UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH, et al., Petitioners, v. DONALD TRUMP, President of the United States, et al., Respondents.	**~~[PROPOSED]~~ ORDER FOR THE PROTECTION OF CONFIDENTIAL INFORMATION** 17-CV-480 (CBA)

AMON, United States District Judge:

The Court has ordered Respondents to produce, by 5:00pm EST on February 23, 2017,

> a list of all individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States (i.e. putative class members) who, at any time during the period from 9:37 PM on January 28, 2017 until 11:59 PM on January 29, 2017, were being held, including being processed, by U.S. Customs and Border Protection pursuant to [Executive Order 13769].

Order at 4 (ECF No. 173).

The parties agree that such disclosure includes, or is likely to include, information that is protected from disclosure by federal statutes and regulations, including without limitation personal information covered by the Privacy Act, 5 U.S.C. § 552a, and identifying information of asylees, or prospective asylees, which are protected from disclosure under 8 C.F.R. § 208.6. *See Phillips v. Immigration & Customs Enf't*, 385 F. Supp. 2d 296, 305 (S.D.N.Y. 2005) ("[A]n asylum application contains personal information about the applicant and his family, including his personal history and political views, the release of which not only threatens the individual's

privacy, but may very well endanger his life and the safety of other family members."). Special protection from public disclosure and from use for any purpose other than prosecuting this litigation is therefore warranted.

Accordingly, the Court finds good cause to enter this Protective Order under 5 U.S.C. § 552a(b)(11) and Federal Rule of Civil Procedure 26(c)(1). It is hereby ORDERED that:

1. As used in this Order, the term "the Confidential List" constitutes any and all information and documents that are described in, and that are to be produced in response to, the Court's February 21, 2017, Order (ECF No. 173).

2. The Confidential List must not be used by Petitioners' counsel or any Permitted Persons (as defined in Paragraph 5) except in accordance with the terms of this Order.

3. Counsel and any Permitted Persons (as defined in Paragraph 5) are permitted to use the Confidential List solely for the purpose of this action and only for the benefit of the Petitioners and the putative class. Counsel and any Permitted Persons must not publish or otherwise disclose the Confidential List to the general public in any form, nor use the Confidential List for any business or commercial purpose, in connection with any other litigation, or for any purpose other than for the purpose of this action. This Order does not preclude Petitioners or Permitted Persons (as defined in Paragraph 5) from disclosing non-personal identifying aspects of the Confidential List, such as the fact that the Confidential List exists or the number of individuals on it.

4. This Order will no longer apply where an individual on the Confidential List authorizes Petitioners' counsel or their representatives to share any information subject to the Order about that individual, including but not limited to the individual's name, with the public

or any third party as deemed appropriate by Petitioners' counsel in the best interests of the individual.

5. Subject to Paragraph 3, the following categories of persons ("Permitted Persons") may be allowed to review the Confidential List:

a. Counsel. Counsel for Petitioners and Respondents—that is, not counsel for any amici or intervenors—and employees and students of such counsel who have responsibility for the action;

b. The Court and its personnel;

c. Court reporters and recorders engaged for depositions;

d. Contractors. Those persons specifically engaged by Counsel for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents.

e. Consultants and Experts. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action, including locating individuals on the list and facilitating their safe travel to the U.S. or another third country, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

f. Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary. Witnesses must not retain a copy of documents containing the Confidential List, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to depositions

that are designated as the Confidential List pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

g. Author or recipient. The author or recipient of the document (not including a person who received the document in the course of litigation);

h. Others by Consent. Other persons or categories of persons only by written consent of the producing party, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound; and

i. Other persons upon order of the Court.

