

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

v.

JEFFREY SEARLS, in his official capacity
as Acting Assistant Field Office Director and
Administrator, Buffalo Federal Detention
Center,

Respondent.

NOTICE OF PROTECTIVE ORDER VIOLATION

Respondent files this notice of a protective order violation consistent with Federal Rule of Civil Procedure 26(c) and this Court's prior orders. Respondent provides the following facts with respect to Petitioner's most recent violation of the protective order.

1. On February 5, 2020, the parties jointly moved the Court to enter a protective order, *inter alia*, to expedite the flow of discovery material between the parties and adequately protect information entitled to be kept confidential. *See* Dkt. No. 76.

2. On February 6, 2020, pursuant to the Court's authority under Federal Rule of Civil Procedure 26(c), the Court entered the Protective Order. *See* Dkt. No. 77.

3. On June 26, 2020, to expedite the flow of information regarding the U.S. government's removal efforts of Petitioner and adequately protect confidential information, the parties entered into a stipulation to amend the protective order to include confidential information regarding removal. *See* Dkt. No. 249. The parties stipulated that "Petitioner's removal from the United States requires coordination with other nations and may potentially

include information that is privileged or otherwise protected from disclosure and for which special protection from public disclosure and from use for any purpose other than this action, including to effectuate Petitioner's removal, is warranted." *Id.* ¶ 4. The parties agreed that confidential information subject to the protective order included information regarding the U.S. government's efforts to remove Petitioner from the United States, and specifically including information such as the country of removal and terms of removal. *Id.* at 2.

4. On June 26, 2020, subject to the protective order, the government provided the name of the potential country of removal to Plaintiff's counsel. Bianco Decl. ¶ 4, Ex. A. The parties agreed that Petitioner's counsel could provide Petitioner with the name of the potential country of removal, but that, under the terms of the protective order, Petitioner would be prohibited from disclosing this information. *Id.*

5. According to Petitioner's counsel, on July 7 or 8, 2020, Petitioner violated the protective order by telling his sons Abed and Abdul the identity of the country of removal. *Id.* ¶ 7.

6. On July 17, 2020, Petitioner's counsel requested a conference call to speak with government counsel "today about an issue that has arisen." *Id.* On the call, Petitioner's counsel disclosed that, on July 7 or 8, 2020, Petitioner told his sons Abed and Abdul the name of the country of removal. *Id.* Petitioner's counsel conceded that Mr. Hassoun's disclosure of the country of removal violated the protective order. *Id.*

7. Counsel for Petitioner stated that they learned of Mr. Hassoun's breach of the Protective Order on July 8, 2020. *Id.* ¶ 8.

8. During the at least nine-day period between when Petitioner's counsel learned of the protective-order violation and when Petitioner's counsel disclosed it to the government,

counsel for the parties had multiple conversations, including conversations discussing if and when Petitioner would be permitted to share the name of the country in question with his family. During these conversations, Petitioner's counsel did not disclose to government counsel Petitioner's breach of the protective order. *Id.* ¶¶ 5, 9.

9. Based on the understanding that Petitioner committed the protective-order violations by phone, counsel for Respondent promptly requested from the Buffalo Federal Detention Facility copies of Petitioner's phone calls during the relevant time period. Counsel received the audio files for such calls on July 24, 2020. *Id.* ¶¶ 11. The calls appear to be in Arabic (with one exception noted below) and will require translation. *Id.* ¶¶ 10-12. Respondent at this point alerts the Court to the tapes. Respondent has not yet obtained translations of the tapes, but stands ready to do so if so directed by the Court.¹

¹ The files provided by U.S. Immigration and Customs Enforcement (ICE) to counsel for Respondent included one call in English. Bianco Decl. ¶ 12. Based on a preliminary assessment, that call appears to have been a call from Petitioner's counsel to Petitioner from a phone number that was not registered with the detention facility as an attorney phone number—which would have prevented the call from being recorded. *Id.* ¶¶ 12-13. As a precautionary measure, counsel for Respondent promptly informed Petitioner's counsel that it had received such a file and deleted all but one copy in Department of Justice possession (the original copy provided by ICE to the Department on CD), which is being held by non-trial counsel so that there is a copy to provide to Petitioner's counsel if they desire. The government stands ready to dispose of that final copy at the request of Petitioner's counsel or the Court's direction.

Dated: July 27, 2020

Respectfully Submitted,

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