

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIMINAL NO. 04-29(JRT/FLN)

1
2 UNITED STATES OF AMERICA,

3 Plaintiff,

4 vs.

5 MOHAMMED ABDULLAH WARSAME,

6 Defendant.

7
8
9 **PROTECTIVE ORDER**

10 This matter comes before the Court upon the Motion of the United States
11 for a Protective Order to prevent the unauthorized disclosure or dissemination of
12 classified national security information and documents which will be reviewed or
13 made available to defense counsel in this case.

14 Pursuant to the authority granted under Section 3 of the Classified
15 Information Procedures Act, 18 U.S.C. App. 3 (1994) ("CIPA"), the Security
16 Procedures Established Pursuant to CIPA by the Chief Justice of the United States
17 for the Protection of Classified Information (reprinted following CIPA section 9),
18 Rules 16(d) and 57 of the Federal Rules of Criminal Procedure, the general
19 supervisory authority of the Court, and in order to protect the national security, the
20 following Protective Order is entered:

21 1. The Court finds that this case will involve information that has been
22 classified national security information. The storage, handling and control of this
23 information will require special security precautions mandated by statute,
24 executive order, and regulation, and access to which requires the appropriate
25 security clearances and a legitimate "need to know." The purpose of this Order is
26 to establish procedures that must be followed by defense counsel, any translators
27 for the defense, investigators and all other individuals who receive access to
28 classified national security information or documents in connection with this case.



1 These procedures will apply to all pretrial, post-trial and appellate matters
2 concerning classified information and may be modified from time to time by
3 further order of the Court acting under its inherent supervisory authority to ensure
4 a fair and expeditious trial.

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

6 a. "Classified information" shall mean:

7 (i) any document or information which has been classified by any
8 executive agency in the interests of national security or pursuant to
9 Executive Order 12958 or its predecessor orders, as "confidential," "secret,"
10 "top secret," or additionally controlled as "SENSITIVE
11 COMPARTMENTED INFORMATION" (SCI), or any information
12 contained in such document.

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

19 (iii) verbal classified information known to the Defendant or defense
20 counsel, or

21 (iv) any information, regardless of place of origin and including "foreign
22 government information," as that term is defined in Executive Order 12958,
23 that could reasonably be believed to contain classified information, or that
24 refers or relates to national security or intelligence matters.

25 b. "Document" shall mean any material containing information. The term
26 "document" shall include, without limitation, written or printed matter of any kind
27 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

1 classified information. The substitution, departure, or removal from this case of
2 defense counsel or anyone associated with the defense as an employee or witness
3 or otherwise, shall not release that person from the provisions of this Order or the
4 Memorandum of Understanding executed in connection with this Order.

5 8. The Court Security Officer shall arrange for an appropriately
6 approved secure area for the use of defense counsel and his employees. The Court
7 Security Officer shall establish procedures to assure that the secure area is
8 accessible during business hours to defense counsel, employees of counsel, and
9 authorized witnesses accompanied by defense counsel, and at other times upon
10 reasonable request as approved by the Court Security Officer. The secure area
11 shall contain a separate working area for defense counsel and will be outfitted with
12 any secure office equipment requested by the defense that is reasonable and
13 necessary to the preparation of the defense. The Court Security Officer, in
14 consultation with defense counsel, shall establish procedures to assure that the
15 secure area may be maintained and operated in the most efficient manner
16 consistent with the protection of classified information. No classified documents
17 may be removed from the secure area unless so authorized by the Court Security
18 Officer with notice provided to the Court. The Court Security Officer shall not
19 reveal to the government the content of any conversations he may hear among the
20 defense, nor reveal the nature of the documents being reviewed or the work being
21 generated. The presence of the Court Security Officer shall not operate to render
22 inapplicable the attorney-client privilege.

23 9. Filing of Papers by Defendant. Any pleading or other document filed
24 by Defendant shall be filed under seal with the Court Security Officer or a
25 designee and shall be marked, "Filed in Camera and Under Seal with the Court
26 Security Officer." The time of physical submission to the Court Security Officer
27 or a designee shall be considered the date and time of filing. The Court Security

1 Officer shall promptly examine the pleading or document and, in consultation with
2 representatives of the appropriate agencies, determine whether the pleading or
3 document contains classified information. If the Court Security Officer
4 determines that the pleading or document contains classified information, he shall
5 ensure that that portion of the document, and only that portion, is marked with the
6 appropriate classification marking and remains under seal. All portions of all
7 paper filed by Defendant that do not contain classified information shall be
8 immediately unsealed by the Court Security Officer and placed in the public
9 record. The Court Security Officer or a designee shall immediately deliver under
10 seal to the Court and counsel for the United States any pleading or document to be
11 filed by defendant that contains classified information; the Court shall then direct
12 the clerk to enter on the docket sheet the title of the pleading or document, the date
13 it was filed, and the fact that it has been filed under seal with the Court Security
14 Officer or a designee.

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

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

25 12. Protection of Classified Information. The Court finds that in order to
26 protect the classified information involved in this case, individuals other than
27 counsel for the United States, appropriately cleared Department of Justice

1 employees, and personnel of the originating agency, can obtain access to classified
2 documents and information only after having been granted a security clearance by
3 the Department of Justice through the Court Security Officer, and with permission
4 of the Court. No person except counsel for Defendant, employees of counsel for
5 the Defendant or defense witnesses, upon receipt of appropriate security
6 clearances, shall have access to the classified information involved in this case.
7 Moreover, no counsel for the Defendant, employee of counsel for the Defendant
8 or defense witnesses shall have access to any classified information in this case
9 unless that person shall first have:

10 (a) received from the Court Security Officer the appropriate security
11 clearance for the level of the classified information involved in this
12 litigation; and

13 (b) signed the Memorandum of Understanding in the form attached hereto
14 agreeing to comply with the terms of this Order. The signed Memorandum
15 of Understanding shall be filed with the Court. The substitution, departure
16 or removal for any reason from this case of counsel for the defense or
17 anyone associated with the defense as an employee or witness or otherwise
18 shall not release that individual from the provisions of this Order or the
19 Memorandum of Understanding executed in connection with this Order.

