

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFYA ROE YASSIN,

Defendant.

Case No. 16-3024-01-CR-S-MDH

PROTECTIVE ORDER

Upon reviewing the Government's motion filed on March 7, 2016 (Doc. No. 28), the Court:

FINDS that the discovery materials the Government will produce to the defendant in this case contain sensitive but declassified materials in that said discovery materials may include information relevant to ongoing national security investigations and prosecutions, and such discovery materials may implicate the privacy interests of the defendant and third parties.

THE COURT FURTHER FINDS that because the discovery materials to be produced by the Government contain sensitive but declassified materials, the Government has a compelling interest in preventing said discovery materials from being disclosed to anyone not a party to the court proceedings in this matter. Therefore, pursuant to the Classified Information Procedures Act, 18 U.S.C. App. 3 §§ 1-16 and Fed. R. Crim. P. 16(d)(1) and 26.2, it is hereby

ORDERED that the Government may tender to the defendant certain declassified materials in this case. As used herein, the term "Declassified Materials" refers to any and all previously classified documents, materials, and information that have been marked as

declassified and provided by the Government to defense counsel as part of the discovery in this case.

IT IS FURTHER ORDERED that the Government shall segregate the discovery materials it produces to the defendant and his counsel of record into two categories: (1) Sensitive Discovery Materials, and (2) General Discovery Materials. All discovery materials produced by the Government shall be clearly identified as either Sensitive Discovery Materials or as General Discovery Materials. The government may identify materials as “Sensitive Discovery Materials” when they contain declassified information, or were a product of physical searches or electronic surveillance authorized pursuant to the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801-1811, 1821-1829, (FISA), or have been filed under seal (including but not limited to search warrants, affidavits, and attachments), or contain any other information that may jeopardize ongoing national security investigations. “General Discovery Materials” means and includes all items not identified by the government as Sensitive Discovery Materials.

IT IS FURTHER ORDERED that General Discovery Materials shall not be disseminated by the defendant or her counsel of record to any individuals, organizations or other entities, other than to: (i) members of the defense team (co-counsel, paralegals, investigators, translators, litigation support personnel, the defendant, and secretarial staff); and (ii) experts retained to assist in the preparation of the defense. As used herein, “disseminate” means and includes provide, show or describe to another either a particular piece of discovery or quotations, excerpts, or summaries derived therefrom. Members of the defense team may review and otherwise work with General Discovery Materials in counsel’s office, but copies of General Discovery Materials cannot be given to the defendant to take out of counsel’s office, nor are General Discovery Materials or any part of it to be copied or disseminated in any manner, to include any paper or

electronic reproduction. Members of the defense team may show (but not provide copies of) any General Discovery Materials to witnesses or potential witnesses during the course of their investigation of this case. Each of the individuals to whom disclosure is made pursuant to the above provisions shall be provided a copy of this protective order and shall be advised that he or she are prohibited from further dissemination of the materials except by the express direction of counsel of record or co-counsel.

IT IS FURTHER ORDERED that Sensitive Discovery Materials shall not be disseminated by the defendant or his counsel of record to any individuals, organizations or other entities, other than to: (i) members of the defense team (co-counsel, paralegals, investigators, translators, litigation support personnel, the defendant, secretarial staff, or other legal professionals from whom the defense team seeks advice and support; and (ii) experts retained to assist in the preparation of the defense. As used in this Order, “disseminate” means and includes provide, show or describe to another either a particular piece of discovery or quotations, excerpts, or summaries derived therefrom. Sensitive Discovery Materials, as defined herein, are not limited to records and information that have been declassified. The defendant shall not retain in her possession a copy, to include any paper or electronic reproduction, of any Sensitive Discovery Materials. If the defense wishes to provide copies, to include any paper or electronic reproduction, of Sensitive Discovery Materials to defense experts, notice of such shall be provided to the Court ex parte and under seal. Each of the individuals to whom disclosure is made pursuant to the above provision shall be provided a copy of this protective order and shall be advised that he or she is prohibited from further dissemination of the materials except by the express direction of counsel of record or co-counsel. The Government shall appropriately mark copies of any Sensitive Discovery Material provided to the defendant in discovery. It is

