. These provisions, and this Order, require that:

i. Any and all items which are classified that the defense seeks to use or publicly disclose shall be listed in the Defendants' Section 5 notices.

ii. To facilitate the filing of notices required under Section 5 of CIPA, the CSO shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or the Defendants or about which the defense or the Defendants have knowledge and which the defense intends to use in any way at any pretrial proceeding, deposition, trial or post-trial or other proceeding. Nothing submitted by the defense to the CSO pursuant to this paragraph shall be made available to counsel for the Government unless so ordered by the Court or so designated by the defense.

20. Notwithstanding any other provision of this or any other Protective Order that may be entered by the Court relating to the disclosure of classified information, the Foreign Intelligence Surveillance Act (FISA) shall govern the disclosure or discovery of materials in connection with any FISA-related litigation, including but not limited to any FISA applications, orders or related

materials.

21. Any unauthorized use or disclosure of classified information may constitute a violation of United States criminal law. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any breach of this Order may also result in the termination of the person's access to classified documents and information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States and may be used to the advantage of a foreign power against the interests of the United States.

22. All classified documents and information to which the defense, the Defendants or authorized witnesses have access in this case are now and forever remain the property of the Government. Any member of the defense, here including the Defendants and authorized witnesses, who receives classified documents or information shall return all such documents and information in their possession or for which they are responsible, upon demand of the CSO. Any notes, summaries, or other documents prepared by the defense, the Defendants, or authorized witnesses that contain classified information shall remain at all times in the custody of the CSO for the duration of this case. All such notes, summaries, and other documents shall be destroyed by the CSO in the presence of defense counsel, should they choose to be present, (a) one year after the judgment in this case is final or (b) at the conclusion of litigation of any motion filed pursuant to 28 U.S.C. § 2255, if said motion was filed within one year after the judgment became final, whichever event is later.

23. A copy of this Order shall be issued forthwith to the attorneys for the Government, the CSO, the Defendants and counsel of record for the Defendants. Counsel for the defense shall be responsible for advising the Defendants, authorized witnesses and any other member of the defense who should be made aware of the contents of this Order. The Defendants, counsel for the Defendants and any other individuals who will be provided access to classified documents or information pursuant to this Order shall execute the Memorandum of Understanding in the form attached hereto. Counsel for the Defendants shall file executed originals of such documents with the Court, and serve copies of executed originals of such documents upon the CSO and the Government. The execution and filing of the Memorandum of Understanding is a condition precedent for the Defendants, any member of the defense or any other individual to have access to classified information.

24. The Court may amend this Protective Order and/or issue additional Protective Orders as needed.

SO ORDERED this 22nd day of May, 2008.

HON. ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

United States v. Holy Land Foundation
(N.D. Tex. 3:04-cr-240)

Protective Order (Judge Fish) **91**

Protective Order (Judge Solis) **110**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 5 2005
CLERK, U.S. DISTRICT COURT
By _____ Deputy

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

UNITED STATES OF AMERICA	§	
	§	
V.	§	
	§	
HOLY LAND FOUNDATION FOR	§	3:04-CR- 240- G
RELIEF AND DEVELOPMENT (1)	§	
also known as the "HLF"	§	
SHUKRI ABU BAKER (2)	§	
MOHAMMAD EL-MEZAIN (3)	§	
GHASSAN ELASHI (4)	§	
HAITHAM MAGHAWRI (5)	§	
AKRAM MISHAL (6)	§	
MUFID ABDULQADER (7)	§	
ABDULRAHMAN ODEH (8)	§	

PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized use, disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to, or are otherwise in the possession of, defense counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (1994) (CIPA); the Security Procedures Established pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

IT IS HEREBY ORDERED:

1. The Court finds that this case will involve classified national security information, the storage, handling and control of which, by law or regulation, requires special security precautions, and access to which requires a security clearance and a "need-to-know."

2. The purpose of this Order is to establish the procedures that must be followed by all defense counsel of record, their designated employees, all other counsel involved in this case, translators for the defense, any Court personnel, and all other individuals who receive access to classified information or documents in connection with this case.

3. The procedures set forth in this Protective Order, CIPA, and the Foreign Intelligence Surveillance Act of 1978 (FISA) shall apply to all pre-trial, trial, post-trial, and appellate aspects concerning this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d), Sections 3 and 9 of CIPA and FISA, and its inherent supervisory authority to ensure a fair and expeditious trial.

Definitions

4. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

a. Any classified document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive

Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," OR "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)," or any information contained in such documents;

b. Any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party, which has been derived from United States government information that was classified, regardless whether such document or information has subsequently been classified by the government pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)";

c. Verbal classified information known to the defense counsel;

d. Any document and information, including verbal information, as to which the defense counsel have been notified orally or in writing that such documents or information contain classified information; or,

e. Any information, regardless of place or origin and including "foreign government information," as that term is defined in Executive Order 12958, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters; and,

f. Any information including, but not limited to any subject obtained from the Central Intelligence Agency, the National Security Agency, the Defense

Intelligence Agency, the Department of State, National Security Counsel, the Federal Bureau of Investigation, or similar entity, with the exception of items seized by the Federal Bureau of Investigation during the execution of a duly authorized Rule 41 search warrant, shall be presumed to fall within the meaning of classified information unless and until the Court Security Officer or an attorney for the government advises otherwise in writing.

5. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

a. Papers, correspondence, memoranda, notes, letters, reports, summaries, photographs, maps, charts and graphs, interoffice and intra-office communications, notations of any sort concerning conversations, meetings, or other communications, bulletins, teletypes, telegrams, and telefacsimiles, invoices, worksheets, and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

b. Graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

c. Electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and,

d. Information acquired orally or verbally.

6. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the originating agency of the document or the information contained therein (hereinafter, the "originating agency").

7. Information in the public domain is ordinarily not classified. However, such information may be considered as classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has, or has had, access to the classified information, and that confirmation corroborated the information in question. Any attempt by the defendant(s) or defense counsel to have such information confirmed or denied at trial, or in connection with any pretrial or other proceeding in this case, shall be governed by CIPA and all provisions of this Order.

8. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

9. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

10. Court Security Officer - In accordance with the provisions of CIPA and the Security Procedures, the Court designates John Molinard Security Specialist as Court Security Officer for this case, and Jennifer Campbell, Mary M. Cradlin, Christine E. Gunning, Barbara J. Russell, Daniel O. Hartenstine, James P. Londergan, and Michael P. Macisso as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified documents and information.

11. Government Attorneys - The Court has been advised that the following government attorneys working on this case, Assistant U.S. Attorneys Jim Jacks and Nathan Garrett and U.S. Department of Justice Trial Attorneys Barry Jonas and Elizabeth Shapiro, and their respective supervisors, have the requisite security clearances to have access to the classified documents and information that relates to this case. All references to government attorneys, or attorneys for the government, as used in this Order, refer only to the attorneys listed in this paragraph and their respective supervisors.

12. Protection of Classified Information – The Court finds that, in order to protect the classified information involved in this case, no person, including the defendants and any witness for the defense, except government attorneys, appropriately cleared Department of Justice employees, personnel of the originating agency, defense

counsel, employees of defense counsel or translators employed by defense counsel, shall have access to the classified information in this case. No defense counsel, employee of defense counsel or translator shall have access to any classified information in this case unless that person shall first have:

a. Signed the Memorandum of Understanding in the form attached hereto, agreeing to comply with the terms of this Order. The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel for the defendant, or anyone associated with the defense as an employee or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

b. Persons other than government attorneys, appropriately cleared Department of Justice employees, and personnel of the originating agency, can only obtain access to classified documents and information after having been granted a security clearance by the Court Security Officer, and with permission of the Court, either through this Order, (for those named in paragraph 13 below), or by a separate Order upon showing of a need to know. Before any person other than government attorneys, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified information, he or she must also sign the Memorandum of Understanding.

13. Defense Counsel - Subject to the provisions of paragraph 12, the following attorneys for the defense, their approved employees and translator (collectively referred to herein as "the defense"), shall be given access to classified documents and information as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case: John Boyd for the Holy Land Foundation for Relief & Development; Nancy Hollander for Shukri Abu Baker; Joshua Dratel for Mohammad El-Mezain; Tim Evans for Ghassan Elashi; Marlo P. Cadeddu for Mufid Abdelqader; and Greg Westfall for Abdulrahman Odeh.

Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court -- with prior notice to the government -- an approval for access to the appropriate level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

14. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this

case, standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and "major case" fingerprints shall be completed and submitted to the Court Security Officer forthwith by the defense counsel, all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

15. Area of Review - The Court Security Officer shall arrange for an appropriately approved secure area for the use by the defense. The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defendants' defense in this case. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer. The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the

presence of the Court Security Officer shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

16. If, upon the entry of a separate order of the Court, it becomes necessary for defendant(s) to review or discuss classified matters, or otherwise meet with defense counsel, in the Secure Area, this will only occur under appropriate supervision to ensure that the defendant(s) does not escape, attempt to escape, cause physical injury to himself or others, or remove, copy, alter, or destroy classified information, or obtain access to classified information the defendant(s) is not entitled to review, and to ensure that the defendant(s) does not use the opportunity to review the classified materials to circumvent any applicable security restrictions, including any Special Administrative Measures imposed by the Bureau of Prisons, other prison regulations, and the other orders of this Court governing discovery in this case.

17. Filings with the Court - Until further order of this Court, any pleading or other document filed by the defense, which defense counsel knows, or has reason to know, contains classified information in whole or in part, believes may be classified in whole or in part, or is unsure of the proper classification of the document or pleading, shall be filed under seal with the Court through the Court Security Officer. The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the appropriate agencies, determine whether

the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, she or he shall ensure that that portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal. All portions of any document filed by the defense that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleadings or document to be filed by the defense that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

18. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

19. Access to Classified Information – Defense counsel, their designated employees and translators, shall have access to classified information only as follows:

a. All classified information produced by the government to the defense, in discovery or otherwise, and all classified information possessed, created, or

maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer;

b. The defense shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials. However, the defense shall not, except under separate Court order, disclose the classified information, either directly, indirectly or in any manner which would disclose the existence of such, to pursue leads or in the defense of the defendants;

c. No person, including the defense, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area;

d. All documents prepared by the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information, shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information, and in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in

the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government;

e. The defense shall discuss classified information only within the secure area or in another area authorized by the Court Security Officer, and shall not discuss or attempt to discuss classified information over any standard commercial telephone instrument or office intercommunication system;

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not authorized pursuant to this Order, including the defendants and defense witnesses, except the Court, Court personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that Classified information be disclosed to persons not named in this Order, then, upon approval by the Court and

upon notice to the government , the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

20. Foreign Intelligence Surveillance Act (FISA) - The defendants have rights under the United States Constitution, federal statutes and the Federal Rules of Criminal Procedure to pre-trial discovery. The Government recognizes its obligation to provide such discovery materials to defense counsel in the most expeditious manner possible, consistent with public safety and the confidentiality of sensitive ongoing investigations. Therefore, to the extent that FISA-obtained or derived information is provided to the defense counsel:

a. the parties agree that both the defense and the government shall have access to such FISA information regardless of prior minimization efforts undertaken by the government upon initial review of the materials;

b. any draft transcripts or summaries of translated electronic and paper materials, shall not be used in any proceeding for any purpose, including cross-examination of any witness except pursuant to CIPA.

c. the parties agree that the disclosure and discovery of materials that may be provided to the court pursuant to FISA for legal determinations shall be governed by the provisions of FISA notwithstanding any other provisions of this order.

21. Procedures for the use or the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be used or disclosed by the defense except:

a. To the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

b. To representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. In accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and,

d. To persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at any pretrial proceeding, deposition or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or

so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

22. Violations of this Order - Any unauthorized use or disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to ensure that those authorized by the Order to receive classified information will never divulge the classified information disclosed to them to anyone who is not now authorized to receive it, or otherwise use the classified information, without prior written authorization from the originating agency and in conformity with this Order.

23. All classified information to which the defense counsel, defense counsel employees and translators has access in this case is now and will remain the property of the government. The defense counsel, defense counsel employee(s) and translators who receive classified information shall return all such classified information in their

possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of this case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

24. Declassified Material - Pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, any and all audio and video tapes (hereinafter called "tapes"), facsimiles, e-mails and any summaries or transcripts thereof, which may be declassified and provided by the government to defense as part of discovery in this case, shall also be governed by the following provisions:

a. Defense counsel shall not disclose any of the tapes and facsimiles, or summaries thereof, to any person other than the defendant(s), witnesses which they may be interviewing or preparing for trial, and attorneys, law clerks, secretaries, translators, technical and other experts, and investigators involved in the representation of their client;

b. The tapes, facsimiles, or any copies thereof are now and will forever remain the property of the United States Government. Defense counsel will return the tapes, facsimiles, and all copies to the government at the conclusion of the case;

c. Defense counsel will store the tapes and facsimiles in a secure place consistent with their security classification, if any, and will use reasonable care to ensure that they are not disclosed to third persons, including the media, in violation of this agreement;

d. If defense counsel makes any further copies of any of the tapes and facsimiles, defense counsel will inscribe on each tape the following notation: "U.S. Government Property; May Not Be Used Without U.S. Government Permission . .";

e. If defense counsel release custody of any of the tapes, facsimiles, or their copies, or summaries or transcripts thereof, to any person described in paragraph (a), defense counsel shall provide such recipients with copies of this protective order and advise them that the tapes and facsimiles are the property of the United States Government and that any unauthorized use may constitute a violation of law and/or contempt of court;

f. Nothing herein constitutes a waiver of any right of the defendant, nor does anything herein restrict in any way the right of the defense to use the tapes and facsimiles in connection with any pleading or proceeding in this case;

g. This Order in no way modifies or alters the obligation of all counsel to handle such tapes, facsimiles, and summaries thereof, to the extent such material is classified, in a manner consistent with the CIPA and such protective orders as may be entered by the Court in this case.

25. Nothing in this Order shall preclude the Government from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material.

26. A copy of this Order shall be issued forthwith to counsel for the defendants, who shall be responsible for advising the defendants and defense counsel employees, of the contents of this Order. The defense counsel and defense counsel employees to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file executed originals with the Court and the Court Security Officer and serve executed originals of such document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent for the defense counsel, defense counsel employees, and defense witnesses to have access to classified information.

ORDERED this 5 day of April 2005 at Dallas, Texas.

A. Joe Fish
Chief United States District Judge

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

UNITED STATES OF AMERICA	§	
	§	
V.	§	
	§	
HOLY LAND FOUNDATION FOR	§	3:04-CR- 240- P
RELIEF AND DEVELOPMENT (1)	§	
also known as the "HLF"	§	
SHUKRI ABU BAKER (2)	§	
MOHAMMAD EL-MEZAIN (3)	§	
GHASSAN ELASHI (4)	§	**ECF**
HAITHAM MAGHAWRI (5)	§	
AKRAM MISHAL (6)	§	
MUFID ABDULQADER (7)	§	
ABDULRAHMAN ODEH (8)	§	

SUBSTITUTE PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Substitute Protective Order to prevent the unauthorized use, disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to, or are otherwise in the possession of, defense counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (1994) (CIPA); the Security Procedures Established pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

IT IS HEREBY ORDERED:

1. The Court finds that this case will involve classified national security information, the storage, handling and control of which, by law or regulation, requires special security precautions, and access to which requires a security clearance and a "need-to-know."

2. The purpose of this Order is to establish the procedures that must be followed by all defense counsel of record, their designated employees, all other counsel involved in this case, translators for the defense, any Court personnel, and all other individuals who receive access to classified information or documents in connection with this case.

3. The procedures set forth in this Protective Order, CIPA, and the Foreign Intelligence Surveillance Act of 1978 (FISA) shall apply to all pre-trial, trial, post-trial, and appellate aspects concerning this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d), Sections 3 and 9 of CIPA and FISA, and its inherent supervisory authority to ensure a fair and expeditious trial.

Definitions

4. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

a. Any classified document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive

Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," OR "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)," or any information contained in such documents;

b. Any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party, which has been derived from United States government information that was classified, regardless whether such document or information has subsequently been classified by the government pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)";

c. Verbal classified information known to the defense counsel;

d. Any document and information, including verbal information, as to which the defense counsel have been notified orally or in writing that such documents or information contain classified information; or,

e. Any information, regardless of place or origin and including "foreign government information," as that term is defined in Executive Order 12958, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters; and,

f. Any information including, but not limited to any subject obtained from the Central Intelligence Agency, the National Security Agency, the Defense

Intelligence Agency, the Department of State, National Security Counsel, the Federal Bureau of Investigation, or similar entity, with the exception of items seized by the Federal Bureau of Investigation during the execution of a duly authorized Rule 41 search warrant, shall be presumed to fall within the meaning of classified information unless and until the Court Security Officer or an attorney for the government advises otherwise in writing.

5. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

a. Papers, correspondence, memoranda, notes, letters, reports, summaries, photographs, maps, charts and graphs, interoffice and intra-office communications, notations of any sort concerning conversations, meetings, or other communications, bulletins, teletypes, telegrams, and telefacsimiles, invoices, worksheets, and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

b. Graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

c. Electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and,

d. Information acquired orally or verbally.

6. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the originating agency of the document or the information contained therein (hereinafter, the "originating agency").

7. Information in the public domain is ordinarily not classified. However, such information may be considered as classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has, or has had, access to the classified information, and that confirmation corroborated the information in question. Any attempt by the defendant(s) or defense counsel to have such information confirmed or denied at trial, or in connection with any pretrial or other proceeding in this case, shall be governed by CIPA and all provisions of this Order.

8. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

9. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

10. Court Security Officer - In accordance with the provisions of CIPA and the Security Procedures, the Court designates Erin Hogarty Security Specialist as Court Security Officer for this case, and Jennifer H. Campbell, Charline DaSilva, Miguel Ferrer, Christine E. Gunning, Daniel O. Hartenstine, Nathaniel Johnson, James P. Londergan, Joan B. Kennedy, Michael P. Macisso, and Barbara J. Russell, as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified documents and information.

11. Government Attorneys - The Court has been advised that the following government attorneys working on this case, Assistant U.S. Attorneys Jim Jacks, and U.S. Department of Justice Trial Attorneys Barry Jonas and Elizabeth Shapiro, and their respective supervisors, have the requisite security clearances to have access to the classified documents and information that relates to this case. All references to government attorneys, or attorneys for the government, as used in this Order, refer only to the attorneys listed in this paragraph and their respective supervisors.

12. Protection of Classified Information – The Court finds that, in order to protect the classified information involved in this case, no person, including the defendants and any witness for the defense, except government attorneys, appropriately

cleared Department of Justice employees, personnel of the originating agency, defense counsel, employees of defense counsel or translators employed by defense counsel, shall have access to the classified information in this case. No defense counsel, employee of defense counsel or translator shall have access to any classified information in this case unless that person shall first have:

a. Signed the Memorandum of Understanding in the form attached hereto, agreeing to comply with the terms of this Order. The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel for the defendant, or anyone associated with the defense as an employee or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

b. Persons other than government attorneys, appropriately cleared Department of Justice employees, and personnel of the originating agency, can only obtain access to classified documents and information after having been granted a security clearance by the Court Security Officer, and with permission of the Court, either through this Order, (for those named in paragraph 13 below), or by a separate Order upon showing of a need to know. Before any person other than government attorneys, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified information, he or she must also sign the Memorandum of Understanding.

13. Defense Counsel - Subject to the provisions of paragraph 12, the following attorneys for the defense, their approved employees and translator (collectively referred to herein as "the defense"), shall be given access to classified documents and information as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case: Nancy Hollander, Theresa M. Duncan and John W. Boyd for Shukri Abu Baker; Joshua L. Dratel and Aaron J. Mysliwiec for Mohammad El-Mezain; Linda Moreno and John D. Cline for Ghassan Elashi; Marlo P. Cadeddu for Mufid Abdulqader; and Greg Westfall for Abdulrahman Odeh.

Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court -- with prior notice to the government -- an approval for access to the appropriate level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

14. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this

case, standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and "major case" fingerprints shall be completed and submitted to the Court Security Officer forthwith by the defense counsel, all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

15. Area of Review - The Court Security Officer shall arrange for an appropriately approved secure area for the use by the defense. The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defendants' defense in this case. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer. The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the

presence of the Court Security Officer shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

16. If, upon the entry of a separate order of the Court, it becomes necessary for defendant(s) to review or discuss classified matters, or otherwise meet with defense counsel, in the Secure Area, this will only occur under appropriate supervision to ensure that the defendant(s) does not escape, attempt to escape, cause physical injury to himself or others, or remove, copy, alter, or destroy classified information, or obtain access to classified information the defendant(s) is not entitled to review, and to ensure that the defendant(s) does not use the opportunity to review the classified materials to circumvent any applicable security restrictions, including any Special Administrative Measures imposed by the Bureau of Prisons, other prison regulations, and the other orders of this Court governing discovery in this case.

17. Filings with the Court - Until further order of this Court, any pleading or other document filed by the defense, which defense counsel knows, or has reason to know, contains classified information in whole or in part, believes may be classified in whole or in part, or is unsure of the proper classification of the document or pleading, shall be filed under seal with the Court through the Court Security Officer, or his or her designee. The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the

appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, she or he shall ensure that that portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal. All portions of any document filed by the defense that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleadings or document to be filed by the defense that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

Any pleading or other document filed by the defendant shall be filed under seal with the Court through the Court Security Officer or his or her designee, unless defense counsel has obtained from the Court Security Officer, permission, specific to a particular, non-substantive pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or under seal, to file the pleading or document not under seal.

18. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security

Officer or his or her designee. The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

19. Access to Classified Information – Defense counsel, their designated employees and translators, shall have access to classified information only as follows:

a. All classified information produced by the government to the defense, in discovery or otherwise, and all classified information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer;

b. The defense shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials. However, the defense shall not, except under separate Court order, disclose the classified information, either directly, indirectly or in any manner which would disclose the existence of such, to pursue leads or in the defense of the defendants;

c. No person, including the defense, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area;

d. All documents prepared by the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain

classified information, shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information, and in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government;

e. The defense shall discuss classified information only within the secure area or in another area authorized by the Court Security Officer, and shall not discuss or attempt to discuss classified information over any standard commercial telephone instrument or office intercommunication system;

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not authorized pursuant to this Order, including the defendants and defense witnesses, except the Court, Court personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any

person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that Classified information be disclosed to persons not named in this Order, then, upon approval by the Court and upon notice to the government , the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

20. Foreign Intelligence Surveillance Act (FISA) - The defendants have rights under the United States Constitution, federal statutes and the Federal Rules of Criminal Procedure to pre-trial discovery. The Government recognizes its obligation to provide such discovery materials to defense counsel in the most expeditious manner possible, consistent with public safety and the confidentiality of sensitive ongoing investigations. Therefore, to the extent that FISA-obtained or derived information is provided to the defense counsel:

a. the parties agree that both the defense and the government shall have access to such FISA information regardless of prior minimization efforts undertaken by the government upon initial review of the materials;

b. any draft transcripts or summaries of translated electronic and paper materials, shall not be used in any proceeding for any purpose, including cross-examination of any witness except pursuant to CIPA.

c. the parties agree that the disclosure and discovery of materials that may be provided to the court pursuant to FISA for legal determinations shall be governed by the provisions of FISA notwithstanding any other provisions of this order.

21. Procedures for the use or the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be used or disclosed by the defense except:

a. To the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

b. To representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. In accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and,

d. To persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the

defense intends to use in any way at any pretrial proceeding, deposition or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

22. Violations of this Order - Any unauthorized use or disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to ensure that those authorized by the Order to receive classified information will never divulge the classified information disclosed to them to anyone who is not now authorized to receive it, or otherwise use the classified information, without prior written authorization from the originating agency and in conformity with this Order.

23. All classified information to which the defense counsel, defense counsel employees and translators has access in this case is now and will remain the property of the government. The defense counsel, defense counsel employee(s) and translators who receive classified information shall return all such classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of this case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

24. Declassified Material - Pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, any and all audio and video tapes (hereinafter called "tapes"), facsimiles, e-mails and any summaries or transcripts thereof, which may be declassified and provided by the government to defense as part of discovery in this case, shall also be governed by the following provisions:

a. Defense counsel shall not disclose any of the tapes and facsimiles, or summaries thereof, to any person other than the defendant(s), witnesses which they may be interviewing or preparing for trial, and attorneys, law clerks, secretaries, translators,

technical and other experts, and investigators involved in the representation of their client;

b. The tapes, facsimiles, or any copies thereof are now and will forever remain the property of the United States Government. Defense counsel will return the tapes, facsimiles, and all copies to the government at the conclusion of the case;

c. Defense counsel will store the tapes and facsimiles in a secure place consistent with their security classification, if any, and will use reasonable care to ensure that they are not disclosed to third persons, including the media, in violation of this agreement;

d. If defense counsel makes any further copies of any of the tapes and facsimiles, defense counsel will inscribe on each tape the following notation: "U.S. Government Property; May Not Be Used Without U.S. Government Permission . .";

e. If defense counsel release custody of any of the tapes, facsimiles, or their copies, or summaries or transcripts thereof, to any person described in paragraph (a), defense counsel shall provide such recipients with copies of this protective order and advise them that the tapes and facsimiles are the property of the United States Government and that any unauthorized use may constitute a violation of law and/or contempt of court;

f. Nothing herein constitutes a waiver of any right of the defendant, nor does anything herein restrict in any way the right of the defense to use the tapes and facsimiles in connection with any pleading or proceeding in this case;

g. This Order in no way modifies or alters the obligation of all counsel to handle such tapes, facsimiles, and summaries thereof, to the extent such material is classified, in a manner consistent with the CIPA and such protective orders as may be entered by the Court in this case.

h. If a pleading filed by a defendant contains exhibits which are covered by Paragraph 24, those exhibits will be filed under seal. If a pleading filed by a defendant quotes from or summarizes any content of materials covered by Paragraph 24, that pleading will be filed under seal. Excepted from these terms are declassified materials which have been admitted into evidence at trial.

25. Nothing in this Order shall preclude the Government from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material.

26. A copy of this Order shall be issued forthwith to counsel for the defendants, who shall be responsible for advising the defendants and defense counsel employees, of the contents of this Order. The defense counsel and defense counsel employees to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file executed originals with the Court and the Court Security Officer and serve executed originals of such

document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent for the defense counsel, defense counsel employees, and defense witnesses to have access to classified information.

SO ORDERED this 7th day of May 2008.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA	§	
	§	
V.	§	
	§	
HOLY LAND FOUNDATION FOR	§	3:04-CR-240-P
RELIEF AND DEVELOPMENT (1)	§	
also known as the "HLF"	§	
SHUKRI ABU BAKER (2)	§	
MOHAMMAD EL-MEZAIN (3)	§	
GHASSAN ELASHI (4)	§	
HAITHAM MAGHAWRI (5)	§	
AKRAM MISHAL (6)	§	
MUFID ABDULQADER (7)	§	
ABDULRAHMAN ODEH (8)	§	

MEMORANDUM OF UNDERSTANDING

I, _____, acknowledge that I have received, read, and understand the Protective Order entered by the Court on _____, 2008, in this case, and I agree to comply with its provisions and to provide the information requested below. I understand that I may be the recipient of certain classified information or documents that concern the present and future security of the United States. I understand that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States, or could be used to the advantage of a foreign nation against the interests of the United States.

I agree that I shall never divulge, publish, or reveal either by word, conduct, or any other means, such classified documents or information unless specifically authorized in writing to do so by an authorized representative of the United States Government; or as authorized by the Court pursuant to the Classified Information Procedures Act and the Protective Order entered in this case.

I agree that this Memorandum and any other nondisclosure agreement signed by me in connection with this case will remain forever binding upon me.

Name: _____

Social Security Number: _____

Date and Place of Birth: _____

_____
(signature)

Date: _____

United States v. Ahmed
(N.D. Ga. 1:06-cr-147)

Protective Order: Unclassified **133**

Protective Order: Classified **141**

FILED IN CHAMBERS
U.S.D.C. Atlanta
DEC 2 0 2006
JAMES N. HATTEN, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:06-CR-147-CC
SYED HARIS AHMED and	:	
EHSANUL ISLAM SADEQUEE	:	(SUPERSEDING)

PROTECTIVE ORDER FOR UNCLASSIFIED DISCOVERY MATERIAL

This matter is before the Court upon the Government's motion for a protective order for unclassified discovery information (Doc 66) and the Government's request to reconsider (Doc 112) the Court's initial denial of the motion (Doc 106). After considering the pleadings regarding this matter and the oral argument at a hearing on December 15, 2006, pursuant to the authority granted under Rule 16(d) of the Federal Rules of Criminal Procedure and the general supervisory authority of the Court, and for the reasons stated by the Court at the conclusion of the hearing, the Court hereby FINDS AND ORDERS THAT:

1. The Government shall segregate the unclassified discovery materials it produces to the Defendants and their counsel into two categories: "general discovery materials" and "sensitive discovery materials." The category to which particular discovery materials belong shall be clearly identified by the Government.

<u>General discovery materials</u>

2. General discovery materials shall not be further

disseminated[1] by the Defendants or their counsel to any individuals, organizations or other entities, other than: (a) members of the defense team (the Defendant, co-counsel, paralegals, investigators, translators, and secretarial staff) and (b) experts and consultants retained to assist in the preparation of the defense. Notice of proposed dissemination to defense experts and consultants shall be provided directly to the Court *ex parte* and under seal. Each individual to whom such disclosure is made pursuant to this Order shall be provided a copy of this Order and shall be advised that he or she may not further disseminate the materials except by the express direction of defense counsel.

3. Defense counsel, any co-counsel, paralegals and any defense investigators may disseminate (but not provide copies of) any 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.

Sensitive discovery materials

4. Sensitive discovery materials[2] shall not be further

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[1] "Disseminate" here means to provide, show, or describe to another either a particular piece of discovery or quotations, excerpts, or summaries derived therefrom.

[2] The category of sensitive discovery materials includes all declassified recorded communications (and any summaries or transcripts thereof) and any other declassified information or materials which were a product of FISA-authorized searches or electronic surveillance that are reviewed by or made available to the Defendants or defense team in this case. Such declassified materials shall be collectively referred to as "FISA Information."

disseminated by the Defendants or their counsel to any individuals, organizations or other entities, other than: (a) members of the defense team (the Defendant, co-counsel, paralegals, investigators, translators, and secretarial staff) and (b) experts and consultants retained to assist in the preparation of the defense. Notice of proposed dissemination to defense experts and consultants shall be provided directly to the Court *ex parte* and under seal. Each individual to whom disclosure is made pursuant to this Order shall be provided a copy of this Order and shall be advised that he or she may not further disseminate the materials except by the express direction of counsel of record.

5. Neither defense counsel nor other members of the defense team (the Defendant, co-counsel, paralegals, investigators, translators, and secretarial staff) nor any experts or consultants retained by the defense may disseminate sensitive discovery materials to witnesses or potential witnesses. The Defendants may seek relief from this restriction as to a particular item or items of discovery by providing notice to the Court of intent to show 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, at its discretion and after so notifying the Defendants, may consult with the Government regarding any dissemination requests pursuant to this paragraph.

6. All 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.

7. Defense counsel in receipt of FISA Information may only make copies of the FISA Information in accordance with approved procedures, after consultation with the Court Security Officer or her designee. 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."

Storage of unclassified discovery

8. Defense counsel shall store all unclassified discovery, to include FISA Information and any copies thereof, in a secure place.

Sharing permitted among defense teams in this case only

9. Notwithstanding other provisions of this Order, the defense team for one Defendant shall be free to disseminate unclassified discovery of any form (including providing copies) to the defense team for the other Defendant, without prior Court approval. However, this exchange privilege does not extend to defense counsel or other persons or parties not associated with this case.

Prohibition on dissemination to public

10. No party or agent thereof shall disseminate to the media or the public any of the discovery materials in this case.

Sealing or redaction of certain filings

Defense filings

11. No later than the filing deadline established by applicable rule or other court order, the defendant shall provide to the Government a copy of any defense filing that quotes, attaches, or refers to sensitive discovery material and shall advise the Court's clerk that this has been done so that the Court is aware that the filing deadline will be extended as provided below. Within three business days after receiving the document, the Government shall notify the defendant in writing or by email whether it intends to file a motion to seal the document in whole or in part. If the Government does not provide timely notice or advises the defendant that the Government does not intend to file a motion to seal, then the defendant shall file the document in unsealed form by the next business day.

12. If the Government notifies the defendant that it does intend to file a motion to seal, then the Government shall have five business days for a defense filing of less than 10 pages, and 10 business days for a defense filing of more than 10 pages, to file a motion to seal the document in whole or in part, detailing what portions of the document the Government argues should be

sealed and the specific reasons therefor. Once the Government's motion to seal is on file with the Court, the defendant shall promptly file the document under seal. The Court will then rule upon the motion to seal, and portions of or the whole filing will be unsealed and placed in the public record based upon the Court's ruling.

Government filings

13. Government filings that quote, attach, or refer to sensitive discovery material shall provisionally be filed under seal, accompanied by a motion to seal that explains, in more than perfunctory or boilerplate terms, the basis for the proposed sealing and requests leave to file a more detailed motion to seal within the period described below. Unless such leave is denied, the Government shall have three business days for a filing of less than 10 pages, and five business days for a filing of more than 10 pages, to file a supplemental motion to seal the document in whole or in part, detailing what portions of the document the Government argues should remain sealed and the specific reasons therefor. If no such supplemental motion is filed within the requisite time period, the underlying filing will immediately be unsealed and placed in the public record. If a supplemental motion to seal is filed, then the Court will rule upon it, and portions of or the whole document will be unsealed and placed in the public record based upon the Court's ruling.

Exceptions

14. The Court may authorize exceptions to this procedure with respect to particular filings, for good cause shown. The Court may also modify this procedure with respect to the filing of documents that contain or may contain classified information in addition to sensitive discovery material, in accordance with any protective order for classified material that is entered in this case. This protective order applies to court filings and does not control court proceedings such as hearings and trials.

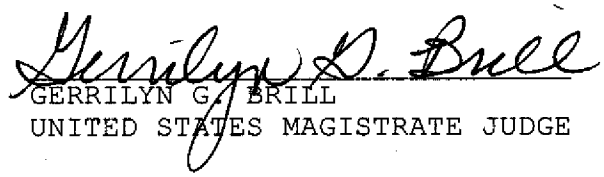
Miscellaneous provisions

15. Nothing in this Order shall preclude the Government from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material. Similarly, nothing in this Order constitutes a waiver of any right of the Defendants to use discovery material in connection with any pleading or proceeding in this case, provided that such use is consistent with the provisions of this Order or any further Order, as well as any applicable law.

16. 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.

SO ORDERED this 20th day of December, 2006.



GERRILYN G. BRILL
UNITED STATES MAGISTRATE JUDGE

Presented by
/s/David E. Nahmias, USA

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
FEB 8 2007
JAMES N. HATTEN, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:06-CR-147-CC
SYED HARIS AHMED and	:	
EHSANUL ISLAM SADEQUEE	:	

PROTECTIVE ORDER FOR CLASSIFIED MATERIALS

This matter is before the Court upon the Government's several motions for a protective order to prevent the unauthorized disclosure of classified national security information in this case (Docs 33, 65, 99); the Defendants', Intervenors', and Amici's objections (Docs 79, 82, 105); and the Government's responses thereto (Docs 99, 100).

On January 25, 2007, this Court held a hearing on the Government's proposed protective order, at which all sides were given an opportunity to present their views. (Docs 155, 157). Having considered the pleadings and the oral arguments made at the hearing, the Court OVERRULES the Defendants', Intervenors', and Amici's objections to the Government's motions and FINDS:

Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. III ("CIPA"), requires entry of a protective order upon motion by the Government. The Government has properly moved for such an order, so one shall be entered, as detailed below.

The Government has demonstrated the need to safeguard national security information at all phases of this criminal proceeding,

including any appellate proceedings. While the following order in no way binds the appellate courts, it does control and govern the conduct of all individuals granted access to classified information during this case at all times unless and until it is superseded by a protective order issued by an appellate court.

The Government's participation in any decision that the Court[1] may be asked to make concerning defense requests to share classified information with either a Defendant or a third party is necessary and appropriate. First, Government participation is structurally proper, given that it is the Executive Branch that ultimately controls the disclosure of classified information. Second, the Government is uniquely situated to advise the Court on the risks involved in disseminating classified information, whether because of the nature or source of the information or because of the individual with whom it is to be shared.

The Court acknowledges its role in ensuring that the public's First Amendment right of access to court filings is not improperly compromised. To that end, the Court will exercise its discretion to compare redacted filings with their companion classified filings to verify that only classified information and materials are kept under seal. While the Court is not now setting any formal deadline for the Government to supply redacted versions of its classified filings, the Court may revisit the issue should there be excessive

[1] "Court" refers to both the District Court and the Magistrate Court insofar as this Order delegates authority (see ¶ 4, below).

delays between the filing of classified documents and the public release of redacted versions thereof.

THEREFORE, pursuant to the authority granted under Section 3 of CIPA; the Security Procedures Established Pursuant To Pub. L. 96-456, 94 Stat. 2025, By The Chief Justice Of The United States For The Protection Of Classified Information (reprinted following Section 9 of CIPA) ("Security Procedures"); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

THE COURT HEREBY FURTHER FINDS AND ORDERS:

1. This case will involve classified national security information, the storage, handling and control of which, by law or regulation, requires special security precautions, and access to which requires a security clearance and an actual need to know.

2. The purpose of this Order is to establish the procedures that must be followed by the Defendants, defense counsel, other counsel involved in this case, persons assisting defense counsel, other Court personnel, and all other individuals who are granted access to classified information or documents in connection with this case. It is a further purpose of this Order to ensure that those authorized by the Order to receive classified information do not divulge the classified information disclosed to them to anyone who is not authorized to receive it, or otherwise use the classified information, except in conformity with this Order or

with prior written authorization from the originating agency.

3. The procedures set forth in this Protective Order and in CIPA will apply to all pretrial, trial, post-trial and appellate aspects concerning classified information in this case, and may be modified from time to time by further order of the Court acting pursuant to Fed. R. Crim. P. 16(d), CIPA, and the Court's inherent supervisory authority to ensure a fair trial.

4. The Court may refer pretrial matters involving classified information to the Magistrate Judge for review and consideration consistent with this and any other applicable orders that may be issued by the Court pursuant to CIPA or any other applicable law. In the event of a referral, this Protective Order, and any other applicable orders, shall remain in effect and binding upon each of the parties and shall govern all proceedings that are held before the Magistrate Judge until such further order of this Court. The Magistrate Judge shall have the full authority to hear and determine any referred pretrial matter that is granted pursuant to 28 U.S.C. § 636 or any other applicable law. Because of the possibility of referrals, all references below to "the Court" shall include the Magistrate Court.

5. Definitions. The following definitions shall apply to this Order:

a. The terms "classified national security information and documents," "classified documents and information," "classified information," and "classified documents" refer to:

i. Any document that has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12,958, as amended, as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" (SCI), and any information contained in such documents;

ii. Any document or information that the Defendants or the defense know, or should reasonably know, has been derived from United States Government information that was classified, regardless whether such document or information has subsequently been classified by the Government pursuant to Executive Order 12,958 as amended;

iii. Verbal classified information that has been disclosed by attorneys for the Government or by a witness in a court proceeding to the Defendants or the defense; or

iv. Any document or information, including verbal information and "foreign government information" (as that term is defined in Executive Order 12,958, as amended), that the Defendants or the defense have been notified is classified, unless already possessed by or known to the Defendants or the defense, provided that such knowledge is not derived from materials described in subparagraph 5(a)(i),(ii), or (iii) above.

b. The words "document" and "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming

copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

i. Papers; correspondence; memoranda; notes; letters; reports, summaries; interoffice and intra-office communications; notations of any sort concerning conversations, meetings or other communications; bulletins; telexes; cables; teletypes; telegrams; facsimiles; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

ii. Graphic or oral records or representations of any kind, including, but not limited to, photographs, maps, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind and motion pictures;

iii. Electronic, mechanical, magnetic, optical or electric records of any kind, including, but not limited to, data stored on tapes, cassettes, CD-ROMS, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

iv. Information acquired aurally.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

d. "Secure Area" shall mean a physical facility accredited for the storage, handling, and control of classified

information.

e. "The defense" means any person assisting the Defendants with the preparation of their defense in this case including (but not limited to) counsel for the Defendants and employees of, consultants to or contractors for defense counsel.

f. "Attorneys for the Government," "Government counsel," and "counsel for the Government" means the attorneys listed in paragraph 10 herein and their respective supervisors.

g. "Originating agency" means the government agency, department or entity from which the classified document or the information contained therein originated.

6. Any document or information provided by attorneys for the Government to the Defendants or the defense referencing, mentioning, originating from, or concerning any agency, or part of an agency, that is a member of the United States "intelligence community" (as defined in Section 3.4 of the National Security Act of 1947, codified at 50 U.S.C. § 401a(4)), other than the FBI, or information in possession of such agency, or part thereof, other than the FBI, shall be presumed to fall within the meaning of classified information unless and until the Court Security Officer or an attorney for the Government advises otherwise in writing.

7. All classified documents and information shall remain classified unless such document or information bears a clear indication that it has been declassified by the originating agency.

8. Information in the public domain is ordinarily not classified. However, such information may be considered classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has had access to the classified information, and that confirmation corroborated the information in question. Any attempt by the Defendants or the defense to have such information confirmed or denied at trial, or in connection with any pretrial, post-trial or other proceeding in this case, shall be governed by CIPA and the provisions of this Order.

9. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Jennifer H. Campbell as Court Security Officer for this case and Mary M. Cradlin, Christine E. Gunning, Michael P. Macisso, Daniel O. Hartenstine, Erin E. Hogarty, James P. Londergan, John P. Molinard, Barbara J. Russell, and Joan B. Kennedy as Alternate Court Security Officers (collectively "the CSO"), for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. The defense shall seek guidance from the CSO with regard to the appropriate storage, handling, transmittal, and use of classified information.

10. The Court has been advised that the following Government attorneys will be working on this case: United States Attorney David E. Nahmias, Assistant United States Attorneys Katherine B. Monahan and Robert C. McBurney, and U.S. Department of Justice

Trial Attorney Alexis L. Collins and Attorney Advisor Shennie Patel, along with various supervisory attorneys. The Court has also been advised that the Government attorneys have the requisite security clearances to have access to the classified information in this case. The Government may add additional attorneys with notice to the Court and defense counsel.

11. Protection of Classified Documents and Information: The Court finds that, in order to protect the classified documents and information involved in this case, no person except the attorneys for the Government, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, judicial personnel, members of the defense, and the Defendants (subject to paragraphs 11(d) and 19(b)) shall have access to the classified documents and information in this case.

a. Judicial personnel, other than the Court, may obtain access to classified documents or information after having been granted security clearance by the CSO.

b. No member of the defense shall have access to any classified documents or information in this case unless that person shall first have:

i. received approval for access to the particular classified documents or information from the Government or, should the Government reject the request, from the Court in a separate order, which shall not occur except upon a showing of a need to know the particular classified information and upon consideration

of any responsive pleading from the Government;

ii. received the necessary security clearance at the appropriate level of classification as determined by the Department of Justice Security Officer working in conjunction with the CSO; and

iii. signed a Memorandum of Understanding (a form for which is attached hereto), agreeing to comply with the terms of this Order.

c. The substitution, departure or removal of counsel for the defense or anyone associated with the defense as an employee, consultant, contractor, witness or otherwise shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

d. The Defendants shall not have access to any classified documents or information in this case except pursuant to paragraph 19(b).

