

the defendant complying with instructions from the government, compliance for which he was later *criminally charged by the same government that issued the policy he was following*, just because such secrecy would favor the government’s interests in concealing the instruction they gave this defendant prior to charging him. See *Gannett Co. v. DePasquale*. See 443 U. S. 368, 380 (1979) (“... a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.”) Indeed, maintaining a high sensitivity designation serves solely to protect the government from public scrutiny. See *In re Oliver*, 333 U.S. 257, 270 (1948) (“The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power”). The defendant is undoubtedly prejudiced if the government’s attack on his character is permitted to proceed publicly while his defense is forced into secrecy.

The same holds true for the two quotes from the Grand Jury transcript. One quote acknowledges the information in the DEA Agents Manual that is discussed above, while the other quote discusses the government’s suspicions about the defendant’s intentions on the day in question. The information sought for release has no justifiable basis on which the government should attempt to maintain secrecy. Both quotes relate directly to the defendant and do not reveal anything that is subject to any potential government interest.

More importantly, multiple Constitutional rights are implicated by maintaining protective order designation and thus secrecy over the evidence that a defendant relies upon in his defense.

First, the defendant's Sixth Amendment right to a public trial and his Fifth Amendment right to present a complete defense are implicated. See *California v. Trombetta*, 467 U.S. 479, 485 (1984). As is the right of the American people to access public cases under the First Amendment. See *Presley v. Georgia*, 130 S.Ct. 721, 724 (2010); *Waller v. Georgia*, 467 U.S. 39, 45 (1984) (“In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury”).

Section 9 of the Protective Order places the burden on the government to demonstrate a need for continued sensitivity designation when a defendant contests the designation, stating that, “the burden of demonstrating the need for a protective order remains with the government at all times.” The standard for the government's burden is “good cause,” which requires a “particularized, specific showing.” *United States v. Dixon*, 355 F. Supp. 3d 1, 4 (D.D.C. 2019). “In determining whether good cause exists, courts have considered whether (1) disclosure of the materials in question would pose a hazard to others; (2) the defendant would be prejudiced by a protective order; and (3) the public's interest in disclosure outweighs the possible harm.” *Id.* The D.C. Circuit recognizes a “strong presumption in favor of public access to judicial proceedings.” *In re Leopold to Unseal Certain Electronic Surveillance Applications and Orders*, 964 F.3d 1121, 1127 (D.C. Cir. 2020) (quoting *United States v. Hubbard*, 650 F.2d 293, 317 (D.C. Cir. 1980). The government cannot meet its burden by simply wishing to keep evidence that exculpates the defendant away from public view.

In summation, the government cannot meet its burden to maintain secrecy over the limited quotes that the defendant seeks to release. At the same time, the defendant is highly prejudiced by shielding these quotes from public view. The disclosures in question pose no

hazard to anyone. And, the public's interest favors disclosure. The government has no basis on which to overcome the strong presumption in favor of public access to evidence the defendant wishes to utilize in his defense at a public hearing.

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Respectfully submitted,
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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on June 9, 2022, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

_____/s/_____
Marina Medvin, Esq.