

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

AARON TOBEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:11cv154-HEH
)	
JANET NAPOLITANO, et al.,)	
)	
Defendants.)	
_____)	

**UNITED STATES' UNOPPOSED MOTION
FOR STIPULATED PROTECTIVE ORDER**

Pursuant to Federal Rule of Civil Procedure 26(c), the United States respectfully submits this unopposed motion for a stipulated protective order. As explained more fully below, the United States seeks a protective order to prevent public disclosure of the names of certain individuals that the United States has agreed to identify to plaintiff's counsel in lieu of plaintiff's filing a Motion for Leave to Conduct Limited Expedited Doe Discovery. A copy of the proposed protective order is attached as Exhibit A. Counsel for the United States has conferred with counsel for plaintiff and for the Capital Region Airport Commission concerning this motion and proposed order. Counsel for said parties do not oppose the motion and have agreed to the proposed order, subject to the stipulated reservations of plaintiff's counsel set forth in paragraph 11 of Exhibit A..

The United States, through the Transportation Safety Administration (TSA), has agreed to provide plaintiff's counsel with the names of the Transportation Security Officers to be identified as John Smith and Jane Smith defendants, or similar nomenclature, as long as those names are protected by an appropriate protective order preventing the public disclosure of the names.

Counsel for the plaintiff have agreed that, as a matter of courtesy, they will not publicly disclose the names of the Smith defendants unless and until this case reaches discovery against those defendants.

The United States believes that a protective order is necessary at this point in the litigation to prevent public disclosure of the identities of Smith defendants. The United States does not currently represent the individual defendants, although the process for determining representation is underway. Further, the United States must comply with the terms of the Privacy Act, 5 U.S.C. § 552a, which precludes disclosure of certain information from Privacy Act systems of records. In addition, the individuals are actively employed in a transportation security capacity. Given the publicity generated by this case, revealing the identities of the defendants could compromise their effectiveness as Transportation Security Officers. In addition, undersigned counsel anticipate that Smith defendants will raise the defense of qualified immunity at the earliest possible stage of litigation, which defense is intended to protect defendants not only from liability, but from the burdens of litigation. *Saucier v. Katz*, 533 U.S. 194, 200-201 (2001) (“qualified immunity is an immunity from suit rather than a mere defense to liability”). The burdens of litigation include not merely discovery, but, in a case such as this, should include any impediment --personal or professional-- that could result from the public disclosure of the Smith defendants’ identities at this early juncture in the case.

In the event that this litigation proceeds to discovery against the Smith defendants, the parties will revisit the terms of the Protective Order to determine whether the protections are still necessary. The United States does not anticipate opposing the lifting of the protective order at that time, though it reserves the right to do so should it deem such opposition necessary.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Alan C Veronick alan.veronick@aporter.com

Anand Agneshwar anand.agneshwar@aporter.com

Belinda Duke Jones bjones@cblaw.com

Henry Irving Willett , III hwillett@cblaw.com, lblacka@cblaw.com,
rrandolph@cblaw.com

James Jeffrey Knicely jjk@knicelylaw.com, Alan.Veronick@APORTER.COM,
Anand.Agneshwar@APORTER.COM, douglasm@rutherford.org

Paul Wilbur Jacobs , II pjacobs@cblaw.com

By: /s/ _____
Robin P. Meier
Virginia State Bar #65825
Attorney for Defendant
Office of the United States Attorney
600 East Main Street, Suite 1800
Richmond, Virginia 23219
(804) 819-5400 (phone)
(804) 819-7417 (fax)
robin.p.meier2@usdoj.gov