12. For the purpose of establishing the security clearances necessary for access to classified documents and information that may be involved in this case, the defense, and such Court personnel as the Court requires for its assistance shall forthwith complete and submit to the CSO Standard Form 86 ("Security Investigation Data for Sensitive Position"), the necessary releases, and full fingerprints, unless such person already holds an appropriate security clearance and is approved for access to classified documents and information in this case. The CSO shall take all

reasonable steps to process all security clearance applications in a timely manner. The CSO shall not disclose to Government attorneys any information supplied by anyone applying for security clearance pursuant to this Order.

13. The CSO shall arrange for and maintain an appropriately approved secure area for the use of the defense. The CSO shall establish procedures to ensure that the secure area is accessible during normal business hours, and at other times on reasonable request as approved by the CSO, to the defense, the Defendants (if such access should be determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and witnesses authorized to access classified information pursuant to paragraph 19 herein (hereafter "authorized witnesses") who are accompanied by defense counsel. The secure area will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of a defense in this case. The CSO, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from the secure area by anyone, including the defense, unless authorized by the CSO. No person, including the defense, shall copy or reproduce any classified document or information in any form, except with the approval of the CSO or in accordance with the procedures

established by the CSO for the operation of the secure area.

14. If, upon the entry of a separate order of the Court as provided in paragraph 19(b), it becomes necessary for the Defendants to discuss classified matters, review classified documents or information, or otherwise meet with defense counsel regarding classified matters, this will only occur in the Secure Area and under appropriate supervision, which the CSO will coordinate with the U.S. Marshals Service, to ensure that the Defendants do not escape, cause physical injury to themselves or others, or remove, copy, alter or destroy classified documents or information or obtain access to classified documents or information that the Defendants are not authorized to review, and to ensure that the Defendants do not use the opportunity to review the classified materials to circumvent any applicable security restrictions and other orders of this Court governing discovery in this case.

15. Filing of Papers By the Defense: Any pleading or other document filed by the defense shall be filed under seal with the Court through the CSO or her designee, unless defense counsel has obtained permission from the CSO, specific to a particular pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or under seal, to file the pleading or document not under seal. Pleadings filed under seal with the CSO shall be marked, "Filed In Camera and Under Seal with the Court Security

Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. The time of physical submission to the CSO shall be considered the date and time of filing. The CSO shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the CSO determines that the pleading or document contains classified information, she shall ensure that the portion of the document that contains classified information, and only that portion, is marked with the appropriate classification marking(s) and remains under seal. All portions of all papers filed by the defense that do not contain classified information shall be immediately unsealed by the CSO and placed in the public record. The CSO shall immediately deliver under seal to the Court and attorneys for the Government any pleading or document filed by the defense that contains classified information. The Court shall then direct the Clerk of Court to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the CSO.

16. Filing of Papers by the Government: Any pleading or document filed by attorneys for the Government that contains classified information shall be filed under seal with the Court through the CSO or her designee. Such pleadings and documents

shall be marked, "Filed In Camera and Under Seal with the Court Security Officer or Designee." Such pleadings need not be accompanied by a separate motion to seal, but should include in the introductory paragraph a statement that the item is being filed under seal pursuant to this Order. The time of physical submission to the CSO shall be considered the date and time of filing. The CSO shall immediately deliver under seal to the Court and the defense any pleading or document filed by the Government that contains classified information, provided that the defense has proper clearance to receive the pleading or document. The Court shall then direct the Clerk of Court to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the CSO. Unless otherwise granted leave by the Court, the Government shall file with the Clerk of Court a redacted, unclassified version of any filing that was sealed because it contained classified information as soon as practicable or as ordered by the Court.

17. Sealing of Records: The CSO shall maintain a separate sealed record for those pleadings or documents containing classified materials. The CSO shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

18. Access to Classified Information: The defense, the Defendants (if such access should be determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses when accompanied

by defense counsel shall have access to classified documents or information only as follows:

a. All classified documents or information produced by the Government to the defense, in discovery or otherwise, and all classified documents or information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the CSO or in another area authorized by the CSO.

b. The defense and authorized witnesses when accompanied by defense counsel shall have free access in the secure area to the classified documents or information made available to them in accordance with this Order, and shall be allowed to take notes and prepare documents with respect to those materials.

c. All documents prepared by the defense, the Defendants or authorized witnesses (including pleadings or other documents intended for filing with the Court) that contain or deal in any way with classified information shall be transcribed, recorded, typed, duplicated, copied, and otherwise prepared only by persons who have received an appropriate approval for access to classified information, and only in the secure area on approved word processing and data handling equipment, and in accordance with the procedures approved by the CSO. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, and exhibits) containing classified information shall be maintained in the secure area unless and until

the CSO determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the Government.

d. The defense, the Defendants (if access to classified information is determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses shall discuss classified documents or information only within the secure area or in another area authorized by the CSO, and shall not discuss or attempt to discuss classified information over any standard commercial telecommunications system or office communication system, including, but not limited to, by facsimile and over the internet.

e. The CSO shall not reveal to the Government the content of any conversation she may hear among the defense, reveal the nature of the documents being reviewed by them, or the work generated by them. In addition, the presence of the CSO shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client or work product privilege.

19. Disclosure of Classified Information: The defense, the Defendants (if access to classified information is determined by the Court to be necessary and is authorized through a separate order, subject to paragraph 19(b) herein), and authorized witnesses shall not disclose, without prior approval of the Court, any classified document or information to any person not authorized pursuant to this Order, except for the Court or those Court

personnel, personnel of the originating agency and other intelligence agencies, appropriately-cleared Department of Justice employees, or attorneys for the Government who have been identified by the CSO as having the appropriate clearances and the need-to-know and in accordance with the procedures of CIPA and the procedures established by the CSO. Counsel for the Government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court a Memorandum of Understanding in the form attached to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that classified documents or information be disclosed to a person not named in this Order, the CSO shall promptly seek to obtain a security clearance for such person at the request of defense counsel.

a. No person shall discuss classified documents or information in the presence of any person who has not been granted access by the Court to such classified documents or information.

b. No person shall disclose classified documents or information to either of the Defendants without prior concurrence of counsel for the Government (in consultation with the originating agency) or, absent such concurrence, an order of the Court, which shall not occur except upon a showing of a need to know the

particular classified document or information. Counsel for the Government shall be given an opportunity to be heard in response to any defense request for disclosure to the Defendants of any classified document or information.

c. Procedures for the use or the public disclosure of classified information shall be those provided in Sections 5, 6 and 8 of CIPA. These provisions, and this Order, require that:

i. Any and all items which are classified that the defense seeks to use or publicly disclose shall be listed in the Defendants' Section 5 notices.

ii. To facilitate the filing of notices required under Section 5 of CIPA, the CSO shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or the Defendants or about which the defense or the Defendants have knowledge and which the defense intends to use in any way at any pretrial proceeding, deposition, trial or post-trial or other proceeding. Nothing submitted by the defense to the CSO pursuant to this paragraph shall be made available to counsel for the Government unless so ordered by the Court or so designated by the defense.

20. Notwithstanding any other provision of this or any other Protective Order that may be entered by the Court relating to the disclosure of classified information, the Foreign Intelligence Surveillance Act (FISA) shall govern the disclosure or discovery of

materials in connection with any FISA-related litigation, including but not limited to any FISA applications, orders or related materials.

21. Any unauthorized use or disclosure of classified information may constitute a violation of United States criminal law. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any breach of this Order may also result in the termination of the person's access to classified documents and information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States and may be used to the advantage of a foreign power against the interests of the United States.

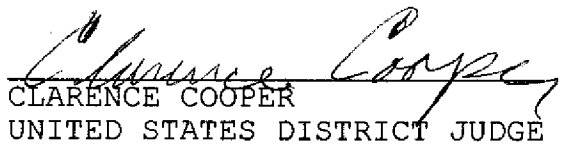
22. All classified documents and information to which the defense, the Defendants or authorized witnesses have access in this case are now and forever remain the property of the Government. Any member of the defense, here including the Defendants and authorized witnesses, who receives classified documents or information shall return all such documents and information in their possession or for which they are responsible, upon demand of the CSO. Any notes, summaries, or other documents prepared by the

defense, the Defendants, or authorized witnesses that contain classified information shall remain at all times in the custody of the CSO for the duration of this case. All such notes, summaries, and other documents shall be destroyed by the CSO in the presence of defense counsel, should they choose to be present, (a) one year after the judgment in this case is final or (b) at the conclusion of litigation of any motion filed pursuant to 28 U.S.C. § 2255, if said motion was filed within one year after the judgment became final, whichever event is later.

23. A copy of this Order shall be issued forthwith to the attorneys for the Government, the CSO, the Defendants and counsel of record for the Defendants. Counsel for the defense shall be responsible for advising the Defendants, authorized witnesses and any other member of the defense who should be made aware of the contents of this Order. The Defendants, counsel for the Defendants and any other individuals who will be provided access to classified documents or information pursuant to this Order shall execute the Memorandum of Understanding in the form attached hereto. Counsel for the Defendants shall file executed originals of such documents with the Court, and serve copies of executed originals of such documents upon the CSO and the Government. The execution and filing of the Memorandum of Understanding is a condition precedent for the Defendants, any member of the defense or any other individual to have access to classified information.

24. The Court may amend this Protective Order and/or issue additional Protective Orders as needed.

SO ORDERED this 8th day of February, 2007.



CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

Submitted by
/s/Robert C.I. McBurney, AUSA

United States v. Hassoun
(S.D. Fla. 0:04-cr-60001)

Protective Order **163**

Filing Order **179**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60001-CR-COOKE/Brown (s)(s)(s)(s)(s)

UNITED STATES OF AMERICA

v.

FILED by TM D.C.
MGC May 1 ~~APR 28~~ 2006
CLARENCE MADDOX
CLERK U. S. DIST. CT.
S.D. OF FLA. - MIAMI

ADHAM AMIN HASSOUN,
a/k/a "Abu Sayyaf,"
MOHAMED HESHAM YOUSSEF,
a/k/a "Abu Turab,"
KIFAH WAEL JAYYOUSI,
a/k/a "Abu Mohamed,"
KASSEM DAHER,
a/k/a "Abu Zurr," and
JOSE PADILLA,
a/k/a "Ibrahim,"
a/k/a "Abu Abdullah the Puerto Rican,"
a/k/a "Abu Abdullah Al Mujahir,"

Defendants.
_____/

AMENDED CIPA § 3 PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized use, disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to, or are otherwise in the possession of, defense counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (1994) (CIPA); the Security Procedures Established pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the

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1K

Protection of Classified Information (reprinted following CIPA Section 9); the general supervisory authority of the Court, and in order to protect the national security;

IT IS HEREBY ORDERED:

1. The Court finds that this case will involve classified national security information, the storage, handling and control of which, by law ~~or~~ and regulation, requires special security precautions, and access to which requires a security clearance and a "need-to-know."

2. The purpose of this Order is to establish, consistent with applicable statutory law, the procedures that must be followed by all defense counsel of record, their designated employees, all other counsel involved in this case, translators for the defense, any Court personnel, and all other individuals who receive access to classified information or documents in connection with this case.

3. The procedures set forth in this Amended CIPA Protective Order, and CIPA, shall apply to all pre-trial, trial, post-trial, and appellate aspects concerning this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d), Sections 3 and 9 of CIPA, and its inherent supervisory authority to ensure a fair and expeditious trial.

Definitions

4. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

a. Any classified document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," OR "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)," or any information contained in such documents;

b. Any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party, which has been derived from United States government information that was classified, regardless whether such document or information has subsequently been classified by the government[1] pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)" by the appropriately authorized authorities;

c. Oral classified information known from a verbal disclosure to defense counsel;

d. Any document and information, including verbal information, as to which the defense counsel have been notified orally or in writing that such documents or information contain classified information; or,

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[1] This provision is meant to explain how classified information may or could come, unknowingly, into the possession of the parties. It intended merely to assist the parties in their continued good faith efforts to guard against the unauthorized, inadvertent disclosure of classified information. It is not intended to be a trap for those who unknowingly come into possession of classified information.

e. Any information, regardless of place or origin and including "foreign government information," as that term is defined in and Executive Order 12958, that could reasonably be believed to contain classified information.

5. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

a. Papers, correspondence, memoranda, notes, letters, reports, summaries, photographs, maps, charts and graphs, interoffice and intra-office communications, notations of any sort concerning conversations, meetings, or other communications, bulletins, teletypes, telegrams, and telefacsimiles, invoices, worksheets, and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

b. Graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

c. Electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and,

d. Information acquired orally or verbally that is classified or which defense counsel has reason to believe is classified, or which defense counsel has reason to believe is derivative of classified material.

6. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the originating agency of the document or the information contained therein (hereinafter, the "originating agency"), or the holder(s) have otherwise been notified of the declassification by an appropriate government official.

7. Information in the public domain is ordinarily not classified. However, if defense counsel anticipates seeking the confirmation or denial of public domain information by any person who has, or has had, access to the classified information at trial, or in connection with any pretrial or other proceeding in this case, that shall be governed by CIPA and all provisions of this Order.

8. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

9. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

10. Court Security Officer - In accordance with the provisions of CIPA and the Security Procedures, the Court designates James Londergan, Security Specialist as Court Security Officer for this case, for the purpose of providing security arrangements necessary

to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified documents and information.

11. Government Attorneys - The Court has been advised that the following government attorneys working on this case, Assistant U.S. Attorneys Russell R. Killinger, Brian K. Frazier, and Julia A. Paylor and U.S. Department of Justice Trial Attorneys Stephanie K. Pell and Mark Maldonado, and their respective supervisors, have the requisite security clearances to have access to the classified documents and information that relates to this case. All references to government attorneys, or attorneys for the government, as used in this Order, refer only to the attorneys listed in this paragraph and their respective supervisors.

12. Protection of Classified Information – The Court finds that, in order to protect the classified information involved in this case, no person, including the defendants and any witness for the defense, except government attorneys, appropriately cleared Department of Justice employees, personnel of the originating agency, defense counsel, employees of defense counsel or translators employed by defense counsel, shall have access to the classified information in this case. Persons other than government attorneys, appropriately cleared Department of Justice employees, and personnel of the originating agency, can only obtain access to classified documents and information after having been granted a security

clearance by the Court Security Officer, and with permission of the Court, either through this Order, (for those named in paragraph 13 below), or by a separate Order upon showing of a need to know.

13. Defense Counsel - Subject to the provisions of paragraph 12, the following attorneys for the defense, their approved employees and translator (collectively referred to herein as "the defense"), shall be given access to classified documents and information as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case: Kenneth M. Swartz, Jeanne Baker, William W. Swor, Michael Caruso, Anthony J. Natale, Orlando do Campo and Andrew Patel, once each of the listed individuals have obtained security clearances verified by the Court Security Officer, James Londergan.

Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court -- with prior notice to the "Wall"attorney for the government[2] -- an approval for access to the appropriate level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. Counsel for the defense may submit applications under seal for additional persons to review classified documents and classified information on the understanding that defense counsel will notify the "Wall" attorney for the government and that the Court will consult with the "Wall" attorney for the

[2] The term "Wall attorney for the government" denotes a government counsel who does not have contact with the government trial counsel for the purpose of this case.

government and the Court Security Officer about any such application. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or any Non-Disclosure Agreement properly executed.

14. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, SF 312 [Non-Disclosure Agreement] and "major case" fingerprints shall be completed and submitted to the Court Security Officer forthwith by the defense counsel, all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

15. Area of Review - The Court Security Officer shall arrange for an appropriately approved secure area for the use by the defense. The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense from 7:00am until 11:00pm, 7 days per week. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment (to include an approved shredder for classified material) requested by the defense that is reasonable and necessary to the preparation of the defendants' defense in this case. The Court Security Officer, in

consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer. The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the presence of the Court Security Officer shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

16. If, upon the entry of a separate order of the Court, it becomes necessary for defendant(s) to review or discuss classified matters, or otherwise meet with defense counsel, in the Secure Area, the conditions under which defendant(s) shall be brought into the Secure Area shall be set in that future order.

17. Filings with the Court - Until further order of this Court, any pleading or other document filed by the defense, which defense counsel knows, or has reason to know, contains classified information in whole or in part, believes may be classified in whole or in part, or is unsure of the proper classification of the document or pleading, shall be filed under seal with the Court through the Court Security Officer.[3] If defense counsel are unsure of either whether or not any such pleading or document contains classified information, in whole or in part, such pleading or document shall also be filed under seal with the Court

[3] See footnote No.1.

Security Officer. The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, she or he shall ensure that that portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal. All portions of any document filed by the defense that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleadings or document to be filed by the defense that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer. The Court Security Officer shall maintain a separate sealed record for those materials which are classified. The Court Security Officer shall be responsible for maintaining the secured record for purposes of later proceedings or appeals.

18. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. The

date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

19. Access to Classified Information – Defense counsel, their designated employees and translators, as well as defense witnesses who are permitted, shall have access to classified information only as follows:

a. All classified information produced by the government to the defense, in discovery or otherwise, and all classified information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer;

b. The defense shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials. However, the defense shall not, except under separate Court order, disclose the classified information, either directly, indirectly or in any manner which would disclose the existence of such, to pursue leads or in the defense of the defendants. Pleadings containing classified information which are filed by any one defendant on behalf of a single defendant or other defendants, can only be disclosed to other defendants and their counsel on authorization by the Court or Court Security Officer.

c. No person, including the defense, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in

accordance with the procedures established by the Court Security Officer for the operation of the secure area;

d. All documents prepared by the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information, shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information, and in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government;

e. The defense shall discuss classified information only within the secure area or in another area authorized by the Court Security Officer, and shall not discuss or attempt to discuss classified information over any standard commercial telephone instrument or office intercommunication system, such as email;

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not authorized pursuant to this Order, including the defendants and defense witnesses, except the Court, Court

personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. The "Wall" attorney for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that Classified information be disclosed to persons not named in this Order, then, upon approval by the Court and upon notice to the "Wall" attorney for the government, the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

20. Procedures for the use or the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be used or disclosed by the defense except:

a. To the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

b. To representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. In accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and,

d. To persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at any pretrial proceeding, deposition or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to trial counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

21. Violations of this Order - Any unauthorized use or disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of the Court and possible referral for criminal prosecution. Any willful, negligent or intentional breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized use, disclosure, retention, or negligent handling

of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States.

22. All classified information to which defenses witness, the defense counsel, defense counsel employees and translators have access to in this case is now and will remain the property of the government. The defense counsel, defense counsel employee(s) and translators who receive classified information shall return all such classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of this case, to include any appellate and post-conviction (if any) procedures. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

23. Nothing in this Order shall preclude the government from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material or limit the defendant(s) right to file objections to any protective order.

24. A copy of this Order shall be issued forthwith to all counsel for the defendants, who shall be responsible for advising the defendants and defense counsel employees, of the

contents of this Order. Any defense counsel employees, who are not counsel of record, and are to be provided access to classified information, shall execute the Memorandum of Understanding appended to this Order, and executed originals shall be filed with the Court and the Court Security Officer and served upon the government, or the "Wall" attorney for the government when appropriate. The execution and filing of the Memorandum of Understanding is a condition precedent for the defense counsel employees, and defense witnesses to have access to classified information in this matter.

25. The provisions of this Order also apply to any document or information derived from information protected by this Order.

26. Nothing contained in this Order or the procedures outlined in this Order shall be construed as a waiver of any right of the defendants.

ORDERED this 28th. day of April, 2006 at Miami, Florida.

MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60001-CR-COOKE/Brown (s)(s)(s)(s)(s)

UNITED STATES OF AMERICA

vs.

ADHAM AMIN HASSOUN,
a/k/a "Abu Sayyaf,"
MOHAMED HESHAM YOUSSEF,
a/k/a "Abu Turab,"
KIFAH WAEL JAYYOUSI,
a/k/a "Abu Mohamed,"
KASSEM DAHER,
a/k/a "Abu Zurr," and
JOSE PADILLA,
a/k/a "Ibrahim,"
a/k/a "Abu Abdullah the Puerto Rican,"
a/k/a "Abu Abdullah Al Mujahir,"

Defendants.
_____/

FILED by IM D.C.
MGC
AUG 3 1 2006
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

ORDER GRANTING GOVERNMENT'S UNOPPOSED MOTION TO ADD ADDENDUM TO CIPA § 3 PROTECTIVE ORDER CONCERNING THE FILING OF CLASSIFIED PLEADINGS

This matter is before the Court on the government's unopposed Motion to Add an Addendum to the Amended CIPA § 3 Protective Order (DE 315) concerning the filing of classified pleadings. The Court having considered the Motion and being otherwise being fully advised in the premises, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Court finds that putting these new filing procedures in writing and incorporating them into the CIPA § 3 Protective Order governing this case is in the interests of all parties.

2. Because the Court Security Officer (CSO) will not always be available to accept classified filings from the parties in person, the following procedures are incorporated into Amended

CIPA § 3 Protective Order governing this case:

A. These filing procedures only govern documents or pleadings that are classified at the CONFIDENTIAL, SECRET or TOP SECRET level, and contain no SCI information. If either party must file documents or pleadings that contain SCI information, the filing of such pleadings must be arranged directly through the CSO. The determination of the level of classification of a document or pleading is to occur prior to the time the pleading is filed. The CSO will assist the defense and the Court with the determination of the level of classification appropriate for each pleading or Court Order. Before defense counsel file a classified pleading, the CSO must be consulted to ensure that the pleading is given the appropriate classification level. The CSO shall also be available to assist the government in the event that agency owning the information has not provided clear direction to the government regarding the classification of information contained in a government pleading.

