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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

FAYEZ MANSOR, CABDI IBRAHIM XAREED,
AND SHUKRIA ZAFARI, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES; ALEJANDRO MAYORKAS,
SECRETARY, U.S. DEPARTMENT OF
HOMELAND SECURITY; UR JADDOU,
DIRECTOR, U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

No: 2:23-cv-347

The Honorable James L.
Robart

**[STIPULATED]
PROTECTIVE ORDER**

NOTE ON MOTION
CALENDAR: November 1,
2023

1. PURPOSES AND LIMITATIONS

The certified administrative record (“CAR”) and any Discovery in this action is likely to involve production of confidential, proprietary, and/or private information for which special protection is warranted.¹ Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is

¹ While this Stipulated Protective Order covers any discovery that may be ordered in this action, nothing herein shall be interpreted as a waiver, forfeiture or abandonment by Defendants of any argument that this action is properly decided solely on the administrative record.

1 consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses
2 to discovery, the protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under the applicable legal
4 principles, and it does not presumptively entitle parties to file confidential information under
5 seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” material shall include the following documents and tangible things
8 produced or otherwise exchanged:

9 (a) Information, documents or tangible things protected by the Privacy Act, 5
10 U.S.C. § 552a, et seq., if the subject of the information is a U.S. citizen or a person lawfully
11 admitted for permanent residence;

12 (b) Deliberative material protected from disclosure under the Freedom of
13 Information Act, 5 U.S.C. § 552(b)(5).

14 (c) Personally identifiable information, and any information that is protected
15 or restricted from disclosure by statute or regulation but which the Court may order to be produced,
16 to include any information that permits the identity of a person to be directly or indirectly inferred,
17 including any information which is linked or linkable to that person regardless of whether the
18 person is a U.S. citizen, lawful permanent resident (LPR), visitor to the United States, or a DHS
19 employee or contractor;

20 (d) Information, documents or tangible things, which contain sensitive
21 information about Defendant’s law enforcement or national security staffing, resources,
22 intelligence and/or methods (including the names and contact information of third parties, and non-
23 supervisory federal and non-federal employees), the release of which to the public may adversely
24 impact identifiable law enforcement or national security interests, to include any information that
25 permits the identity of a person to be directly or indirectly inferred, including any information
26

1 which is linked or linkable to that person regardless of whether the person is a U.S. citizen, lawful
2 permanent resident (LPR), visitor to the United States, or a DHS employee or contractor;

3 (e) Information contained in or pertaining to:

4 (1) an individual's asylum, statutory withholding of removal, refugee, or
5 Convention Against Torture ("CAT") claims or applications, or credible fear or
6 reasonable fear determinations;

7 (2) legalization applications under 8 U.S.C. § 1255a;

8 (3) Special Agricultural Worker applications under 8 U.S.C. § 1160;

9 (4) Individual I-821 applications for temporary protected status ("TPS")
10 under 8 U.S.C. § 1254a;

11 (f) Information which relates to an individual who is the beneficiary of an
12 application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration
13 and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8
14 U.S.C. 1229b(b)(2)]; information contemplated by 8 U.S.C. § 1186a(c)(4)(C) concerning any
15 abused noncitizen spouse or child, including information regarding the whereabouts of such spouse
16 or child (see 8 C.F.R. §§ 216.5(a)(1)(iii) and 1216.5(a)(1)(iii));

17 (g) All other protected documents, information or tangible things not
18 identified above that the parties agree in writing or the Court orders qualify for protection under
19 Federal Rule of Civil Procedure 26(c).

20
21 3. SCOPE

22 The protections conferred by this agreement cover not only confidential material (as
23 defined above), but also (1) any information copied or extracted from confidential material; (2) all
24 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
25 conversations, or presentations by parties or their counsel that reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the public
2 domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
5 or produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
7 categories of persons and under the conditions described in this agreement. Confidential material
8 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
9 that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
11 by the court or permitted in writing by the designating party, a receiving party may disclose any
12 confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees of
14 counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
17 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any confidential material to third parties and to immediately
25 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a custodian
8 or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party,
11 at least three business days prior to filing and in accordance with Local Civil Rule 5(g)(3)(A), to
12 determine whether the designating party will remove the confidential designation, whether the
13 document can be redacted, or whether a motion to seal or stipulation and proposed order is
14 warranted. During the meet and confer process, the designating party must identify the basis for
15 sealing the specific confidential information at issue, and the filing party shall include this basis in
16 its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule
17 5(g) sets forth the procedures that must be followed and the standards that will be applied when a
18 party seeks permission from the court to file material under seal. A party who seeks to maintain
19 the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
20 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
21 the motion to seal being denied, in accordance with the strong presumption of public access to the
22 Court’s files.

23
24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
26 or non-party that designates information or items for protection under this agreement must take

1 care to limit any such designation to specific material that qualifies under the appropriate
2 standards. The designating party must designate for protection only those parts of material,
3 documents, items, or oral or written communications that qualify, so that other portions of the
4 material, documents, items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this agreement. Mass, indiscriminate, or routinized designations
6 are prohibited. Designations that are shown to be clearly unjustified or that have been made for an
7 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
8 impose unnecessary expenses and burdens on other parties) expose the designating party to
9 sanctions.

10 If it comes to a designating party's attention that information or items that it designated for
11 protection do not qualify for protection, the designating party must promptly notify all other parties
12 that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
14 (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered,
15 disclosure or discovery material that qualifies for protection under this agreement must be clearly
16 so designated before or when the material is disclosed or produced.

17 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
19 the designating party must affix the word "CONFIDENTIAL" to each page that contains
20 confidential material. If only a portion or portions of the material on a page qualifies for protection,
21 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
22 markings in the margins).

23 (b) Testimony

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the designating party's
26 right to secure protection under this agreement for such material. Upon timely correction of a
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1 designation, the receiving party must make reasonable efforts to ensure that the material is treated
2 in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding confidential
12 designations or for a protective order must include a certification, in the motion or in a declaration
13 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
14 affected parties to resolve the dispute without court action. The certification must list the date,
15 manner, and participants to the conference. A good faith effort to confer requires a face-to-face
16 meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under Local
19 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
21 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
22 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
23 the material in question as confidential until the court rules on the challenge.

24 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
25 LITIGATION

1 If a party is served with a subpoena or a court order issued in other litigation that compels
2 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
3 must:

4 (a) promptly notify the designating party in writing and include a copy of the
5 subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to issue
7 in the other litigation that some or all of the material covered by the subpoena or order is subject
8 to this agreement. Such notification shall include a copy of this agreement; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
10 designating party whose confidential material may be affected.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
13 material to any person or in any circumstance not authorized under this agreement, the receiving
14 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
15 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
16 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
17 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
18 Bound” that is attached hereto as Exhibit A.

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
20 MATERIAL

21 When a producing party gives notice to receiving parties that certain inadvertently
22 produced material is subject to a claim of privilege or other protection, the obligations of the
23 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
24 is not intended to modify whatever procedure may be established in an e-discovery order or
25 agreement that provides for production without prior privilege review. The parties agree to the
26 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

1 10. NON-TERMINATION AND RETURN OF DOCUMENTS

2 Within 60 days after the termination of this action, including all appeals, each receiving
3 party must return all confidential material to the producing party, including all copies, extracts and
4 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.
5 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents
6 filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial
7 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
8 such materials contain confidential material.

9 The confidentiality obligations imposed by this agreement shall remain in effect until a
10 designating party agrees otherwise in writing or a court orders otherwise.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 Date: November 3, 2023

Respectfully Submitted,

13 /s/ Matt Adams (with consent)

14 Matt Adams

15 Aaron Korthuis

16 Glenda M. Aldana Madrid

17 NORTHWEST IMMIGRATION RIGHTS
PROJECT

18 Mary Kenney

19 Trina Realmuto

Kristin Macleod-Ball

20 NATIONAL IMMIGRATION
LITIGATION ALLIANCE

21 Ira J. Kurzban

22 Edward F. Ramos

23 KURZBAN KURZBAN TETZELI &
PRATT, P.A.

24 *Attorneys for Plaintiffs*

25
26
27
28 [STIPULATED] PROTECTIVE ORDER
Case No. 2:23-cv-347

Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 353-8536

1 Dated: November 3, 2023

Respectfully submitted,

2 BRIAN M. BOYNTON
3 Principal Deputy Assistant Attorney General
4 Civil Division

5 WILLIAM C. PEACHEY
6 Director
7 Office of Immigration Litigation
8 District Court Section

9 ELIANIS PEREZ
10 Assistant Director

MARY L. LARAKERS
11 Trial Attorney

12 /s/Kevin Hirst
13 KEVIN HIRST
14 Trial Attorney
15 Office of Immigration Litigation
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18 P.O. Box 868, Ben Franklin Station
19 Washington, D.C. 20044
20 Telephone: (202) 353-8536
21 Email: kevin.c.hirst@usdoj.gov

Counsel for Defendants

22 PURSUANT TO STIPULATION, IT IS SO ORDERED

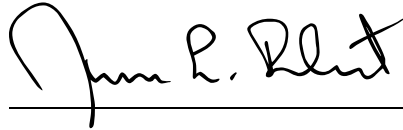
23 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
24 any documents, whether inadvertent or otherwise, in this proceeding shall not, for the purposes
25 of this proceeding or any other federal or state proceeding, constitute a waiver by the producing
26 party of any privilege applicable to those documents, including the attorney-client privilege,
27 attorney work-product protection, or any other privilege or protection recognized by law. This
28 Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d).
The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or

[STIPULATED] PROTECTIVE ORDER
Case No. 2:23-cv-347

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1 shall serve to limit a party's right to conduct a review of documents for relevance, responsiveness
2 and/or segregation of privileged and/or protected information before production. Information
3 produced in the CAR and any discovery that is protected as privileged or work product shall be
4 immediately returned to the producing party.

5
6 DATED: November 3, 2023

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9 Hon. James L. Robart
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ [**insert formal name of the case and the number and initials
assigned to it by the court**]. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____