

SEALED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 23-80101-CR-CANNON(s)

UNITED STATES OF AMERICA,

Plaintiff,

v.

EX PARTE

DONALD J. TRUMP,
WALTINE NAUTA, and
CARLOS DE OLIVEIRA,

Defendants.

FILED BY <u>col</u> D.C.
NOV 22 2023
ANGELA E. NOBLE CLERK U.S. DIST. CT. S.D. OF FLA. - W.P.B.

EX PARTE MOTION TO EXCEED PAGE LIMITS

The Government respectfully moves for leave to exceed the page limits set forth in the Court's Local Rules with respect to its upcoming *ex parte* motion under Section 4 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3. As explained below, the leave requested will permit the Government to file a single motion, rather than multiple motions, which will be more efficient and succinct and thereby promote judicial economy.

Pursuant to the Scheduling Order entered by this Court on November 10, 2023, on Monday, December 4, the Government intends to file an *ex parte*, classified motion to withhold from discovery certain sensitive classified material under CIPA Section 4. The motion relates to classified information both that the Government seeks to delete from discovery with respect to cleared counsel and all three defendants and classified information the Government seeks to withhold from defendants Waltine Nauta and Carlos De Oliveira. With respect to cleared counsel and all three defendants, the motion involves four categories of especially sensitive classified information—representing a much smaller amount of material than the classified discovery already

provided to cleared defense counsel—over which multiple federal agencies hold equities. The motion will invoke the classified information privilege and request that the Court authorize the Government to delete from or substitute in discovery certain specific portions of the classified information to protect intelligence equities, particularly the sources and methods involved in collecting the subject intelligence. With respect to defendants Nauta and De Oliveira, the Government will invoke the classified information privilege and request that the Court authorize the Government to withhold from them nearly all of the approximately 5,500 pages the Government has produced in classified discovery to cleared counsel (and defendant Trump). In support of the Government's invocation of the classified information privilege, the motion will attach sworn declarations from representatives of agencies holding equities in the classified information that attest to the sensitive nature of the classified information and the risks posed by disclosure (either to cleared defense counsel or the defendants personally, depending on the category of information).

Although this Court's Scheduling Order permits the Government to file multiple Section 4 motions, *see* ECF No. 215 at 8, for efficiency, rather than file separate motions to protect the four separate categories of classified information from disclosure to cleared counsel and additional motions with respect to Nauta and De Oliveira (which strict compliance with the Local Rules' page limitation for briefs would require), the Government is combining them into a single motion. Although combining the categories of classified information, which involve overlapping risks to national security, into a single motion is more efficient and succinct, doing so necessitates filing a brief exceeding 20 pages in length. Accordingly, pursuant to Local Rule 7.1(c)(2), which requires the Court's permission to file a brief beyond 20 pages, the Government requests leave to file a single *ex parte* CIPA Section 4 motion and supporting memorandum of law not to exceed 85 pages

(not including the supporting sworn declarations by representatives of equity-holding federal agencies and other documentary exhibits).

Because the Government's CIPA Section 4 Motion is *ex parte*, see ECF No. 83 at 5; ECF No. 215 at 8; *see also* 18 U.S.C. App. 3 § 4 ("The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone."), and information that will be included in that filing is discussed herein, the Government is filing this motion for leave *ex parte* as well. For the same reason, the Government has not conferred with opposing counsel regarding the requested relief. *See* Local Rule 88.9(a) (explaining that the conferral requirement "does not apply to *ex parte* filings").

For the foregoing reasons, the Government respectfully requests that the Court permit it to exceed Local Rule 7.1(c)(2)'s 20-page limit for its upcoming CIPA Section 4 filing, up to 85 pages for a motion and accompanying memorandum of law.

Respectfully submitted,

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