B. The CSO authorizes Tammy McIntyre (designee), from the Chambers of the Honorable Marcia G. Cooke, to serve as a designee for the CSO to accept classified filings at the CONFIDENTIAL, SECRET and TOP SECRET level, that do not contain SCI information. The CSO may appoint additional court personnel to act as a designee for the purpose of accepting classified filings at the CONFIDENTIAL, SECRET and TOP SECRET level, that do not contain SCI information. However, the CSO must notify all parties and the Court in writing if the CSO appoints additional designees.

C. Every effort should be made to notify the designee by 4:00 pm that a party intends to make a classified filing. The designee may then give further directions to the party.

D. An original and a courtesy copy should be delivered for filing with the Court. Any additional copies that a party needs for records or for opposing counsel should also be brought to the

designee to be file stamped. Each copy should contain the appropriate classification markings and cover sheet.

E. A "half sheet" should also be affixed to the top of the original pleading and all classified copies. This "half sheet" should contain the caption of the case, as well as an UNCLASSIFIED title for the pleading. The designee will then stamp all "half sheets" and classified pleadings. One of the "half sheets" will be filed and appear on the docket. Another "half sheet" should be faxed to the CSO at 202-307-2066. The additional "half sheets" will be retained by the party for records, and/or to provide to opposing counsel.

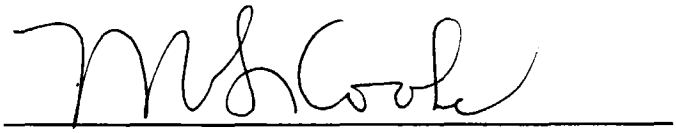
F. All materials transported to the designee for filing must be wrapped and sealed in accordance with "double wrapping" procedures established for the transportation of classified information. The CSO has explained these procedures to all parties. Any questions about these procedures should be directed to the CSO. A "half sheet" should be attached to the outside of the envelope or package containing the classified filing.

G. Once all documents are file stamped, the designee shall hand carry them to the Judge or Magistrate Judge, or place them in an approved security container for storage.

H. Parties should attempt to make arrangements to serve classified pleadings (containing "half sheets") with opposing counsel. Such service can occur only when a party has access to a secure container to store the classified pleading. The CSO will assist the parties in making service if necessary.

I. Any questions on these procedures or on the handling of classified documents should be directed to the CSO.

DONE and **ORDERED** this 31st. day of August, 2006 at Miami, Florida.



HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT COURT JUDGE

United States v. Franklin
(E.D. Va. 1:05-cr-225)

Franklin Protective Order **184**

Rosen Protective Order **199**

Weissman Protective Order **219**

FILED
JUN 16 2005
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
	)	
LAWRENCE ANTHONY FRANKLIN,	)	
	)	
Defendant.	)	
	)	

PROTECTIVE ORDER

This matter comes before the court upon the Motion of the United States for a Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents, which will be reviewed or made available to the defendant and his counsel by the government during the prosecution of this case. Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (2000) ("CIPA"), the Security Procedures Established Pursuant to CIPA by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA section 9), Rule 16(d) of the Federal Rules of Criminal Procedure, local rule 49 and the general supervisory authority of the Court, and in order to protect the national security, the following Protective Order is entered:

1. The Court finds that this case will involve information that has been classified in the interest of the national security. The storage, handling and control of this information will require special security precautions mandated by statute, executive order, and regulation, and

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access to which requires the appropriate security clearances. The purpose of this Order is to establish procedures that must be followed by counsel and the parties in this case. These procedures will apply to all pretrial, trial and post-trial matters concerning classified information and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure a fair and expeditious trial.

2. Definitions. The following definitions shall apply to this Order:

a. "Classified information" shall mean:

i. any document or information which has been classified by any executive agency in the interests of national security or pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information."

ii. any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States government that was classified, and (B) has been subsequently classified by the United States pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information,"

iii. verbal classified information known to the defendant or defense counsel, or

iv. any information, regardless of place of origin and including "foreign government information," as that term is defined in Executive Order 13292, that could reasonably be believed to contain classified information, or that refers to national security or intelligence matters.

b. "Document" shall mean any material containing information. The term "document" shall include, without limitation, written or printed matter of any kind, including originals, conforming copies, and non-conforming copies (e.g., a copy of an original with an added notation). The term "document" shall also include, without limitation, letters, reports,

summaries, memoranda, notes, communications, telexes, cables, telecopies, telegrams, facsimiles, e-mails, microfilms, reports, photographs, charts, graphs, maps, invoices, accountings, worksheets, bulletins, transcripts, and messages, as well as alterations, amendments, modifications, and changes of any kind to the foregoing; and all recordings of information on magnetic, electronic, or optical media (including but not limited to those on CD-ROM), typewriter ribbons, films and all manner of electronic data processing storage.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know, in any manner, classified information.

d. "Secure area" means a sensitive compartmented information facility accredited by the Department of Justice Security Officer for the storage, handling, and control of classified information.

3. Information in the public domain is ordinarily not classified. However, such information may be considered as classified and subject to the provisions of CIPA, if it is confirmed as being classified by any person who has, or has had, such access to classified information and that confirmation corroborated the information in question. Any attempt by the defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by CIPA and all provisions of this Order.

4. All classified documents and information contained therein shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that originated the document or information contained therein (hereinafter, "originating agency").

5. In accordance with the provisions of CIPA and the Security Procedures promulgated by the Chief Justice of the United States pursuant to that Act, this court designates Christine Gunning as the Court Security Officer and Michael Macisso, Glenn Bensely, John Molinard, James Londergan, Daniel Hartenstine, Mary Cradlin, Barbara Russell and Jennifer Campbell as alternate Court Security Officers for this case for the purpose of providing security arrangements necessary to protect any classified information or documents that will be made available to the defense in connection with this case or that may be in the possession of the defense from unauthorized disclosure. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

6. The court has been advised that the United States Attorney, Paul J. McNulty, the Assistant United States Attorneys overseeing or assigned to this case, Kenneth E. Melson, Robert Spencer, Kevin V. Di Gregory, Neil Hammerstrom, and Department of Justice attorneys John J. Dion, Ronald R. Roos and Thomas Reilly, all have the requisite security clearances allowing them to have access to the classified documents and information that relate to this case. Any references to government attorneys as used in this Order refer only to the attorneys listed in this paragraph.

7. The defendant's counsel, Plato Cacheris and John F. Hundley, shall be given access to classified national security documents and information as required by the government's discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA, and upon receipt of appropriate security clearances. Consistent with the defendant's prior employment and authorized access to classified information, the defendant,

Lawrence Franklin, will also be given access to national security documents and information as required by government discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA. As set forth in the Government's Motion for Protective Order, Franklin has a continuing contractual obligation to the government not to disclose to any unauthorized person classified information known to him or in his possession. The government is entitled to enforce its agreement to maintain the confidentiality of classified information. Consequently, pursuant to federal common law and the ordinary principles of contract law, the defendant is hereby enjoined from breaching the terms of his secrecy agreements with the government, is prohibited from any future violations of the above referenced secrecy agreements, and is enjoined from disclosing any classified information to any unauthorized person unless authorized to do so by this Court. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after first obtaining from this Court, with prior notice to the government, an approval for access to the required level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal from this case of defense counsel or any other cleared person associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

8. The Court Security Officer shall arrange for and maintain an appropriately approved secure area for the use of defense counsel. The Court Security Officer shall establish procedures to assure that the secure area is accessible to defense counsel during business hours

and at other times upon reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for defense counsel and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defense. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the secure area unless so authorized by the Court Security Officer with notice provided to the Court. The Court Security Officer shall not reveal to the government the content of any conversations he may hear among the defense, nor reveal the nature of the documents being reviewed or the work being generated. The presence of the Court Security Officer shall not operate to render inapplicable the attorney-client privilege.

9. Filing of Papers by Defendant. Any pleading or other document filed by the defendant shall be filed under seal with the Court Security Officers or Designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer or Designee." The time of physical submission to the Court Security Officers or designee shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, she shall ensure that the portion of the document containing classified information, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all papers filed by the defendants that do not contain classified information shall be immediately unsealed

by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver, under seal, to the Court and counsel for the United States any pleading or document to be filed by the defendant that contains classified information. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

10. Filing of Papers by the United States. Only the portions of pleadings or documents filed by the United States that contain classified information shall be filed under seal with the court through the Court Security Officer or Designee. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer or Designee shall be considered the date and time of filing.

11. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel, by all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

12. The Court Security Officer shall maintain a separate sealed record for those materials which are classified. The Court Security Officer shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

13. Protection of Classified Information. The Court finds that in order to protect the classified information involved in this case, no individual other than counsel for the United States, appropriately cleared Department of Justice employees, personnel of the originating agency, the defendant, Lawrence Franklin, and Franklin's counsel, Plato Cacheris and John F. Hundley, shall be allowed to obtain access to classified documents and information unless and until that person has been granted a security clearance by the Department of Justice through the Court Security Officer, and has obtained permission of the Court. No person except the defendant and counsel for the defendant, Plato Cacheris and John F. Hundley, shall have access to the classified information involved in this case, unless and until that person, which includes any potential witness at trial, shall first have:

a. received from the Court Security Officer the appropriate security clearance for the level of the classified information involved in this litigation; and

b. signed the Memorandum of Understanding, in the form attached hereto, thereby agreeing to comply with the terms of this Order.

The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel for the defense or anyone later cleared and associated with the defense as an employee or witness or otherwise shall not release that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order. Before any person other than counsel for the United States,

appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified national security information, he or she must also sign the attached Memorandum of Understanding.

14. Access to Classified Information. Counsel for the defendant, Plato Cacheris and John F. Hundley, the defendant, Lawrence Franklin, and any later cleared employees of counsel for the defendant or cleared witnesses accompanied by counsel for the defendant (hereinafter, "the defense") shall have access to classified information only as follows:

a. All classified information produced by the government to the defense in discovery or otherwise, and all classified information possessed, created or maintained by the defense, shall be stored, maintained and used only in the secure area established by the Court Security Officer. No classified information shall be maintained by the defense in any other place other than the secure area established by the Court Security Officer.

b. Counsel for the defendant shall have free access to the classified information made available to him in the secure area established by the Court Security Officer and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including counsel for the defendant, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in a secure area on word processing equipment approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the United States.

e. The defense shall discuss classified information only with other cleared persons and only in the secure area or in an area authorized by the Court Security Officer.

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not named in this Order except the Court, Court personnel, and the attorneys for the United States identified by the Court Security Officer as having the appropriate clearances and the need to know. Counsel for the United States shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. The defense, including the defendant, counsel for the defendant, and any other later cleared employees or defense witnesses, shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the internet, or in the presence of any person who has not been granted access by the Court to classified information.

h. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. If counsel for the government advises defendant's counsel that certain classified information or documents may not be disclosed to the defendant, then defense counsel shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government or, absent such concurrence, approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

15 . Classified Information in the Defendant's Possession. The court has been advised that the defendant and/or his counsel have been provided information during pre-indictment discussions in this case which may later be determined to be classified. All such information

shall be immediately provided to the Court Security Officer or to counsel for the United States. Counsel for the United States will assist defendant's counsel in identifying any such classified information which may have remained in the defendant's or his counsel's possession. The defendant and defendant's counsel are hereby enjoined from disclosing any classified information to any unauthorized person during the pendency of this Order. Nothing in this Order shall be construed as a limitation on the government in filing criminal charges against any person in the event of an unauthorized disclosure of classified information or instituting civil litigation to enforce secrecy agreements.

16. Classified Information Procedures Act. No motion has been made by the defense for the disclosure of classified information. Procedures for the public disclosure of classified information by the defense shall be those established in sections 5 and 6 of CIPA. The court may issue additional Protective Orders as needed.

17. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

a. to the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding prior approvals identified by the Court Security Officer as holding proper approvals for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding appropriate security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way in any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

18. As the identity of government intelligence employees may be classified, and as certain security arrangements may be necessary to protect classified information which may be discussed, the parties agree that the defense may not contact any employee of any government intelligence agency without making prior arrangements for such contact with an attorney for the government, unless the defense files a motion with the Court -- which motion may be ex parte at the discretion of defense counsel -- to authorize such contact, gives the government notice of such motion without revealing the name of the employee the defense seeks to contact , and obtains a court order authorizing that contact. Further, the defense shall give prior notice to government attorneys of any contacts it intends to make with any employee of any government

intelligence agency for the purpose of declassifying any classified information relating to this case.

19. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of this Court and may result in a charge of contempt of court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases, exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Protective Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

20. All classified documents and information to which the defense (including the defendant, counsel for the defendant, any later cleared employee of counsel for the defendant, or cleared defense witness) have access in this case are now and will remain the property of the United States. Upon demand of the Court Security Officer, these persons shall return to the Court Security Officer, all classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the defense that

do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of the case. At the conclusion of this case, all such notes, summaries and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

21. A copy of this Order shall be issued forthwith to the defendant, defense counsel who shall be responsible for advising the defendant, any co-counsel, employees of counsel for the defendants, and defense witnesses who need to know of the contents of this Order. Defendant, counsel for the defendant, and any other individuals who will be provided access to the classified information, shall execute the Memorandum of Understanding described in paragraph 13 of this Order, and counsel for the defendant shall file executed originals of such documents with the Court and the Court Security Officer and serve an executed original upon the United States. The execution and filing of the Memorandum of Understanding is a condition precedent for Defendant, counsel for the defendant, or any other person assisting the defense to have access to classified information.

SO ORDERED this 16th day of June , 2004, at Alexandria, Virginia.

T.S. Ellis, III
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that the a true and correct copy of the Government's Motion for Protective Order and to Allow Prospective Filing of Sealed Documents has been faxed to Plato Cacheris, counsel for the defendant, 1350 Connecticut Avenue, NW, Washington, DC 20036, fax number (202) 464-3319, phone number (202) 464-3303, this 16th day of June, 2005.

Kevin V. Di Gregory
Assistant United States Attorney

FILED
IN OPEN COURT
SEP 19 2005
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
LAWRENCE ANTHONY FRANKLIN,	)	Hon. T.S. Ellis, III
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

PROTECTIVE ORDER

This matter comes before the court upon the Motion of the United States for a Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents, which will be reviewed or made available to the defendant and his counsel by the government during the prosecution of this case. Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (2000) ("CIPA"), the Security Procedures Established Pursuant to CIPA by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA section 9), Rule 16(d) of the Federal Rules of Criminal Procedure, local rule 49 and the general supervisory authority of the Court, and in order to protect the national security, the following Protective Order is entered:

1. The Court finds that this case will involve information that has been classified in the interest of the national security. The storage, handling and control of this information will

require special security precautions mandated by statute, executive order, and regulation, and access to which requires the appropriate security clearances. The purpose of this Order is to establish procedures that must be followed by counsel and the parties in this case. These procedures will apply to all pretrial, trial and post-trial matters concerning classified information and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure a fair and expeditious trial.

2. Definitions. The following definitions shall apply to this Order:

a. "Classified information" shall mean:

i. any document or information which has been classified by any executive agency in the interests of national security or pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information."

ii. any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States government that was classified, and (B) has been subsequently classified by the United States pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information,"

iii. verbal classified information known to the defendant or defense counsel, or

iv. any information, regardless of place of origin and including "foreign government information," as that term is defined in Executive Order 13292, that could reasonably be believed to contain classified information, or that refers to national security or intelligence matters.

b. "Document" shall mean any material containing information. The term "document" shall include, without limitation, written or printed matter of any kind, including originals, conforming copies, and non-conforming copies (e.g., a copy of an original with an added

notation). The term "document" shall also include, without limitation, letters, reports, summaries, memoranda, notes, communications, telexes, cables, telecopies, telegrams, facsimiles, e-mails, microfilms, reports, photographs, charts, graphs, maps, invoices, accountings, worksheets, bulletins, transcripts, and messages, as well as alterations, amendments, modifications, and changes of any kind to the foregoing; and all recordings of information on magnetic, electronic, or optical media (including but not limited to those on CD-ROM), typewriter ribbons, films and all manner of electronic data processing storage.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know, in any manner, classified information.

d. "Secure area" means a sensitive compartmented information facility accredited by the Department of Justice Security Officer for the storage, handling, and control of classified information.

3. Information in the public domain is ordinarily not classified. However, such information may be considered as classified and subject to the provisions of CIPA, if it is confirmed as being classified by any person who has, or has had, such access to classified information and that confirmation corroborated the information in question. Any attempt by the defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by CIPA and all provisions of this Order.

4. All classified documents and information contained therein shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that originated the document or information contained therein (hereinafter, "originating agency").

5. In accordance with the provisions of CIPA and the Security Procedures promulgated by the Chief Justice of the United States pursuant to that Act, this court designates Christine Gunning as the Court Security Officer and Michael Macisso, Glenn Bensley, John Molinard, James Londergan, Daniel Hartenstine, Mary Cradlin, Barbara Russell and Jennifer Campbell as alternate Court Security Officers for this case for the purpose of providing security arrangements necessary to protect any classified information or documents that will be made available to the defense in connection with this case or that may be in the possession of the defense from unauthorized disclosure. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

6. The court has been advised that the United States Attorney, Paul J. McNulty, the Assistant United States Attorneys overseeing or assigned to this case, Kenneth E. Melson, Robert Spencer, Kevin V. Di Gregory, Neil Hammerstrom, and Department of Justice attorneys John J. Dion, Ronald R. Roos and Thomas Reilly, all have the requisite security clearances allowing them to have access to the classified documents and information that relate to this case. Any references to government attorneys as used in this Order refer only to the attorneys listed in this paragraph.

7. The defendant's counsel, Abbe David Lowell and Keith Rosen, shall be given access to classified national security documents and information as required by the government's discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA, and upon receipt of appropriate security clearances. The defendant, Steven J. Rosen, will also be given access to national security documents and information as

required by government discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA. As set forth in the Government's Motion for Protective Order, Rosen has a continuing contractual obligation to the government not to disclose to any unauthorized person classified information known to him or in his possession. The government is entitled to enforce its agreement to maintain the confidentiality of classified information. Consequently, pursuant to federal common law and the ordinary principles of contract law, the defendant is hereby enjoined from breaching the terms of his secrecy agreements with the government, is prohibited from any future violations of the above referenced secrecy agreements, and is enjoined from disclosing any classified information to any unauthorized person unless authorized to do so by this Court. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after first obtaining from this Court, with prior notice to the government, an approval for access to the required level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal from this case of defense counsel or any other cleared person associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

8. The Court Security Officer shall arrange for and maintain an appropriately approved secure area for the use of defense counsel. The Court Security Officer shall establish procedures to assure that the secure area is accessible to defense counsel during business hours and at other times upon reasonable request as approved by the Court Security Officer. The

secure area shall contain a separate working area for defense counsel and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defense. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the secure area unless so authorized by the Court Security Officer with notice provided to the Court. The Court Security Officer shall not reveal to the government the content of any conversations he may hear among the defense, nor reveal the nature of the documents being reviewed or the work being generated. The presence of the Court Security Officer shall not operate to render inapplicable the attorney-client privilege or the attorney work product doctrine.

9. Filing of Papers by Defendant. Any pleading or other document filed by the defendant shall be filed under seal with the Court through the Court Security Officer or her designee, unless defense counsel has obtained from the Court Security Officer permission, specific to a particular, non-substantive pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or under seal, to file the pleading or document not under seal. Pleadings filed under seal with the Court Security Officers or Designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer or Designee." The time of physical submission to the Court Security Officers or designee shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains

classified information. If the Court Security Officer determines that the pleading or document contains classified information, she shall ensure that the portion of the document containing classified information, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all papers filed by the defendants that do not contain classified information shall be immediately unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver, under seal, to the Court and counsel for the United States any pleading or document to be filed by the defendant that contains classified information. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

10. Filing of Papers by the United States. Only the portions of pleadings or documents filed by the United States that contain classified information shall be filed under seal with the court through the Court Security Officer or Designee. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer or Designee shall be considered the date and time of filing.

11. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel, by all persons whose assistance the defense reasonably requires, and by such Court personnel as the

Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

12. The Court Security Officer shall maintain a separate sealed record for those materials which are classified. The Court Security Officer shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

13. Protection of Classified Information. The Court finds that in order to protect the classified information involved in this case, no individual other than counsel for the United States, appropriately cleared Department of Justice employees, personnel of the originating agency, the defendant, Steven J. Rosen and Rosen's counsel, Abbe David Lowell and Keith Rosen, shall be allowed to obtain access to classified documents and information unless and until that person has been granted a security clearance by the Department of Justice through the Court Security Officer, and has obtained permission of the Court. No person except the defendant and counsel for the defendant, Abbe David Lowell and Keith Rosen, shall have access to the classified information involved in this case, unless and until that person, which includes any potential witness at trial, shall first have:

a. received from the Court Security Officer the appropriate security clearance for the level of the classified information involved in this litigation; and

b. signed the Memorandum of Understanding, in the form attached hereto, thereby agreeing to comply with the terms of this Order.

The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel for the defense or anyone later cleared and associated with the defense as an employee or witness or otherwise shall not release

that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order. Before any person other than counsel for the United States, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified national security information, he or she must also sign the attached Memorandum of Understanding.

14. Access to Classified Information. Counsel for the defendant, Abbe David Lowell and Keith Rosen, the defendant, Steven J. Rosen, and any later cleared employees of counsel for the defendant or cleared witnesses accompanied by counsel for the defendant (hereinafter, "the defense") shall have access to classified information only as follows:

a. All classified information produced by the government to the defense in discovery or otherwise, and all classified information possessed, created or maintained by the defense, shall be stored, maintained and used only in the secure area established by the Court Security Officer. No classified information shall be maintained by the defense in any other place other than the secure area established by the Court Security Officer.

b. Counsel for the defendant shall have free access to the classified information made available to him in the secure area established by the Court Security Officer and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including counsel for the defendant, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in a secure area on word processing equipment approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their

entirety. None of these materials shall be disclosed to counsel for the United States.

e. The defense shall discuss classified information only with other cleared persons and only in the secure area or in an area authorized by the Court Security Officer.

