

1 NICOLA T. HANNA
United States Attorney
2 BRANDON D. FOX
Assistant United States Attorney
3 Chief, Criminal Division
RICHARD E. ROBINSON (Cal. Bar No. 90840)
4 Assistant United States Attorney
Major Frauds Section
5 1100 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-0713
7 Facsimile: (213) 894-6269
E-mail: Richard.Robinson@usdoj.gov

8 DANIEL S. KAHN
9 Acting Chief, Fraud Section
BENJAMIN A. SALTZMAN
10 Trial Attorney (NY Bar No. 5151477)
Criminal Division, Fraud Section
11 United States Department of Justice
1400 New York Avenue, NW
12 Washington, DC 20005
Phone: (202) 514-0337
13 Email: Benjamin.Saltzman@usdoj.gov

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA

16 UNITED STATES DISTRICT COURT

17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 HASSAN KANYIKE,

22 Defendant.

No. CR 20-mj-05936

STIPULATION AND JOINT REQUEST FOR
A PROTECTIVE ORDER REGARDING
DISCOVERY CONTAINING: PERSONAL
IDENTIFYING INFORMATION AND
PRIVACY ACT INFORMATION

PROPOSED ORDER FILED SEPARATELY

25 Plaintiff, United States of America, by and through its counsel
26 of record, the United States Attorney for the Central District of
27 California and Assistant United States Attorney Richard E. Robinson,
28 and defendant Hassan Kanyike ("defendant"), by and through his

1 counsel of record, Victor Sherman (collectively the “parties”), for
2 the reasons set forth below, request that the Court enter the
3 proposed protective order (the “Protective Order”) governing the use
4 and dissemination of (1) personal identifying information (“PII”) of
5 real persons pursuant to Federal Rule of Criminal Procedure Rule
6 16(d)(1), and (2) material that may contain information within the
7 scope of the Privacy Act.

8 Introduction and Grounds for Protective Order

9 1. On December 8, 2020, defendant was arrested on a complaint
10 issued by Magistrate Judge Charles F. Eick for violation of 18
11 U.S.C. §§ 1344 (2) (bank fraud). (ECF 1.)

12 2. On December 22, 2020, Charles F. Eick entered an order
13 releasing the defendant from custody. (ECF 18.)

14 3. A protective order is necessary because the government
15 intends to produce to the defense materials containing third
16 parties’ PII. The government believes that disclosure of this
17 information without limitation risks the privacy and security of the
18 information’s legitimate owners. Because the government has an
19 ongoing obligation to protect third parties’ PII, the government
20 cannot produce to defendant an unredacted set of discovery
21 containing this information without the Court entering the
22 Protective Order. Moreover, PII makes up a significant part of the
23 discovery in this case and such information itself, in many
24 instances, has evidentiary value. If the government were to attempt
25 to redact all this information in strict compliance with Federal
26 Rule of Criminal Procedure 49.1, the Central District of
27 California’s Local Rules regarding redaction, and the Privacy Policy
28 of the United States Judicial Conference, the defense would receive

1 a set of discovery that would be highly confusing and difficult to
2 understand, and it would be challenging for defense counsel to
3 adequately evaluate the case, provide advice to defendant, or
4 prepare for trial.

5 4. An order is also necessary because the government intends
6 to produce to the defense materials that may contain information
7 within the scope of the Privacy Act, 5 U.S.C. § 552a ("Privacy Act
8 Information"). To the extent that these materials contain Privacy
9 Act Information, an order is necessary to authorize disclosure
10 pursuant to 5 U.S.C. § 552a(b)(11).

11 5. The purpose of the Protective Order is to (a) allow the
12 government to comply with its discovery obligations while protecting
13 this sensitive information from unauthorized dissemination, and
14 (b) provide the defense with sufficient information to adequately
15 represent defendant.

16 Definitions

17 6. The parties agree to the following definitions:

18 a. "PII Materials" includes any information that can be
19 used to identify a person, including a name, address, date of birth,
20 Social Security number, driver's license number, telephone number,
21 account number, email address, or personal identification number.

