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6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA, ) 1:06-CR-00292-AWI  
9 Plaintiff, )  
10 v. ) PROTECTIVE ORDER REGARDING  
11 ) CLASSIFIED INFORMATION  
12 AMEN AHMED ALI, )  
13 Defendant. )

14 This matter comes before the Court upon the Government's  
15 Motion for Protective Order to prevent the unauthorized  
16 disclosure or dissemination of classified national security  
17 information which will be reviewed or made available to the  
18 defendant's counsel by the government during the prosecution of  
19 this case. Pursuant to the authority granted under Section 3 of  
20 the Classified Information Procedures Act, 18 U.S.C. App. III  
21 (2000) ("CIPA"); the Security Procedures Established Pursuant to  
22 Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United  
23 States for the Protection of Classified Information (the  
24 "Security Procedures"); Rules 16(d) and 57 of the Federal Rules  
25 of Criminal Procedure; the general supervisory authority of the  
26 Court; and in order to protect the national security, the  
27 following Protective Order is entered:

28 1. The court finds that this case will involve information

1 that has been classified in the interest of national security.  
2 The storage, handling, and control of this information will  
3 require special security precautions mandated by statute,  
4 executive order, and regulation, and access to which requires the  
5 appropriate security clearances. The purpose of this Protective  
6 Order is to establish procedures that must be followed by counsel  
7 and the parties in this case. These procedures will apply to all  
8 pretrial, trial, post-trial, and appellate matters concerning  
9 classified information and may be modified from time to time by  
10 further order of the Court acting under its inherent authority to  
11 ensure the proceedings in this case are fair and expeditious:

12 2. Definitions. The following definitions shall apply to  
13 this Order:

14 a. "Classified information" shall mean:

15 i. any document or information which  
16 has been classified by any executive agency  
17 in the interests of national security or  
18 pursuant to Executive Order 13292 as  
19 "confidential," "secret," "top secret," or  
20 "sensitive compartmented information."

21 ii. any document or information now or  
22 formerly in the possession of a private party  
23 which (A) has been derived from information  
24 from the United States government that was  
25 classified, and (B) has been subsequently  
26 classified by the United States pursuant to  
27 Executive Order 13292 as "confidential,"  
28 "secret," "top secret," or "sensitive  
compartmented information,"

iii. verbal classified information  
known to counsel for the defendant, or

iv. any information, regardless of  
place of origin and including "foreign  
government information," as that term is  
defined in Executive Order 13292, that could  
reasonably be believed to contain classified  
information, or that refers to national  
security or intelligence matters.

1           b. "Documents" shall mean any material containing  
2 information. The term "document" shall include, without  
3 limitation, written or printed matter of any kind, including  
4 originals, conforming copies, and non-informing copies (e.g., a  
5 copy of an original with an added notation). The term "document"  
6 shall also include, without limitation, letters, reports,  
7 summaries, memoranda, notes, communications, telexes, cables,  
8 telecopies, telegrams, facsimiles, e-mails, sound recordings of  
9 any kind, microfilms, reports, photographs, charts, graphs, maps,  
10 invoices, accountings, worksheets, bulletins, transcripts, and  
11 messages, as well as alterations, amendments, modifications, and  
12 changes of any kind to the forgoing, as well as information  
13 acquired orally; and all recordings of information on magnetic,  
14 electronic, or optical media (including, but not limited to,  
15 those on CD-ROM), typewriter ribbons, films, and all manner of  
16 electronic data processing storage..

17           c. "Access to classified information" means having access  
18 to, reviewing, reading, learning, or otherwise coming to know in  
19 any manner any classified information.

20           d. "Secure area" means a facility accredited by a Court  
21 Security Officer for the storage, handling and control of  
22 classified information.

23           3. Information in the public domain is ordinarily not  
24 classified. However, if such classified information is reported  
25 in the press or otherwise enters the public domain, such  
26 information does not lose its classified status merely because it  
27 is in the public domain. The information may be considered as  
28 classified and subject to the provisions of CIPA if it is

1 confirmed as being classified by any person who has, or has had,  
2 such access to classified information and that confirmation  
3 corroborated the information in question. Any attempt by the  
4 defense to have such information confirmed or denied at trial or  
5 in any public proceeding in this case shall be governed by CIPA  
6 and all provisions of this Protective Order.

7 4. All classified documents and information contained  
8 therein shall remain classified unless the documents bear a clear  
9 indication that they have been declassified by the agency or  
10 department that is the originating agency of the document or the  
11 information contained therein (hereinafter, the "originating  
12 agency").

