

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-00404-CMA-MJW

SALVADOR MAGLUTA,

Plaintiff,

v.

UNITED STATES FEDERAL BUREAU OF PRISONS,
HARLEY LAPPIN, and
RON WILEY,

Defendants.

JOINT MOTION FOR PROTECTIVE ORDER

Plaintiff Salvador Magluta, through his undersigned counsel, and Defendants the Federal Bureau of Prisons ("BOP"), Harley Lappin, Ron Wiley, through their undersigned counsel, hereby move pursuant to Fed. R. Civ. P. 26(c) for the entry of a Protective Order restricting the production of certain documents to Plaintiff for purposes of the above-captioned action. In support of this motion, the parties state as follows:

1. Plaintiff in this matter is an inmate incarcerated at the United States Penitentiary, Administrative Maximum ("ADX") in Florence, Colorado.
2. On September 16, 2008, Plaintiff served Defendants with a First Set of Interrogatories and a First Set of Document Requests.
3. Plaintiff's Requests include requests for the entirety of Plaintiff's Central Files maintained by the BOP. Plaintiff's Requests also seek psychological records and Plaintiff's Special Investigative Services ("SIS") files.

4. An inmate's Central File is divided into two parts: a part that is disclosable to the inmate, and a part that is not. See 28 C.F.R. § 513.40 (2007); see also BOP Program Statement 1351.05, Release of Information at 4-6, 12-13 (Sept. 19, 2002) (available online at http://www.bop.gov/policy/progstat/1351_005.pdf) [hereinafter PS 1351.05]. Documents are selected for the "nondisclosable" portion of an inmate's Central File for several reasons. First, the documents "may reveal sources of information obtained through a legitimate expectation of confidentiality or which would otherwise endanger the life or physical safety of any person." PS 1351.05 at 5. An example of this is a statement of an inmate witness made in the context of disciplinary investigation. That statement shall not be disclosed to the subject inmate. Id. Second, the documents may contain diagnostic or evaluative opinions that, if disclosed, might disrupt the institutional adjustment of the subject inmate. Id. Third, the documents may contain information, such as statements made by inmate witnesses, that, if disclosed, would disrupt an ongoing investigation. Id. at 5-6. Fourth, the documents may reveal the law enforcement techniques, information, or procedures of the BOP. Id. at 6.
5. An inmate's psychological records are placed in the "nondisclosable" portion of an inmate's Central File. See id. at 14.
6. The SIS file is not disclosable to the inmate because it contains information regarding investigations into the inmate's behavior and conduct, the disclosure of which would disrupt ongoing investigations, reveal sources, or endanger the safety of the inmate or others.

7. Defendants have already produced the disclosable portion of Plaintiff's Central File.
8. As set forth above, the "nondisclosable" portions of Plaintiff's Central Files and the SIS file implicate prison security and safety, the institutional adjustment of Plaintiff, and law enforcement techniques.
9. Defendants object to the disclosure of the "nondisclosable" portions of Plaintiff's Central Files and SIS files described above, unless the disclosure of this information is authorized and governed pursuant to a Protective Order. This Protective Order will not prohibit Plaintiff's counsel from sharing Plaintiff's Central File or the information contained therein with Plaintiff. However, this Protective Order requires the marking of these files as confidential and the destruction of these files at the completion of the case. In addition, for Plaintiff's psychological records and Plaintiff's SIS file, and where the information disclosed to Plaintiff's counsel contains highly sensitive security information, the information shall be for attorney's eyes only.

WHEREFORE, the parties respectfully request that the Court sign and enter the Protective Order submitted with this Motion.

Respectfully submitted this 8th day of December, 2008.

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s/ Jessica L. West

Jessica L. West

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

Jessica L. West
info@smithandwest.com
Counsel for Plaintiff

Theresa Montoya
Theresa.Montoya@usdoj.gov
Counsel for BOP

I also hereby certify that on this 8th day of December, 2008, I have mailed or served the foregoing document to the following non-CM/ECF participant(s) in the manner (mail, e-mail, etc.) indicated by the nonparticipant's name:

None

s/ Marcy E. Cook
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PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c), and upon a showing of good cause in support of the entry of a Protective Order to protect the production, discovery, and dissemination of confidential information and/or sensitive data or records, IT IS
HEREBY ORDERED:

1. This Protective Order shall apply to all documents, materials, and information, including without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition testimony, and other information disclosed pursuant to the disclosure or discovery duties created by the Federal Rules of Civil Procedure.
2. As used in this Protective Order, "document" is defined as provided in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