20 Before any person other than counsel for the United States, appropriately cleared
21 Department of Justice employees, and personnel of the originating agency, is
22 permitted by the Court to inspect and review classified national security
23 information, he or she must also sign the attached Memorandum of Understanding.

24 13. Access to Classified Information. In the interest of the national
25 security, the defendant may be excluded from access to certain classified
26 information. Counsel for the Defendant, employees of counsel for the Defendant

and witnesses accompanied by counsel for the Defendant shall have access to
1 classified information only as follows:

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

6 b. Counsel for the defendant and employees of counsel for the
7 Defendant shall have free access to the classified information made
8 available to them in the secure area established by the Court Security
9 Officer and shall be allowed to take notes and prepare documents with
10 respect to those materials.

11 c. No person, including counsel for the defendants, any employee of
12 counsel for the defendant or defense witnesses, shall copy or reproduce any
13 classified information in any manner or form, except with the approval of
14 the Court Security Officer or in accordance with the procedures established
15 by the Court Security Officer for the operation of the secure area.

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

1 e. Counsel for the Defendant and employees of counsel for the
2 Defendant shall discuss classified information only within the secure area or
3 in an area authorized by the Court Security Officer.

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

18 g. The Defendant, counsel for the Defendant, employees of counsel for
19 the Defendant and defense witnesses shall not discuss classified information
20 over any standard commercial telephone instrument or office
21 intercommunication systems, including but not limited to the internet, or in
22 the presence of any person who has not been granted access by the Court to
23 classified information.

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

1 i. If counsel for the government advise defense counsel that certain
2 classified information or documents may not be disclosed to the Defendant,
3 then defense counsel, employees of defense counsel, and defense witnesses
4 shall not disclose such information or documents to the Defendant without
5 prior concurrence of counsel for the government or, absent such
6 concurrence, approval of the Court. Counsel for the government shall be
7 given an opportunity to be heard in response to any defense request for
8 disclosure to the defendant of such classified information.

9 14. Defense counsel, employees of defense counsel, and defense
10 witnesses shall not disclose such information or documents to the defendant
11 without prior concurrence of counsel for the government, or, absent such
12 concurrence, prior approval of the Court. Counsel for the government shall be
13 given an opportunity to be heard in response to any defense request for disclosure
14 to the defendant of such classified information.

15 15. Classified Information Procedures Act. Procedures for the public
16 disclosure of classified information by the defense shall be those established in
17 sections 5 and 6 of CIPA. No classified information may be disclosed by any
18 defense except:

- 19 a. to the Court, court personnel and government attorneys and their
20 agents and employees identified by the Court Security Officer or a designee
21 as holding proper approval for access to classified information;
- 22 b. to representatives of the agency or department originating the
23 classified information who have been identified by the Court Security
24 Officer as holding proper security clearances and having the need to know
25 the classified information;
- 26 c. in accordance with the procedures of CIPA and the procedures
27 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

1 handling of classified documents or information could cause serious damage, and
2 in some cases exceptionally grave damage to the national security of the United
3 States or may be used to the advantage of a foreign nation against the interests of
4 the United States. This Protective Order is to ensure that those authorized to
5 receive classified information in connection with this case will never divulge that
6 information to anyone not authorized to receive it, without prior written
7 authorization from the originating agency and in conformity with this Order.

8 18. All classified documents and information which counsel for the
9 Defendant, employees of counsel for the Defendant or defense witnesses have
10 access to in this case are now and will remain the property of the United States.
11 Upon demand of the Court Security Officer, these persons shall return to the Court
12 Security Officer, all classified information in their possession obtained through
13 discovery from the government in this case, or for which they are responsible
14 because of access to classified information. The notes, summaries and other
15 documents prepared by the defense that do or may contain classified information
16 shall remain at all times in the custody of the Court Security Officer for the
17 duration of the case. At the conclusion of this case, all such notes, summaries and
18 other documents are to be destroyed by the Court Security Officer in the presence
19 of defense counsel.

20 19. A copy of this Order shall be issued forthwith to defense counsel who
21 shall be responsible for advising the Defendant, employees of counsel for the
22 defendant, and defense witnesses of the contents of this Order. Counsel for the
23 defendant, each employee of counsel for the Defendant and defense witnesses who
24 will be provided access to the classified information, shall execute the
25 Memorandum of Understanding described in paragraph 12 of this Order, and
26 counsel for the defendant shall file executed originals of such documents with the
27 Court and the Court Security Officer and serve an executed original upon the

1 United States. The execution and filing of the Memorandum of Understanding is a
2 condition precedent for counsel for the defendants, any employee of counsel for
3 the Defendant, and any defense witness to have access to classified information.

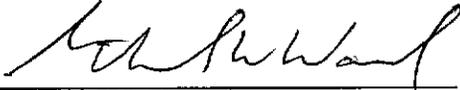
4 ORDERED this 8th day of March, 2005.

5 

6 JOHN R. TUNHEIM
United States District Court Judge

7 WE ASK FOR THIS:

8 THOMAS B. HEFFELFINGER
9 United States Attorney

10 

11 Michael W. Ward
12 Assistant United States Attorney
Attorney ID Number 190755

13
14
15 SEEN AND AGREED TO:

16 

17 David Thomas
18 Counsel for Defendant
Mohammed Abdullah Warsame