6. Prior to disclosure of any the Confidential List to any Permitted Persons, counsel must inform such Permitted Persons of the terms of this Order, confirm each Permitted Persons' understanding of the terms of this Order, and require such Permitted Persons to execute a copy of the attached acknowledgement form, which includes a certification and agreement to be bound by the terms of this Order. Counsel must maintain copies of the acknowledgment forms on file, and will make such forms available: (a) to the Court at its request, and (b) to Respondents in the event of a loss or suspected loss of the Confidential List or at Respondents' request if Respondents have demonstrated good cause to believe that any individual who received the Confidential List has not adhered to the terms of this Order. No person to whom the Confidential List has been disclosed may, in turn, disclose the Confidential List other than pursuant to the terms of this Order.

7. The parties agree that all documents filed in this matter which disclose, contain, or attach the Confidential List must be filed electronically under seal via ECF. In connection

with any such documents and testimony filed by Petitioners, Petitioners' counsel must, within a reasonable period of time after filing and serving upon Respondents any such sealed document or testimony, serve upon Respondents, but not file, a proposed unsealed version of each such document with the Confidential List redacted. Respondents will either approve or oppose for filing in the public record the Petitioners' proposed unsealed version of each such document. If Respondents approve the proposed unsealed version of each such document, it will notify Petitioners' counsel of such approval in writing within seven days of the original filing of the sealed version of such document, and Petitioners' counsel will file such unsealed version electronically with all the Confidential List redacted pursuant to Respondents' approval. If Respondents fails to approve the proposed unsealed version within seven days of the filing of the sealed version of such filed document, Respondents will be deemed to have opposed such unsealed version; in such instances, the parties agree to meet and confer in good faith regarding the redactions that should be made to the unsealed, publically-accessible version of each such document. Petitioners must not file any version of a document proposed by Petitioners' counsel for public filing pursuant to this paragraph but not approved for public filing by Respondents; Petitioners retain the right to challenge before the Court any decision by Respondents not to approve a document proposed by Petitioners' counsel for public filing pursuant to this paragraph.

8. The parties further agree that at any trial of this action and in any hearing in this action before any judicial officer, subject to the Federal Rules of Evidence and any order of the Court, a party may use any the Confidential List for any purpose, provided that reasonable prior notice of such use is given to counsel for Respondents, to permit Respondents the opportunity to obtain appropriate protection from the Court, including a request to the Court that the courtroom

be cleared of any persons not subject to the Order and that the Court employees be advised as to the terms of this Order.

9. Within sixty days after the final termination of this litigation by settlement or exhaustion of all appeals, all copies of the Confidential List produced or designated must either be returned to Respondents or must be destroyed, at the option of Petitioners' counsel. In the event that Petitioners' counsel choose to destroy documents or other media containing the Confidential List, Petitioners' counsel must certify in writing to Respondents that such documents or other media have been destroyed no later than ten days after such destruction. Records certified to have been destroyed must have been disposed of by burning, pulping, shredding, or other suitable means that ensures the information in the documents or other media is definitively destroyed. Definitively destroying means the material cannot be reassembled and used. Electronic records must be definitively destroyed in a similar manner that prevents reconstruction as well. This provision applies to Petitioners, their counsel, Petitioners' counsel's employees, and consultants or expert witnesses who have access to the Confidential List during the litigation.

10. When counsel or any Permitted Person becomes aware of the possible or suspected loss of the Confidential List, he or she must provide immediate same-day notification of the incident to counsel for Respondents. Examples of incidents indicating the possible or suspected loss of the Confidential List include but are not limited to missing equipment (including laptops, and removable storage devices such as USB flash or "thumb" drives, CDs, DVDs, etc.) and paper or electronic documents potentially containing the Confidential List. The party must provide updates as they become available, but must not delay the initial report.

The party must provide complete and accurate information about the details of the possible loss. The party must include the following information:

a. Contact information;

b. A description of the loss or suspected loss (i.e., nature of loss, scope, number of files or records, type of equipment or media, etc.) including the approximate time and location;

c. What safeguards were used, where applicable (e.g., locked briefcase, password protected, encrypted, etc.);

d. Whether any external organizations (i.e. law enforcement, press) have been contacted or contacted the party;

e. Whether any other reports have been filed (i.e., local police); and

f. Any other pertinent information.

The party must limit disclosure of the fact that a loss occurred only to those who need to know.

11. For knowingly disclosing the Confidential List, an individual may be subject to appropriate sanctions.

12. This Order is without prejudice to the rights of Respondents to move to dismiss this action prior to the commencement of discovery, to move to stay discovery, and to move to preclude or limit discovery. This Order is without prejudice to the rights of Respondents to apply to the Court for a further protective order relating to the Confidential List or to make any discovery objections permitted by the Federal Rules of Civil Procedure, or any statute or other authority.

13. This Order does not waive any privileges or defenses that either Petitioners or Respondents have regarding the production of the requested information; thus, this Stipulation cannot be used as evidence of a waiver of any production objection, including but not limited to, relevance, undue burden, over breadth, ambiguity or that the information sought will not lead to the discovery of admissible evidence, or of any privilege, including but not limited to, the

attorney-client privilege, the attorney work product privilege, and the deliberative process privilege.

SO ORDERED.

Dated: February 23, 2017
Brooklyn, New York

Hon. Carol Bagley Amon
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH, et al., Petitioners, v. DONALD TRUMP, President of the United States, et al., Respondents.	Civil Action No. 17-CV-480 (CBA)

ACKNOWLEDGMENT OF UNDERSTANDING AND AGREEMENT TO BE BOUND

[The parties shall work out the language of the Acknowledgment after the government files the proposed order.]

I, _____, hereby acknowledge that I have read and understand the Order for the Protection of Confidential Information ("Order") entered in this action. I hereby agree to be bound by the terms of the Stipulation and Order. Specifically,

1. I agree that I will use records and information protected by the Order only for purposes of this litigation, including any appeals, and not for any other purpose of any kind;

2. I agree that records and information, and all copies thereof protected by the Order (including but not limited to electronic copies), may not be removed from, or reviewed outside of, a secure location, except to the extent the records and information are (a) sent to the Court for filing, (b) sent to the expert witness(es) or litigation consultant(s) retained or hired by Petitioner, or (c) returned to Respondents or Respondents' counsel;

3. I agree that records and information, and all copies thereof protected by the Order (including but not limited to electronic copies), must be returned to Petitioners' counsel within 30 days after the termination of this litigation, and I agree not to further use the records and information for any purpose. I further agree that any documents created by Petitioners, their counsel, Petitioners' counsel's employees, consultants or expert witnesses containing the Confidential List also will be returned by me to Petitioners' counsel within thirty days after the termination of the litigation. I understand that Petitioners' counsel must determine whether the documents or other media must be returned to Respondents or destroyed and that, if destroyed, Petitioners' counsel must certify in writing to Respondents' counsel that such documents or other media have been destroyed;

4. I agree that, subject to the restrictions in the Order and this Acknowledgement of Understanding and Agreement to Be Bound, I may disclose records and information protected by the Order only to the Court, the parties' attorneys of record, persons regularly in the employ of such attorneys, and any experts or consultants hired for this case by the Petitioners or their attorneys and who (except the Court) have signed an acknowledgment like this one and have a need for such information to perform duties specifically related to the conduct of this litigation;

5. Should I wish to disclose the records that are subject to the Order to any additional persons except those indicated in the Order and herein, I will first seek the Respondents' consent;

6. I agree that those portions of any filings with the Court which contain records or information protected by the Order must be filed under seal;

7. I hereby confirm that my duties under this Acknowledgment must survive the termination of this case and are binding upon me for all time; and

8. I hereby consent to the personal jurisdiction of the United States District Court for the Eastern District of New York in the above-captioned case for the purpose of enforcing the aforementioned Order.

_____
[signature]

_____
[print name]

Dated: _____