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15 UNITED STATES OF AMERICA

NOTE CHANGES MADE BY THE COURT

16 UNITED STATES DISTRICT COURT
17
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,
20 Plaintiff,
21 v.
22 HASSAN KANYIKE,
23 Defendant.

No. CR 20-mj-05936

~~PROPOSED~~ PROTECTIVE ORDER
REGARDING DISCOVERY CONTAINING
PERSONAL IDENTIFYING INFORMATION
AND PRIVACY ACT INFORMATION

NOTE CHANGES MADE BY THE COURT

24
25 The Court has read and considered the parties' Stipulation for
26 a Protective Order Regarding Discovery Containing Personal
27 Identifying Information and Privacy Act Information, filed by the
28

1 government and defendant Hassan Kanyike ("defendant") in this matter
2 on January 5, 2021, which this Court incorporates by reference into
3 this order, and FOR GOOD CAUSE SHOWN the Court hereby FINDS AND
4 ORDERS as follows:

5 1. The government's discovery in this case relates to
6 defendant's alleged crime, that is, a violation of 18 U.S.C.
7 § 1344(2) (Bank Fraud).

8 2. A protective order for the discovery is necessary so that
9 the government can produce to the defense materials containing third
10 parties' PII. The Court finds that disclosure of this information
11 without limitation risks the privacy and security of the
12 information's legitimate owners. Because the government has an
13 ongoing obligation to protect third parties' PII, the government
14 cannot produce to defendant an unredacted set of discovery
15 containing this information without this Court entering the
16 Protective Order. Moreover, PII makes up a significant part of the
17 discovery in this case and such information itself, in many
18 instances, has evidentiary value. If the government were to attempt
19 to redact all this information in strict compliance with Federal
20 Rule of Criminal Procedure 49.1, the Central District of
21 California's Local Rules regarding redaction, and the Privacy Policy
22 of the United States Judicial Conference, the defense would receive
23 a set of discovery that would be highly confusing and difficult to
24 understand, and it would be challenging for defense counsel to
25 adequately evaluate the case, provide advice to defendant, or
26 prepare for trial.

27 3. An order is also necessary because the government intends
28 to produce to the defense materials that may contain information

1 within the scope of the Privacy Act, 5 U.S.C. § 552a ("Privacy Act
2 Information"). The Court finds that, to the extent that these
3 materials contain Privacy Act information, disclosure is authorized
4 pursuant to 5 U.S.C. § 552a(b)(11).

5 4. The purpose of this Protective Order is therefore to
6 (a) allow the government to comply with its discovery obligations
7 while protecting this sensitive information from unauthorized
8 dissemination, and (b) provide the defense with sufficient
9 information to adequately represent defendant.

10 5. Accordingly, the discovery that the government will
11 provide to defense counsel in the above-captioned case will be
12 subject to this Protective Order, as follows:

13 a. As used herein, "PII Materials" includes any
14 information that can be used to identify a person, including a name,
15 address, date of birth, Social Security number, driver's license
16 number, telephone number, account number, email address, or personal
17 identification number.

18 b. "Confidential Information" refers to any document or
19 information containing PII Materials that the government produces to
20 the defense pursuant to this Protective Order and any copies
21 thereof.

22 c. "Defense Team" includes (1) defendant's counsel of
23 record ("defense counsel"); (2) other attorneys at defense counsel's
24 law firm who may be consulted regarding case strategy in this case;
25 (3) defense investigators who are assisting defense counsel with
26 this case; (4) retained experts or potential experts; and
27 (5) paralegals, legal assistants, and other support staff to defense
28 counsel who are providing assistance on this case. The Defense Team

1 does not include defendant, defendant's family members, or any other
2 associates of defendant.

3 d. The government is authorized to provide defense
4 counsel with Confidential Information marked with the following
5 legend: "CONFIDENTIAL INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE
6 ORDER." The government may put that legend on the digital medium
7 (such as DVD or hard drive) or simply label a digital folder on the
8 digital medium to cover the content of that digital folder. The
9 government may also redact any PII contained in the production of
10 Confidential Information.

11 e. If defendant objects to a designation that material
12 contains Confidential Information, the parties shall meet and
13 confer. If the parties cannot reach an agreement regarding
14 defendant's objection, defendant may apply to this Court to have the
15 designation removed.

16 f. Defendant and the Defense Team shall use the
17 Confidential Information solely to prepare for any pretrial motions,
18 plea negotiations, trial, and sentencing hearing in this case, as
19 well as any appellate and post-conviction proceedings.

20 g. The Defense Team shall not permit anyone other than
21 the Defense Team to have possession of Confidential Information,
22 including defendant, while outside the presence of the Defense Team.

23 h. At no time, under no circumstance, will any
24 Confidential Information be left in the possession, custody, or
25 control of defendant, regardless of defendant's custody status.

26 i. Defendant may review PII Materials only in the
27 presence of a member of the Defense Team, who shall ensure that
28 defendant is never left alone with any PII Materials. At the

1 conclusion of any meeting with defendant at which defendant is
2 permitted to view PII Materials, defendant must return any PII
3 Materials to the Defense Team, and the member of the Defense Team
4 present shall take all such materials with him or her. Defendant
5 may not take any PII Materials out of the room in which defendant is
6 meeting with the Defense Team.

