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NOTE: Changes made to this document

9
 10 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11) Case No.: CV 14-7566 DMG (VBK)
 12 DAVID ISRAEL GASTELUM-CHAVEZ,)
 Petitioner,) PROTECTIVE ORDER
 13)
 v.) Honorable Judge Victor B. Kenton
 14)
 ERIC H. HOLDER, JR.,)
 15 U.S. Attorney General,)
 Respondent.)
 16)

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1 In the course of discovery, the parties anticipate the production of
2 documents containing identifying information relating to third parties not
3 participating in this lawsuit. This identifying information is contained within
4 various agency records, document, and databases, some of which are in the
5 possession, custody, and control of the Respondent, Respondent's agents, and
6 Respondent's counsel. Respondent agrees to produce to Petitioner certain
7 unprivileged unredacted records relating to Petitioner and (where appropriate)
8 third-parties, subject to entry of this protective order, in accordance with the
9 Privacy Act of 1974, 5 U.S.C. § 552a, to which the parties have stipulated.

10 At the request of counsel for Petitioner and Respondent ("the Parties"),
11 IT IS HEREBY ORDERED that in accordance with the terms of this Privacy
12 Act Protective Order, under 5 U.S.C. § 552a(b)(11), Respondent is authorized
13 to release to Petitioner, Petitioner's counsel, and the Court in this case,
14 discovery containing unredacted identifying information of third-parties,
15 without obtaining prior written consent of third parties whose names, addresses,
16 birth dates, and other identifying information may be present in such
17 documents. Such disclosure is subject to the following conditions:

18 **Privacy Act material**

19 1. The Parties agree that the terms of this Protective Order will
20 govern the entirety of any and all documents, alien registration files, any law

1 enforcement reports, probation and pre-sentencing reports, or any other
2 discovery that contains Privacy Act material, as well as any copies or
3 summaries made thereof and any information derived therefrom, including any
4 materials produced in discovery or will be produced through any further
5 discovery taken in this case.

6 2. The parties expect that records to be provided by the federal
7 government will contain third-party names, addresses, birth dates, social
8 security numbers, alien numbers, or any other identifying information (*i.e.*,
9 information the use of which would allow the identification of the person to
10 whom the information relates), such identifying information shall be deemed
11 confidential and protected by this Protective Order. All such Privacy Act
12 information is subject to this Protective Order and may be used solely for
13 purposes of this litigation.

14 3. Protected information may be disclosed only to the following
15 persons and only to the extent necessary for the prosecution of this action:

16 (a) Counsel for Petitioner, Petitioner, counsel for Respondent,
17 Respondent, and any support staff of such counsel assisting in this action;

18 (b) The Court and its personnel, including court reporters;

19 (c) Individuals whose testimony is contemplated or actually taken
20 in this action, but only to the extent necessary to elicit testimony concerning the

1 subject matter of information or records produced subject to this Protective
2 Order;

3 (d) Expert witnesses or consultants retained by Petitioner or
4 Respondent;

5 (e) The author of the document or the original source of the
6 information; and

7 (f) Any Court of Appeals and its personnel, in the event of an
8 appeal.

9 4. All persons listed in Paragraph 3(a) above to whom identifying
10 information is disclosed are prohibited from disclosing to, or otherwise
11 discussing with, any person other than those listed in 3(b)-(f) above, any
12 confidential information, except as provided in this Protective Order.

13 5. All persons listed in Paragraphs 4(c) and (d) above, to whom
14 identifying information is disclosed, shall first be required to read the terms of
15 this Protective Order and sign a copy of the Acknowledgment form, attached
16 as Exhibit A, agreeing to be bound thereby. The signed Acknowledgment
17 forms shall be maintained by Petitioner's counsel or Respondent's counsel.

18 6. To the extent that third-party identifying information is discussed
19 in the course of a deposition, such confidential information must be designated
20 as such by indicating on the record at the deposition, and the relevant portions

1 of the deposition transcript shall be placed under seal if filed with the Court,
2 unless a release is obtained from the individual to whom the identifying
3 information pertains, authorizing the disclosure of such information.