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not named in this Order except the Court, Court personnel, and the attorneys for the United States identified by the Court Security Officer as having the appropriate clearances and the need to know. Counsel for the United States shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. The defense, including the defendant, counsel for the defendant, and any other later cleared employees or defense witnesses, shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the internet, or in the presence of any person who has not been granted access by the Court to classified information.

h. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. If counsel for the government advises defendant's counsel that certain classified information or documents may not be disclosed to the defendant, then defense counsel shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government or, absent such concurrence, approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

15. Classified Information in the Defendant's Possession. The court has been advised that the defendant and/or his counsel have been provided information during pre-indictment discussions in this case which may later be determined to be classified. All such information shall be immediately provided to the Court Security Officer or to counsel for the United States. Counsel for the United States will assist defendant's counsel in identifying any such classified information which may have remained in the defendant's or his counsel's possession. The defendant and defendant's counsel are hereby enjoined from disclosing any classified information to any unauthorized person during the pendency of this Order. Nothing in this Order shall be construed as a limitation on the government in filing criminal charges against any person in the event of an unauthorized disclosure of classified information or instituting civil litigation to enforce secrecy agreements.

16. Classified Information Procedures Act. No motion has been made by the defense for the disclosure of classified information. Procedures for the public disclosure of classified information by the defense shall be those established in sections 5 and 6 of CIPA. The court may issue additional Protective Orders as needed.

17. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

a. to the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding prior approvals identified by the Court Security Officer as holding proper approvals for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding appropriate security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way in any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

18. As the identity of government intelligence employees may be classified, and as certain security arrangements may be necessary to protect classified information which may be discussed, the parties agree that the defense may not contact any employee of any government intelligence agency without making prior arrangements for such contact with an attorney for the government, unless the defense files a motion with the Court -- which motion may be ex parte at the discretion of defense counsel -- to authorize such contact, gives the government notice of such motion without revealing the name of the employee the defense seeks to contact , and

obtains a court order authorizing that contact. Further, the defense shall give prior notice to government attorneys of any contacts it intends to make with any employee of any government intelligence agency for the purpose of declassifying any classified information relating to this case.

19. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of this Court and may result in a charge of contempt of court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases, exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Protective Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

20. All classified documents and information to which the defense (including the defendant, counsel for the defendant, any later cleared employee of counsel for the defendant, or cleared defense witness) have access in this case are now and will remain the property of the United States. Upon demand of the Court Security Officer, these persons shall return to the Court Security Officer, all classified information in their possession obtained through discovery

from the government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of the case. At the conclusion of this case, all such notes, summaries and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel if they choose to be present.

21. A copy of this Order shall be issued forthwith to the defendant, defense counsel who shall be responsible for advising the defendant, any co-counsel, employees of counsel for the defendants, and defense witnesses who need to know of the contents of this Order. Defendant, counsel for the defendant, and any other individuals who will be provided access to the classified information, shall execute the Memorandum of Understanding described in paragraph 13 of this Order, and counsel for the defendant shall file executed originals of such documents with the Court and the Court Security Officer and serve an executed original upon the United States. The execution and filing of the Memorandum of Understanding is a condition precedent for Defendant, counsel for the defendant, or any other person assisting the defense to have access to classified information.

SO ORDERED this 19th day of September, 2005, at Alexandria, Virginia.

T.S. Ellis, III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
LAWRENCE ANTHONY FRANKLIN,	)	
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF UNDERSTANDING

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in United States v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman,

Criminal No. 1:05CR225, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the Eastern District of Virginia in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
Abbe David Lowell
Counsel for Defendant Steven J. Rosen

_____
Date

_____
Witness Name

_____
Witness Signature

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
	)	
LAWRENCE ANTHONY FRANKLIN,	)	
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF UNDERSTANDING

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in United States v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman,

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4. I have received, read and understand the Protective Order entered by the United States District Court for the Eastern District of Virginia in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
Keith Rosen
Counsel for Defendant Steven J. Rosen

_____
Date

_____
Witness Name

_____
Witness Signature

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
	)	
LAWRENCE ANTHONY FRANKLIN,	)	
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF UNDERSTANDING

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in United States v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman,

Criminal No. 1:05CR225, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the Eastern District of Virginia in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
Steven J. Rosen

_____
Date

_____
Witness Name

_____
Witness Signature

FILED
IN OPEN COURT
SEP 19 2005
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
LAWRENCE ANTHONY FRANKLIN,	)	Hon. T.S. Ellis, III
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

PROTECTIVE ORDER

This matter comes before the court upon the Motion of the United States for a Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents, which will be reviewed or made available to the defendant and his counsel by the government during the prosecution of this case. Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (2000) ("CIPA"), the Security Procedures Established Pursuant to CIPA by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA section 9), Rule 16(d) of the Federal Rules of Criminal Procedure, local rule 49 and the general supervisory authority of the Court, and in order to protect the national security, the following Protective Order is entered:

1. The Court finds that this case will involve information that has been classified in the interest of the national security. The storage, handling and control of this information will

require special security precautions mandated by statute, executive order, and regulation, and access to which requires the appropriate security clearances. The purpose of this Order is to establish procedures that must be followed by counsel and the parties in this case. These procedures will apply to all pretrial, trial and post-trial matters concerning classified information and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure a fair and expeditious trial.

2. Definitions. The following definitions shall apply to this Order:

a. "Classified information" shall mean:

i. any document or information which has been classified by any executive agency in the interests of national security or pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information."

ii. any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States government that was classified, and (B) has been subsequently classified by the United States pursuant to Executive Order 13292 as "confidential," "secret," "top secret," or "sensitive compartmented information,"

iii. verbal classified information known to the defendant or defense counsel, or

iv. any information, regardless of place of origin and including "foreign government information," as that term is defined in Executive Order 13292, that could reasonably be believed to contain classified information, or that refers to national security or intelligence matters.

b. "Document" shall mean any material containing information. The term "document" shall include, without limitation, written or printed matter of any kind, including originals, conforming copies, and non-conforming copies (e.g., a copy of an original with an added

notation). The term "document" shall also include, without limitation, letters, reports, summaries, memoranda, notes, communications, telexes, cables, telecopies, telegrams, facsimiles, e-mails, microfilms, reports, photographs, charts, graphs, maps, invoices, accountings, worksheets, bulletins, transcripts, and messages, as well as alterations, amendments, modifications, and changes of any kind to the foregoing; and all recordings of information on magnetic, electronic, or optical media (including but not limited to those on CD-ROM), typewriter ribbons, films and all manner of electronic data processing storage.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know, in any manner, classified information.

d. "Secure area" means a sensitive compartmented information facility accredited by the Department of Justice Security Officer for the storage, handling, and control of classified information.

3. Information in the public domain is ordinarily not classified. However, such information may be considered as classified and subject to the provisions of CIPA, if it is confirmed as being classified by any person who has, or has had, such access to classified information and that confirmation corroborated the information in question. Any attempt by the defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by CIPA and all provisions of this Order.

4. All classified documents and information contained therein shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that originated the document or information contained therein (hereinafter, "originating agency").

5. In accordance with the provisions of CIPA and the Security Procedures promulgated by the Chief Justice of the United States pursuant to that Act, this court designates Christine Gunning as the Court Security Officer and Michael Macisso, Glenn Bensley, John Molinard, James Londergan, Daniel Hartenstine, Mary Cradlin, Barbara Russell and Jennifer Campbell as alternate Court Security Officers for this case for the purpose of providing security arrangements necessary to protect any classified information or documents that will be made available to the defense in connection with this case or that may be in the possession of the defense from unauthorized disclosure. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

6. The court has been advised that the United States Attorney, Paul J. McNulty, the Assistant United States Attorneys overseeing or assigned to this case, Kenneth E. Melson, Robert Spencer, Kevin V. Di Gregory, Neil Hammerstrom, and Department of Justice attorneys John J. Dion, Ronald R. Roos and Thomas Reilly, all have the requisite security clearances allowing them to have access to the classified documents and information that relate to this case. Any references to government attorneys as used in this Order refer only to the attorneys listed in this paragraph.

7. The defendant's counsel, John Nassikas and Laura Lester, shall be given access to classified national security documents and information as required by the government's discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA, and upon receipt of appropriate security clearances. The defendant, Keith Weissman, will also be given access to national security documents and information as

required by government discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA. As set forth in the Government's Motion for Protective Order, Weissman has a continuing contractual obligation to the government not to disclose to any unauthorized person classified information known to him or in his possession. The government is entitled to enforce its agreement to maintain the confidentiality of classified information. Consequently, pursuant to federal common law and the ordinary principles of contract law, the defendant is hereby enjoined from breaching the terms of his secrecy agreements with the government, is prohibited from any future violations of the above referenced secrecy agreements, and is enjoined from disclosing any classified information to any unauthorized person unless authorized to do so by this Court. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after first obtaining from this Court, with prior notice to the government, an approval for access to the required level of classification on a need-to-know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal from this case of defense counsel or any other cleared person associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

8. The Court Security Officer shall arrange for and maintain an appropriately approved secure area for the use of defense counsel. The Court Security Officer shall establish procedures to assure that the secure area is accessible to defense counsel during business hours and at other times upon reasonable request as approved by the Court Security Officer. The

secure area shall contain a separate working area for defense counsel and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defense. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the secure area unless so authorized by the Court Security Officer with notice provided to the Court. The Court Security Officer shall not reveal to the government the content of any conversations he may hear among the defense, nor reveal the nature of the documents being reviewed or the work being generated. The presence of the Court Security Officer shall not operate to render inapplicable the attorney-client privilege or the attorney work product doctrine.

9. Filing of Papers by Defendant. Any pleading or other document filed by the defendant shall be filed under seal with the Court through the Court Security Officer or her designee, unless defense counsel has obtained from the Court Security Officer permission, specific to a particular, non-substantive pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or under seal, to file the pleading or document not under seal. Pleadings filed under seal with the Court Security Officers or Designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer or Designee." The time of physical submission to the Court Security Officers or designee shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains

classified information. If the Court Security Officer determines that the pleading or document contains classified information, she shall ensure that the portion of the document containing classified information, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all papers filed by the defendants that do not contain classified information shall be immediately unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver, under seal, to the Court and counsel for the United States any pleading or document to be filed by the defendant that contains classified information. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

10. Filing of Papers by the United States. Only the portions of pleadings or documents filed by the United States that contain classified information shall be filed under seal with the court through the Court Security Officer or Designee. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer or Designee shall be considered the date and time of filing.

11. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel, by all persons whose assistance the defense reasonably requires, and by such Court personnel as the

Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

12. The Court Security Officer shall maintain a separate sealed record for those materials which are classified. The Court Security Officer shall be responsible for maintaining the secured records for purposes of later proceedings or appeal.

13. Protection of Classified Information. The Court finds that in order to protect the classified information involved in this case, no individual other than counsel for the United States, appropriately cleared Department of Justice employees, personnel of the originating agency, the defendant, Keith Weissman, and Weissman's counsel, John Nassikas and Laura Lester, shall be allowed to obtain access to classified documents and information unless and until that person has been granted a security clearance by the Department of Justice through the Court Security Officer, and has obtained permission of the Court. No person except the defendant and counsel for the defendant, John Nassikas and Laura Lester, shall have access to the classified information involved in this case, unless and until that person, which includes any potential witness at trial, shall first have:

a. received from the Court Security Officer the appropriate security clearance for the level of the classified information involved in this litigation; and

b. signed the Memorandum of Understanding, in the form attached hereto, thereby agreeing to comply with the terms of this Order.

The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel for the defense or anyone later cleared and associated with the defense as an employee or witness or otherwise shall not release

that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order. Before any person other than counsel for the United States, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified national security information, he or she must also sign the attached Memorandum of Understanding.

14. Access to Classified Information. Counsel for the defendant, John Nassikas and Laura Lester, the defendant, Keith Weissman, and any later cleared employees of counsel for the defendant or cleared witnesses accompanied by counsel for the defendant (hereinafter, "the defense") shall have access to classified information only as follows:

a. All classified information produced by the government to the defense in discovery or otherwise, and all classified information possessed, created or maintained by the defense, shall be stored, maintained and used only in the secure area established by the Court Security Officer. No classified information shall be maintained by the defense in any other place other than the secure area established by the Court Security Officer.

b. Counsel for the defendant shall have free access to the classified information made available to him in the secure area established by the Court Security Officer and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including counsel for the defendant, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in a secure area on word processing equipment approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their

entirety. None of these materials shall be disclosed to counsel for the United States.

e. The defense shall discuss classified information only with other cleared persons and only in the secure area or in an area authorized by the Court Security Officer.

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not named in this Order except the Court, Court personnel, and the attorneys for the United States identified by the Court Security Officer as having the appropriate clearances and the need to know. Counsel for the United States shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. The defense, including the defendant, counsel for the defendant, and any other later cleared employees or defense witnesses, shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the internet, or in the presence of any person who has not been granted access by the Court to classified information.

h. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. If counsel for the government advises defendant's counsel that certain classified information or documents may not be disclosed to the defendant, then defense counsel shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government or, absent such concurrence, approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

15. Classified Information in the Defendant's Possession. The court has been advised that the defendant and/or his counsel have been provided information during pre-indictment discussions in this case which may later be determined to be classified. All such information shall be immediately provided to the Court Security Officer or to counsel for the United States. Counsel for the United States will assist defendant's counsel in identifying any such classified information which may have remained in the defendant's or his counsel's possession. The defendant and defendant's counsel are hereby enjoined from disclosing any classified information to any unauthorized person during the pendency of this Order. Nothing in this Order shall be construed as a limitation on the government in filing criminal charges against any person in the event of an unauthorized disclosure of classified information or instituting civil litigation to enforce secrecy agreements.

16. Classified Information Procedures Act. No motion has been made by the defense for the disclosure of classified information. Procedures for the public disclosure of classified information by the defense shall be those established in sections 5 and 6 of CIPA. The court may issue additional Protective Orders as needed.

17. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

a. to the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding prior approvals identified by the Court Security Officer as holding proper approvals for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding appropriate security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way in any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

18. As the identity of government intelligence employees may be classified, and as certain security arrangements may be necessary to protect classified information which may be discussed, the parties agree that the defense may not contact any employee of any government intelligence agency without making prior arrangements for such contact with an attorney for the government, unless the defense files a motion with the Court -- which motion may be ex parte at the discretion of defense counsel -- to authorize such contact, gives the government notice of such motion without revealing the name of the employee the defense seeks to contact , and

obtains a court order authorizing that contact. Further, the defense shall give prior notice to government attorneys of any contacts it intends to make with any employee of any government intelligence agency for the purpose of declassifying any classified information relating to this case.

19. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of this Court and may result in a charge of contempt of court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases, exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Protective Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

20. All classified documents and information to which the defense (including the defendant, counsel for the defendant, any later cleared employee of counsel for the defendant, or cleared defense witness) have access in this case are now and will remain the property of the United States. Upon demand of the Court Security Officer, these persons shall return to the Court Security Officer, all classified information in their possession obtained through discovery

from the government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of the case. At the conclusion of this case, all such notes, summaries and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel, if they choose to be present.

21. A copy of this Order shall be issued forthwith to the defendant, defense counsel who shall be responsible for advising the defendant, any co-counsel, employees of counsel for the defendants, and defense witnesses who need to know of the contents of this Order. Defendant, counsel for the defendant, and any other individuals who will be provided access to the classified information, shall execute the Memorandum of Understanding described in paragraph 13 of this Order, and counsel for the defendant shall file executed originals of such documents with the Court and the Court Security Officer and serve an executed original upon the United States. The execution and filing of the Memorandum of Understanding is a condition precedent for Defendant, counsel for the defendant, or any other person assisting the defense to have access to classified information.

SO ORDERED this 19th day of September, 2005, at Alexandria, Virginia.

T.S. Ellis, III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	
LAWRENCE ANTHONY FRANKLIN,	)	
	)	
STEVEN J. ROSEN and	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF UNDERSTANDING

1. Having familiarized myself with the applicable laws, I understand that I have already received, and may be the future recipient of information and documents, that pertain to the national security of the United States, and which are the property of the United States, and that such documents and information, together with the methods of collecting such information, are classified according to security standards set by the United States government.

2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in United States v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman,

Criminal No. 1:05CR225, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the Eastern District of Virginia in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
John Nassikas
Counsel for Defendant Keith Weissman

_____
Date

_____
Witness Name

_____
Witness Signature

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
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v.	)	
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LAWRENCE ANTHONY FRANKLIN,	)	
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Defendants.	)	
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2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
Laura Lester
Counsel for Defendant Keith Weissman

_____
Date

_____
Witness Name

_____
Witness Signature

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
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LAWRENCE ANTHONY FRANKLIN,	)	
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Defendants.	)	
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2. I agree that I shall never divulge, publish or reveal, either by word, conduct or any other means, such classified information and documents unless specifically authorized to do so in writing by an authorized representative of the United States government, or as required by the Classified Information Procedures Act, or as otherwise ordered by this Court.

3. I understand that this agreement will remain binding upon me after the conclusion of trial in United States v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman,

Criminal No. 1:05CR225, and any subsequent related proceedings including the appellate process.

4. I have received, read and understand the Protective Order entered by the United States District Court for the Eastern District of Virginia in the above-styled case, and I agree to comply with the provisions contained therein.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

_____
Keith Weissman

_____
Date

_____
Witness Name

_____
Witness Signature

United States v. Abu Ali
(E.D. Va. 1:05-cr-53)

Protective Order **240**

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION NO. 05-53 (GBL)
	)	
AHMED OMAR ABU ALI,	)	
	)	
Defendant.	)	

ORDER

THIS MATTER is before the Court on the government's Motion to Unseal Testimony by Saudi Government Officials and Government's Opposition to Defendant's Motion to Suppress, and on the government's Motion for Protective Order. The issues before the Court are (1) whether to unseal the existence and transcripts of testimony, taken under seal, of Saudi Government officials pursuant to Federal Rule of Criminal Procedure 15 and the government's Opposition to Defendant's Motion to Suppress; (2) how the aforementioned testimony will be presented during the upcoming suppression hearing and during trial; and (3) the manner in which defense counsel shall be permitted access to the video recordings of that testimony. The Court grants, in part, the government's Motion to Unseal Testimony by Saudi Government Officials and Government's Opposition to Defendant's Motion to Suppress. The Court grants, in part, the government's Motion for Protective Order.

(A) Limited Unsealing of Rule 15 Deposition Transcripts and Unsealing of Government's Opposition to Defendant's Motion to Suppress

Background

By its April 19, 2005 Memorandum Order, this Court granted the government's Motion for Rule 15 Depositions and thereby authorized the parties in this case to take depositions in Saudi Arabia of several Saudi government officials, including Foreign Witnesses A and B, who are alleged to possess relevant information about the detention and interrogation of Defendant Ahmed Omar Abu Ali ("Mr. Abu Ali," "Defendant") as his primary interrogator and superior interrogator, respectively. Federal Rule of Criminal Procedure 15(a)(1) allows a party to move for the deposition of a prospective witness to preserve his or her testimony for trial, and permits the Court to grant the motion when "exceptional circumstances" arise, and when doing so is in the "interest of justice." FED. R. CRIM. P. 15(a)(1).

After weighing the factors articulated in *United States v. Hajbeh*, 284 F.Supp.2d 380, 382 (E.D.Va. 2003), this Court granted the Rule 15 motion because it found that: (1) Foreign Witnesses A and B are unavailable to testify at trial since they both reside in Saudi Arabia and the Saudi government will not allow them to travel to the United States to participate in judicial proceedings; (2) their testimony is material to the outcome of

this proceeding; and (3) their testimony is necessary to serve the ends of justice. Mem. Order, Apr. 19, 2005, at 3-5. Pursuant to the Order of the Court, the transcript of the deposition testimony was filed by the government under seal. The government, through the instant motion, now seeks to have the existence and transcripts of the Rule 15 deposition testimony unsealed.

Ruling

The Court grants the government's Motion to Unseal Testimony by Saudi Government Officials and Government's Opposition to Defendant's Motion to Suppress, and orders that the transcripts of the Rule 15 deposition testimony are unsealed with the following restrictions. During the suppression hearing, both the government and defense counsel may refer only to testimony in the transcripts. Neither party may refer to those portions of the transcript which refer to evidentiary objections. Furthermore, neither the government nor defense counsel may refer to arguments made by either party during the course of the depositions. Finally, neither party may release these transcripts, in whole or in part, to the public until so instructed by the Court.

The government's Opposition to Defendant's Motion to Suppress is unsealed and may be referred to during the suppression hearing.

(B) Presentation of Video Recordings of Rule 15 Depositions at Suppression Hearing and at Trial

The Court grants, in part, the government's Motion for Protective Order and orders that the Rule 15 deposition testimony be displayed in the manner prescribed below. In the Court's April 19, 2005 Memorandum Order authorizing Rule 15 depositions to be taken, the Court specifically reserved the question of whether and how that deposition testimony would be presented in future hearings and at trial. Mem. Order, Apr. 19, 2005, at 2 n.1.

Suppression Hearing

The Court rules that during the suppression hearing, the parties will be permitted to play, in open court, those portions of the videotaped depositions to which evidentiary objections were not made. However, the Court will only permit the public to hear audio of the videotaped depositions and will, otherwise, conceal the faces of the deponents. During these depositions, at the government's request, the Court permitted the Foreign Witnesses to testify under pseudonyms and ordered the courtroom sealed during the deposition testimony because the government advanced an "overriding interest that is likely to be prejudiced," and the closure was no broader than necessary to protect that interest. *See Waller v. Georgia*, 467 U.S. 39, 48 (1984) (describing and affirming the standard for closing a

hearing in *Press-Enterprise Co. v. Super. Ct. Cal.*, 464 U.S. 501 (1984)). The Court also considered alternatives to closing the proceeding. *Id.* (holding courts must "consider reasonable alternatives to closing the proceeding, and... make findings adequate to support the closure").