7 j. Defendant may see and review Confidential Information
8 as permitted by this Protective Order, but defendant may not copy,
9 keep, maintain, or otherwise possess any Confidential Information in
10 this case at any time. Defendant also may not write down or
11 memorialize any data or information contained in the Confidential
12 Information.

13 k. The Defense Team may review Confidential Information
14 with a witness or potential witness in this case, including
15 defendant. A member of the Defense Team must be present if PII
16 Materials are being shown to a witness or potential witness. Before
17 being shown any portion of Confidential Information, however, any
18 witness or potential witness must be informed of, and agree in
19 writing to be bound by, the requirements of the Protective Order.
20 No member of the Defense Team shall permit a witness or potential
21 witness to retain Confidential Information or any notes generated
22 from Confidential Information.

23 l. The Defense Team shall maintain Confidential
24 Information safely and securely, and shall exercise reasonable care
25 in ensuring the confidentiality of those materials by (1) not
26 permitting anyone other than members of the Defense Team, defendant,
27 witnesses, and potential witnesses, as restricted above, to see
28 Confidential Information; (2) not divulging to anyone other than

1 members of the Defense Team, defendant, witnesses, and potential
2 witnesses, the contents of Confidential Information; and (3) not
3 permitting Confidential Information to be outside the Defense Team's
4 offices, homes, vehicles, or personal presence.

5 m. To the extent that defendant, the Defense Team,
6 witnesses, or potential witnesses create notes that contain, in
7 whole or in part, Confidential Information, or to the extent that
8 copies are made for authorized use by members of the Defense Team,
9 such notes, copies, or reproductions become Confidential Information
10 subject to the Protective Order and must be handled in accordance
11 with the terms of the Protective Order.

12 n. The Defense Team shall use Confidential Information
13 only for the litigation of this matter and for no other purpose.
14 Litigation of this matter includes any appeal filed by defendant and
15 any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the
16 event that a party needs to file Confidential Information with the
17 Court or divulge the contents of Confidential Information in court
18 filings, the filing should be made under seal. If the Court rejects
19 the request to file such information under seal, the party seeking
20 to file such information publicly shall provide advance written
21 notice to the other party to afford such party an opportunity to
22 object or otherwise respond to such intention. If the other party
23 does not object to the proposed filing, the party seeking to file
24 such information shall redact any PII Materials and make all
25 reasonable attempts to limit the divulging of PII Materials.

26 o. Any Confidential Information inadvertently produced
27 in the course of discovery prior to entry of the Protective Order
28 shall be subject to the terms of this Protective Order. If

1 Confidential Information was inadvertently produced prior to entry
2 of the Protective Order without being marked "CONFIDENTIAL
3 INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE ORDER," the government
4 shall reproduce the material with the correct designation and notify
5 defense counsel of the error. The Defense Team shall take immediate
6 steps to destroy the unmarked material, including any copies.

7 p. Confidential Information shall not be used by any
8 member of the defense team, in any way, in any other matter, absent
9 an order by this Court. All materials designated subject to the
10 Protective Order maintained in the Defense Team's files shall remain
11 subject to the Protective Order unless and until such order is
12 modified by this Court. Upon request of the government, defense
13 counsel shall return all PII Materials, certify that such materials
14 have been destroyed, or certify that such materials are being kept
15 pursuant to the California Business and Professions Code and the
16 California Rules of Professional Conduct.

17 q. In the event that there is a substitution of counsel
18 prior to when such documents must be returned, new defense counsel
19 must be informed of, and agree in writing to be bound by, the
20 requirements of the Protective Order before defense counsel
21 transfers any Confidential Information to the new defense counsel.
22 New defense counsel's written agreement to be bound by the terms of
23 the Protective Order must be returned to the Assistant U.S. Attorney
24 assigned to the case. New defense counsel then will become the
25 Defense Team's custodian of materials designated subject to the
26 Protective Order and shall then become responsible, upon the
27 conclusion of appellate and post-conviction proceedings, for:
28 (1) returning to the government, certifying the destruction of, or

1 retaining pursuant to the California Business and Professions Code
2 and the California Rules of Professional Conduct all PII Materials.

3 r. Defense counsel shall advise defendant and all
4 members of the Defense Team of their obligations under the
5 Protective Order and ensure their agreement to follow the Protective
6 Order, prior to providing defendant and members of the Defense Team
7 with access to any materials subject to the Protective Order.

8 IT IS SO ORDERED.

9 January 5, 2021

10 DATE

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12 Presented by:

13 /s/

14 RICHARD E. ROBINSON
15 Assistant United States Attorney
16 BENJAMIN A. SALTZMAN
17 Trial Attorney
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Alicia G. Rosenberg

HONORABLE ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

*Counsel are ordered to notify the
District Judge of this protective
order within 30 days after the
case is assigned to a District
Judge.*