22 b. "Confidential Information" refers to any document or
23 information containing PII Materials that the government produces to
24 the defense pursuant to this Protective Order and any copies
25 thereof.

26 c. "Defense Team" includes (1) defendant's counsel of
27 record ("defense counsel"); (2) other attorneys at defense counsel's
28 law firm who may be consulted regarding case strategy in this case;

1 (3) defense investigators who are assisting defense counsel with
2 this case; (4) retained experts or potential experts; and
3 (5) paralegals, legal assistants, and other support staff to defense
4 counsel who are providing assistance on this case. The Defense Team
5 does not include defendant, defendant's family members, or any other
6 associates of defendant.

7 Terms of the Protective Order

8 7. The parties jointly request the Court enter the Protective
9 Order, which will permit the government to produce Confidential
10 Information in a manner that preserves the privacy and security of
11 third parties. The parties agree that the following conditions in
12 the Protective Order will serve these interests:

13 a. The government is authorized to provide defense
14 counsel with Confidential Information marked with the following
15 legend: "CONFIDENTIAL INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE
16 ORDER." The government may put that legend on the digital medium
17 (such as DVD or hard drive) or simply label a digital folder on the
18 digital medium to cover the content of that digital folder. The
19 government may also redact any PII contained in the production of
20 Confidential Information.

21 b. If defendant objects to a designation that material
22 contains Confidential Information, the parties shall meet and
23 confer. If the parties cannot reach an agreement regarding
24 defendant's objection, defendant may apply to the Court to have the
25 designation removed.

26 c. Defendant and the Defense Team agree to use the
27 Confidential Information solely to prepare for any pretrial motions,
28 plea negotiations, trial, and sentencing hearing in this case, as

1 well as any appellate and post-conviction proceedings related to
2 this case.

3 d. The Defense Team shall not permit anyone other than
4 the Defense Team to have possession of Confidential Information,
5 including defendant, while outside the presence of the Defense Team.

6 e. At no time, under no circumstance, will any
7 Confidential Information be left in the possession, custody, or
8 control of defendant, regardless of defendant's custody status.

9 f. Defendant may review PII Materials only in the
10 presence of a member of the Defense Team, who shall ensure that
11 defendant is never left alone with any PII Materials. At the
12 conclusion of any meeting with defendant at which defendant is
13 permitted to view PII Materials, defendant must return any PII
14 Materials to the Defense Team, and the member of the Defense Team
15 present shall take all such materials with him or her. Defendant
16 may not take any PII Materials out of the room in which defendant is
17 meeting with the Defense Team.

18 g. Defendant may see and review Confidential Information
19 as permitted by this Protective Order, but defendant may not copy,
20 keep, maintain, or otherwise possess any Confidential Information in
21 this case at any time. Defendant also may not write down or
22 memorialize any data or information contained in the Confidential
23 Information.

24 h. The Defense Team may review Confidential Information
25 with a witness or potential witness in this case, including
26 defendant. A member of the Defense Team must be present if PII
27 Materials are being shown to a witness or potential witness. Before
28 being shown any portion of Confidential Information, however, any

1 witness or potential witness must be informed of, and agree in
2 writing to be bound by, the requirements of the Protective Order.
3 No member of the Defense Team shall permit a witness or potential
4 witness to retain Confidential Information or any notes generated
5 from Confidential Information.

6 i. The Defense Team shall maintain Confidential
7 Information safely and securely, and shall exercise reasonable care
8 in ensuring the confidentiality of those materials by (1) not
9 permitting anyone other than members of the Defense Team, defendant,
10 witnesses, and potential witnesses, as restricted above, to see
11 Confidential Information; (2) not divulging to anyone other than
12 members of the Defense Team, defendant, witnesses, and potential
13 witnesses, the contents of Confidential Information; and (3) not
14 permitting Confidential Information to be outside the Defense Team's
15 offices, homes, vehicles, or personal presence.

