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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Adrian Rodriguez Alcantara, et al.,
Plaintiffs-Petitioners,

v.

Gregory J. Archambeault, San Diego
Field Office Director, Immigration and
Customs Enforcement, et al.,

Defendants-
Respondents.

NO. 3:20-cv-00756-DMS-AHG

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER**

[ECF No. 152]

The following Protective Order is entered to govern the dissemination of documents and information exchanged between the parties in this matter that contain CONFIDENTIAL INFORMATION as defined herein and designated by the parties. The purpose of this Protective Order is to protect the confidentiality of such materials as much as practical during the litigation. The parties have agreed to be bound by the terms of this Order.

DEFINITIONS

1. For purposes of this Order, CONFIDENTIAL INFORMATION means any document, information, materials, or tangible thing, electronic recording or transcript of oral testimony, whether or not made under oath, or any portion of such a document, thing, recording, or transcript, designated by any party as

1 “CONFIDENTIAL INFORMATION” because the party making the designation
2 avers that it can and would make a showing to this Court sufficient to justify the filing
3 of the document or information under seal in accordance with Federal Rule of Civil
4 Procedure 26(c) and/or controlling federal case law, including the following:
5 (a) proprietary information (trade secret, proprietary matter, or other confidential
6 research, development, or commercial information as those terms are used in Federal
7 Rule of Civil Procedure 26), (b) security-sensitive information (information that if
8 released to the public or inmate/detainee population may compromise the safety and
9 security of a correctional or detention facility), (c) confidential personal or medical
10 information, or (d) information reasonably believed to be protected from disclosure
11 pursuant to state or federal law, or subject to the Privacy Act, 5 U.S.C. § 552a
12 (“Privacy Act”).

13 2. For purposes of this Order, “discovery” means all information,
14 documents, and things subject to discovery and that may be used as evidence in this
15 action, whether produced by any party or a third party, including but not limited to,
16 documents and information produced pursuant to Federal Rule of Civil Procedure 26,
17 testimony adduced at depositions pursuant to Rule 30 or 31, answers to
18 interrogatories pursuant to Rule 33, documents produced pursuant to Rule 34, and
19 answers to requests for admissions pursuant to Rule 36.

20 3. The term “documents” in this Order includes but is not limited to,
21 correspondence, memoranda, interoffice and/or intra-corporate communications,
22 letters, statements, contracts, invoices, drafts, charts, work sheets, logs, transcripts,
23 summaries, notes, abstracts, motions, drawings, diagrams, maps, specifications,
24 sketches, drawings, data, reports, work assignments, instructions, and other writings.

25 4. The term “materials” will include, but is not be limited to: spreadsheets;
26 lists; documents; correspondence; memoranda; bulletins; letters; statements;
27 contracts; invoices; drafts; worksheets; notes of conversations; desk diaries;
28 appointment books; recordings; photographs; videos; compilations from which

1 information can be obtained and translated into reasonably usable form through
2 detection devices; sketches; drawings; notes; reports; instructions; disclosures; other
3 writings; models and other physical objects; and electronically-stored information.

4 5. The term “Counsel” means counsel of record, and other attorneys,
5 paralegals, secretaries, legal assistants, clerks, and other support staff employed in
6 Counsel’s offices.

7 GENERAL RULES

8 6. Only documents marked as “CONFIDENTIAL” will be subject to this
9 Protective Order. Documents subject to this Order will be used by non-producing
10 parties only in this lawsuit, including any appeals. CONFIDENTIAL
11 INFORMATION will not be disseminated or produced except in accordance with
12 this Agreement.

13 7. Whenever a deposition or court proceeding involves the disclosure of a
14 party’s CONFIDENTIAL INFORMATION to another party, the following
15 procedure will apply:

16 a. The court reporter will be directed to label pages with portions of
17 the transcript containing CONFIDENTIAL INFORMATION as
18 “CONFIDENTIAL.” This request will be made on the record whenever possible.

19 b. The cover of any portion of a deposition or court proceeding
20 transcript that contains testimony or documentary evidence that has been designated
21 CONFIDENTIAL INFORMATION will be prominently marked with the legend:
22 CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.

