

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

CASE NO. 23-80101-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DONALD J. TRUMP and
WALTINE NAUTA,**

Defendants.

**UNITED STATES' MOTION FOR PROTECTIVE ORDER
PURSUANT TO § 3 OF THE CLASSIFIED INFORMATION PROCEDURES ACT**

The United States of America, by and through the Special Counsel's Office, respectfully moves for the entry of the attached Protective Order Pertaining to Classified Information. In support of its motion, the Government states as follows:

1. On June 8, 2023, a grand jury in this district returned an indictment against the Defendants.

2. This case involves classified information. Defendant Trump was charged with, *inter alia*, the willful retention of national defense information in violation of 18 U.S.C. § 793(e). Classified documents and materials, including but not limited to documents Defendant Trump was charged with illegally retaining, were collected as part of the investigation and will be subject to procedures outlined in the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"), as well as other rules, statutes, and case law.

3. Section 3 of CIPA provides that the Court shall issue an order, upon the request of the United States, “to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case.” In contrast to the discretionary authority in Rule 16(d)(1), Section 3 of CIPA provides that, when classified information is involved, protective orders are to be issued whenever the government discloses classified information to a defendant in connection with a prosecution. *See* H.R. Rep. No. 96-831, part 1, at 26 (1980).

4. On June 26, 2023, the Court appointed a CISO and alternate CISOs for this case. ECF No. 40. This motion and attached Protective Order Pertaining to Classified Information has been reviewed by the CISO.

5. On July 12, 2023, the Government sent to counsel for the Defendants the proposed protective order. On July 14, 2023, counsel for the Defendants informed the Government that they intend to object to certain provisions of the proposed protective order, but did not specify any such provisions.¹ Because the entry of a protective order is necessary to provide any classified discovery to the Defendants, the Government respectfully requests that the Court require the Defendants to file on an expedited schedule any objections to the proposed protective order.

¹ In an effort to narrow any disputes, the Government asked to have a call on July 14 with counsel for the Defendants in order to see if it was possible to address the Defendants’ concerns. Defense counsel informed the Government that they were not available that day but could find a time for a call the following week. Government counsel responded that the Government did not want to delay filing this motion because a protective order needed to be entered prior to the provision of classified discovery, that Government counsel would be available for a call over the weekend, and that it would be helpful for defense counsel to identify the provisions they found objectionable. Government counsel has not heard further from defense counsel since sending that email on July 14, but is filing this motion now to avoid further delay. The Government notes that since sending the proposed protective order to defense counsel, the Government has made minor, clarifying edits to a few provisions.

WHEREFORE, the United States respectfully requests that the Court enter the attached protective order.

Respectfully submitted,

JACK SMITH
Special Counsel

By: /s/ Jay I. Bratt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Julie A. Edelstein _____

Julie A. Edelstein

Senior Assistant Special Counsel