UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MUHAMMAD NUMAAN IMAM; and KHADIJAH MANSOOR, *Plaintiffs,* v. MARKWAYNE MULLIN, *et al*., *Defendants*.	**CASE NO. 1:26-mc-0025-LMB-IDD**

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE THE DECLARATION OF MATTHEW SUAREZ *EX PARTE* AND UNDER SEAL

INTRODUCTION

Defendants seek to withhold from Plaintiffs a declaration offered to substantiate privilege claims that this Court has already substantially rejected. This Court found that "most of the redacted information is not privileged law enforcement information and should not be sealed." ECF No. 18, at 1. Rather than provide a sufficient explanation accessible to Plaintiffs, Defendants now seek to substantiate their renewed privilege assertions through portions of the Suarez Declaration that Plaintiffs cannot examine or meaningfully challenge.

The need for transparency is particularly pressing given the condition of Mr. Imam's laptop upon its return from CBP custody. The laptop was returned with extensive cracking and distortion of its display, as well as a puncture through the MSI logo on its lid. *See* Ex. A. Mr. Imam confirms that neither defect was present before CBP seized the laptop. The exterior shipping packaging showed no apparent signs of damage. These circumstances raise serious questions about the

handling of Plaintiffs' property and underscore the importance of allowing Plaintiffs to meaningfully examine and challenge Defendants' representations.

Having already determined that most of Defendants' original redactions were unjustified, this Court should require a particularized showing before permitting further secrecy. Defendants have not adequately demonstrated why targeted redactions, a sufficiently detailed public summary, or an attorneys'-eyes-only protective order would be insufficient. Plaintiffs respectfully request that the Court deny Defendants' motion or, alternatively, require Defendants to provide a sufficiently detailed public justification for why less restrictive alternatives would be inadequate.

ARGUMENT

I. Defendants Have Not Established That the Law-Enforcement Privilege Justifies Withholding Information from Plaintiffs.

The law-enforcement privilege is qualified and protects sensitive investigative information, including confidential sources, investigative techniques, and information whose disclosure could interfere with law-enforcement activities. *In re U.S. Dep't of Homeland Sec.*, 459 F.3d 565, 569–71 (5th Cir. 2006). Defendants bear the burden of establishing its applicability. *United States v. Matish*, 193 F. Supp. 3d 585, 597 (E.D. Va. 2016). Even where the privilege applies, courts must balance the government's interest in confidentiality against the litigant's need for disclosure, considering the nature of the information, potential interference with investigations, and its importance to the claims. *Tuite v. Henry*, 98 F.3d 1411, 1417–18 (D.C. Cir. 1996).

Here, the Court has already found that most of Defendants' original redactions were not protected by the privilege. ECF No. 18, at 1. Unlike in *Matish*, where disclosure of FBI source code threatened to compromise sensitive investigative techniques and enable individuals to evade detection, Defendants have not identified a comparable risk arising from disclosure of the factual basis for their continued retention of Plaintiffs' devices. *Matish*, 193 F. Supp. 3d at 600–01.

Defendants nevertheless seek to justify renewed privilege assertions through a declaration withheld from Plaintiffs, without adequately explaining why disclosure under appropriate safeguards would compromise legitimate law-enforcement interests. Generalized assertions of investigative sensitivity cannot substitute for the particularized showing necessary to justify withholding information from Plaintiffs.

II. Courts Must Independently Scrutinize Government Secrecy Claims, Particularly Where They May Conceal Official Misconduct.

The Supreme Court has long recognized that claims of government secrecy cannot displace the judiciary's independent responsibility to determine whether withholding information is justified. In *United States v. Reynolds*, 345 U.S. 1 (1953), the Court emphasized that "[j]udicial control over the evidence in a case cannot be abdicated to the caprice of executive officers." *Id.* at 9–10. Although the government may invoke recognized evidentiary privileges, "[t]he court itself must determine whether the circumstances are appropriate for the claim of privilege." *Id.* at 8.

The Supreme Court has likewise recognized the dangers of excessive deference to executive assertions of secrecy. In *New York Times Co. v. United States*, 403 U.S. 713 (1971), the government sought to prevent publication of documents concerning its conduct during the Vietnam War on national security grounds. Rejecting that effort, Justice Black cautioned that "[t]he word 'security' is a broad, vague generality" that cannot justify disregarding constitutional protections. *Id.* at 719 (Black, J., concurring).

Courts in this District have recognized the judiciary's heightened responsibility to scrutinize executive secrecy claims where individuals are denied access to the information underlying government action. In *Gulet Mohamed v. Holder*, the court emphasized its "particularly strong and heightened institutional responsibility" to review executive conduct where individuals

were deprived of basic liberties through secret government decision-making, without an opportunity to learn of or challenge the information relied upon. No. 1:11-cv-00050, ECF No. 139, at 3–4 (E.D. Va. Sept. 15, 2014). The court further observed that "[i]n many instances, the privilege claims are conclusory," making it difficult to assess their merits based solely on the government's descriptions, and refused to accept those assertions "without further inquiry and review." *Id.* at 4–5.

