

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Criminal No. 04-29 (JRT)

Plaintiff,

v.

MOHAMED ABDULLAH WARSAME,

Defendant.

**PROTECTIVE ORDER PURSUANT
TO SECTION 4 OF THE CLASSIFIED
INFORMATION PROCEDURES ACT
AND RULE 16 OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE**

W. Anders Folk, Assistant United States Attorneys, **OFFICE OF THE UNITED STATES ATTORNEY**, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415; Joseph N. Kaster, **UNITED STATES DEPARTMENT OF JUSTICE**, 10th and Constitution Avenue NW, Room 2649, Washington DC, 20530; for plaintiff.

David C. Thomas, **LAW OFFICES OF DAVID C. THOMAS**, 53 West Jackson Boulevard, Suite 1362, Chicago, IL 60604; Andrea K. George, Assistant Federal Defender **OFFICE OF THE FEDERAL DEFENDER**, 300 South Fourth Street, Suite 107, Minneapolis, MN 55415; for defendant.

This matter came before the Court on the United States' second *ex parte, in camera* motion and supporting Declaration (hereinafter, the "Submission"), filed May 27, 2008, pursuant to Section 4 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. III § 4, and Rule 16 of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.") for a protective order authorizing the disclosure of a certain unclassified summary in lieu of disclosure of classified material (the "Classified Document") itself, and to withhold disclosure of the Classified Document. After *ex parte, in camera*

inspection and consideration of the United States' Submission, this Court finds, pursuant to Section 4 of CIPA and Rule 16(d)(1), Fed. R. Crim. P., that:

The United States' Submission contains classified information that requires protection against unauthorized disclosure for reasons of national security. Specifically, the Court finds that disclosure of the classified information or the Classified Document to the defense, or to the public, reasonably could be expected to cause serious damage to national security.

The Court further finds that the information sought to be protected is either not discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and Rule 16, Fed. R. Crim. P., or that such discovery value is outweighed by the potential danger to national security that might ensue after disclosure. Accordingly,

IT IS HEREBY ORDERED that the United States need not disclose to the defense the specific classified information or Classified Document described in the United States' Submission.

Pursuant to CIPA Section 4 and Rule 16(d)(1), Fed. R. Crim. P., the United States has proposed an unclassified summary as a substitute for certain specific classified information at issue. The Court finds that the unclassified summary will provide Defendant with substantially the same ability to make his defense as would disclosure of the specific classified information or Classified Document.

IT IS FURTHER ORDERED that the United States may disclose to the defense the unclassified summary substantially in the form proposed in the Submission.

IT IS FURTHER ORDERED that the United States' unclassified summary of the specific information at issue is hereby SUBSTITUTED for the classified information and Classified Document.

IT IS FURTHER ORDERED that the United States need **not** disclose to the defense reports cited in or incorporated in, or reports derivative of, the Classified Document.

IT IS FURTHER ORDERED that the United States' Submission is hereby sealed and shall be maintained in a facility appropriate for the storage of such classified information by the Court Security Officer as the designee of the Clerk of Court, in accordance with established security procedures, until further order of this Court.

DATED: October 3, 2008
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge