

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

DR. KUSUMA NIO, *et al.*,

Plaintiffs,

.v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, *et al.*,

Defendants.

---

)  
)  
)  
)  
) Civil Action No. 1:17-00998-ESH-RMM  
)  
)  
)  
)  
)  
)  
)  
)  
)

**PROTECTIVE ORDER**

1. **Scope.** The following terms, conditions, procedures, and restrictions govern the certified administrative record produced by Defendant USCIS in this litigation (“CAR”). The protections conferred by this Order cover Protected Material (as defined below), and: (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by parties or their counsel that reveal Protected Material.

2. **Protected Material.** Protected Material means CAR documents (or portions thereof), designated pursuant to Paragraph 3 below, revealing (a) information that would be protected from disclosure under the Freedom of Information Act (“FOIA”) 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, *et seq.*, under any of the exemptions found at 5 U.S.C. § 552(b).<sup>1</sup>.

3. **Designations.** Defendants must designate Protected Material by labeling it “PROTECTED MATERIAL” on a page-by-page or provision-by provision basis as necessary to

---

<sup>1</sup> Legally privileged information on documents contained in the Certified Administrative Record will remain redacted in the CAR after the entry of this Protective order and is therefore not part of the Administrative Record in this case.

specifically identify the material subject to the designation. The duty of the Plaintiffs and of all other persons bound by this Protective Order to maintain the confidentiality of Protected Material so designated shall commence when the Protected Material is received by Plaintiffs.

**4. Access to Protected Material.** Beyond authorized federal agency employees, including Defendants' Counsel, only the following persons shall have access to Protected Material:

- a. This Court, this Court's official personnel, and any reviewing appellate court and its personnel;
- b. Plaintiffs' Counsel, including any attorneys, paralegals, office clerks, secretaries, and other support staff to whom such disclosure Plaintiffs' Counsel deems reasonably necessary. The persons covered by this Section 4(b) shall use the Protected Material only for purposes of this litigation and/or related litigation<sup>2</sup>;
- c. Legal and/or subject matter experts and consultants (and the experts' or consultants' staff whose duties and responsibilities require access to such Protected Material) engaged or consulted by Plaintiffs' Counsel to assist in this litigation and/or related litigation. These experts, consultants, and their associated staff shall use the Protected Material only for purposes of this litigation and/or related litigation and shall execute an acknowledgment in the form of Exhibit A prior to receiving any Protected Material; and
- d. Court reporters and interpreters.

**5. Use of Protected Material before a Court.** Nothing contained in this Protective Order shall be construed to limit use of Protected Material before this Court for the purposes of this litigation and/or related litigation. When filing Protected Material with this Court, a party shall

---

<sup>2</sup> Related litigation referenced in this Protective Order refers to any litigation that has been related to the instant litigation under Rule 40.5 of the Local Rules of the U.S. District Court for the District of Columbia.

request that the Protected Material be filed under seal and shall provide the opposing party with an unredacted (revealing the Protected Material) version of the filing at the time of filing.

**6. Challenge to Designations.** If Plaintiffs' Counsel seek to challenge any Protected Material designation, redaction, or seek to disclose Protected Material to persons not covered by Paragraph 4, the following procedure shall be used:

- a. Plaintiffs' Counsel shall give Defendants' counsel notice by email specifying the redaction or Protected Material for which such removal is sought and the reasons for the request. Defendants shall, within five (5) business days of such notice, either remove the designation or send an objection to Plaintiffs' Counsel by email.
- b. If the Parties cannot reach agreement concerning the designation, Plaintiffs' Counsel may file a motion with the Court seeking relief. The designated material shall continue to be redacted or treated as Protected Material until the issue is resolved by Order of this Court.
- c. Upon request by Counsel for Plaintiffs, Defendants shall specify the basis for the designation of "protected material" for any particular designation.

**7. Disclosure to Unauthorized Persons.** If Protected Material is disclosed by Plaintiffs' Counsel to any unauthorized person through inadvertence, mistake, or otherwise without authorization by the Defendants, Plaintiffs' Counsel shall: (a) use their best efforts to retrieve the disclosed information and all copies thereof; (b) advise the recipient of the improperly disclosed information, in writing, of the terms of this Protective Order; (c) make reasonable efforts to require the recipient to execute an agreement to be bound by the terms of this Protective Order in the form of the acknowledgement attached to this Protective Order as Exhibit A; and (d) take other

reasonable steps to prevent further disclosure by or to the unauthorized person who received the Protected Material.

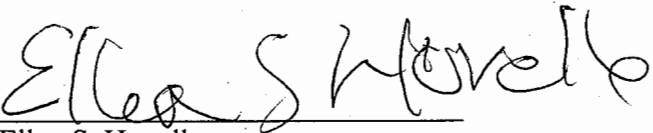
**8. Inadvertent Disclosure of Protected Material.** The failure by Defendants to designate specific documents or materials as Protected Material shall not, by itself, be deemed a waiver in whole or in part of a claim of confidentiality as to such documents or materials. Upon written notice to the Plaintiffs of such failure to designate, or of incorrect designation, Plaintiffs shall cooperate to retrieve disseminated copies, and restore the confidentiality of the inadvertently disclosed information beyond those persons authorized to review such information pursuant to paragraph 6, and shall thereafter take reasonable steps to ensure that the Protected Material is treated in accordance with the designation. No person or Party shall incur any liability under this Protective Order with respect to disclosure that occurred prior to the receipt of written notice of the mistaken designation.

**9. Good Faith Designations.** Plaintiffs and Defendants represent that Defendants' designation of Protected Material, the parties' requests to permit further disclosure of Protected Material, and the responses thereto shall be made in good faith and not: (a) to impose burden or delay, or (b) for tactical or other advantage in litigation.

**10. Survival and Final Disposition of Designated Material.** Final termination of this litigation, including exhaustion of appellate remedies, shall not terminate the limitations imposed by this Protective Order.

**11. Nothing in this Order compels the production of extra record material or disclosure of privileged material.**

SO ORDERED

  
Ellen S. Huvelle  
United States District Judge

**STIPULATION EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT CONCERNING PROTECTED MATERIAL**

My name is \_\_\_\_\_ (first, middle initial, last).  
I live at \_\_\_\_\_ (street address), \_\_\_\_\_  
(city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code).  
I am employed as a/an \_\_\_\_\_ by \_\_\_\_\_ (company),  
which is located at \_\_\_\_\_ (street address),  
\_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code). Its  
telephone number is \_\_\_\_\_.

I have read the attached Protective Order entered in the action of *Nio, et al., v. Dept. of Homeland Security, et al.*, pending in the District Court for the District of Columbia and bearing Case No. 1:17-cv-00998-ESH-RMM, and a copy of the Protective Order has been given to me.

I agree to be bound by the terms of the Protective Order.

I agree that I will not disclose or discuss Protected Material with anyone other than the persons described in paragraph 4 of the Protective Order.

I understand that any disclosure or use of Protected Material in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of the Court's Order.

I agree to be subject *in personam* to the jurisdiction of the United States District Court for the District of Columbia in connection with any proceeding concerning an alleged unauthorized (under the Protective Order) disclosure of Protected Material that involves me.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature