

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

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

_____ /

MOTION FOR LEAVE TO FILE EXHIBIT EX PARTE AND UNDER SEAL

On January 16, 2024, the defendants filed their motion to compel discovery (ECF No. 262) along with a Motion for Temporary Leave to File Redacted Brief (ECF No. 261). Two days later, the Government responded to the Motion for Temporary Leave, opposing it to the limited extent that the motion to compel or its exhibits identified any prospective Government witness, constituted Jencks Act material for the same, or contained certain additional discrete sensitive information. ECF No. 267. On February 2, 2024, the Government filed a Motion for Permission to File Sealed and Redacted Documents (ECF No. 278) in connection with its unclassified Response in Opposition to Defendants' Motion to Compel Discovery (ECF No. 277).

On February 6, 2024, the Court issued an Order (ECF No. 283) granting in part the defendants' Motion for Temporary Leave to File Redacted Brief (ECF No. 261). Today, February 7, 2024, the Court issued an Order (ECF No. 286) ruling on the Government's Motion for Permission to File Sealed and Redacted Documents, by directing the Government to comply with

the redaction instructions in the Court's earlier order (ECF No. 283), for the reasons set forth in that Order. ECF No. 286 at 1-2.

Tomorrow (February 8, 2024), the Government intends to file a Motion for Reconsideration of the Orders at ECF Nos. 283 and 286. The Government hereby respectfully requests permission to file an exhibit to the Motion for Reconsideration *ex parte* and under seal.¹

The exhibit describes in some detail threats that have been made over social media to a prospective Government witness and the surrounding circumstances, and the fact that those threats are the subject of an ongoing federal investigation being handled by a United States Attorney's Office. Disclosure of the details and circumstances of the threats risks disrupting the investigation. *See, e.g., In re Sealed Search Warrant*, 622 F. Supp. 3d 1257, 1262 (S.D. Fla. 2022) ("Protecting the integrity and secrecy of an ongoing criminal investigation is a well-recognized compelling governmental interest.") (citing *United States v. Valenti*, 987 F.2d 708, 714 (11th Cir. 1993)). Means short of sealing the exhibit, *e.g.*, redaction of persons' names, will not suffice to protect the integrity of the investigation because even with such names redacted, the details of the exhibit could reveal investigative methods, potentially further endanger the victim, and/or provide information to the suspect to which he/she may not otherwise be entitled.

¹ The defendants have requested that their position on this Motion be reported as follows: "The defendants object to any exhibit being filed *ex parte*, and reserve our rights to object to whether the exhibit should be filed under seal until after defense counsel have had an opportunity to review the exhibit. Defense counsel in this case have security clearances, and, as officers of the Court should be allowed to review the relevant exhibit to allow an appropriate response. *Ex parte* communications are disfavored, especially when the communication is being used as a basis for the Special Counsel to infringe on the Rights of the defendants and the public to open proceedings."

For these reasons, the Government requests an order authorizing it to file an exhibit to its Motion for Reconsideration *ex parte* and under seal, and directing that the exhibit remain under seal until the investigation to which it relates is either closed or resolved by adjudication of any resultant charges, or until further order of the Court. A proposed Order is attached.

Respectfully submitted,

JACK SMITH
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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which in turn serves counsel of record via transmission of Notices of Electronic Filing.

/s/ David V. Harbach, II
David V. Harbach, II