

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
vs.) No. 16-03024-01-CR-S-MDH
)
SAFYA ROE YASSIN,)
)
 Defendant.)

RESPONSE TO GOVERNMENT’S SUGGESTIONS
IN OPPOSITION TO DEFENDANT’S MOTION
TO RESCIND PROTECTIVE ORDER

Comes now, Safya R. Yassin, by undersigned counsel, and submits this Response to the government’s Suggestions to Ms. Yassin’s Motion to Rescind Protective Order.

SUGGESTIONS

Ms. Yassin reasserts and avers her previously filed arguments to the Protective Order, which are listed out in detail in Docket Entry 33.

A. The government continues to rely on CIPA as authority for the Court to issue an order that would treat the discovery in this case as classified. As outlined in Docket Entry 33, by the government’s own admission, the discovery in this case is not classified, and any portion that was previously classified has apparently been declassified. Ergo, the authority of CIPA is not controlling in this case, which includes the case *United States v. El-Mezain*, 664 F.3d 467 (5th Cir. 2011).

The statement the government asserted on page six of Docket Entry 36 that “the defendant should not be permitted to second guess in the first instance the Government’s assessment of what is properly considered classified information,” runs afoul of the argument Ms. Yassin has tendered. Ms. Yassin is not second guessing what is classified; the government has already admitted that the discovery is not classified.

B. The government pivots its argument that the Court should not rescind its order predicated on Rule 16(d) of the Rules of Criminal Procedure.

Rule 16(d) states the Court may, for good cause, deny, restrict or defer discovery or inspection, or grant other appropriate relief. The rule states nothing of protective orders, however, the government’s case law is correct that the Court can issue protective orders, once good cause has been shown.

Ms. Yassin asserts that no good cause has been shown to this Court, and for the Court to issue an Order at this time would be in violation of Rule 16.

The government gives the Court various blanket statements, but not once has actual evidence been presented to the Court to bolster the government’s argument for “good cause.”

The government has left out the part of Rule 16(d), in which, “the court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve the entire text of the party’s statement under seal.”

It is not for the government to determine “good cause,” that is a function of this Court.

C. The government asserts that the protective order is an appropriate balance between the two parties’ interests and that “the defense has no articulated, and cannot, articulate, any prejudice that they will suffer from abiding by the terms of the protective order.” Docket Entry 36, page 4.

The following is how the stayed protective order prejudices Ms. Yassin in violation of Rule 16 and the United States Constitution (this is not an exhaustive list):

1. The order is only binding on the defense, and does not extend to the attorney for the government, their staff, their experts, and their witness or potential witnesses,
2. The order violates Rule 16 in that a copy of rule 16 material is to be provided to Ms. Yassin, which would include her statement, photographs and expert reports,
3. The order forces Ms. Yassin to disclose to the Court and the government whom she intends to call as a witness or potentially call as a witness, frustrating her right to a proper defense,
4. The order forces Ms. Yassin to disclose to the Court what experts she plans on utilizing, further frustrating her right to a proper defense, and

5. The order does not allow undersigned counsel to disseminate “General Discovery Materials” to legal professionals from whom the defense team may seek advice and support.

The stayed Order treats the parties unequally, and places undue burdens on Ms. Yassin that are not placed on the government. Furthermore, by forcing Ms. Yassin to divulge who she plans on calling as an expert witness to the Court invades the attorney client privilege and attorney work product; the same is true for divulging possible witness to the government.

It is clear that the government wants to treat the discovery as declassified for them, however, wants the discovery treated as classified for Ms. Yassin; all without any showing of good cause.

D. Lastly, there seems to be some confusion as to what weight the government gives this Court in regards to the Scheduling and Trial Order. The protective order has been stayed; therefore the only order that is in effect in the case at bar regarding discovery is the Scheduling and Trial order issued by the Court on February 23, 2016. That order demanded that Rule 16 discovery be given to Ms. Yassin ten days following the issuance of that Order. As of today’s date, no discovery has been given to Ms. Yassin, and it has now been well over 35 days since that Order was issued.

In the meantime, this Court has set the above referenced case on the pretrial conference docket set for April 5, 2016. Typically, the Court at that time makes a

determination regarding the disposition of the case. While the government may hope that their proposed protective order is granted, the case continues on the docket, and the Scheduling and Trial Order are still the law of the case.

The government states that the discovery is ready for review by Ms. Yassin, then the Court should order that discovery to be handed over to the defense. When, and if, the Court determines the validity of the proposed protective order, the Court can issue it at that time. In the meantime, the case continues on and should be treated as such.

WHEREFORE, Ms. Yassin continues to move this Court Compel the attorney for the government to immediately disclose all discovery materials outlined in the Court's Scheduling and Trial Order, and for any other remedy the Court deems proper.

Respectfully submitted,

/s/ Ian A. Lewis

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March 30, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent e-mail notification of such filing to all CM/ECF participants in this case, and a copy was mailed, via the United States Postal Service, to all non-CM/ECF participants.

/s/ Ian A. Lewis

IAN A. LEWIS