

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:17-cr-18-Orl-40KRS

NOOR ZAHI SALMAN

**UNITED STATES' UNOPPOSED MOTION FOR
A PROTECTIVE ORDER REGARDING DISCOVERY**

The United States of America, by W. Stephen Muldrow, Acting United States Attorney for the Middle District of Florida, through the undersigned attorneys, respectfully moves this Court, pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure, to enter an order prohibiting the unauthorized disclosure of discovery material and information contained therein to persons not a party to, or otherwise involved in, this case. A proposed protective order accompanies this motion.

Counsel for the defendant, Charles D. Swift, Esq., has advised the undersigned that the defendant does not oppose the relief sought in this motion but does object to the recitation of the facts in the motion and requested that the government seek to file this motion under seal. The government is aware of no basis to seek to file this motion under seal.

I. INTRODUCTION AND BACKGROUND

On June 12, 2016, the defendant's husband, Omar Mateen, killed 49 innocent victims and injured more than 50 other people at the Pulse nightclub, in Orlando, Florida – the deadliest mass-shooting in United States' history. He did so on behalf of the Islamic State of Iraq and the Levant (ISIL), pledging his allegiance during the attack to ISIL. On January 12, 2017, a grand jury in the Middle District of Florida, Orlando Division, indicted the defendant, NOOR ZAHY SALMAN (SALMAN), for: (a) aiding and abetting the attempted provision and provision of material support to a foreign terrorist organization, that is, ISIL, in violation of 18 U.S.C. §§ 2339B(a)(1) and 2; and (b) obstruction of justice, in violation of 18 U.S.C. § 1512(b)(3). Doc. 1.

On April 12, 2017, SALMAN made her initial appearance in the Middle District of Florida, and the Court entered a scheduling order concerning discovery, among other topics. Docs. 37 and 38. The government has over 100,000 pages of discovery to produce, including, but not limited to, financial records, telecommunications records, records from governmental entities, and records from retail locations. Additionally, as part of discovery, the government will provide to the defense dozens of hours of recorded video obtained from numerous sources, including business-controlled surveillance cameras and private citizens. Of note, among the discovery the government

intends to produce are (1) documents related to victims and witnesses, including personal information,¹ and (2) videos and photographs, often graphic, of the violence at the Pulse nightclub on June 12, 2016. The government also understands that the defendant may produce reciprocal discovery to the government. The discovery in this case should be restricted from widespread disclosure to safeguard the sanctity of this case and the privacy of individuals. Accordingly, the government now seeks a protective order regarding the discovery material and the information contained therein.

II. REQUESTED PROTECTIVE ORDER

The government requests that this Court enter a protective order applicable to all materials produced as part of discovery in this matter by either the government or the defendant and the information contained therein (collectively the “discovery material”).

The government requests that this Court order that the discovery material not be disseminated or provided in any way to persons not a party to, or involved in, this case. Persons involved in the case are persons employed

¹ The government has redacted personal identifying information (PII) of victims and witnesses from the documents to be produced to the defendant. Nonetheless, many of the documents in discovery still contain information that would make it possible, particularly in combination with other publicly available information, to identify specific victims. *See* 18 U.S.C. § 3771(a)(1), (a)(8) & (b)(1) (providing, under the Crime Victims Rights Act, that the court “shall ensure that [] crime victim[s] [are] afforded” their rights, including the right “to be treated with fairness and with respect for the victim’s dignity and privacy”).

by defense counsel or the government who are necessary to assist counsel in preparation for trial, and persons whom the defense counsel or the government deems necessary to further legitimate investigation and preparation of this case. The requested protective order places no restrictions on the dissemination of the discovery material to the defendant, counsel of record for the defendant, or federal government employees.