13 5. In accordance with the provisions of CIPA and the  
14 Security Procedures, the Court designates James P. Londergan, as  
15 Court Security Officer for this case, and Christine E. Gunning,  
16 Michael P. Macisso, Daniel O. Hartenstine, Erin E. Hogarty,  
17 Jennifer H. Campbell, Nathaniel A. Johnson, Miguel A. Ferrer,  
18 Charline A. DaSilva, Barbara J. Russell, and Joan B. Kennedy, as  
19 alternate Court Security Officers, for the purpose of providing  
20 security arrangements necessary to protect from unauthorized  
21 disclosure any classified information or documents to be made  
22 available in connection with this case. Defense counsel shall  
23 seek guidance from the Court Security Officer with regard to  
24 appropriate storage, handling, transmittal, and use of classified  
25 information.

26 6. The Court has been advised that the United States  
27 Attorney, McGregor Scott, the Assistant United States Attorneys  
28 overseeing or assigned to this case, Stanley A. Boone, xxxx,

1 ssss, and Department of Justice attorneys John J. Dion and  
2 Clifford I. Rones, all have the requisite security clearances to  
3 have access to the classified documents and information that  
4 relate to this case. All references to government attorneys, or  
5 attorneys for the government, as used in this Order, refer only  
6 to the attorneys listed in this paragraph. Any other government  
7 attorneys who may in the future participate in the litigation of  
8 any part of this matter (or supervise such litigation) will have  
9 appropriate security clearances.

10 7. The defendant's counsel, David A. Torres, shall be  
11 given access to classified national security documents and  
12 information as required by the government's discovery obligations  
13 and as necessary to prepare for proceedings in this case, in  
14 accordance with the terms of this Protective Order, and any other  
15 orders pursuant to CIPA, and upon receipt of the appropriate  
16 security clearance. Any additional person whose assistance the  
17 defense reasonably requires may only have access to classified  
18 information in this case after obtaining from the Court -- with  
19 prior notice to the government -- an approval for access to the  
20 appropriate level of classification on a need-to-know basis, and  
21 after satisfying the other requirements described in this  
22 Protective Order for access to classified information. The  
23 substitution, departure, or removal for any reason from this case  
24 of defense counsel or anyone associated with the defense as an  
25 employee or witness or otherwise, shall not release that person  
26 from the provisions of this Protective Order or the Memorandum of  
27 Understanding executed in connection with this Protective Order.

28 8. Before any person (not including government counsel and

1 appropriately cleared Court personnel, Department of Justice  
2 employees, and personnel of the originating agencies) may have  
3 access to classified national security information that may be  
4 involved in this case, he or she must also sign and swear to the  
5 Memorandum of Understanding ("MOU") appended to this Protective  
6 Order. Each person executing the MOU must file an executed  
7 original with the Court and in addition must provide an executed  
8 original to the Court Security Officer.

9       9. The Court Security Officer shall arrange for an  
10 appropriately approved secure area for the use of defense  
11 counsel. The Court Security Officer shall establish procedures  
12 to assure that the secure area is accessible to defense counsel  
13 during normal business hours and at other times on reasonable  
14 request as approved by the Court Security Officer. The secure  
15 area shall contain a separate working area for the defense, and  
16 will be outfitted with any secure office equipment requested by  
17 the defense that is reasonable and necessary to the preparation  
18 of the defense. The Court Security Officer, in consultation with  
19 defense counsel, shall establish procedures to assure that the  
20 secure area may be maintained and operated in the most efficient  
21 manner consistent with the protection of classified information.  
22 No documents containing classified information may be removed  
23 from this secure area unless authorized by the Court Security  
24 Officer with notice to the Court.

25       The Court Security Officer shall not reveal to the  
26 government the content of any conversations she or he may hear  
27 among the defense, nor reveal the nature of documents being  
28 reviewed by them, or the work generated by them. In addition,

1 the presence of the Court Security Officer shall not operate as a  
2 waiver of, limit, or otherwise render inapplicable, the attorney-  
3 client privilege.

4 10. Filing of Papers by the Defendant. Any pleading or  
5 document filed by the defendant which defense counsel knows or  
6 has reason to believe is classified, or is unsure of the proper  
7 classification of the document or pleading, shall be filed under  
8 seal with the Court through the Court Security Officer and shall  
9 be marked, "Filed in Camera and Under Seal with the Court  
10 Security Officer or Designee." The time of physical submission  
11 to the Court Security Officer shall be considered the time of  
12 filing. The Court Security Officer shall promptly examine such  
13 pleading or document and determine, in consultation with  
14 representatives of the appropriate agencies, whether the document  
15 contains classified information. If the Court Security Officer  
16 determines that the pleading or document contains classified  
17 information, he or she shall ensure that the portion of the  
18 document containing classified information, and only that  
19 portion, is marked with the appropriate classification marking  
20 and that the document remains under seal. The Court Security  
21 Officer shall immediately deliver under seal to the Court and  
22 counsel for the government any such pleading or other document;  
23 the Court shall then direct the clerk to enter on the docket  
24 sheet the title of the pleading or document, the date it was  
25 filed, and the fact that it has been filed under seal with the  
26 Court Security Officer.

27 Any document filed by the defense that the Court Security  
28 Officer determines does not contain classified information shall

1 immediately be unsealed by the Court Security Officer and placed  
2 in the public record, unless otherwise sealed by the Court.

3 11. Filing of Papers by the United States. Any pleading or  
4 other document filed by the government containing classified  
5 information shall be filed under seal with the Court through the  
6 Court Security Officer. Such pleadings and documents shall be  
7 marked, "Filed In Camera and Under Seal with the Court Security  
8 Officer or Designee." The date and time of physical submission  
9 to the Court Security Officer shall be considered the date and  
10 time of the filing.

11 12. The Court Security Officer shall maintain a separate  
12 sealed record for those materials which are classified. The  
13 Court Security Officer shall be responsible for maintaining the  
14 secured records for purposes of later proceedings or appeal.

15 13. Protection of Classified Information. The Court finds  
16 that in order to protect the classified information involved in  
17 this case, no individual other than counsel for the United  
18 States, appropriately cleared Department of Justice employees,  
19 personnel of the originating agency, and the defendant's counsel  
20 named above shall be allowed to obtain access to classified  
21 documents and information unless and until that person has been  
22 granted a security clearance by the Department of Justice through  
23 the Court Security Officer, and has obtained permission of the  
24 Court. No person except counsel for the defendant, shall have  
25 access to the classified information involved in this case,  
26 unless and until that person, which includes any potential  
27 witnesses at trial, shall first have:

28 a. received from the Court Security Officer the



1 appropriate security clearance for the level of the  
2 classified information involved in this litigation; and  
3 b. signed the Memorandum of Understanding, in the form  
4 attached hereto, thereby agreeing to comply with the terms  
5 of this Protective Order.

6 14. The signed Memorandum of Understanding shall be filed  
7 with the Court. The substitution, departure, or removal for any  
8 reason from this case of counsel for the defense or anyone later  
9 cleared and associated with the defense as an employee or witness  
10 or otherwise shall not release that individual from the  
11 provisions of this Protective Order or the Memorandum of  
12 Understanding executed in connection with this Protective Order.  
13 Before any person other than counsel for the United States,  
14 appropriately cleared Department of Justice employees, and  
15 personnel of the originating agency, is permitted by the Court to  
16 inspect and review classified national security information, he  
17 or she must also sign the attached Memorandum of Understanding.

18 15. Access to Classified Information. In the interest of  
19 national security, defendant Ali is excluded from access to  
20 classified information. Counsel for the defendant named above,  
21 and any later cleared employees of counsel for the defendant, or  
22 cleared defense witnesses, shall have access to classified  
23 information only as follows:

24 a. All classified information produced by the government  
25 to the defense, in discovery or otherwise, and all classified  
26 information possessed, created, or maintained by the defense,  
27 shall be stored, maintained, and used only in the secure area  
28 established by the Court Security Officer. No classified  
information shall be maintained by the defense in any other place  
other than the secure area established by the Court Security  
Officer.

1 b. The defense shall have free access to the classified  
2 information made available to them in the secure area established  
3 by the Court Security Officer and shall be allowed to take notes  
4 and prepare documents with respect to those materials.

5 c. No person, including counsel for the defendant, shall  
6 copy or reproduce any classified information in any manner or  
7 form, except with the approval of the Court Security Officer or  
8 in accordance with the procedures established by the Court  
9 Security Officer for the operation of the secure area.

10 d. All documents prepared by the defense (including,  
11 without limitation, pleadings or other documents intended for  
12 filing with the Court) that do or may contain classified  
13 information must be prepared in a secure area on word processing  
14 equipment approved by the Court Security Officer. All such  
15 documents and associated materials (such as notes, drafts,  
16 copies, typewriter ribbons, magnetic recordings, exhibits)  
17 containing classified information shall be maintained in the  
18 secure area unless and until the Court Security Officer  
19 determines that those documents or associated materials are  
20 unclassified in their entirety. None of these materials shall be  
21 disclosed to counsel for the United States.