The Court granted the government's motion to seal the courtroom because the government articulated overriding public interests: protecting the witnesses from possible violent acts, allowing the factfinder access to highly relevant testimony necessary for a fair adjudication of this case, and Saudi cooperation in future terrorism cases. The prosecution informed the Court that the Saudi Government expressly conditioned its willingness to make the witnesses available for deposition on the United States Government's assurance that the true names of the witnesses will not be made public. Both witnesses work for the Saudi domestic security service, the *Mabahith*, and their true names are classified. Other *Mabahith* members whose true names have been publicized have suffered violent retribution. Other courts have permitted the sealing of courtrooms and testimony under pseudonyms when danger to the witnesses or national security interests are at issue. *See United States v. Moussaoui*, 382 F.3d 453, 458 (4th Cir. 2004) (allowing remote video depositions of witnesses not identified to the public for national security reasons); *see also Ayala v. Speckard*, 131 F.3d 62 (2d Cir. 1997) (holding three state court trial judges

"adequately determined that courtroom closure was warranted" during the testimony of undercover officers whose testimony might make it impossible for them to continue their work); *Smith v. Illinois*, 390 U.S. 129, 133-34 (1968) (White and Marshall, JJ., concurring) (suggesting that a court may bar inquiries on cross-examination tending to endanger the personal safety of a witness).

Despite the Court's granting of the government's motion to seal the courtroom and allow Foreign Witnesses A and B to testify under pseudonyms, the Court recognizes that sealed proceedings in a criminal case, particularly involving the credibility of key prosecution witnesses, are highly disfavored. *See Smith*, 390 U.S. at 131 (citing *Pointer v. State of Texas*, 380 U.S. 400, 404 (1965) ("Yet when the credibility of a witness is in issue, the very starting point in 'exposing falsehood and bringing out the truth' through cross examination must necessarily be to ask the witness who he is and where he lives.... To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself"). Consequently, the Court has fashioned a procedure intended to preserve the defendant's rights to confrontation under the Sixth Amendment and the public and the press's qualified First Amendment rights to attend criminal trials. *See Waller*, 467 U.S. at 44-45 (citing *Globe Newspaper Co. v. Super. Ct. Norfolk County*, 457 U.S. 596 (1982)

(discussing the First Amendment rights of the public and press to attend criminal trials)).

Trial

The Court rules that, during trial, the depositions will be presented in the same manner as during the suppression hearing, with one exception. During trial, the jury, the defendant, and counsel will see the full edited video testimony with the faces unobstructed.

Evidentiary Objections to Transcripts

The Court directs both parties to meet on or before September 30, 2005 to jointly review the transcript, and seek to resolve, in advance of trial, any evidentiary objections to the transcript registered by either side and to determine which portions, if any, of the testimony are not necessary for consideration by the judge or jury (e.g. dialogue with the judge and counsel concerning scheduling witnesses, etc.). If necessary, the parties shall then prepare a list of any unresolved objections not including translation issues concerning the transcripts and submit that list to the Court no later than 5 p.m. on Thursday, October 6, 2005. The Court will hold a hearing on any unresolved evidentiary objections at the end of the civil docket at 12:00 noon on Friday, October 14, 2005. After those objections have been resolved, the Court will require that the

video and audio recordings to be played at trial be edited accordingly.

Translation-Related Objections to Transcript

The Court will address, in a separate Order, the manner in which the parties' objections to the transcripts that are based on translation-related issues are to be resolved.

(C) Defense Access to Video Recordings of Rule 15 Depositions

The Court grants the government's Motion for Protective Order and prohibits defense counsel, the government, and any other persons from making or receiving copies of the aforementioned video recordings for the reasons the Court has shielded the identity and names of the Saudi Arabian government officials discussed above. However, the government shall give defense counsel liberal access and opportunity to privately view the video recordings of the Rule 15 depositions at the United States Attorney's Office in Alexandria, VA. The Court notes that this ruling is in no way a reflection upon the integrity or ethics of defense counsel who continue to conduct themselves in accordance with their duties as officers of the court. However, the Court issues this protective order in order to minimize the likelihood that individuals other than defense counsel and the government will inadvertently gain access to the video recordings.

For the preceding reasons, it is hereby

ORDERED that the government's Motion to Unseal Testimony by Saudi Government Officials and Government's Opposition to Defendant's Motion to Suppress is GRANTED IN PART. The transcripts of the Rule 15 deposition testimony are unsealed with the following restrictions. During the suppression hearing, both the government and defense counsel may refer only to testimony in the transcripts. Neither party may refer to those portions of the transcript to which evidentiary objections were made. Furthermore, neither the government nor defense counsel may refer to arguments made by either party during the course of the depositions. Finally, neither party may release these transcripts, in whole or in part, to the public until so instructed by the Court. Also, the government's Opposition to Defendant's Motion to Suppress is unsealed and may be referred to during the suppression hearing. It is further

ORDERED that the government's Motion for Protective Order is GRANTED IN PART. During the suppression hearing, the parties will be permitted to play, in open court, testimony of witnesses excluding those portions of the videotaped depositions to which evidentiary objections were made. However, the Court will only permit the public to hear audio of the videotaped depositions and will, otherwise, conceal the faces of the deponents. During trial, the depositions will be presented in the same manner as during the suppression hearing, with one exception. During

trial, the jury, the defendant, and counsel will see the full edited video testimony with the witnesses, faces unobstructed. It is further

ORDERED that defense counsel, the government, and any other persons are prohibited from making or receiving copies of the aforementioned video recordings for the reasons the Court has shielded the identity and names of the Saudi Arabian government officials discussed above. However, the government shall give defense counsel liberal access and opportunity to privately view the video recordings of the Rule 15 depositions at the United States Attorney's Office in Alexandria, VA. It is further

ORDERED that both parties meet on or before September 30, 2005 to jointly review the transcript, and seek to resolve, in advance of trial, any evidentiary objections to the transcript registered by either side. If necessary, the parties shall then prepare a list of any unresolved issues concerning the transcripts and submit that list to the Court no later than 5 p.m. on Thursday, October 6, 2005. The Court will hold a hearing on any unresolved evidentiary objections at 12:00 noon on Friday, October 14, 2005. After those objections have been resolved, the Court will require that the video and audio recordings to be played at trial be edited accordingly.

The Clerk is directed to forward a copy of this Order to counsel of record.

ENTERED this ___16th____ day of September, 2005.

_____/s/_____
Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
9/16/05

United States v. Warsame
(D. Minn. 0:04-cr-29)

Protective Order **252**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIMINAL NO. 04-29(JRT/FLN)

UNITED STATES OF AMERICA, Plaintiff, vs. MOHAMMED ABDULLAH WARSAME, Defendant.	**PROTECTIVE ORDER**

This matter comes before the Court upon the Motion of the United States for a Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents which will be reviewed or made available to defense counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (1994) ("CIPA"), the Security Procedures Established Pursuant to CIPA by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA section 9), Rules 16(d) and 57 of the Federal Rules of Criminal Procedure, the general supervisory authority of the Court, and in order to protect the national security, the following Protective Order is entered:

1. The Court finds that this case will involve information that has been classified national security information. The storage, handling and control of this information will require special security precautions mandated by statute, executive order, and regulation, and access to which requires the appropriate security clearances and a legitimate "need to know." The purpose of this Order is to establish procedures that must be followed by defense counsel, any translators for the defense, investigators and all other individuals who receive access to classified national security information or documents in connection with this case.

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These procedures will apply to all pretrial, post-trial and appellate matters concerning classified information and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure a fair and expeditious trial.

2. Definitions. The following definitions shall apply to this Order:

a. "Classified information" shall mean:

(i) any document or information which has been classified by any executive agency in the interests of national security or pursuant to Executive Order 12958 or its predecessor orders, as "confidential," "secret," "top secret," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" (SCI), or any information contained in such document.

(ii) any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States government that was classified and (B) has subsequently been classified by the United States pursuant to Executive Order as "confidential," "secret," "top secret" or additionally controlled as "sensitive compartmented information."

(iii) verbal classified information known to the Defendant or defense counsel, or

(iv) any information, regardless of place of origin and including "foreign government information," as that term in defined in Executive Order 12958, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters.

b. "Document" shall mean any material containing information. The term "document" shall include, without limitation, written or printed matter of any kind including originals, conforming copies, non-conforming copies (e.g., a copy of an

original with an added notation). The term "document" shall also include, without limitation, letters, reports, summaries, memoranda, notes, communications, telexes, cables, telecopies, telegrams, facsimiles, microfilms, reports, photographs, charts, graphs, maps, invoices, accountings, worksheets, bulletins, transcripts, and messages, as well as alterations, amendments, modifications and changes of any kind to the foregoing; and all recordings of information on magnetic, electronic, or optic media such as audio or video tapes, computer tapes or discs, microfiche, type-writer ribbons, films and all manner of electronic data processing storage.

c. "Access to classified information" means having access to, reviewing, reading, learning or otherwise coming to know in any manner classified information.

d. "Secure Area" means a sensitive compartmented information facility accredited by a Court Security Officer for the storage, handling and control of classified information.

3. Information in the public domain is ordinarily not classified; however, such information may be considered as classified and therefore subject to the provisions of CIPA, if it is confirmed as being classified by any person who has, or has had, such access to classified information and that confirmation corroborated the information in question. Any attempt by the defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by CIPA and all provisions of this Order.

4. All classified documents and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that originated the document or information contained therein (hereinafter, *originating agency)*.

5. In accordance with the provisions of CIPA and the Security Procedures promulgated by the Chief Justice of the United States pursuant to that Act, this Court designates John Mollinard as Court Security Officer and Christine Gunning, Barbara Russell, Margaret Fennell, Michael Macisso, and Charles Alliman as alternate Court Security Officers for this case, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified information or documents that have been made available to the Defendant Mohammed Abdullah Warsame, as a result of his prior relationship with the government, or will be made available to the defense in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

6. The Court has been advised that the Assistant United States Attorney assigned to this case, Michael W. Ward, and Thomas Hollenhorst and Department of Justice attorneys Joseph Kaster and Daniel Fromstein, have the requisite security clearances allowing them to have access to the classified documents and information that relate to this case. Any references to government attorneys as used in this Order refer only to the attorneys listed in this paragraph.

7. The Defendant, his counsel, and counsels' approved employees, shall be given access to classified national security documents and information as required by the government's discovery obligations and in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA, and upon receipt of appropriate security clearances. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court, with prior notice to the government, an approval for access to the required level of classification on a need to know basis, and after satisfying the other requirements described in this Order for access to

classified information. The substitution, departure, or removal from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

8. The Court Security Officer shall arrange for an appropriately approved secure area for the use of defense counsel and his employees. The Court Security Officer shall establish procedures to assure that the secure area is accessible during business hours to defense counsel, employees of counsel, and authorized witnesses accompanied by defense counsel, and at other times upon reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for defense counsel and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defense. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No classified documents may be removed from the secure area unless so authorized by the Court Security Officer with notice provided to the Court. The Court Security Officer shall not reveal to the government the content of any conversations he may hear among the defense, nor reveal the nature of the documents being reviewed or the work being generated. The presence of the Court Security Officer shall not operate to render inapplicable the attorney-client privilege.

9. Filing of Papers by Defendant. Any pleading or other document filed by Defendant shall be filed under seal with the Court Security Officer or a designee and shall be marked, "Filed in Camera and Under Seal with the Court Security Officer." The time of physical submission to the Court Security Officer or a designee shall be considered the date and time of filing. The Court Security

Officer shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, he shall ensure that that portion of the document, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all paper filed by Defendant that do not contain classified information shall be immediately unsealed by the Court Security Officer and placed in the public record. The Court Security Officer or a designee shall immediately deliver under seal to the Court and counsel for the United States any pleading or document to be filed by defendant that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer or a designee.

10. Filing of Papers by the United States. Only the portions of pleadings or documents filed by the United States that contain classified information shall be filed under seal with the Court through the Court Security Officer. Such pleadings and documents shall be marked, "Filed In Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer or a designee shall be considered the date and time of filing.

11. The Court Security Officer shall maintain a separate sealed record for those materials which are classified. The Court Security Officer shall be responsible for the maintaining of the secured records for purposes of later proceedings or appeal.

12. Protection of Classified Information. The Court finds that in order to protect the classified information involved in this case, individuals other than counsel for the United States, appropriately cleared Department of Justice

employees, and personnel of the originating agency, can obtain access to classified documents and information only after having been granted a security clearance by the Department of Justice through the Court Security Officer, and with permission of the Court. No person except counsel for Defendant, employees of counsel for the Defendant or defense witnesses, upon receipt of appropriate security clearances, shall have access to the classified information involved in this case. Moreover, no counsel for the Defendant, employee of counsel for the Defendant or defense witnesses shall have access to any classified information in this case unless that person shall first have:

(a) received from the Court Security Officer the appropriate security clearance for the level of the classified information involved in this litigation; and

(b) signed the Memorandum of Understanding in the form attached hereto agreeing to comply with the terms of this Order. The signed Memorandum of Understanding shall be filed with the Court. The substitution, departure or removal for any reason from this case of counsel for the defense or anyone associated with the defense as an employee or witness or otherwise shall not release that individual from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

Before any person other than counsel for the United States, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified national security information, he or she must also sign the attached Memorandum of Understanding.

13. Access to Classified Information. In the interest of the national security, the defendant may be excluded from access to certain classified information. Counsel for the Defendant, employees of counsel for the Defendant

and witnesses accompanied by counsel for the Defendant shall have access to classified information only as follows:

a. All classified information produced by the government to defense counsel in discovery or otherwise, and all classified information possessed, created or maintained by the defense, shall be stored, maintained and used only in the secure area established by the Court Security Officer.

b. Counsel for the defendant and employees of counsel for the Defendant shall have free access to the classified information made available to them in the secure area established by the Court Security Officer and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including counsel for the defendants, any employee of counsel for the defendant or defense witnesses, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including, without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in a secure area on word processing equipment approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the United States.

e. Counsel for the Defendant and employees of counsel for the Defendant shall discuss classified information only within the secure area or in an area authorized by the Court Security Officer.

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not named in this Order except the Court, Court personnel and the attorneys for the United States identified by the Court Security Officer as having the appropriate clearances and the need to know. Counsel for the United States shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to the Order, and to comply with all the terms and conditions of the Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Department of Justice shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. The Defendant, counsel for the Defendant, employees of counsel for the Defendant and defense witnesses shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems, including but not limited to the internet, or in the presence of any person who has not been granted access by the Court to classified information.

h. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

i. If counsel for the government advise defense counsel that certain classified information or documents may not be disclosed to the Defendant, then defense counsel, employees of defense counsel, and defense witnesses shall not disclose such information or documents to the Defendant without prior concurrence of counsel for the government or, absent such concurrence, approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

14. Defense counsel, employees of defense counsel, and defense witnesses shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government, or, absent such concurrence, prior approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

15. Classified Information Procedures Act. Procedures for the public disclosure of classified information by the defense shall be those established in sections 5 and 6 of CIPA. No classified information may be disclosed by any defense except:

a. to the Court, court personnel and government attorneys and their agents and employees identified by the Court Security Officer or a designee as holding proper approval for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; or

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense in its filing of notices as required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate Agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer or a designee pursuant to this paragraph shall be made available to counsel for the United States unless so ordered by the Court, or so designated by the defense. Any and all of these items which are classified shall be listed in defendant's Section 5 notice.

16. The defense may not contact any employee of any government intelligence agency without making prior arrangements with a government attorney, unless the defense files a motion with the Court (which may be ex parte at the discretion of defense counsel), to authorize such contact, provides the government notice of such motion, and obtains a court order authorizing that contact. This is required since the identities of the government intelligence employees may be classified, and formal arrangements may be required to protect the classified information which may be the subject of discussion by the parties.

17. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be brought immediately to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order may also result in termination of an individual's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention or negligent

handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Protective Order is to ensure that those authorized to receive classified information in connection with this case will never divulge that information to anyone not authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

18. All classified documents and information which counsel for the Defendant, employees of counsel for the Defendant or defense witnesses have access to in this case are now and will remain the property of the United States. Upon demand of the Court Security Officer, these persons shall return to the Court Security Officer, all classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information. The notes, summaries and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of the case. At the conclusion of this case, all such notes, summaries and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

19. A copy of this Order shall be issued forthwith to defense counsel who shall be responsible for advising the Defendant, employees of counsel for the defendant, and defense witnesses of the contents of this Order. Counsel for the defendant, each employee of counsel for the Defendant and defense witnesses who will be provided access to the classified information, shall execute the Memorandum of Understanding described in paragraph 12 of this Order, and counsel for the defendant shall file executed originals of such documents with the Court and the Court Security Officer and serve an executed original upon the

United States. The execution and filing of the Memorandum of Understanding is a condition precedent for counsel for the defendants, any employee of counsel for the Defendant, and any defense witness to have access to classified information.

ORDERED this 8th day of March, 2005.

JOHN R. TUNHEIM
United States District Court Judge

WE ASK FOR THIS:

THOMAS B. HEFFELFINGER
United States Attorney

Michael W. Ward
Assistant United States Attorney
Attorney ID Number 190755

SEEN AND AGREED TO:

David Thomas
Counsel for Defendant
Mohammed Abdullah Warsame

United States v. Lindh
(E.D. Va. 1:02-cr-37)

Protective Order **266**

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED
FEB 27 2002
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 02-37-A
	)	(J. ELLIS)
JOHN PHILLIP WALKER LINDH	)	

PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to the defense in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (CIPA); the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the ordinary principles of contract law; the general supervisory authority of the Court; and in order to protect the national security,

IT IS HEREBY ORDERED THAT:

1. The Court finds that this case will involve information that has been classified in the interest of national security.

The storage, handling, control, and use of this information will require special security precautions mandated by statute, executive order, and regulation.

2. The procedures set forth in this Protective Order are intended to govern the time period throughout all post-indictment proceedings, including trial and post-trial (including appellate) matters in this case, and may be modified from time to time by further order of the Court acting under its inherent supervisory authority.

3. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

A. any document which has been classified by any Executive Branch agency in the interest of national security or pursuant to Executive Order 12958 as "CONFIDENTIAL," "SECRET," "TOP SECRET," or "SENSITIVE COMPARTMENTED INFORMATION," or information contained in such document;

B. any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party or a foreign government which (1) has been derived from information from the United States government that was classified, and (2) that has subsequently been classified by the government pursuant to Executive Order 12958 as "CONFIDENTIAL," "SECRET," "TOP SECRET" or "SENSITIVE

COMPARTMENTED INFORMATION (SCI)";

C. verbal classified information known to the defendant or defense counsel; or

D. any information regardless of origin and including foreign classified documents, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters, unless and until the Court Security Officer or counsel for the United States advises otherwise in writing, or the material in question is produced to the defense by the Government as unclassified material.

4. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to,

A. papers, correspondence; memoranda; notes; letters; reports; summaries; photographs; maps; charts and graphics; inter-office and intra-office communications; notations of any sort concerning conversations, meetings, or other communications; bulletins; teletypes, telegrams, and telefacsimiles; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

B. graphic or oral records or representations of any

kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

C. electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

D. information acquired orally.

5. All classified documents and information contained therein shall remain classified until the documents bear a clear indication that they have been declassified by an authorized agency or department of the United States.

6. Information in the public domain is ordinarily not classified. However, such information may be considered as classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has, or has had, access to the classified information, and that confirmation corroborated the information in question. Any attempt by the defendant or defense counsel to have such information confirmed or denied at trial, or in connection with any proceeding in this case, shall be governed by CIPA and all provisions of this Order.

7. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in

any manner any classified information.

8. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

9. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Christine Gunning as Court Security Officer for this case, and Michael P. Macisso, Charles L. Alliman, Earl D. Hicks, James P. Londergan, and Barbara J. Russell as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

10. The Court Security Officer shall arrange for an appropriately approved secure area for the use of counsel for the defense and their employees. The Court Security Officer shall establish procedures to assure that the secure area is accessible to defense counsel, employees of defense counsel, and authorized witnesses accompanied by defense counsel during normal business hours and at other times upon reasonable request, as approved by the Court Security Officer and in consultation with the United States Marshal Service. The secure area shall contain a separate working area for defense counsel, and will be outfitted with any

secure office equipment requested by defense counsel that is reasonable and necessary to the preparation of the defense. The Court Security officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. The Court Security Officer shall not reveal to the government the content of any conversations she/he may hear between defense counsel and their employees, nor reveal the nature of documents being reviewed by them, or the work generated by them, except as authorized by defense counsel. In addition, the presence of the Court Security Officer shall not operate as a waiver of, limit, to otherwise render inapplicable, the attorney-client privilege.

11. Filing of Papers by Defendant. Any pleadings or other document filed by the defendant shall be filed under seal with the Court through the Court Security Officer and shall be marked: "Filed in Camera and Under Seal with the Court Security Officer." The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information,

she/he shall ensure that the portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal, unless the Court directs that a redacted version of the document be placed on the public record. Any document filed by the defendant that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleading or document to be filed by the defendant that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it is filed, and the fact that it has been filed under seal with the Court Security Officer.

