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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,) No. 1:17-cr-00010-TMB
)
Plaintiff,) GOVERNMENT’S RESPONSE
) TO DEFENDANT’S MOTION TO
vs.) PROHIBIT THE ACCESS AND
) DISSEMINATION OF
KENNETH MANZANARES,) PROFESSIONAL VISITS AT
) DETENTION FACILITY FILED
Defendant.) AT DKT 65
)
)

COMES NOW the United States of America, by and through undersigned counsel, hereby submits its opposition to Defendant’s Motion to Prohibit access and dissemination of professional visits at detention facility, filed at docket 65.

The defendant has filed a motion requesting that the court prohibit the government, during the pendency of this case, the visitation records, telephone calls, and correspondence related to professional/legal contacts with the defendant while incarcerated at Lemon Creek Correctional Center (LCCC) in Juneau, Alaska and prohibiting LCCC from disseminating this information to the government or to anyone else without a court order.

The defendant's motion is unnecessary and overbroad, as there are already protections in place at the detention facility preventing the dissemination of legal or other professional visits to anyone outside of the detention facility. Furthermore, the need for an order is unnecessary, as government does not have access to such information unless there is a court order. The defendant's premise, that professional visits with prisoners are available to be disseminated at will to the government is wrong. Moreover, the defendant's motion is overbroad, as it requires a prohibition for the duration of this case, which does not comport with Rule 16 nor case law regarding discovery to the government.

Counsel for the government contacted the booking supervisor for Lemon Creek Correctional Center and asked how legal and professional visits were logged at the correctional center. The LCCC booking supervisor indicated there is a visitor log for the public (family and friends of the prisoner) which the government has access to, which is logged into a computer system. For legal and professional

visits, which include medical, counselor, and other professional visits, including experts, are handwritten in an actual legal/professional logbook at the facility, which is not available to anyone outside of the institution, and dissemination of that information requires a court order to obtain access to that information. Given those protections that are already in place, the need for a specific order is completely unnecessary.

Moreover, the defendant's request to prohibit this information for the pendency of the case is not legally sound. Under the Fifth and Sixth Amendments, grant a defendant the right to testify, present witness in his own defense, cross-examine witnesses against him, often referred as a right to present a defense, but this right is not absolute, the defendant must still abide by the rules of evidence and procedure. United States v. Tapaha, 891 F.3d 900 (10th Cir. 2018). Furthermore, Criminal Rule 16 provides disclosure by the defendant a summary of the expert testimony that it intends to use at trial/sentencing or notice that the defense intends to present expert testimony on the defendant's mental condition. See Fed. R. Crim. P. 16(b)(1)(C). Additionally, the defendant is required to disclose to the government results of physical or mental examinations and scientific test or experiments pursuant to Rule 16 (b)(1)(B) if they intend to offer the information in their case-in-chief. This information is still discoverable even if the with the defendant's claims of work product, as the defendant waives work product if the

defendant intends to call a witness at trial. United States v. Nobles, 422 U.S. 225 (1975). Furthermore, if called as a witness the government has a right to information for use in the cross-examination of the expert witnesses, which would include the number of visits with the defendant, and the duration of those visits would be contained in those professional visit logs.

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Here, the government and the defense have agreed to a scheduling order requiring disclosures to each party and the times for those disclosures. The government requests that the court deny the defendant's motion, as it is unnecessary and overbroad. However, if the court is inclined to order the restriction, the government requests a standing order that upon notice of the defense expert, the government may have immediate access to the visitation records, telephone calls, and correspondence related to and any other records at LCCC related to defense expert identified as required under Fed. R. Crim. P. 16 and applicable case law.

RESPECTFULLY SUBMITTED this 28th day of June, 2018, in Juneau, Alaska.

BRYAN SCHRODER
United States Attorney

s/ Jack Schmidt
JACK S. SCHMIDT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2018, a copy of the foregoing was served electronically on:

Rich Curtner, Esq.
Jamie McGrady, Esq.
Mark A. Larranaga, Esq.

s/ Jack S. Schmidt
Office of the U.S. Attorney

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