23 c. All portions of deposition transcripts designated as
24 CONFIDENTIAL INFORMATION will not be disseminated except to the persons
25 identified in Paragraphs 9 and 10.

26 8. If Counsel for any party wishes to file CONFIDENTIAL
27 INFORMATION on the public docket or otherwise make it publicly available,
28 Counsel shall notify opposing Counsel of their intent to file or distribute such

1 material at least three business days before doing so. Upon such notice, Counsel for
2 both parties shall confer in good faith to determine whether redactions are necessary
3 and to agree on appropriate redactions. In the event Counsel does not provide
4 notification prior to the filing of CONFIDENTIAL INFORMATION, they shall not
5 file any CONFIDENTIAL INFORMATION on the public docket. All pleadings that
6 contain CONFIDENTIAL INFORMATION shall be filed in the public record in
7 redacted form, with as few redactions as possible. An unredacted version will be filed
8 provisionally under seal with the clerk of the court until this Court rules on an
9 application to file the CONFIDENTIAL INFORMATION under seal.

10 9. No document shall be filed under seal unless Counsel secures a court
11 order allowing the filing of a document, or portion thereof, under seal. An application
12 to file a document under seal shall be served on opposing Counsel, and on the person
13 or entity that has custody and control of the document, if different from opposing
14 Counsel. If opposing Counsel, or the person or entity who has custody and control of
15 the document, wishes to oppose the application, they must contact the chambers of
16 the judge who will rule on the application to notify this Court that an opposition to
17 the application will be filed. The parties shall follow and abide by applicable law
18 with respect to filing documents under seal. If opposing Counsel, or the person or
19 entity who has custody and control of the document, wishes to supplement the
20 application, they must contact the chambers of the judge who will rule on the
21 application to notify this Court that a supplement to the application will be filed.

22 10. Subject to the Federal Rules of Evidence, CONFIDENTIAL
23 INFORMATION may be offered in evidence at trial or any court hearing in this
24 matter, provided that the proponent of the evidence gives reasonable notice to
25 Counsel for any party or other person who designated the information as confidential.
26 Any party may move this Court for an order that the evidence be received in camera
27 or under other conditions to prevent unnecessary disclosure. This Court will then
28 determine whether the proffered evidence should continue to be treated as

1 confidential information and what protection, if any, may be afforded to the
2 information at trial.

3 11. Unless otherwise provided in this Order, access to CONFIDENTIAL
4 INFORMATION will be restricted to: this Court and its officers; the named plaintiffs
5 or any party appointed by the Court to represent a class; the parties to which the
6 CONFIDENTIAL INFORMATION specifically applies; Counsel in this action and
7 their support staff, including paralegals, legal interns, and legal assistants; testifying
8 or consulting experts; any person noticed for deposition or designated as a trial
9 witness to the extent reasonably necessary to prepare such person to testify, except
10 as prohibited by paragraph 9; U.S. agency officials who are decisionmakers related
11 to this litigation; where production is required by the Federal Rules of Civil
12 Procedure; or where production is ordered by this Court. Any person to whom
13 disclosure is made will be furnished with a copy of the Protective Order and will be
14 subject to the Order.

15 12. Nothing in this Protective Order shall prohibit Counsel from sharing
16 confidential personal or medical information with the members of the Certified
17 Class[es] or Subclass[es] in this case to which the confidential personal or medical
18 information specifically applies.

19 13. DEFENDANTS may further designate CONFIDENTIAL
20 INFORMATION that contains security sensitive information, proprietary
21 information, or information not for release to the current or former detainee
22 population as “FOR ATTORNEYS’ EYES ONLY.” Such CONFIDENTIAL
23 INFORMATION so designated as “FOR ATTORNEYS’ EYES ONLY” may not be
24 provided to representative parties, class members, or subclass members. Should
25 Counsel for the representative parties, class members, or subclass members contend
26 that such designated CONFIDENTIAL INFORMATION be shared with
27 representative parties, class members, or subclass members in any form (by copy of
28 the information or oral explanation of the same), Counsel shall confer with the

1 Counsel that designated the CONFIDENTIAL INFORMATION as “FOR
2 ATTORNEYS’ EYES ONLY” before doing so in an attempt to reach an agreement
3 regarding the same.

4 14. CONFIDENTIAL INFORMATION containing private addresses,
5 personal identifying information (does not include last names of current and former
6 corrections/detention or law enforcement employees and contractors), dependent
7 information, or contact information concerning current or former corrections/
8 detention or law enforcement employees or contractors will not be disclosed to any
9 current or former detainee or member of the general public. Access will be restricted
10 to Counsel in this action, their support staff, and any consulting or testifying experts.
11 Moreover, CONFIDENTIAL INFORMATION containing policies, protocols,
12 practices, and directives specifically relating to security procedures utilized by any
13 corrections/detention or law enforcement employee or contractor or at any
14 corrections/detention or law enforcement facility will not be disclosed to any current
15 or former detainee or the general public, unless a court has ordered it after the
16 procedure in paragraph 15 is followed. The producing party will produce the
17 information with the label: “CONFIDENTIAL/ATTORNEYS’ EYES ONLY.” By
18 stipulating to this Protective Order, CoreCivic, Management & Training Corporation
19 (“MTC”), United States Immigration and Customs Enforcement (“ICE”), and their
20 employees are not agreeing to disclose security-sensitive information related to the
21 operation of any CoreCivic, MTC, or ICE facility.

22 15. If any party, or that party’s Counsel, expert, or agent, is required by law
23 or court order to disclose CONFIDENTIAL INFORMATION to any person or entity
24 not identified in paragraph 11, the name of that person or entity will be furnished to
25 Counsel as far in advance of disclosure as is reasonably possible (ideally, not less
26 than two weeks), so that Counsel may object and seek further protection as necessary.
27 Once an objection has been made, there will be no disclosure until the matter is
28 resolved, unless disclosure is required by law or court order. Any person not listed in

1 Paragraph 10 who is then entitled to receive CONFIDENTIAL INFORMATION
2 must be furnished with a copy of the Protective Order.

3 16. The parties retain the right to challenge the designation of a particular
4 document as CONFIDENTIAL INFORMATION. If a party to this Order who has
5 received material marked CONFIDENTIAL in accordance with this Order disagrees
6 with the designation, in full or in part, the party shall notify the producing party in
7 writing. The parties will then confer in good faith as to the designation of a particular
8 document as CONFIDENTIAL INFORMATION within 5 business days of notice
9 provided regarding the challenge to the designation. If the recipient and the producing
10 party are unable to agree upon the status of the material at issue, any party may raise
11 the issue with this Court for resolution. Any disputes regarding designations must be
12 brought to this Court's attention within 45 days of the conference of Counsel. The
13 burden of proof with respect to the propriety or correctness of the designation of
14 information as CONFIDENTIAL INFORMATION will rest on the designating
15 party. No party, by treating designated material as CONFIDENTIAL
16 INFORMATION in accordance with this Order, shall be deemed to have conceded
17 that the material actually is confidential. A party shall not be obligated to challenge
18 a designation of CONFIDENTIAL INFORMATION at the time the designation is
19 made, and failure to do so shall not preclude a subsequent challenge under the
20 procedure set forth in this paragraph.

21 17. The intent and purpose of this Order is to facilitate the disclosure and
22 use of relevant and discoverable documents containing CONFIDENTIAL
23 INFORMATION for purposes of this litigation. Nothing in this Order precludes
24 Petitioners or Respondents from seeking and obtaining, on an appropriate showing,
25 additional protection with respect to the confidentiality of documents or other
26 discovery material, or relief from the Order. Moreover, by agreeing generally in this
27 stipulated Order that certain categories will be covered as confidential, although the
28 parties may not refuse to produce particular documents simply because they contain

1 confidential information, the parties do not waive the right to challenge the
2 discoverability of documents that fall within those categories. The Parties do not
3 waive any privileges or objections by entering into this Order.

4 18. All CONFIDENTIAL INFORMATION must be held in confidence by
5 those inspecting or receiving it, and must be used only for purposes of this action.
6 Counsel for each party, and each person receiving CONFIDENTIAL
7 INFORMATION, must take reasonable precautions to prevent the unauthorized or
8 inadvertent disclosure of such information. If CONFIDENTIAL INFORMATION
9 is disclosed to any person other than a person authorized by this Order, the party
10 responsible for the unauthorized disclosure must immediately bring all pertinent facts
11 relating to the unauthorized disclosure to the attention of the other parties and,
12 without prejudice to any rights and remedies of the other parties, make every effort
13 to prevent further disclosure by the party and by the person(s) receiving the
14 unauthorized disclosure.

15 19. If a party, through inadvertence, produces any CONFIDENTIAL
16 INFORMATION without labeling or marking or otherwise designating it as such in
17 accordance with this Order, the designating party may give written notice to the
18 receiving party that the document or thing produced is deemed CONFIDENTIAL
19 INFORMATION, and that the document or thing produced should be treated as such
20 in accordance with that designation under this Order. The receiving party must treat
21 the materials as confidential, once the designating party so notifies the receiving
22 party. If the receiving party has disclosed the materials before receiving the
23 designation, the receiving party must notify the designating party in writing of each
24 such disclosure. Counsel for the parties will agree on a mutually acceptable manner
25 of labeling or marking the inadvertently produced materials as "CONFIDENTIAL."

26 20. Upon completion of this litigation, if requested in writing by the
27 disclosing party, Counsel and their experts shall return, or by agreement of the parties
28 may provide a Certificate of Destruction, to the producing party any

1 CONFIDENTIAL INFORMATION produced in this action. Legal memoranda and
2 briefs containing protected information and any work product materials containing
3 protected information may be retained if such documents shall be kept in the
4 possession of a private litigant's counsel, and shall not in the future be disclosed
5 contrary to the provisions of this Order. Nothing herein shall restrict the parties' use
6 of their records for official business or for other purposes consistent with other
7 applicable laws and regulations.

8 21. The restrictions and obligations set forth within this order will not apply
9 to any information that: (a) the parties agree should not be designated confidential
10 information; (b) the parties agree, or this Court rules, is already public knowledge,
11 and with regards to documents produced by Federal Defendants-Respondents,
12 disclosure would not violate the Privacy Act; (c) the parties agree, or this Court rules,
13 has become public knowledge other than as a result of disclosure by the receiving
14 party, its employees, or its agents in violation of this Order, and with regards to
15 documents produced by Federal Defendants-Respondents, disclosure would not
16 violate the Privacy Act; or (d) has come or will come into the receiving party's
17 legitimate knowledge independently of the production by the designating party. Prior
18 knowledge must be established by preproduction documentation.

19 22. If a party, through inadvertence, produces any confidential information
20 without labeling or marking or otherwise designating it as such in accordance with
21 this Order, the designating party may give written notice to the receiving party that
22 the document or thing produced is deemed confidential information, and that the
23 document or thing produced should be treated as such in accordance with that
24 designation under this Order. The receiving party must treat the materials as
25 confidential, once the designating party so notifies the receiving party. If the
26 receiving party has disclosed the materials before receiving the designation, the
27 receiving party must notify the designating party in writing of each such disclosure.
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1 Counsel for the parties will agree on a mutually acceptable manner of labeling or
2 marking the inadvertently produced materials as “CONFIDENTIAL.”

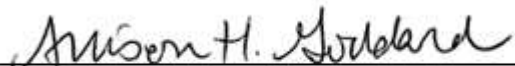
3 23. Nothing in this Order precludes any party from seeking and obtaining,
4 on an appropriate showing, additional protection with respect to the confidentiality
5 of documents or other discovery material or relief from the Protective Order.

6 24. Each person designated in Paragraph 10, by receiving a copy of the
7 Protective Order entered by this Court and agreed to by the parties, agrees to abide
8 by its provisions and to see that its provisions are known and adhered to by those
9 under his or her supervision or control, and to submit to the jurisdiction of this Court
10 in the event the Order or the parties’ agreement concerning the contents of the Order
11 is breached.

12 25. This Court may modify the Protective Order *sua sponte* in the interests
13 of justice or for public policy reasons.

14 **IT IS SO ORDERED.**

15 Dated: December 23, 2020

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18 Honorable Allison H. Goddard
19 United States Magistrate Judge
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