expressly understood that counsel for the defendant or co-counsel may discuss information contained in Sensitive Discovery Materials with witnesses or potential witnesses when deemed necessary by the defense, but may not provide copies, to include any paper or electronic reproduction, of such Sensitive Discovery Materials to witnesses or potential witnesses, other than expert witnesses as provided above. The defendant may seek relief from these provisions as to a particular item or items of discovery with the agreement of the Government or by providing notice to the Court of intent to provide copies of particular identified item(s) to a witness and the purpose in doing so. The Notice shall be under seal. No copies of the item(s) shall be provided to the witness(es) until the Court so permits. The Court, after notifying the defense, may consult with the Government regarding any dissemination requests pursuant to this paragraph.

IT IS FURTHER ORDERED that except as provided above no Sensitive Discovery Material shall be disseminated by any member of the defense team (as defined above), or by expert witness retained by the defense team, or by any duly authorized witness. The substitution, departure, or removal for any reason from this case of counsel for the defendant, or anyone associated with the defense team, shall not release that person from the provisions of this Order.

IT IS FURTHER ORDERED that all discovery materials, in this case whether General or Sensitive, are now and will forever remain the property of the United States Government. At the conclusion of this case, all discovery materials shall be destroyed or maintained under secure conditions by defense counsel. Upon written request of the Government, all discovery materials shall be returned to the Government.

IT IS FURTHER ORDERED that defense counsel in receipt of Declassified Materials may only make copies of the Declassified Materials in accordance with this order. Defense

counsel shall not remove from any copies of either General Discovery Materials or Sensitive Discovery Materials any inscription made by the Government identifying the materials as: “U.S. Government Property” and “May Not Be Used Without U.S. Government Permission.”

IT IS FURTHER ORDERED that all discovery materials are to be provided to the defense, and used by the defense, solely for the purpose of allowing the defendant to prepare her defense.

IT IS FURTHER ORDERED that no party shall make, or participate in the making of, any extrajudicial disclosure of any discovery materials for dissemination by means of public communication, unless such materials are (or become) public record including, but not limited to, trial transcripts, documents that have been received in evidence at other trials, or documents that are otherwise properly placed in the public domain, subject to any redaction or sealing requirements imposed in compliance with Rule 49.1 of the Federal Rules of Criminal Procedure.

IT IS FURTHER ORDERED that any papers to be served upon the Court by any party which include Sensitive Discovery Materials or refer to the contents of Sensitive Discovery Materials shall be filed under Seal and pursuant to the local rules of the United States District Court for the Western District of Missouri.

IT IS FURTHER ORDERED that any papers to be served upon the Court in response to papers served in conformity with the preceding paragraphs also be filed under seal.

IT IS FURTHER ORDERED that counsel shall store in a secure place all Sensitive Discovery Materials and General Discovery Materials produced to the defense.

IT IS FURTHER ORDERED that notwithstanding any other provision of this or any other Protective Order that may be entered by the Court, the disclosure or discovery of materials

that may be submitted to the Court in connection with any FISA-related litigation, including but not limited to any FISA applications, orders, or related materials, shall be governed by FISA.

IT IS FURTHER ORDERED that any papers filed by the Government pursuant to the Classified Information Procedures Act containing classified information shall be filed under seal and ex parte with the Court through the Classified Information Security Officer or a designee of his choosing who possesses the necessary security clearance. The date and time of physical submission to the Classified Information Security Officer or an appropriately cleared designee of the District Court's staff shall be considered the date and time of the filing. At the time of making a physical submission to the Classified Information Security Officer or a designee, counsel shall file on the public record in the CM/ECF system a notice of filing. This notice should contain only the case caption and the unclassified title of the filing.

IT IS FURTHER ORDERED that nothing in this Order shall preclude the Government or the defendant from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material.

IT IS FURTHER ORDERED that this Order is entered without prejudice to either party's right to seek a revision of the Order by appropriate motion to the Court.

Dated this 23rd day of March 2016.

/s/ David P. Rush
DAVID P. RUSH
United States Magistrate Judge