12. Filing of Papers by the Government. Pleadings or documents filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. Such pleadings and documents shall be marked: "Filed in Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

13. Protection of Classified Information. The Court finds that, in order to protect the classified information involved in

this case, no person except counsel for the defendant shall have access to the classified information in this case unless the Court grants permission. "Counsel for the defendant" is defined as the following individuals, assuming they receive the appropriate security clearances and execute the Memorandum of Understanding referenced in this order: **James J. Brosnahan, George c. Harris, Tony West, Raj Chatterjee, William Cummings and David T. Williams**. No defense counsel shall have access to any classified information in this case unless that person shall first have:

A. received an approval for access to the appropriate level of classification from the Court on a need to know basis;

B. received from the Court Security Officer the appropriate security clearance for the level of classified information involved in this litigation (For the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel and all persons whose assistance the defense counsel requires.); and

C. signed the Memorandum of Understanding in the form attached hereto, agreeing to comply with the terms of this Order.

An executed original of each signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel, for the defendant, or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this order.

Persons other than counsel for the government, appropriately cleared Department of Justice employees, and appropriately cleared personnel of the originating agency, can only obtain access to classified documents and information after having been granted a security clearance by the Court Security Officer, and with permission of the Court. Before any person other than counsel for the government, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified information, he or she must also sign the Memorandum of Understanding.

14. Access to Classified Information. In the interest of National Security, the defendant shall not have any access to classified information except as provided for by the procedures in Section 14 (F) and (G). Defense counsel shall have access to classified information only as follows:

A. All classified information produced by the

government to counsel for the defendant, in discovery or otherwise, and all classified information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer.

B. Defense counsel shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those material.

C. No person, including defense counsel, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

D. All documents prepared by counsel for the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information, must be prepared in the secure area with approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated material (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer

determines that those documents or associated material are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government.

E. Defense counsel shall discuss classified information only within the secure area or in an area authorized by the Court Security Officer.

F. Defense counsel shall not disclose without prior approval of the Court the contents of any classified documents or information to any person not authorized pursuant to this Order, including the defendant, except the Court, Court personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to any person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with each and every term and condition of this Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

G. Defense counsel shall not disclose to the defendant, without prior concurrence of counsel for the government, or, absent such concurrence, prior approval of the Court, the contents of any classified documents or information provided to the defense in connection with the litigation of this matter. The Government shall review and respond to any such request promptly. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of classified information. This Court will consider a defense request to disclose classified information to the defendant where the government refuses to concur.

H. The defendant, defense counsel, employees of defense counsel, and defense witnesses shall not discuss classified information over any standard commercial telephone instrument or office intercommunication system.

I. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

15. Classified Information Disclosed to Defendant. Should classified information be disclosed to the defendant in the course of this litigation, the defendant is enjoined from

disclosing such classified information to any unauthorized person at any time. Nothing in this order shall be construed as a limitation on the government in filing additional criminal charges against the defendant in the event of an unauthorized disclosure of classified information, or instituting civil litigation to further enforce these agreements.

16. Classified Information Procedures Act. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

A. to the Court, court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

B. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

C. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

D. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

17. Any unauthorized disclosure of classified information

may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to ensure that those authorized by the Order to receive classified information will never divulge the classified information disclosed to them to anyone who is not now authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

18. All classified information to which the defendant, defense counsel, defense counsel employees, or any defense witnesses has access in this case will remain the property of the government. The defendant, defense counsel, defense counsel employees, and defense witnesses shall return all classified information in their possession obtained through discovery from

the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the designated and approved secure area or in the custody of the Court Security Officer for the duration of this case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

19. A copy of this Order shall be issued forthwith to counsel for the defendant, who shall be responsible for advising the defendant of the contents of this Order. Counsel for the defendant who are to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file an executed original with the Court and the Court Security Officer and serve executed original of such document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent for defense counsel being granted access to classified information in this case.

2/27/02
Date

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 02-37-A
	)	(J. ELLIS)
JOHN PHILLIP WALKER LINDH	)	

MEMORANDUM OF UNDERSTANDING REGARDING
RECEIPT OF CLASSIFIED INFORMATION

Having familiarized myself with the applicable espionage laws, I understand that I may be recipient of information and documents that concern the present and future security of the United States and belong to the United States, and that such information and documents, together with the sources and methods of collecting ti, are classified according to security standards set by the United States government. In consideration for the disclosure to me of classified information and documents, as necessary in connection with this case:

1. I agree that I shall never divulge, publish, or reveal, either by word, conduct, or any other means, such classified information and documents unless specifically authorized in writing to do so by an authorized representative of the United States Government, or as authorized by the Court pursuant to the

Classified Information Procedures Act, or as provided for in the Protective Order entered in the case of United States v. John Phillip Walker Lindh now pending in the Eastern District of Virginia.

2. I agree that this agreement and any other nondisclosure agreement will remain binding upon me after the conclusion of the proceedings in the above-captioned case.

I have received and read a copy of the Protective Order entered in this case by the United States District Court for the Eastern District of Virginia on _____, 2002, relating to classified information. I understand this Protective Order, and I agree to comply with the provisions of it.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

_____
Signature

_____
Date

_____
Witness

United States v. Moussaoui
(E.D. Va. 1:01-cr-455)

Protective Order 284

FILED
JAN 2 2 2002
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
V.	)	Crim. No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	

PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to, or are otherwise in the possession of, the defendant and/or defense counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 111 (1994) (CIPA); the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

IT IS ORDERED:

1. The Court finds that this case will involve classified national security information, the storage, handling and control

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of which requires special security precautions, and access to which requires a security clearance and a "need to know."

2. The purpose of this Order is to establish the procedures that must be followed by all defense counsel of record, their respective defendant(s), all other counsel involved in this case, translators for the defense, any Court personnel, and all other individuals who receive access to classified national security information or documents in connection with this case.

3. The procedures set forth in this Protective Order and the Classified Information Procedures Act will apply to all pre-trial, trial, post-trial, and appellate aspects concerning this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d), Sections 3 and 9 of CIPA, and its inherent supervisory authority to ensure a fair and expeditious trial.

4. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

a. any classified document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED

INFORMATION (SCI)", or any information contained in such document;

b. any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party, which has been derived from United States government information that was classified, regardless whether such document or information has subsequently been classified by the government pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL", "SECRET", or "TOP SECRET" or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION (SCI)";

c. verbal classified information known to the defendant or defense counsel; or

d. any document and information as to which the defendant or defense counsel have been notified orally or in writing that such documents or information contains classified information.

5. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to,

a. papers; correspondence; memoranda; notes; letters; reports; summaries; photographs; maps; charts and graphs; interoffice and intra-office communications; notations of any sort concerning conversations, meetings, or other communications; bulletins; teletypes, telegrams, and telefacsimiles; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

b. graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

c. electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

d. information acquired orally.

6. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the originating agency of the document or the information contained therein (hereinafter, the "originating agency").

7. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

8. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

9. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Christine E. Gunning as Court Security Officer for this case, and Michael P. Macisso, Charles L. Alliman, Earl D. Hicks, James P. Londergan, and Barbara J. Russell as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified documents and information.

10. The Court has been advised that the following government attorneys working on this case, Paul J. McNulty, Robert A. Spencer, Kenneth M. Karas, David J. Novak, John W. Van Lonkhuyzen, and Margaret Griffey, have the requisite Security clearances to have access to the classified documents and information that relate to this case. All references to government attorneys, or attorneys for the government, as used in this Order, refer only to the attorneys listed in this paragraph.

11. No defendant, counsel for a defendant, employee of counsel for a defendant, or defense witness shall have access to any classified information involved in this case unless that person shall first have:

a. received the necessary security clearance as determined by the Department of Justice Security Officer working in conjunction with the CSO, or approval from the Court (as set forth below in paragraph 8), or the Government for access to the particular classified information in question; approval by the Court shall not occur but upon a showing to the Court's satisfaction of a "need to know" the particular classified information; and

b. signed the Memorandum of Understanding ("MOU") in the form attached hereto agreeing to comply with the terms of this Order.

12. The following attorneys for the defense and their approved employees (collectively referred to herein as "the defense"), shall be given access to classified documents and information as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case: Frank W. Dunham, Jr.; Gerald T. Zerkin; Edward B. MacMahon, Jr., Michael Nachmanoff, Ken Troccoli, Linda McGrew, and Pam Bishop. Any additional person whose assistance the defense reasonably requires may only have access to classified

information in this case after obtaining from the Court -- with prior notice to the government -- an approval for access to the appropriate level of classification on a need to know basis, and after satisfying the other requirements described in this order for access to classified information. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this order or the Memorandum of Understanding executed in connection with this Order.

13. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel, all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

14. The Court Security Officer shall arrange for an appropriately approved secure area for the use of the defense.

The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense, and the defendant (if such access should be determined by the Court to be necessary) and authorized witnesses accompanied by defense counsel, during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defendant's defense in this case. The Court Security officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer.

The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the presence of the Court Security Officer shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

15. If it is necessary for a defendant to review or discuss classified matters, or otherwise meet with defense counsel, in the Secure Area, this will only occur under appropriate supervision to ensure that the defendant does not escape, attempt to escape, cause physical injury to himself or others, or remove, copy, alter, or destroy classified information, or obtain access to classified information the defendant is not entitled to review, and to ensure that the defendant does not use the opportunity to review the classified materials to circumvent any applicable security restrictions, including the Special Administrative Measures imposed by the Bureau of Prisons, other prison regulations, and the other orders of this Court governing discovery in this case.

16. Until further order of this Court, any pleading or other document filed by the defense shall be filed under seal with the Court through the Court Security Officer. The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, she or he shall ensure that that portion of the document, and only that

portion, is marked with the appropriate classification marking and that the document remains under seal. Any document filed by the defense that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleading or document to be filed by the defense that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

17. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

18. Access to Classified Information. Defense counsel and their employees, and the defendant (if such access should be determined by the Court to be necessary) and defense witnesses when accompanied by defense counsel, shall have access to classified information only as follows:

a. All classified information produced by the government to the defense, in discovery or otherwise, and all classified information possessed, created, or maintained by the

defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer.

b. The defense shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including the defense, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information, shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information, and in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials

are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government.

e. The defense shall discuss classified information only within the secure area or in an other area authorized by the Court Security Officer, and shall not discuss classified information over any standard commercial telephone instrument or office intercommunication system.

f. The defense shall not disclose, without prior approval of the Court, the contents of any classified documents or information to any person not authorized pursuant to this Order, except the Court, Court personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that. Classified information be disclosed to persons not named in this Order, the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. If counsel for the government advise defense counsel that certain classified information or documents may not be disclosed to the defendant, then defense counsel, employees of defense counsel, and defense witnesses shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government, or, absent such concurrence, prior approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

19. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

a. to the Court, court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

20. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this order are advised that

direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to ensure that those authorized by the Order to receive classified information will never divulge the classified information disclosed to them to anyone who is not now authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

21. Unless otherwise ordered by the Court, with due notice to the government, all classified information to which the defendant, defense counsel, defense counsel employees, or any defense witness has access in this case is now and will remain the property of the government. The defendant, defense counsel, defense counsel employees, and defense witnesses shall return all classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of this case. At

the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

22. A copy of this Order shall be issued forthwith to counsel for the defendant, who shall be responsible for advising the defendant, defense counsel employees, and defense witnesses of the contents of this Order. The defendant, defense counsel, defense counsel employees, and defense witnesses to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file executed originals with the Court and the Court Security Officer and serve executed original of such document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent for the defendant,

defense counsel, defense counsel employees, and defense witnesses to have access to classified information.

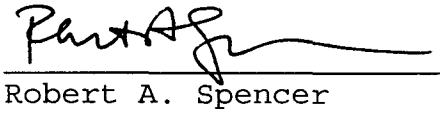
ORDERED this 22nd day of January 2002, at Alexandria, Virginia.

/S/

Leonie M. Brinkema
United States District Judge

WE ASK FOR THIS:

Paul J. McNulty
United States Attorney



Robert A. Spencer
Kenneth M. Karas
David J. Novak
Assistant United States Attorneys

United States v. Regan
(E.D. Va. 1:01-cr-944)

Protective Order **302**

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED
SEP - 4 2001
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 01-944-M
	)	
BRIAN PATRICK REGAN	)	

PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents, which will be reviewed by or made available to, or is otherwise in the possession of, the defendant and/or his counsel in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. III (1994) ("CIPA"); the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (the "Security Procedures"); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security,

IT IS ORDERED:

1. The procedures set forth in this Protective Order are intended to govern the time period preceding indictment in this case, as well as throughout all post-indictment proceedings. Accordingly, these procedures shall apply to all pre-indictment, pretrial, trial, and post-trial (including appellate) matters in this case, and may be modified from time to time by further order of the Court acting under its inherent supervisory authority to ensure the proceedings in this case are fair and expeditious.

2. As used in this Order, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

a. any classified document or information which has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL," "SECRET," or "TOP SECRET," or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" ("SCI"), or any information contained in such document;

b. any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party, which has been derived from United States government information that was classified, regardless whether such document or information has subsequently been

classified by the government pursuant to Executive Order 12958 or its predecessor Orders as "CONFIDENTIAL", "SECRET", or "TOP SECRET", or additionally controlled as "SENSITIVE COMPARTMENTED INFORMATION" ("SCI");

c. verbal classified information known to the defendant or defense counsel;

d. any information, regardless of place or origin and including "foreign government information" as that term is defined in Executive Order 12958, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters;

e. any document or information as to which the defendant or defense counsel have been notified orally or in writing that such document or information contains classified information.

3. The words "documents" or "information" as used in this Order include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to,

a. papers; correspondence; memoranda; notes; letters; telegrams; reports; summaries; inter-office and intra-office communications; notations of any sort concerning conversations,

information that relate to this case. All references to government attorneys, or attorneys for the government, as used in this Order, refer only to the attorneys listed in this paragraph.

10. The defendant and his counsel, Nina J. Ginsberg, and her approved employees (collectively referred to herein as "the defense") shall be given access to classified national security documents and information as required by the government's discovery obligations and as necessary to prepare for proceedings in this case, in accordance with the terms of this Protective Order, and any other orders pursuant to CIPA, and upon receipt of the appropriate security clearances. Any additional person whose assistance the defense reasonably requires may only have access to classified information in this case after obtaining from the Court -- with prior notice to the government -- an approval for access to the appropriate level of classification on a need to know basis, and after satisfying the other requirements described in this Order for access to classified information. The substitution, departure, or removal for any reason from this case of defense counsel or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this Order.

11. Unless already holding an appropriate security clearance, and approved for access to classified information in this case, for the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel, by all persons whose assistance the defense reasonably requires, and by such Court personnel as the Court requires for its assistance. The Court Security Officer shall take all reasonable steps to process all security clearance applications.

12. Before any person, including the defendant and his counsel -- but not including government counsel and appropriately cleared Court personnel, Department of Justice employees, and personnel of the originating agencies -- may have access to classified national security information that may be involved in this case, he or she must also sign and swear to the Memorandum of Understanding ("MOU") appended to this Protective Order. Each person executing the MOU must file an executed original with the Court and in addition must provide an executed original to the Court Security Officer.

13. The Court Security Officer shall arrange for an appropriately approved secure area for the use of the defense. The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense, and the defendant and authorized witnesses accompanied by defense counsel, during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defendant's defense in this case. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer with notice to the Court.

The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the presence of the Court Security Officer shall not operate as a

waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

14. Until further order of this Court, any pleading or other document filed by the defense shall be filed under seal with the Court through the Court Security Officer. The time of physical submission to the Court Security Officer shall be considered the time of filing. The Court Security Officer shall promptly examine such document and determine, in consultation with representatives of the appropriate agencies, whether the document contains classified information. If the Court Security Officer determines that the document contains classified information, she or he shall ensure that that portion of the document -- and only that portion -- is marked with the appropriate classification marking and that the document remains under seal. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any such pleading or other document; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

Any document filed by the defense that the Court Security Officer determines does <u>not</u> contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record, unless otherwise sealed by the Court.

13. The Court Security Officer shall arrange for an appropriately approved secure area for the use of the defense. The Court Security Officer shall establish procedures to assure that the secure area is accessible to the defense, and the defendant and authorized witnesses accompanied by defense counsel, during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The secure area shall contain a separate working area for the defense, and will be outfitted with any secure office equipment requested by the defense that is reasonable and necessary to the preparation of the defendant's defense in this case. The Court Security Officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. No documents containing classified information may be removed from this secure area unless authorized by the Court Security Officer with notice to the Court.

The Court Security Officer shall not reveal to the government the content of any conversations she or he may hear among the defense, nor reveal the nature of documents being reviewed by them, or the work generated by them. In addition, the presence of the Court Security Officer shall not operate as a

waiver of, limit, or otherwise render inapplicable, the attorney-client privilege.

14. Until further order of this Court, any pleading or other document filed by the defense shall be filed under seal with the Court through the Court Security Officer. The time of physical submission to the Court Security Officer shall be considered the time of filing. The Court Security Officer shall promptly examine such document and determine, in consultation with representatives of the appropriate agencies, whether the document contains classified information. If the Court Security Officer determines that the document contains classified information, she or he shall ensure that that portion of the document -- and only that portion -- is marked with the appropriate classification marking and that the document remains under seal. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any such pleading or other document; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

Any document filed by the defense that the Court Security Officer determines does <u>not</u> contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record, unless otherwise sealed by the Court.

15. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

16. Access to Classified Information. Defense counsel and their employees, and the defendant and defense witnesses, shall have access to classified information only as follows:

a. All classified information produced by the government to the defense, in discovery or otherwise, and all classified information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer.

b. The defense shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including the defense, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

d. All documents prepared by the defense (including, without limitation, pleadings or other documents intended for

filing with the Court) that do or may contain classified information, shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information, and in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, and exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government.

e. The defense shall discuss classified information only within the secure area or in another area authorized by the Court Security Officer; the defense shall not discuss classified information over any standard commercial telephone instruments or office intercommunication systems, including, but not limited to, the internet, or in the presence of any person who has not been granted access to classified information in this case by the Court.

f. The defense shall not disclose, without prior approval of the Court, classified information to any person not authorized pursuant to this Order, except the Court, Court

personnel, and the attorneys for the government, who have been identified by the Court Security Officers as having the appropriate security clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to a person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with all terms and conditions of this Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

g. If counsel for the government advise defense counsel that certain classified information or documents may not be disclosed to the defendant, then defense counsel, employees of defense counsel, and defense witnesses shall not disclose such information or documents to the defendant without prior concurrence of counsel for the government or, absent such concurrence, prior approval of the Court. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of such classified information.

17. Classified Information in the Possession of the Defendant Prior to the Institution of this Case. The Court has been advised by the government that as a result of his previous employment by the United States government and by a contractor to the United States government, the defendant possesses classified information. Furthermore, set forth in the government's Motion for Protective Order, it is clear that the defendant has a continuing contractual obligation to the government not to disclose to any unauthorized person classified information that he possesses as a result of such previous employment. The government is entitled to enforce its agreements to maintain the confidentiality of classified information. Consequently, pursuant to federal common law and the ordinary principles of contract law, the defendant is hereby enjoined from breaching the terms of the secrecy agreements to which he has subscribed throughout his government employment, an exemplar of which is appended hereto and expressly incorporated herein. Specifically, the defendant is prohibited from any future violations of the above-referenced secrecy agreements, and in particular is enjoined from disclosing any classified information to any unauthorized person during the pendency of this Order. Nothing in this Order shall be construed as a limitation on the government in filing additional criminal charges against the defendant in the event of an unauthorized disclosure of

classified information, or instituting civil litigation to further enforce these agreements.

18. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

a. to the Court, Court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding prior approvals identified by the Court Security Officer as holding proper approvals for access to classified information;

b. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding appropriate security clearances and having the need to know the classified information;

c. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

To facilitate the defense filing of notices required under Section 5 of CIPA, the Court Security Officer shall make arrangements with the appropriate agencies for a determination of the classification level, if any, of materials or information

either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way in any pretrial proceeding or at trial. Nothing submitted by the defense to the Court Security Officer pursuant to this paragraph shall be made available to counsel for the government unless so ordered by the Court, or so designated by the defense. Any and all items which are classified shall be listed in the defendant's Section 5 notice.

19. As the identity of government intelligence employees may be classified, and as certain security arrangements may be necessary to protect classified information which may be discussed, the parties agree that the defense may not contact any employee of any government intelligence agency without making prior arrangements for such contact with an attorney for the government, unless the defense files a motion with the Court -- which motion may be ex parte at the discretion of defense counsel -- to authorize such contact, gives the government notice of such motion, and obtains a court order authorizing that contact. Further, the defense shall give prior notice to government attorneys of any contacts it intends to make with any employee of any government intelligence agency for the purpose of declassifying any classified information relating to this case.

20. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or in direct unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and, in some cases, exceptionally grave damage to the national security of the United States, or may be used to the advantage of a foreign nation against the interests of the United States. This Protective Order is to ensure that authorized to receive classified information in connection with this case will never divulge the classified information disclosed to them to anyone who is not authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

21. Unless otherwise ordered by the Court, with due notice to the government, all classified information to which the defendant, defense counsel, defense counsel employees, or any defense witness has access in this case is now and will remain the property of the United States government. The defendant,

defense counsel, defense counsel employees, and defense witnesses shall return all classified information in their possession obtained through discovery from the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the duration of this case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

22. A copy of this Order shall issue forthwith to defense counsel named herein, who shall be responsible for advising the defendant, defense counsel employees, and defense witnesses of the contents of this Order. The defendant, defense counsel, defense counsel employees, and defense witnesses to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file executed originals with the Court and the Court Security Officer, and serve executed originals upon the government. The execution and filing of the Memorandum of Understanding are conditions precedent for the defendant, defense counsel, defense

counsel employees, and defense witnesses to have access to classified information in this case.

ORDERED this 4th day of ~~August~~ Sept., 2001, at Alexandria, Virginia.