16 j. To the extent that defendant, the Defense Team,
17 witnesses, or potential witnesses create notes that contain, in
18 whole or in part, Confidential Information, or to the extent that
19 copies are made for authorized use by members of the Defense Team,
20 such notes, copies, or reproductions become Confidential Information
21 subject to the Protective Order and must be handled in accordance
22 with the terms of the Protective Order.

23 k. The Defense Team shall use Confidential Information
24 only for the litigation of this matter and for no other purpose.
25 Litigation of this matter includes any appeal filed by defendant and
26 any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the
27 event that a party needs to file Confidential Information with the
28 Court or divulge the contents of Confidential Information in court

1 filings, the filing should be made under seal. If the Court rejects
2 the request to file such information under seal, the party seeking
3 to file such information publicly shall provide advance written
4 notice to the other party to afford such party an opportunity to
5 object or otherwise respond to such intention. If the other party
6 does not object to the proposed filing, the party seeking to file
7 such information shall redact any PII Materials and make all
8 reasonable attempts to limit the divulging of PII Materials.

9 1. The parties agree that any Confidential Information
10 inadvertently produced in the course of discovery prior to entry of
11 the Protective Order shall be subject to the terms of the Protective
12 Order. If Confidential Information was inadvertently produced prior
13 to entry of the Protective Order without being marked "CONFIDENTIAL
14 INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE ORDER," the government
15 shall reproduce the material with the correct designation and notify
16 defense counsel of the error. The Defense Team shall take immediate
17 steps to destroy the unmarked material, including any copies.

18 m. Confidential Information shall not be used by the
19 defendant or Defense Team, in any way, in any other matter, absent
20 an order by this Court. All materials designated subject to the
21 Protective Order maintained in the Defense Team's files shall remain
22 subject to the Protective Order unless and until such order is
23 modified by this Court. Upon request by the government, defense
24 counsel shall return all PII Materials, certify that such materials
25 have been destroyed, or certify that such materials are being kept
26 pursuant to the California Business and Professions Code and the
27 California Rules of Professional Conduct.

1 n. In the event that there is a substitution of counsel
2 prior to when such documents must be returned, new defense counsel
3 must be informed of, and agree in writing to be bound by, the
4 requirements of the Protective Order before the undersigned defense
5 counsel transfers any Confidential Information to the new defense
6 counsel. New defense counsel's written agreement to be bound by the
7 terms of the Protective Order must be returned to the Assistant U.S.
8 Attorney assigned to the case. New defense counsel then will become
9 the Defense Team's custodian of materials designated subject to the
10 Protective Order and shall then become responsible, upon the
11 conclusion of appellate and post-conviction proceedings, for
12 (1) returning to the government, certifying the destruction of, or
13 retaining pursuant to the California Business and Professions Code
14 and the California Rules of Professional Conduct all PII Materials
15 and (2) returning to the government or certifying the destruction of
16 all CI Materials.

17 o. Defense counsel agrees to advise defendant and all
18 members of the Defense Team of their obligations under the
19 Protective Order and ensure their agreement to follow the Protective
20 Order, prior to providing defendant and members of the Defense Team
21 with access to any materials subject to the Protective Order.

22 p. Defense Counsel has conferred with defendant
23 regarding this stipulation and the proposed order thereon, and
24 defendant agrees to the terms of the proposed order.

25 ///

26 ///

27 ///

1 q. Accordingly, the parties have agreed to request that
2 the Court enter a protective order in the form submitted herewith.

3 IT IS SO STIPULATED.

4 DATED: December 31, 2020

NICOLA T. HANNA
United States Attorney

5
6 BRANDON D. FOX
Assistant United States Attorney
7 Chief, Criminal Division

8 DANIEL S. KAHN
9 Acting Chief, Fraud Section

10 /s/
11 RICHARD E. ROBINSON
Assistant United States Attorney
12 BENJAMIN A. SALTZMAN
13 Trial Attorney

14 Attorneys for Plaintiff
UNITED STATES OF AMERICA

15
16 DATED: December 31, 2020

/s/
17 VICTOR SHERMAN
Attorney for Defendant
18 HASSAN KANYIKE