

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 12-231 (RC)</b>
	:	
<b>v.</b>	:	
	:	
<b>JAMES F. HITSELBERGER,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S UNOPPOSED MOTION FOR SUPPLEMENTAL  
CIPA PROTECTIVE ORDER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court pursuant to Section 3 of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. III § 3, for the entry of a supplemental CIPA protective order to govern the disclosure to the defendant of certain national security documents and information already produced in classified discovery in this matter. Although the defendant no longer has a security clearance, the information subject disclosure is subject to prior nondisclosure agreements the defendant has signed in connection with previous employment. Counsel for Mr. Hitselberger has authorized the government to represent it does not oppose this motion and that the parties have reached an agreement as to a proposed supplemental protective order. Counsel for the defendant reserves its right to seek from the

Court authorization for additional disclosures. Accordingly, for the reasons set forth in the proposed Order, the Court should grant the government's motion.

Respectfully submitted,

RONALD C. MACHEN JR.  
UNITED STATES ATTORNEY

By:

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

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**Certificate of Service**

I, Jay I. Bratt, certify that I served a copy of the foregoing Government's Unopposed Motion for Protective Order by ECF on Mary Petras, Esq., counsel for defendant, this 13<sup>th</sup> day of February, 2013.

\_\_\_\_\_/s/\_\_\_\_\_  
Jay I. Bratt

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	:	
<b>Defendant.</b>	:	

**FIRST SUPPLEMENTAL CIPA PROTECTIVE ORDER**

This matter comes before the Court upon the Government’s Unopposed Motion for First Supplemental CIPA Protective Order to prevent the unauthorized disclosure or dissemination of classified national security documents and information which will be reviewed by, or made available to, or are otherwise in the possession of, the defendant, James F. Hitselberger.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"); the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9; hereinafter referred to as the "Security Procedures"); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the general supervisory authority of the Court; and in order to protect the national security, it is this \_\_\_\_\_ day of February, 2013, hereby

ORDERED that the Government's Unopposed Motion for First Supplemental CIPA Protective Order is **GRANTED**; and it is

**FURTHER ORDERED** that:

1. The purpose of this First Supplemental CIPA Protective Order is to establish the procedures that must be followed by the defendant, who does not presently possess an active security clearance, before his being granted authorized access to any classified documents and information in connection with this case.

2. This Order incorporates by reference the terms of the CIPA Protective Order issued on January 8, 2013 (Docket Entry 24) (hereinafter, "CIPA Protective Order") and the Memorandum of Understanding ("MOU") that is an exhibit to the CIPA Protective Order.

3. The procedures set forth in this First Supplemental Protective Order shall apply to all pre-trial, trial, post-trial, and appellate aspects of this case, and may be modified from time to time by further order of the Court acting under Fed. R. Crim. P. 16(d); Sections 3 and 9 of CIPA; and the Court's inherent supervisory authority to ensure a fair and expeditious trial.

4. At the Government's election or by order of this Court under paragraph 20(f) of the CIPA Protective Order, the defendant may be given access in discovery to certain classified national security documents and information. In particular, the defendant may have access to the classified materials bearing the following Bates numbers from among the classified discovery the government has provided to cleared defense counsel: Classified 001004-001112. In addition, the defendant may have access to the classified versions of the following exhibits to the government's Memorandum in Support of Detention, which the government previously produced in classified discovery: Exhibits 7, 8, 10, 11, 13, and 14. As set forth in

the Government's Motion, pursuant to the Nondisclosure Agreements that the defendant signed when he was granted authorized access to classified documents and information as part of his work for the United States government, the defendant has a continuing contractual obligation to the government not to disclose to any unauthorized person any classified documents or information known to him or that he possesses. The government is entitled to enforce its Nondisclosure Agreements with the defendant to maintain the secrecy of the classified documents and information that the defendant may obtain as a result of this case. Consequently, pursuant to federal common law and the ordinary principles of contract law, the defendant shall fully comply with his Nondisclosure Agreements and shall not disclose any classified documents or information to any unauthorized person unless authorized to do so by order of this Court.

5. The authorized disclosure and discussion of classified information to/with the defendant can occur only inside the secure area referenced in paragraph 15 of the CIPA Protective Order. While in the secure area, the defendant must be escorted by and under the supervision of cleared defense counsel or defense counsel's cleared investigator.

6. Further, the defendant shall comply with all terms of the CIPA Protective Order not inconsistent with the terms set forth herein, as well as the requirements of CIPA and any other orders issued by this Court pursuant to CIPA.

7. A copy of this First Supplemental CIPA Protective Order shall be issued forthwith to counsel for the defendant, who shall be responsible for advising the defendant of its contents. Before his being given access to any classified documents or information in this matter, the defendant shall execute a copy of the MOU, and defense counsel shall file

executed originals with the Court and the Classified Information Security Officer and serve an executed original of such document upon the United States. The execution and filing of the MOU is a condition precedent for the defendant to have access to classified documents and information in this matter.

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Rudolph Contreras  
Judge  
United States District Court  
for the District of Columbia

copied to:

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