

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
) v.)
) CRIMINAL NO. 02-37-A
) (J. ELLIS)
JOHN WALKER LINDH)

GOVERNMENT'S MOTION TO PERMIT EX PARTE AND IN CAMERA FILING
OF GOVERNMENT'S SECOND MOTION FOR PROTECTIVE ORDER
REGARDING NON-EXCULPATORY REPORTS OF DETAINEE INTERVIEWS

The United States of America, by undersigned counsel, hereby moves this Court, pursuant to Federal Rule of Criminal Procedure 16(d)(1), for permission to file ex parte and in camera the Government's Second Motion for Protective Order Regarding Non-Exculpatory Reports of Detainee Interviews and the attachments thereto. In support of this motion, the Government states as follows:

1. The attached Second Motion for Protective Order Regarding Non-Exculpatory Reports of Detainee Interviews and attachments summarize interviews of suspected al Qaeda and Taliban operatives captured in Afghanistan and Pakistan and detained at Guantanamo Bay, Cuba. The interviews in question are highly sensitive and confidential, and involve ongoing matters of vital importance to the national security. Accordingly, the Government seeks to file the Motion and attachments ex parte and in camera.

2. Rule 16(d)(1) provides that this Court "may permit" the Government to make its showing in support of a protective order on an ex parte basis. Although ex parte proceedings are "disfavored," see, e.g., United States v. Napue, 834 F.2d 1311, 1317 (7th Cir. 1987), the case law and the Advisory Committee Notes are also clear that ex parte proceedings "nevertheless would be appropriate 'if any adversary proceeding would defeat the purpose of the protective or modifying order.'" Id. (quoting from Advisory Committee Notes to 1975 Enactment); see also United States v. Innamorati, 996 F.2d 456, 487 (1st Cir. 1993) ("Fed. R. Crim. P. 16(d)(1) expressly authorizes the court to deny discovery of information sought by a defendant based on an ex parte showing by the government of the need for confidentiality.") In the instant case, an adversarial review of the Government's Second Motion for Protective Order

Regarding Non- Exculpatory Reports of Detainee Interviews would defeat the very purpose of the motion, specifically, to obtain an order protecting the reports from disclosure.

3. WHEREFORE, the Government respectfully requests that the Court permit the ex parte in camera filing of the Second Motion for Protective Order Regarding Non-Exculpatory Reports of Detainee Interviews.

4. The Government has this day also filed a Notice of Ex Parte In Camera Filing, thereby putting the defense on notice that the Government has sought relief under Rule 16(d)(1).

Respectfully submitted,
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