4 ~~7. No protected documents or information shall be used at any~~
5 ~~hearing, trial or appellate proceeding in this action, unless provision shall be~~
6 ~~made for exclusion of the public or unless some other reasonable provision to~~
7 ~~protect confidentiality has been made. Where protected documents or~~
8 ~~information is used at a hearing, trial, or appellate proceeding in this action,~~
9 ~~the appropriate portion of the court transcript shall be placed under seal. Such~~
10 ~~designation shall be limited to those portions of the transcript the sealing of~~
11 ~~which is reasonably necessary to preserve the confidentiality of documents, as~~
12 ~~well as copies or summaries made thereof and any information derived~~
13 ~~therefrom, which are subject to the terms of this Protective Order.~~

14 **Federal Rule of Evidence 502**

15 8. Under Federal Rule of Evidence 502, the parties agree, and this
16 Court orders, that any disclosure, whether intentional or inadvertent, of any
17 document or any other information anytime during the pendency of this case
18 shall be without prejudice to any claims that any or all such material is
19 confidential, privileged, or otherwise protected from discovery within the
20 meaning of Federal Rule of Civil Procedure 26, or any relevant case law, and

1 no party to this Protective Order shall be held to have waived or forfeited any
2 rights by any such intentional or inadvertent disclosure.

3 (a) If, at any time in this case, a producing party discloses any
4 information subject to a claim of any privilege or protection, including but not
5 limited to the attorney-client and work-product doctrines, the disclosure of the
6 information shall not constitute or be deemed a waiver or forfeiture of any
7 claim of privilege that the producing party would otherwise be entitled to assert
8 with respect to the disclosed information and its subject matter.

9 (b) If any claim of disclosure of privileged material is made by a
10 producing party with respect to disclosed information, the receiving party shall,
11 without any court order, within five business days, return or destroy all copies
12 of the disclosed information and provide a certification of counsel that all such
13 disclosed information has been returned or destroyed.

14 (c) Within twenty-one calendar days of the any notification that
15 such disclosed information has been returned or destroyed, or within a different
16 time upon written agreement of the Parties or order of the Court, the producing
17 party shall produce a privilege log with respect to the disclosed information.

18 (d) Any document or information so produced, and subject to
19 any subsequent claim of privilege, work-product or any other protection,
20 including protection under this Protective Order, shall not be introduced into

1 evidence in this or any other proceeding by any person without either (i) the
2 consent of the party, or (ii) Order of the Court. Nor will such document or
3 information be subject to production (other than *in camera*) in any proceeding
4 by virtue of the fact that it was produced in this proceeding.

5 (e) This order does not prohibit or otherwise restrict a party from
6 disclosing information protected by this agreement and order that may be
7 relevant to any civil or criminal proceeding or investigation to any Federal or
8 State agency with authority to enforce laws regulating any activity related to
9 the requested information. Any such Federal or State agency shall keep the
10 information confidential only to the extent provided by law, and shall not be
11 subject to this order.

12 **ATTORNEYS' EYES ONLY STIPULATIONS**

13 9. Petitioner seeks to discover certain information and documents that
14 Respondent maintains are protected by the law enforcement privilege and/or are
15 highly-sensitive or confidential matters that would jeopardize the objectives of
16 law enforcement if released to the general public. Respondent contends that
17 this specific category of documents warrants special protection from disclosure,
18 and the parties agree that, to the extent produced, these documents will be for
19 review only by Petitioner's attorney(s) and certain limited additional agents of
20

1 Petitioner, but not for review by Petitioner himself. Thus, the parties stipulate
2 to this “Attorney’s Eyes Only” provision, to assure the protection and
3 confidentiality of such information and documents.

4 10. The term “Protected Information – Attorneys’ Eyes Only”
5 constitutes any and all documents and records, and the information contained
6 therein, that: (1) are relevant to this action; (2) are required to be produced in
7 response to discovery requests; (3) are not available to the general public;
8 (4) are protected from disclosures pursuant to various privileges, laws, statutes,
9 rules and regulations, or any other authority; and (5) Respondent has designated
10 as being produced for attorneys’ eyes only.

11 11. Any information Respondent deems Protected Information –
12 Attorneys’ Eyes Only shall be stamped as “Subject to Protective Order –
13 Attorneys’ Eyes Only” prior to production.

14 12. If Petitioner (through his counsel) contests the designation of
15 particular documents as Protected Information – Attorneys’ Eyes Only, he may
16 bring an appropriate motion and legal memorandum in this Court as governed
17 by the applicable local rules.

18 13. The Protected Information produced by Respondent shall be used
19 by the parties and their counsel solely for the prosecution and/or defense of this
20 matter and shall not be published to members of the general public in any form,

1 nor used for any purpose except as specified in this Order or as the Court may
2 order.

3 14. Access to materials designated as Protected Information –
4 Attorneys’ Eyes Only shall be limited to the following authorized individuals:

5 (a) counsel for the parties, including support staff reasonably
6 necessary to assist counsel and operating under counsel’s direction, such as law
7 students, paralegals or legal assistants, secretaries, and any other employees or
8 independent contractors operating under counsel’s instruction or direction;

9 (b) a present or former employee or representative of the United
10 States or any other party who may be examined and may testify concerning any
11 documents and information designated as Protected Information – Attorneys’
12 Eyes Only;

13 (c) medical, technical, or other experts and consultants and their
14 staff retained by any party or party’s counsel to assist in this action;

15 (d) qualified persons taking or recording testimony involving such
16 documents or other information and necessary stenographic and clerical
17 personnel thereof (for example, court reporters and video technicians);

18 (e) Judges and Magistrate Judges of the Court, their staff, and
19 Court employees; and

20 (f) Clerk of Court and the Clerk’s staff.

1 15. Petitioner’s counsel shall not disclose materials subject to this
2 Order to Petitioner, any third party not specified above, or any unauthorized
3 person without further order of the Court or stipulation by the parties. Nothing
4 in this Order imposes any obligations or limits on the United States and/or
5 counsel for the United States, nor does this Order limit or preclude in any way
6 government personnel’s rights to access and review documents containing
7 Protected Information – Attorneys’ Eyes Only.

8 16. All individuals to whom Protected Information – Attorneys’ Eyes
9 Only is disclosed shall first be informed of and shall agree with the terms of this
10 Order; shall not disclose or use the Protected Information – Attorneys’ Eyes
11 Only except in compliance with this Order; and, except for individuals
12 identified above, shall, before receiving Protected Information –Attorneys’
13 Eyes Only, acknowledge their agreement to comply with this Order by signing
14 a copy of the attached acknowledgment form. A copy of each such
15 acknowledgment form must be provided promptly after its execution to counsel
16 of record for either party.

17 17. Each person to whom Protected Information – Attorneys’ Eyes
18 Only is disclosed shall

19 (a) maintain the information and documents protected from
20 disclosure in a secure location;

1 (b) not reveal information and documents protected from
2 disclosure to any person not authorized by and already subject to the terms of
3 this Order; and

4 (c) not reveal or use the Protected Information – Attorney’ Eyes
5 Only except to assist the parties and their counsel in preparing and litigating this
6 matter.

7 18. With respect to all information and documents designated as
8 Protected Information - Attorneys’ Eyes Only and any pleadings, motions or
9 other papers to be filed with the Court disclosing information and/or documents
10 protected from disclosure, the parties shall, before filing such information or
11 documents with the Court, make a motion to the Court requesting permission to
12 file such information or documents “under seal.” If the request is granted, the
13 information or documents to be filed “under seal” shall be delivered to the
14 Court either enclosed in a sealed envelope bearing this case’s caption, an
15 indication of the nature of the contents, and designated “Subject to Protective
16 Order - Attorneys Eyes Only,” or filed electronically using a filing option that
17 allows the document to be filed under seal and not made accessible to the
18 general public. In addition, the parties shall publicly file redacted versions of
19 the information or documents filed “under seal” if feasible given the
20 information that needs to be redacted.

1 19. Petitioner’s counsel shall not make copies of Protected Information
2 – Attorneys’ Eyes Only except at Petitioner’s own expense and only to the
3 extent necessary for permissible use under this stipulation. Petitioner’s counsel
4 shall maintain a log of all copies that are made of Protected Information –
5 Attorneys’ Eyes Only.

6 20. All Protected Information – Attorneys’ Eyes Only, including
7 copies, that have not been submitted to the Court, designated as subject to this
8 Order shall be, within sixty days of a final judgment in this matter, be returned
9 to Respondent’s counsel. To the extent that copies of Protected Information –
10 Attorneys’ Eyes Only are made, Petitioner’s counsel shall, in addition to all
11 copies, provide the log described above to Respondent’s counsel.

12 21. Inadvertent production of any Protected Information – Attorneys’
13 Eyes Only without it being marked “Subject to Protective Order - Attorneys’
14 Eyes Only” shall not in itself be deemed a waiver of any claim of
15 confidentiality as to those documents or information. If Respondent fails to
16 mark an item as Protected Information - Attorneys Eyes Only at the time of
17 production, Respondent may correct this failure in writing accompanied by
18 substitute copies of each item, container or folder, appropriately marked
19 confidential, or by so identifying such production by assigned page number. In
20 the event of inadvertent production or disclosure, the producing party may

1 provide written notice to the other parties identifying the material inadvertently
2 disclosed. Within five business days of receipt of such notice, any individual or
3 entity that received such allegedly privileged or protected material shall return
4 to the producing party all such material, and copies thereof, in his, her or its
5 possession.

6 22. This stipulation does not constitute a ruling on whether any
7 particular document or category of information is properly discoverable and
8 does not constitute a ruling on any potential objection to the discoverability,
9 relevance, or admissibility of a document or information. Nor does this
10 stipulation constitute a ruling on whether any party may withhold any particular
11 document or category of information on the basis of privilege.

12 23. This Order does not constitute a waiver of any privilege or defense
13 that any party has regarding the production of the requested information. Thus,
14 this Order cannot be used as evidence of a waiver of any production objection,
15 including but not limited to, relevance, undue burden, over breadth, ambiguity,
16 or that the information sought will not lead to the discovery of admissible
17 evidence.

18 24. This Order is without prejudice to the rights of any party to apply
19 to the Court for a further protective order or to make discovery objections
20 permitted by the Federal Rules of Civil Procedure, or any other authority.

1 **General Provisions**

2 25. Within thirty days of the final conclusion of this litigation,
3 including any appeals, Petitioner’s counsel shall collect all documents
4 produced under this Protective Order that contain third-party identifying
5 information, as well as any copies thereof, or any information and notes
6 derived therefrom, and shall return – without demand – such documents to
7 Respondent’s counsel. Alternatively, Petitioner’s counsel shall destroy the
8 documents by shredding them and provide Respondent’s counsel with
9 verification of destruction within thirty days of the final conclusion of this
10 litigation, including any appeals.

11 26. Agreement to this Protective Order does not waive any rights
12 of any party to assert, and/or object to, a claim of any privilege as to these
13 or similar documents.

14 27. Nothing in this agreement shall be deemed to restrict in any
15 manner the use by any party of its own documents or materials.

16 28. Nothing in this agreement shall affect the right of any party to
17 seek additional protection against the disclosure of documents or materials.

18 29. Any disclosure of information related to a third-party who has
19 executed a Privacy Act Waiver shall be governed by the terms of the Privacy
20 Act Waiver executed by the third-party.

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT**

3 I, _____, [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Protective Order that was issued
6 by the United States District Court for the Central District of California in the case of the
7 *Gastelum-Chavez v. Holder*, Case No. 2:14-CV-7566, and I agree to comply with and to be
8 bound by all the terms of this Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Protective Order to any person or entity except in strict compliance with the provisions of
12 this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcing the terms of this Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of _____
17 [print or type full address and telephone number] as my agent for service of process in
18 connection with this action or any proceedings related to enforcement of this Protective
19 Order.
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1 Date: _____

2 City and State where sworn and signed: _____

3 Printed Name: _____

4 Signature: _____

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