3. Information designated CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY (collectively "CONFIDENTIAL Information") shall be information that is confidential and implicates prison security and safety, the institutional adjustment of Plaintiff, and/or law enforcement techniques. CONFIDENTIAL Information shall not be disclosed or used for any purpose except the preparation and trial of this case. The protections granted by this Protective Order shall not be waived.
4. Documents, materials, and/or information pertaining to the sensitive and limited official-use only records of the Bureau of Prisons are designated as CONFIDENTIAL by marking them "CONFIDENTIAL."
5. Documents, materials, and/or information pertaining to the sensitive and official-use only records of the Bureau of Prisons that cannot be released to Plaintiff are designated as CONFIDENTIAL by marking them "CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY."
6. CONFIDENTIAL-FOR ATTORNEY'S EYES ONLY information shall not be disclosed to or discussed with Plaintiff.
7. CONFIDENTIAL Information may be reproduced electronically for litigation management purposes only. Electronically reproduced CONFIDENTIAL Information must retain the mark "CONFIDENTIAL" or "CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY."
8. CONFIDENTIAL Information shall not, without the consent of the party producing it or further Order of the Court, be disclosed to any person, except that such information may be disclosed to:

- a. attorneys actively working on this case;
 - b. persons regularly employed or associated with the attorneys actively working on the case, whose assistance is required by said attorneys in the preparation for trial, at trial, or at other proceedings in this case;
 - c. persons hired on a contract basis to assist the attorneys actively working on the case, whose assistance is required by said attorneys in the preparation for trial, at trial, or at other proceedings in this case;
 - d. expert witnesses and consultants retained in connection with this proceeding, to the extent such disclosure is necessary for preparation, trial or other proceedings in this case;
 - e. witnesses during deposition;
 - f. the Court, and necessary Court staff, pursuant to Paragraph 12; and
 - g. other persons by written agreement of the parties.
9. Prior to disclosing any CONFIDENTIAL Information to any person listed in Paragraphs 12(c), 12(d), 12(e), and/or 12(g), counsel shall provide such person with a copy of this Protective Order and obtain from such person a written acknowledgment stating that he or she has read this Protective Order and agrees to be bound by its provisions. All such acknowledgments shall be retained by counsel and shall be subject to in camera review by the Court if good cause for review is demonstrated by the opposing party.
10. If additional disclosure is needed of CONFIDENTIAL Information, counsel for Plaintiff will contact counsel for Defendants to work out an appropriate procedure for such disclosure. If the parties cannot resolve the dispute within ten (10)

business days, either party may file an appropriate motion with the Court. Said motion may request in camera review of the CONFIDENTIAL Information.

11. Whenever a deposition involves the disclosure of CONFIDENTIAL Information, the deposition or portions thereof shall be designated as CONFIDENTIAL and shall be subject to the provisions of this Protective Order. Such designation shall be made on the record during the deposition whenever possible, but a party may designate portions of depositions as CONFIDENTIAL after transcription, provided written notice of the designation is promptly given to all counsel of record within thirty (30) days after notice by the court reporter of the completion of the transcript.
12. A party may object to the designation of particular information as CONFIDENTIAL by giving written notice to the counsel for the party designating the disputed information. The written notice shall identify the information to which the objection is made. If the parties cannot resolve the objection within ten (10) business days after the time the notice is received, it shall be the obligation of the party designating the information as CONFIDENTIAL to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion is timely filed, the disputed information shall be treated as CONFIDENTIAL under the terms of this Protective Order until the Court rules on the motion. If the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as CONFIDENTIAL and shall not thereafter be treated as CONFIDENTIAL in accordance with this Protective

Order. In connection with a motion filed under this provision, the party designating the information as CONFIDENTIAL shall bear the burden of establishing that good cause exists for the disputed information to be treated as CONFIDENTIAL.

13. At the conclusion of this case, unless other arrangements are agreed upon, each document and all copies (electronic and physical) thereof which have been designated as CONFIDENTIAL shall be returned to the party that designated it CONFIDENTIAL, or the parties may agree to destroy CONFIDENTIAL documents. Where the parties agree to destroy CONFIDENTIAL documents, the destroying party shall provide all parties with an affidavit confirming the destruction.
14. This Protective Order may be modified by the Court at any time for good cause shown following notice to all parties and an opportunity for them to be heard.

DATED this ____ day of December, 2008.

BY THE COURT:

United States Magistrate Court Judge