

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA

v.

HEATH GAUTHIER

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Criminal Case No. 1:23-cr-00015-JL

GOVERNMENT’S ASSENTED-TO MOTION FOR A PROTECTIVE ORDER

The United States of America, with the defendant’s assent, moves the Court to issue a protective order in this case. The government makes this request for the following reasons:

1. On February 15, 2023, a grand jury returned an indictment charging the defendant with wire fraud, attempted wire fraud, and aggravated identity theft in connection with his alleged fraud in obtaining CARES Act loans. ECF No. 1.
2. The defendant was arrested on February 16, 2023. That same day, investigators executed a search warrant of the defendant’s residence and person. The search warrant also authorized the search of the defendant’s electronic devices. 23-mj-27-AJ.
3. While searching the devices, investigators saw, in plain view, evidence of other federal offenses, including possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5).
4. On May 26, 2023, Judge Johnstone signed a search warrant authorizing investigators to search the seized devices for evidence relating to the distribution, receipt, and possession of child pornography. *See* 23-mj-102-AJ.
5. On June 1, 2023, Judge Johnstone held a bail review hearing and the defendant stipulated to detention, without prejudice, pending trial. ECF No. 20.
6. The government is evaluating this new evidence and investigating to determine if a superseding indictment charging child exploitation offenses is appropriate. The parties have

begun discussing a potential resolution of both the charged fraud scheme and potential charges related to child exploitation. For these discussions to continue, the government wishes to produce pre-(superseding) indictment discovery to the defense related to the child exploitation investigation (the “CE Discovery Material”). Due to the nature of the child exploitation investigation, the discovery contains sensitive information, including statements and other information concerning alleged minor victims.

7. Criminal Rule 16(d)(1) states that “the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” Fed. R. Crim. P. 16(d)(1).

8. The government conferred with defense counsel and the parties agreed that a protective order is appropriate here to enable the government to produce pre-indictment discovery concerning the child exploitation investigation.

9. Accordingly, the United States requests that the Court issue a Protective Order that includes the following provisions:

- a. For purposes of this Order, the term “defense team” means defense counsel, defense counsel’s staff, and anyone directly engaged by defense counsel to assist in preparing and presenting a defense in this case.
- b. The CE Discovery Material shall be used by the defense team only as necessary to prepare and present a defense in this case;
- c. Defense counsel shall show the CE Discovery Material only to other members of the defense team;
- d. Defense counsel shall not provide a copy of the CE Discovery Material to the defendant. Defense counsel may view and review the CE Discovery Material with the defendant, but must do so in a manner that reasonably assures they

will not be viewed by any other person who is not a member of the defense team; and

- e. Defense counsel shall maintain custody of the CE Discovery Material and shall not make copies unless necessary to provide to another member of the defense team who will use the copy to assist in the defense of this case.
- f. At the end of the case, including any collateral challenges, or when the CE Discovery Material is no longer needed by the other member(s) of the defense team, defense counsel shall destroy the CE Discovery Material or, if destruction is not feasible because electronic copies of the CE Discovery Material are stored on defense counsel's archive system due to routine server back-ups, defense counsel shall maintain the CE Discovery Material in a way that reasonably assures compliance with this Order.

10. The defendant, Heath Gauthier, through his counsel, Dorothy Graham, Esq., assents to this motion.

WHEREFORE, the United States respectfully requests that this Court enter a protective order containing the provisions specified above. For the Court's convenience, a proposed Protective Order is enclosed with this motion.

Respectfully submitted,

JANE E. YOUNG
United States Attorney

Dated: June 16, 2023

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