

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

RUBEN NMI ORTIZ, JR.,
ALEJANDRO NMI LOPEZ,
FRANCISCO NMI MARTINEZ,
HECTOR M. GOMEZ-SALAS,
OSCAR NMI ALONSO,
GABIEL Y. BONILLA,
CEDRIC D. COHEN,
TERRY A. JOHNSON,
RICHARD D. GUYETTE,
JAMES H. PARKINSON and
STEPHANIE M. ORTIZ,

Green Bay Division

Defendants.

MOTION FOR ENTRY OF A PROTECTIVE ORDER GOVERNING DISCOVERY

Pursuant to Fed. R. Crim. P. 16(d), the United States of America, by Matthew Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, moves for the entry of a protective order, and in support thereof states as follows:

1. Rule 16(d) of the Federal Rules of Criminal Procedure provides that “[a]t any time, the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.”
2. The discovery to be provided by the government in this case includes personal identifying information of confidential informants and third parties, in which unrestricted

dissemination could adversely affect the safety and privacy interests of those individuals. The United States has been making efforts to redact that information prior to providing discovery to the defense. Nevertheless, the identities of these individuals are often still determinable by the defendants and others.

3. The criminal history of the defendants and investigation of this case support the need to protect the identities of the cooperating individuals. Several defendants have at least one prior felony conviction. The grand jury has found probable cause that the defendants (with the exception of James Parkinson who is charged with possession with intent to deliver controlled substances and Stephanie Ortiz who is charged with money laundering) in this case conspired to deliver and possess with the intent to deliver controlled substances. Law enforcement seized several firearms as a result of this investigation which were believed to be held for one or more members of the conspiracy. Further, law enforcement indicate confidential informants report that members of the conspiracy have been responsible for assaults/threats to assault those who have not timely paid their drug debt. Additionally, law enforcement continue to investigate a report of gunshots fired at a residence in March 2018 by one or more individuals believed to have been part of this conspiracy. The shooting is alleged to be in retaliation for a drug debt to Ruben Ortiz. In May 2019, law enforcement received information that another individual was also threatened by a member of the conspiracy for not paying a drug debt to Ortiz. Finally, one cooperating defendant reports that he recently received threats related to his involvement in the conspiracy.

4. Additionally, the discovery also includes the contents of intercepted wire communications pursuant to 18 U.S.C. §§ 2511-2519. In accordance with its disclosure obligations under Section 2518(9) and Rule 16.1, the government intends to produce to defendant and defendant's counsel copies of the sealed applications, affidavits, and orders

authorizing the interception of wire communications in this case. The government requests the Court to direct that the release of the applications, affidavits, and court orders, as well as any recordings, reports, and other materials that may be turned over in connection with this matter be subject to the conditions set forth in the proposed protective order.

5. The need for a proposed protective order also arises from the significant constraints imposed by the federal wiretap statute, 18 U.S.C. §§ 2510-2520, on the disclosure and use of electronic surveillance information. Subsumed in these constraints and, indeed, a driving force behind them, is the protection of the privacy interests of persons including third parties who were intercepted in the electronic surveillance but who not have been charged. Although the wiretap applications, affidavits and orders are being disclosed to defendants in accordance with 18 U.S.C. § 2518(9), they otherwise remain under seal pursuant to 18 U.S.C. § 2518(8)(b). These materials may be further disclosed only “upon a showing of good cause before a judge of competent jurisdiction.” 18 U.S.C. § 2518(8)(b).

6. The above stated circumstances require that a protective order be in place so as to prevent the dissemination of information about victims and cooperating witnesses as well as the intercepted wire communications.

7. All but one of the defendants (Stephanie Ortiz) are currently in custody with most of them being housed at the Brown County Jail. Because the paper discovery is too voluminous to print (estimated to be in excess of 70,000 pages), the government will provide a copy of the discovery via a hard drive computer disk to correctional officers at any facility housing the defendants. Those redacted reports will be available for the defendants in a private location for review. The defendants will not be able to copy, print, or take the reports to their cell or any other location. As to the defendant Stephanie Ortiz, the government requests that (1) defense

counsel be prohibited from providing her with a copy of discovery materials and (2) Ortiz be prohibited from copying or reproducing the discovery material. Discovery would be made available for her viewing at counsel's office.

WHEREFORE, the government respectfully moves this Court to enter the proposed protective order.

Respectfully submitted this 24th day of September, 2019

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Green Bay Division

Defendants.

PROTECTIVE ORDER GOVERNING DISCOVERY

Upon the motion of the government and pursuant to Fed. R. Crim. P. 16(d), it is hereby
ORDERED:

1. All of the discovery materials provided by the United States in preparation for, or in connection with, any stage of the proceedings in this case (collectively, “the materials”) are subject to this protective order and may be used by defense counsel (defined as the counsels of record in this case) solely in connection with the defense of this case, and for no other purpose, and in connection with no other proceeding, without further order of this Court.

2. Defense counsel shall not provide copies of the material directly to the defendants. The defense counsel may show copies of the materials to the defendants as necessary to prepare the defense, but defendants may not retain copies without prior permission of the Court.

3. Defendants and defense counsel shall not disclose the materials or their contents directly or indirectly to any person or entity other than persons employed to assist in the defense, persons who are interviewed as potential witnesses, counsel for potential witnesses, and other persons to whom the Court may authorize disclosure (collectively, “authorized persons”). With the exception of expert witnesses who may receive copies of the materials, potential witnesses and their counsel may be shown copies of the materials as necessary to prepare the defense, but may not retain copies without prior permission of the Court.

4. Defendants, defense counsel, and authorized persons shall not copy or reproduce the materials except as authorized by this Order. Such copies and reproductions shall be treated in the same manner as the original materials. Copies of the materials, redacted as to the names and identifying information of cooperating individuals, will be made available for the defendants review, in a private location within the jail or holding facility. The materials may not be copied or taken by the defendants to their cell or any other location other than the reviewing room within the jail.

5. The government has made available for each defendant a computer disk containing the discovery materials. The computer disk will be kept in the possession of the Brown County Jail, or any other facility maintaining custody of a defendant charged in this case. The materials may be viewed by a defendant by arranging a time with the correctional facility staff. The defendant cannot print copies of any discovery materials.

6. Defendants are authorized to take notes summarizing the discovery materials or detailing questions they may have for counsel. These notes may be taken to and from their cell but shall not be disclosed to anyone other than an authorized person.

7. Before providing materials to an authorized person, defense counsel must provide the authorized person with a copy of this Order.

8. Upon conclusion of all stages of this case, all of the materials and all copies made thereof shall be disposed of in one of three ways, unless otherwise ordered by the Court. The materials may be (1) destroyed; (2) returned to the United States; or (3) retained in defense counsel's case file. In the event that the materials are retained by defense counsel, the restrictions of this Order continue in effect for as long as the materials are so maintained, and the materials may not be disseminated or used in connection with any other matter without further order of the Court.

9. The restrictions set forth in this Order do not apply to documents that are or become part of the public court record, including documents that have been received in evidence at other trials. Personal identifying information contained in any discovery material shall be redacted if the discovery material is filed with this Court. If it is necessary for the Court to review the personal identifying information contained within the discovery materials or a description thereof, such filing shall be made under seal.

10. Nothing contained in this Order shall preclude any party from applying to this Court for further relief or for modification of any provision hereof.

SO ORDERED this _____ day of _____, 2019

HONORABLE NANCY JOSEPH
Magistrate Judge