It is further requested that the protective order restrict any person, including the defendant, counsel of record for the defendant, and federal government employees, who receives any discovery material subject to this protective order from: (1) using the discovery material in any way except to assist in the investigation or preparation of this case, and (2) reproducing or disseminating the discovery material to any other person or entity, except as provided in the requested protective order. The requested protective order would require any individuals, other than the defendant, counsel of record for the defendant, and federal government employees, who receive discovery materials to sign a copy of the protective order acknowledging its restrictions. The requested protective order does not limit the right of any individual or entity to reproduce or disseminate any document or information obtained

from sources other than the discovery materials, even if such document or information is also within the discovery materials.

The proposed protective order does not limit the right of either party to use the discovery material as part of any court filing or court hearing.

At the conclusion of this case, including any direct appeal, defense counsel shall return to the government all discovery materials provided to the defendant by the government, including all copies provided to individuals who assisted in the preparation of the defense.

If counsel for either party believes an exception should be made to the requested protective order, the parties will confer and then seek guidance from this Court as necessary. The parties will advise this Court by letter of any agreed-upon exceptions made to the protective order.

III. ARGUMENT

“At any time 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). The Eleventh Circuit has recognized that discovery in criminal matters is meant to be a private process between the litigants and that discovery materials should generally not be disclosed outside of those individuals who are necessary for preparation for trial. *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986) (“Discovery, whether civil or

criminal, is essentially a private process because the litigants and the courts assume that the sole purpose of discovery is to assist trial preparation. That is why parties regularly agree, and courts often order, that discovery information will remain private.”).² Protective orders limiting the dissemination of discovery have been upheld in a number of situations. *See, e.g., United States v. Fischer*, 137 F.3d 1158, 1165 (9th Cir. 1998) (finding that the district court did not abuse its discretion where it limited a defendant’s access to discovery material provided by the government); *United States v. Salemm*, 978 F. Supp. 386, 389-90 (D. Mass. 1997) (protective order limiting the dissemination of discovery to anyone who was not necessary to assist counsel in a RICO conspiracy case).

A protective order related to dissemination of discovery is appropriate given the sensitive nature of this case. Unrestricted disclosure of discovery in this case could adversely impact both the privacy of victims and witnesses and the course of the proceedings in this case due to unnecessary pre-trial

² Protective orders limiting or preventing disclosures of discovery material to individuals not related to the litigation do not infringe on any First Amendment rights. Discovery that is available to a litigant for the purposes of trial preparation is not the sort of information traditionally available to the public. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). Privacy interests of litigants and third parties may be adversely affected by public release of the materials. *Id.* While *Seattle Times Co.* involved a protective order in a civil case, its reasoning applies to criminal cases as well. *See United States v. Smith*, 602 F. Supp. 388, 395-96 (M.D. Pa. 1985).

disclosure of evidence outside of judicial proceedings or filings. Thus, there is good cause to enter this protective order under Fed. R. Crim. P. 16(d)(1).

IV. CONCLUSION

Accordingly, for the reasons stated above, the United States respectfully requests that this Court grant its unopposed motion for a protective order.

Respectfully submitted,

W. STEPHEN MULDROW
Acting United States Attorney

By: s/ Sara C. Sweeney
Sara C. Sweeney
Assistant United States Attorney
USA No. 119
400 W. Washington Street, Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Facsimile: (407) 648-7643
E-mail: Sara.Sweeney@usdoj.gov

By: s/ James D. Mandolfo
James D. Mandolfo
Assistant United States Attorney
Florida Bar No. 96044
400 W. Washington St., Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Facsimile: (407) 648-7643
E-mail: James.Mandolfo@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Charles D. Swift, Esquire (counsel for Defendant)
Fritz J. Scheller, Esquire (counsel for Defendant)
Linda G. Moreno, Esquire (counsel for Defendant)

s/ Sara C. Sweeney

Sara C. Sweeney
Assistant United States Attorney
USA No. 119
400 W. Washington Street, Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Facsimile: (407) 648-7643
E-mail: Sara.Sweeney@usdoj.gov

s/ James D. Mandolfo

James D. Mandolfo
Assistant United States Attorney
Florida Bar No. 96044
400 W. Washington St., Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Facsimile: (407) 648-7643
E-mail: James.Mandolfo@usdoj.gov