That heightened responsibility is particularly important here. The Court directed Defendants to explain why Plaintiffs' electronic devices were seized and retained, whether their contents were accessed, and what happened to any information obtained. ECF No. 9. At the October 23 hearing, the Court emphasized the potential exposure of Mr. Imam's confidential patient information and Ms. Mansoor's private photographs depicting her without her hijab, and required firsthand attestations concerning the handling of their devices. Oct. 23, 2026 Hr'g Tr. 8–11. Given that (from what plaintiffs can tell given the redactions) the Government did not disclose the damage that it did to Mr. Imam's laptop, it is likely that these attestations are incomplete. And if the government did redact such information, said redaction would serve no legitimate interest.

III. Defendants Have Not Demonstrated That Permanent Sealing and *Ex Parte* Consideration Are Necessary.

Defendants acknowledge that the First Amendment right of access to judicial records may be overcome only where the restriction is "necessitated by a compelling government interest and narrowly tailored to serve that interest." ECF No. 24, at 3 (quoting *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)). The Fourth Circuit has further held that, before sealing judicial records, a court must "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal

the documents and for rejecting the alternatives." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (citing *In re Knight Publ'g Co.*, 743 F.2d 231, 235–36 (4th Cir. 1984)). Defendants have not demonstrated why their proposed restrictions are necessary or why less restrictive alternatives would be inadequate.

Defendants assert that "[s]ealing and *ex parte* filings are necessary to protect this information from both public dissemination and dissemination of privileged information to Plaintiffs to thereby preserve the privilege that Defendants assert." ECF No. 24, at 4. This reasoning is circular. The mere invocation of privilege cannot justify excluding Plaintiffs from the evidence offered to support it, particularly where Defendants have failed to explain why less restrictive alternatives would be insufficient. Public sealing and *ex parte* consideration also raise distinct concerns. Even if certain information warrants protection from public disclosure, that does not automatically establish that Plaintiffs' counsel must be denied access. Excluding counsel prevents Plaintiffs from identifying inconsistencies, challenging Defendants' factual representations, or addressing the asserted grounds for withholding information central to their claims.

Defendants' reliance on decisions permitting *ex parte* submissions in privilege disputes does not establish that such treatment is warranted here. Several involve attorney-client privilege or work-product protection rather than the law-enforcement privilege asserted here. *See Fed. Election Comm'n v. Christian Coal.*, 178 F.R.D. 61, 64–65 (E.D. Va. 1998) (considering an *ex parte* declaration in connection with an attorney-client privilege claim); *Zivali v. AT&T Mobility LLC*, No. 08 Civ. 10310, 2010 WL 5065963, at *1 (S.D.N.Y. Dec. 6, 2010) (addressing attorney-client privilege and work-product protection); *Franzone v. Lask*, No. 14 Civ. 3043, 2015 WL 1379066, at *7 (S.D.N.Y. Mar. 26, 2015) (conducting confidential proceedings involving

privileged attorney communications). Here, Defendants have not identified a concrete risk arising from disclosure to Plaintiffs' counsel under appropriate safeguards.

Courts have recognized less restrictive measures that protect sensitive government information while preserving meaningful adversarial participation. *See Ellsberg v. Mitchell*, 709 F.2d 51, 63–64 (D.C. Cir. 1983) (explaining that "[t]he more specific the public explanation, the greater the ability of the opposing party to contest it," and requiring the government to publicly justify its privilege claim to the extent feasible); *Al-Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury*, 686 F.3d 965, 982–84 (9th Cir. 2012) (holding that OFAC violated due process by failing to pursue alternatives to withholding classified evidence, including unclassified summaries or access by security-cleared counsel under a protective order); *Jardaneh v. Garland*, No. 8:18-cv-02415-PX, ECF No. 162, at 13–15 (D. Md. Sept. 14, 2021) (permitting *ex parte* declarations but resolving a privilege-log dispute based on publicly filed, redacted declarations); *Hake v. Carroll County*, No. WDQ-13-1312, 2014 WL 3974173, at *9 (D. Md. Aug. 14, 2014) (explaining that "[a] party cannot simply claim privilege and refuse to provide a privilege log"); *Heffernan v. City of Chicago*, No. 10 C 7564, ECF No. 95, at 6–9 (N.D. Ill. Aug. 17, 2012) (finding attorneys'-eyes-only protections adequate where defendants failed to establish that disclosure to counsel would endanger an informant or ongoing investigations); *Ibrahim v. Dep't of Homeland Sec.*, No. C 06-00545 WHA, ECF No. 461, at 7–8 (N.D. Cal. Apr. 19, 2013) (compelling production of certain law-enforcement-sensitive information to plaintiffs' counsel under protective orders).

Defendants should therefore explain why targeted redactions, a sufficiently detailed public summary, or disclosure to designated counsel under an attorneys'-eyes-only protective order would be inadequate here, particularly given this Court's prior rejection of most of Defendants' original redactions. ECF No. 18, at 1.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Leave to File the Declaration of Matthew Suarez *Ex Parte* and Under Seal (ECF No. 22), or alternatively require Defendants to provide a sufficiently detailed public justification for their privilege assertions, consider less restrictive alternatives, and afford Plaintiffs a meaningful opportunity to respond.

Dated: November 9, 2026

Respectfully submitted,

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