Claude M. Hilton
The Honorable Claude M. Hilton
United States District Judge

WE ASK FOR THIS:

KENNETH E. MELSON
UNITED STATES ATTORNEY

Patricia M. Haynes
Robert A. Spencer
Patricia M. Haynes
Assistant United States Attorneys

Laura Ingersoll by Patricia Haynes
Laura A. Ingersoll
Senior Trial Attorney
Internal Security Section
United States Department of Justice

SEEN AND AGREED TO:

Nina J. Ginsberg
Nina J. Ginsberg
Counsel for the Defendant

SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between Regan, Brian P. and the United States
(Name – Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in the process of a classification determination under the standards of Executive Order 12356 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this Agreement continue to exist whether or not I am required to sign such subsequent agreements.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation to any person not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.

5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.

6. I have been advised that any breach of this Agreement may result in the termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.

8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.

9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798, and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12356, as amended, so that I may read them at this time, if I so choose.

12. I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12356; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the Military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including section 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. This Agreement shall be interpreted under and in conformance with the law of the United States.

15. I make this Agreement without any mental reservation or purpose of evasion.

Brian P Regan — *Signature* — 31 July 95 — *Date*

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

WITNESS and ACCEPTANCE: _____ *Signature* _____ *Date*

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

SI TK BYE

(Special Access Programs by Initials Only)

119-60-4321 — SSN (See Notice Below)

Regan, Brian P. — Printed or Typed Name

SIGINT/SI-4 — Organization

BRIEF DATE 31 July 95

I hereby acknowledge that I was briefed on the above SCI Special Access Programs(s):

Brian P Regan — *Signature of Individual Briefed*

DEBRIEF DATE 30 Aug 2000

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Programs(s):

Brian P Regan — *Signature of Individual Debriefed*

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.

[redacted] — Signature of Briefing/Debriefing Officer

[redacted] — SSN (See Notice Below)

[redacted] — Printed or Typed Name

NSA O/H556 — Organization (Name and Address)

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information indicated has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

AN AGREEMENT BETWEEN BRIAN P REGAN AND THE UNITED STATES

(Name of Individual - Printed or typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in Sections 1.1 and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of the information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and *952, Title 18, United States Code, *the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

(Continue on reverse.)

I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR Section 2003.20) so that I may read them at this time, if I so choose.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER (See Notice below)
Brian P Regan	25 NOV 91	119-60-4321

ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) (Type or print)

AFISA/INA
Director of Assessments
Washington, DC 20330

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE	DATE	SIGNATURE	DATE
[redacted]	25 NOV 91	[redacted]	25 Nov 91
NAME AND ADDRESS (Type or print)		NAME AND ADDRESS (Type or print)	
[redacted]		[redacted] ADMINISTRATIVE OFFICER AFISA/INA Director of Assessments Washington, DC 20330	

SECURITY DEBRIEFING ACKNOWLEDGEMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE

NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations, or possibly result in the denial of your being granted access to classified information.

* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

United States v. El Hage
(S.D.N.Y. 1:98-cr-1023)

Protective Order **325**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA	:	
- v -	:	PROTECTIVE ORDER
USAMA BIN LADEN, et al.	:	98 Cr. 1023 (LBS)
Defendants.	:	

- - - - - - - - - - - - - - - - - - - -x

WHEREAS this matter comes before the Court upon the motion of the United States for a Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents belonging to the United States Government which may be reviewed by, made available to, or may otherwise come to be in the possession of the defendants and defense counsel in this case, and

WHEREAS the Government personnel in this case, including Assistant United States Attorneys Patrick J. Fitzgerald, Kenneth M. Karas, Michael J. Garcia and Paul W. Butler, who have had, and will have, access to national security information and documents relating to this case have "Top Secret" security clearances, and

WHEREAS the Government maintains and has access to storage facilities necessary for the storage, maintenance and handling of "Top Secret" and "Secret" national security information and documents, and

WHEREAS the national security information in this case may be classified at the "Secret" and "Top Secret" levels, and

WHEREAS having considered the motion of the Government, the defendants' opposition, all other related submissions and proceedings, and having heard oral argument,

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to Fed. R. Crim. P. 16(d), Sections 3 and 9 of the Classified Information and Procedure Act, Title 18, United States Code, App. III, ("CIPA"), and the Court's inherent authority, the following Protective Order is entered.

1. The Court finds that this case will involve classified national security information, the storage, handling and control of which requires special security precautions, and access to which requires a security clearance and a "need to know."

2. The purpose of this Order is to establish the procedures that must be followed by all defense counsel of record, their respective defendants, all other counsel involved in this case, translators for the defense, any Court personnel, and all other individuals who receive access to classified national security information or documents in connection with this case.

3. The procedures set forth in this Protective Order and the Classified Information Procedures Act will apply to all pre-trial, trial, post-trial, and appellate aspects concerning this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d), Sections 3 and 9

of CIPA, and its inherent supervisory authority to ensure a fair and expeditious trial.

4. In accordance with the provisions of CIPA and the Security procedures promulgated by the Chief Justice of the United States pursuant to that Act, this Court appoints James Londergan as the Court Security Officer (hereinafter "Administrative CSO") who will provide security arrangements necessary to protect from unauthorized disclosure any classified information or document made available to the defense or the Court in connection with this case. The Court also appoints Charles L. Alliman, Christine E. Gunning, Earl D. Hicks, Michael P. Macisso, and Barbara J. Russell as alternate Administrative CSO's. Defense counsel and Court personnel shall seek guidance from the Administrative CSO's with regard to appropriate storage, handling, transmittal, and use of classified information. Furthermore, the Court appoints James P. Walker as the "Security Clearance CSO" whose sole responsibility will be to process the security clearances for defense counsel, their staff, and any designated Court personnel who will have access to classified information in this case. The Court may appoint alternate or additional Administrative and/or Security Clearance CSO's for either purpose at a later date.

5. No defendant, counsel for a defendant, employee of counsel for a defendant, defense witness, or Courtroom personnel

required by the Court for its assistance, shall have access to any classified information involved in this case unless that person shall first have:

(a) received the necessary security clearance as determined by the Department of Justice Security Officer working in conjunction with the Security Clearance CSO, or approval from the Court (as set forth below in paragraph 8), or the Government for access to the particular classified information in question; approval by the Court shall not occur but upon a showing to the Court's satisfaction of a "need to know" the particular classified information; and

(b) signed the Memorandum of Understanding in the form attached hereto agreeing to comply with the terms of this Order.

6. Standard Form 86, "Questionnaire for National Security Positions," attached releases, and full fingerprints shall be completed and submitted to the Security Clearance CSO forthwith by all defense counsel, persons whose assistance the defense reasonably requires and by such courtroom personnel as the Court requires for its assistance. The Security Clearance CSO shall undertake all reasonable steps to process all security clearance applications in accordance with applicable regulations.

7. Prior security clearance and a "need to know" as determined by any government entity or the Court as applying to one person does not give that person the authority to disclose

any classified national security documents or information to any other individual. By way of example, but not limitation, defense counsel with appropriate clearances and a "need to know," as determined by the Court or the government, are not authorized to discuss such classified information with an uncleared defendant absent written permission of either the Court or the government.

8. The Court will be the final arbiter of all classified information questions. In the event that the Department Security Officer working in conjunction with the Security Clearance CSO determines, after exhausting all administrative processes of review (including meeting with counsel applying for the clearance), that any counsel is not to be granted a security clearance, the Security Clearance CSO shall advise the Court promptly of the fact that such a clearance is not forthcoming but not the underlying reasons. In that event, the Court will conduct an ex parte hearing to determine that person's eligibility to see classified materials. In the first instance, the Court will schedule a conference with such counsel (in the absence of the Government or other counsel) at which time defense counsel will advise whether counsel wishes the Court to undertake a review of the security clearance determination in order to make an access decision. If the Court reviews such a determination, only the Court, counsel seeking the clearance and the Security Clearance CSO shall participate in that process, absent further

order of the Court. If counsel seeks a revision of this Protective Order in any manner, the Government shall be notified of the proposed amendments and provided an opportunity to be heard on the proposed amendments.

9. The substitution, departure, or removal for any reason from this case of any defense counsel, defendant, or anyone associated with the defense as a witness or otherwise shall not release that individual from the provisions of this Order or any form or document executed in connection with this Order. Because classified information remains the property of the United States Government, the persons covered in this order are bound by any subsequent conditions imposed on the classified information or documents, even if more restrictive.

10. As used herein, the term "classified national security information or document" refers to:

A. any classified information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government, its agencies, employees and contractors including research and development;

B. any document, including notes and regardless of form or characteristic, or information contained therein, which contains classified information;

C. verbal classified information known to the

defendant or defense counsel;

D. classified documents (or information contained therein) or information disclosed to the defendant, defense counsel or others governed by this Order as part of the proceedings in this case;

E. classified documents and information which have otherwise been made known to defendant, defense counsel or others governed by this Order and which documents have been marked or designated: "CONFIDENTIAL", "SECRET", "TOP SECRET", or "SENSITIVE COMPARTMENTED INFORMATION", or concerning which the defendant or defense counsel or others governed by this Order have been orally advised of the classified nature of the document or information;

F. information and documents covered by Presidential Executive Order 12356; and

G. any information or document, regardless of place of origin and including foreign classified documents, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters. Any document or information including but not limited to any subject referring to the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, Department of State, National Security Council, Federal Bureau of Investigation, or intelligence agencies of any foreign government, or similar entity, or information in the possession

of such agency, shall be presumed to fall within the meaning of "classified national security information or document" unless and until the Administrative CSO or counsel for the government advises otherwise in writing.

H. This provision shall not apply to documents or information which the defense obtains from other than classified materials, or to public court documents or to documents which are provided by the Government with a marking to indicate that the document has been "declassified." While information in the public domain is ordinarily not classified, however, such information may be considered as classified, and therefore subject to the provisions of CIPA and this Order, if it is confirmed or denied by any person who has, or has had, access to classified information and that confirmation or denial corroborates or tends to refute the information in question. Any attempt by the defense to have such information confirmed or denied at trial or in any public proceeding in this case shall be governed by CIPA and all provisions of this Order.

11. All classified documents and information contained therein shall remain classified unless and until anyone covered by this Order has been notified in writing by the appropriate attorney for the government or the Court Security Officer that the document or information has been declassified and marked declassified by the appropriate classifying authority; or the

documents bear a clear indication that they have been declassified by the agency or department of government that originated the document or the information contained therein.

12. "Documents" or "associated materials" or "information" include, but are not limited to, all written or printed matter of any kind, formal or informal, including the originals, all identical copies, and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including without limitation pleadings, papers, correspondence, memoranda, notes, letters, telegrams, reports, summaries, inter-office and intra-office communications, notations of any sort concerning conversations, meetings or other communication, teletypes, telefaxes, invoices, worksheets, and all drafts, alterations, modifications, changes, and amendments of any kind of the foregoing; graphic or aural records or representations of any kind, including without limitation, photographs, charts, graphs, microfiches, microfilm, video tapes, sound recording of any kind, motion pictures, any electronic mechanical or electric records or representations of any kind, including without limitation, tapes, cassettes, computers, discs, CD-ROMs, recordings, films, typewriter ribbons, correcting ribbons, and word processor discs, tapes and ribbons; and information acquired orally.

13. The Administrative CSO shall arrange for the creation,

construction, maintenance and operation of a "secure room" hereinafter referred to as an "SR", for the storage, handling, and control of classified documents and information to which the defense counsel, defendants, and other persons assisting in the preparation of the defense case are cleared for access. The Administrative CSO shall establish procedures to assure that the SR is accessible to defendants (if such access should be determined by the Court to be necessary), counsel for defendants, employees of counsel for defendants and authorized witnesses accompanied by counsel for defendants. The Court Security Officer, in consultation with counsel for defendants, shall establish procedures to assure that the SR is maintained and operated in the most efficient manner consistent with the protection of classified information. The government may also construct a separate SR for the storage, handling, and control of classified documents and information in accordance with the security procedures required by the Administrative CSO. For the convenience of the Court, the defense counsel, and the Government, the Government may provide classified materials to the defense pursuant to Fed. R. Crim. P. 16, CIPA, Brady v. Maryland, Giglio v. United States, and the Jencks Act by providing it to the Administrative CSO and making it available at the SR without requiring the Court to pass upon the identified recipient's "need to know." If it is necessary for a defendant

to review or discuss classified matters, or otherwise meet with defense counsel, in the SR, this will only occur under appropriate supervision to ensure that the defendant does not escape, attempt to escape, cause physical injury to himself or others, or remove, copy, alter, or destroy classified information, or obtain access to classified information the defendant is not entitled to review, and to ensure that the defendant does not use the opportunity to review the classified materials to circumvent any applicable security restrictions, including the Special Administrative Measures imposed by the Bureau of Prisons, other prison regulations, and the other orders of this Court governing discovery in this case.

14. Classified national security documents and information or information believed to be classified shall only be kept, discussed, or reviewed, in a SR.

15. Defendants, defense attorneys, and those persons whose assistance the defense reasonably requires shall not disclose or discuss classified national security documents or information, or information believed to be classified, with other defendants or with counsel for other defendants without prior consent of the Government with notification to the Administrative CSO, or the prior approval of the Court. That authorization will not be unreasonably withheld but, when granted, will be subject to all the provisions of this Order. Moreover, the Government shall

attach a cover page to each installment of classified materials indicating the names of other counsel who have received the same materials. Counsel may discuss the contents of any such installment he or she receives if counsel (i) verifies that other counsel are also on the list of addressees for that particular installment of classified information and (ii) conducts the conversation in an appropriate place and manner (e.g. in the SR but not on an unclassified telephone). If counsel are not certain as to which counsel have received particular materials, they should ask either an attorney for the Government or the Administrative CSO for clarification of whether particular classified information has been shared with any other counsel.

16. No one shall discuss any classified national security information or document over any standard commercial telephone instrument or office intercommunication system. Nor shall any person covered by this Order discuss or disclose such information in the presence of any person who does not have a clearance certified by the Administrative CSO as applicable to this case, and either a "need to know" as determined by the Court or written approval from counsel for the government.

17. Written materials presumed to contain classified national security information which are prepared for this case by a defendant or defense counsel shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons

who have received access to classified information pursuant to this Order, and in accordance with conditions prescribed by the Administrative CSO.

18. Machines of any kind used in the preparation or transmission of classified information in this case may be used only with the approval of the Administrative CSO and in accordance with instructions he shall issue, including instructions as to where such machines must be operated and stored.

19. To facilitate the defendants' filings of notices as required under Section 5 of CIPA, the Administrative CSO shall make arrangements with the respective agencies for a determination of the classification level, if any, of materials or information either within the possession of the defense or about which the defense has knowledge and which the defense intends to use in any way at trial. Nothing thus submitted by the defense to the Administrative CSO pursuant to this paragraph shall be made available to the prosecutors unless so ordered by the Court, or so designated by the defense. Any and all of these items which are classified shall be listed in the defendant's Section 5 notice.

20. All written pleadings, filings, attachments, or documents involving classified information, or those which reasonably might cause the disclosure of classified information,

or which concern or relate to national security or intelligence matters (as defined in paragraph 10 above) shall not be publicly filed, but shall be filed under seal to the Administrative CSO and shall be marked: "Filed in Camera and Under Seal with the Court Security Officer," with separate service of copies upon counsel for the Government and co-defendants (except in the event of an ex parte application), provided that the materials be transported by, and delivered to, persons known to have the appropriate security clearance. Service upon other defense counsel with security clearances shall be effected by depositing such counsel's copy (in an envelope marked on the outside to indicate the addressee and the fact that the document enclosed contains classified information) in the drawer of the safe in the SR which will be designated as a drawer to be shared in common by cleared counsel (the "common drawer"). Notice shall be sent to all cleared counsel by hand or by facsimile which shall simply state that a document which may contain classified information has been filed with the Administrative CSO and served upon the Government and is available in the safe in the SR. Service shall be effected upon the Government by personal delivery by cleared counsel to one of the following persons: Assistant United States Attorneys Patrick J. Fitzgerald, Kenneth M. Karas, Michael J. Garcia, or Paul W. Butler, or Paralegal Specialists Gerard Francisco or Lillie Grant, or Intelligence Officer Harry Brady,

all of whom have Top Secret clearance and who will thereafter be responsible for the document's secure storage within the United States Attorney's Office. If for any reason, none of the seven named Government personnel are available at the time of attempted service, then defense counsel shall maintain the Government's copy in the common drawer in the SR (in an envelope marked on the outside to indicate the copy is for delivery to the Government and the fact that the document enclosed contains classified information) and send a notice to the Government by hand or by facsimile indicating that the delivery of a filing which may contain classified needs to be arranged. Thereafter, the Government may obtain the document from any cleared defense counsel (or the Administrative CSO) with access to the common drawer, and the Government personnel obtaining such documents shall sign a receipt indicating the date and time of receipt and the cleared person from whom it was received. The Government shall not have direct access to the common drawer of the SR but shall only be provided such documents by cleared defense counsel or the Administrative CSO." The date and time of physical submission to the Administrative CSO, which shall be noted on the document, shall be considered the date and time of filing. Upon receiving a pleading from a defense counsel, the Administrative CSO shall notify by the end of the next business day the Court of the fact that a pleading has been filed. Thereafter, any defense

counsel with the appropriate security clearance and who has been granted access to the particular classified information in question by the government or the Court pursuant to paragraph 5(a) of this order will be permitted to review such pleadings in the SR under the same conditions as they would review other classified information. The Administrative CSO shall promptly review such pleading and shall determine, with the assistance of and in consultation with personnel from the appropriate agencies, whether any of the submitted material is classified, and the level of any classified information. If the Administrative CSO, working in conjunction with appropriate Intelligence Community member agencies, determines that the pleading or document contains classified information, the Administrative CSO shall insure that the portion of the document, and only that portion, is marked with the appropriate classification marking and remains sealed. All reasonable efforts to declassify such materials will be undertaken by the agencies conducting the review. Portions of the pleading or documents that do not contain classified information shall be unsealed by the Administrative CSO and placed in the public record.

21. The Administrative CSO shall maintain a separate sealed record for those materials which are classified. The Administrative CSO shall be responsible for the maintaining of the secured record for purposes of later proceedings or appeals.

22. Pleadings containing classified information which are filed by any one defendant on behalf of a single defendant or other defendants, can only be disclosed to other defense counsel whom counsel knows is authorized pursuant to paragraph 15 to discuss all the classified information contained in the document therein.

23. Persons subject to this Order are advised that all information to which they obtain access by this Order is now and will forever remain the property of the United States Government. They shall return all materials that may have come into their possession or for which they are responsible because of such access upon demand by the counsel for the government or the Court Security Officer.

24. Persons subject to this Order are further admonished that they are obligated by law and regulation not to disclose any national security classified information in an unauthorized fashion and that any breach of this Order may result in the termination of their access to classified information. In addition, they are admonished that any unauthorized disclosure of classified information may constitute violations of the United States criminal laws, including without limitation, the provisions of 18 U.S.C. Sections 371, 641, 1001, 793, 794, 798, 952, and 1503; 50 U.S.C. Sections 421 (the Intelligence Identities Protection Act) and 783; and that a violation of this

Order or any portion hereof may be chargeable as a contempt of Court.

25. Nothing contained in this Order shall be construed as a waiver of any right of any defendant.

26. A copy of this Order shall be issued forthwith to counsel for all defendants who shall be responsible for advising defendants, employees of counsel for defendants, and defense witnesses of the contents of this Order. Each defendant, counsel for defendant, employee of counsel for defendant, defense witness, or any other person associated with the defense to be provided access to classified information shall execute the Memorandum of Understanding described in paragraph 4 of this Order, and counsel for defendants shall file executed originals with the Court and the Administrative CSO and serve an executed original of such document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent to receiving access to classified information.

Dated: New York, New York
July 29, 1999

SO ORDERED:

HON. LEONARD B. SAND
United States District Judge
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : 98 Cr. 1023 (LBS)

USAMA BIN LADEN, et al. :

Defendants. :
- - - - - - - - - - - - - - - - - - - -x

MEMORANDUM OF UNDERSTANDING REGARDING RECEIPT OF CLASSIFIED INFORMATION

Having familiarized myself with the applicable statutes, regulations, and orders, related to, but not limited to, Title 18 United States Code, including unauthorized disclosure of classified information, espionage and related offenses; The Intelligence Agents Identities Protection Act, Title 50 U.S.C. Section 421;; Title 18 U.S.C. Section 641; Title 50 U.S.C. Section 783; 28 C.F.R. 17 et seq., and Executive Order 12356; I understand that I may be the recipient of information and documents that concern the present and future security of the United States and belong to the United States, and that such documents and information together with the methods and sources of collecting it are classified by the United States Government. In consideration for the disclosure of classified information and documents:

(1) I agree that I shall never divulge, publish, or reveal either by word, conduct or any other means, such classified documents and information unless specifically authorized in writing to do so by an authorized representative of

the United States Government; or as expressly authorized by the Court pursuant to the Classified Information Procedures Act and the Protective Order entered in the case of United States v. Usama Bin Laden, et al., 98 Cr. 1023 (LBS), Southern District of New York.

(2) I agree that this Memorandum and any other non-disclosure agreement signed by me will remain forever binding on me.

(3) I have received, read, and understand the Protective Order entered by the United States District Court for the Southern District of New York on July 29, 1999, in the case of United States v. Usama Bin Laden et al., 98 Cr. 1023 (LBS),

relating to classified information, and I agree to comply with the provisions thereof.

Court Security Officer	Date
David Bruck, Esq. Counsel for Defendant al-'Owhali	Date
Carl J. Herman, Esq. Counsel for Defendant Odeh	Date
Leonard F. Joy, Esq. Counsel for Defendant al-'Owhali	Date
Paul J. McAllister, Esq. Counsel for Defendant Salim	Date
James Roth, Esq. Counsel for Defendant Mohamed	Date
Samuel Schmidt, Esq. Counsel for Defendant El-Hage	Date
Robert Tucker, Esq. Counsel for Defendant al-'Owhali	Date
Michael Young, Esq. Counsel for Defendant Odeh	Date