

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
)	
V.)	NO. 09-CR-10017-GAO
)	
TAREK MEHANNA)	
_____)	

DEFENDANT’S MOTION TO LIFT THE PROTECTIVE ORDER

Defendant Tarek Mehanna moves, pursuant to Fed. R. Crim. P. 16(d)(1), that this Court lift the Protective Order in its entirety. As grounds therefore, the defendant states the following:

A Protective Order¹ was entered on the discovery materials in this case on November 17, 2008.² The Protective Order provides in relevant part that the “defendant and his counsel will not reproduce and will not disclose to anyone, including the public, media, defense counsel in other cases, potential witnesses, family of the defendant, or to anyone else, the contents or copies of any portion of the discovery materials,” and further

¹ An example of the Protective Order is attached as exhibit 1.

² The Government had filed an assented-to Motion for a Protective Order (docket #5) on November 14, 2008. It is attached as exhibit 2.

that the "parties agree that any modification of this Order will only be done by the order of the Court."

Notwithstanding the fact that the parties agreed that the Protective Order could be modified by this Court, it is inherent within a district court's authority to modify a protective order. See United States ex rel. Franklin v. Parke-Davis, 210 F.R.D. 257, 258 (D. Mass. 2002) (while the Parke-Davis court was presented with a protective order issue governed by civil rules of procedure, the general principle towards protective orders should also hold true for this criminal prosecution case.); See also Poliquin v. Garden Way, Inc., 989 F.2d 527, 535 (1st Cir. 1993) ("A protective order, like any ongoing injunction, is always subject to the inherent power of the district court to relax or terminate the order, even after judgment. This retained power in the court to alter its own ongoing directives provides a safety valve for public interest concerns, changed circumstances or any other basis that may reasonably be offered for later adjustment.").

The defendant's trial is less than four weeks away; jury selection will begin on October 3, 2011. The government's discovery and the identities of witnesses will shortly be made public over the course of the trial. Accordingly, there is no longer a reasonable need for the Protective Order as it no longer serves a legitimate purpose with trial so close at hand.

Defense counsel is seriously disadvantaged by this Protective Order. Notwithstanding the fact that defense counsel is unable to incorporate relevant, but protected information in its pleadings (unless under seal),³ defense counsel is unable to discuss with witnesses relevant information regarding the case. Defense counsel is also unable to solicit opinions from or strategize with other experienced attorneys.

As additional discovery has been produced to the defendant, it has become exceedingly clear that defense counsel will need to be able to publicly discuss discovery materials with witnesses, other counsel not assigned to the case and members of the public. While the Assistant United States Attorneys are not hindered from discussing the case with their team of FBI agents, experts, specialists, and various levels of the U.S. Department of Justice hierarchy (at a minimum, they have the resources of fellow prosecutors in the Anti-Terrorism Unit), defense counsel is restricted to discussing the case with a very small pool of people.

WHEREFORE, the defendant moves this Court to lift the Protective Order in its entirety.

³ Defense counsel must also take pains to carefully ensure its arguments do not violate the Protective Order.

TAREK MEHANNA
By his attorneys,

CARNEY & BASSIL

J. W. Carney, Jr.

J. W. Carney, Jr.
B.B.O. # 074760

Janice Bassil

Janice Bassil
B.B.O. # 033100

Sejal H. Patel
B.B.O. # 662259
Steven R. Morrison
B.B.O. # 669533
John E. Oh
B.B.O. # 675916
Carney & Bassil
20 Park Plaza, Suite 1405
Boston, MA 02116
617-338-5566

Dated: September 6, 2011

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on or before the above date.

J. W. Carney, Jr.

J. W. Carney, Jr.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
V.) NO. 09-CR-10017-GAO
TAREK MEHANNA)
_____)

PROTECTIVE ORDER

Upon motion of the Government and the assent of the defendant, the defendant and his counsel, who will receive discovery from the government, are bound by the following restrictions with regard to discovery materials provided in this case.

1. The defendant and his counsel will not reproduce and will not disclose to anyone, including the public, media, defense counsel in other cases, potential witnesses, family of the defendant, or to anyone else, the contents or copies of any portion of the discovery materials.

2. The defendant and his counsel agree that at the conclusion of this criminal matter, they will return the discovery materials to the government and will destroy any derivative contents of the discovery materials, if any exist.

3. The defendant and counsel agree not to provide access to the discovery materials to anyone who has not signed this

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES)	
)	
v.)	Crim. No. 08-MJ-0148-LTS
)	
TAREK MEHANNA)	
)	
Defendant.)	
_____)	

GOVERNMENT’S MOTION FOR A PROTECTIVE ORDER
(ASSENTED TO)

The United States, by and through Michael J. Sullivan, United States Attorney, and Alope S. Chakravarty and Jeffrey Auerhahn, Assistant U.S. Attorneys, for the District of Massachusetts, respectfully submits this Assented to Motion For A Protective Order, and states as follows:

The United States has provided limited discovery in this case, and intends on providing additional discovery in the future. The discovery contains law enforcement sensitive information, information from which the identity of cooperating witnesses may be gleaned, and other sensitive information related to this ongoing investigation. In the face of a request for discovery, the government has agreed to provide information to the defendant and his attorney (“the discovery materials”), provided there are reasonable restrictions to ensure that the information is not further disseminated, and that there is documentation as to who has had access to the information. As grounds for its motion, the Government states that the parties have agreed that a Protective Order which will be filed with the court at the next hearing, satisfies the concerns of the parties at this stage.

Counsel for the Defendant has assented to this motion. The Government is providing the discovery materials to the defendant pursuant to the mutual understanding of the protections of

the proposed protective order, a copy of which has been provided to the counsel for the defendant and will be filed with the court at the next hearing.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Alope Chakravarty
ALOKE S. CHAKRAVARTY and
JEFFREY AUERHAHN
Assistant United States Attorneys

Dated: November 14, 2008