22 e. The defense shall discuss classified information only  
23 with other cleared persons and only within the secure area or in  
24 another area authorized by the Court Security Officer. The  
25 defense shall not discuss classified information over any  
26 standard commercial telephone instruments or office  
27 intercommunication systems, including, but not limited to, the  
28 internet, or in the presence of any person who has not been  
granted access to classified information in this case by the  
Court.

18 f. The defense shall not disclose, without prior approval  
19 of the Court, classified information to any person not authorized  
20 pursuant to this Order, except the Court, Court personnel, and  
21 the attorneys for the government, who have been identified by the  
22 Court Security Officers as having the appropriate security  
23 clearances and the need to know that information. Counsel for  
24 the United States shall be given an opportunity to be heard in  
25 response to any defense request for disclosure to a person not  
26 named in this Order. Any person approved by the Court for  
27 disclosure under this paragraph shall be required to obtain the  
28 appropriate security clearance, to sign and submit to the Court  
the Memorandum of Understanding appended to this Order, and to  
comply with all terms and conditions of this Order. If  
preparation of the defense requires that classified information  
be disclosed to persons not named in this Order, the Court  
Security Officer shall promptly seek to obtain security  
clearances for them at the request of defense counsel.

27 g. If counsel for the United States advises defense  
28 counsel that classified information or documents may not be  
disclosed to the defendant, then defense counsel, employees of

1 defense counsel, and defense witnesses shall not disclose such  
2 information or documents to the defendant without prior  
3 concurrence of counsel for the government or, absent such  
4 concurrence, prior approval of the Court. Counsel for the  
5 government shall be given an opportunity to be heard in response  
6 to any defense request for disclosure to the defendant of such  
7 classified information.

8 16. Classified Information Procedures Act. No motion has  
9 been made by the defense for the public disclosure of classified  
10 information. Procedures for the public disclosure of classified  
11 information by the defense shall be those provided in Sections 5  
12 and 6 of CIPA. The court may issue additional Protective Orders  
13 as needed.

14 17. Any unauthorized disclosure of classified information  
15 may constitute violations of United States criminal laws. In  
16 addition, any violation of the terms of this Order shall be  
17 immediately brought to the attention of the Court and may result  
18 in a charge of contempt of Court and possible referral for  
19 criminal prosecution. Any breach of this Order will also result  
20 in the termination of a person's access to classified  
21 information. Persons subject to this Order are advised that  
22 direct or in direct unauthorized disclosure, retention, or  
23 negligent handling of classified documents or information could  
24 cause serious damage, and, in some cases, exceptionally grave  
25 damage to the national security of the United States, or may be  
26 used to the advantage of a foreign nation against the interests  
27 of the United States. This Protective Order is to ensure that  
28 those authorized to receive classified information in connection  
with this case will never divulge the classified information  
disclosed to them to anyone who is not authorized to receive it,  
without prior written authorization from the originating agency

1 and in conformity with this Protective Order.

2 18. All classified documents and information to which the  
3 defense (including counsel for the defendant, and any later  
4 cleared employee of counsel for the defendant, or cleared defense  
5 witnesses) has access in this case is now and will remain the  
6 property of the United States. Defense counsel, later cleared  
7 defense counsel employees, and cleared defense witnesses shall  
8 return all classified information in their possession obtained  
9 through discovery from the government in this case, or for which  
10 they are responsible because of access to classified information,  
11 upon demand of the Court Security Officer. The notes, summaries,  
12 and other documents prepared by the defense that do or may  
13 contain classified information shall remain at all times in the  
14 custody of the Court Security Officer for the duration of this  
15 case. At the conclusion of this case, all such notes, summaries,  
16 and other documents are to be destroyed by the Court Security  
17 Officer in the presence of defense counsel.

18 19. A copy of this Protective Order shall issue forthwith  
19 to defense counsel named herein, who shall be responsible for  
20 advising the defendant, defense counsel employees, and defense  
21 witnesses of the contents of this Protective Order. Counsel for  
22 the defendant, and any other individuals who will be provided  
23 access to classified information shall execute the Memorandum of  
24 Understanding appended to this Protective Order, and defense  
25 counsel shall file executed originals with the Court and the  
26 Court Security Officer, and serve executed originals upon the  
27 government. The execution and filing of the Memorandum of  
28 Understanding are conditions precedent for counsel for the

1 defendant, or any other person assisting the defense to have  
2 access to classified information in this case.

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IT IS SO ORDERED.

**Dated:** December 30, 2007

/s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE