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★ JAN 07 2010 ★

BROOKLYN OFFICE

JHK:JPL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

NOTICE OF MOTION

- against -

JOHN DOE,

Defendant.

- - - - -X

CR 10 - 0013

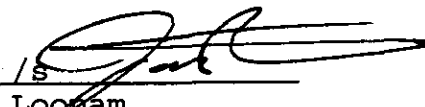
DEARIE, CH. J.
GOLD, M.J.

Please take notice that the undersigned will move this Court, before a judge to be assigned, for leave to file an information upon the defendant's waiver of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure.

Dated: Brooklyn, New York
January 7, 2010

BENTON J. CAMPBELL
United States Attorney
271 Cadman Plaza East
Brooklyn, New York 11201

By: _____


James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

①



U.S. Department of Justice

United States Attorney
Eastern District of New York

JHK:JPL
F.# 2009RO1869

271 Cadman Plaza East
Brooklyn, New York 11201

January 7, 2010

Filed Under Seal

The Honorable Raymond J. Dearie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe

Dear Judge Dearie:

Pursuant to Chief Judge Dearie's Administrative Order dated February 27, 2008 ("Administrative Order"), the government hereby certifies to the Court that the above-captioned case is properly related to United States v. Najibullah Zazi, Criminal Docket No. 09-663 (RJD). The Administrative Order provides in relevant part:

[N]otwithstanding any provision of Rule 50.3 of the Rules for the Division of Business Among District Judges, the Clerk of the Court is directed to assign all criminal cases randomly, unless the United States Attorney certifies in writing at the time of filing that a case to be assigned satisfies one of the three conditions in Rule 50.3(c), or involves the same specific conduct that is a subject of a pending case.

This letter constitutes the certification contemplated by the Administrative Order. As set forth below, relation is appropriate in this case pursuant to the Administrative Order because Amanullah Zazi's case "involves the same specific conduct that is a subject" of the Najibullah Zazi case. (Administrative Order).

On September 23, 2009, a grand jury in the Eastern District of New York returned an indictment charging Najibullah Zazi with conspiracy to use weapons of mass destruction, in

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cc: Mark DeMarco, Esq.



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JHK:JPL
F.# 2010R00017

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 7, 2010

ENCLOSURES SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government respectfully submits the enclosed motion and proposed order to close the courtroom and requests that the motion and any order entered by the Court be filed under seal. The government further writes to confirm that a hearing on the motion to close the courtroom has been scheduled for January 8, 2010 at 2:30 p.m. in Courtroom number 10A South.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

By: _____/s_____
James P. Loonam
Jeffrey H. Knox
Berit W. Berger
David Bitkower
Assistant U.S. Attorneys
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)

JHK:JPL
F.# 2010R00017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-against-

SEALED ORDER TO CLOSE COURTROOM
AND FILE DOCUMENTS UNDER SEAL

JOHN DOE,

10 CR 0013 (RJD)

Defendant.

- - - - -X

Upon consideration of the joint motion of the United States of America and the defendant AMANULLAH ZAZI, filed under seal, for an Order: to close the courtroom during the defendant's guilty plea, to use the name "John Doe" in place of the defendant's true name in the case's caption, and to seal the transcripts of that proceeding and this Order;

Having scheduled a public hearing on the motion and notified the public of the hearing by listing the date, time and location of the hearing on the public docket and the Court's public calendar; and

Having held a public hearing on the motion at which the parties and any intervenors were provided an opportunity to be heard;

Based on the submissions of the parties, the Court makes the following findings:

1. There is a substantial probability that a public

2
plea proceeding under the defendant's true name would prejudice a compelling interest of the defendant AMANULLAH ZAZI in his own safety and that of his family by placing the defendant and his family in danger;

2. There is a substantial probability that a public plea proceeding would prejudice a compelling interest of the government in the integrity of significant government activities entitled to confidentiality, including ongoing grand jury investigations of serious and violent crimes;

3. There is a substantial probability that a public plea proceeding would prejudice a compelling interest of the government in gathering information of potential importance to protect national security.

4. No reasonable alternatives to closure of the courtroom exist that can adequately protect the compelling interests that would be prejudiced by a public proceeding, identified above.

5. The prejudice to the compelling interests identified above overrides the public's and the media's qualified First Amendment right to access the plea proceedings.

Accordingly, pursuant to United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), and United States v. John Doe, 63 F.3d 121 (2d Cir. 1995),

IT IS ORDERED that the motion to close the courtroom during the defendant's guilty plea, to use the name "John Doe" in

place of the defendant's true name in the case's caption, and to³
seal the transcripts of the plea proceeding and this Order is
hereby granted;

IT IS FURTHER ORDERED that the closure of the courtroom
be tailored by requiring the government, with advance notice to
the defendant, to disclose the transcript as required by Brady v.
Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S.
150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules
of Criminal Procedure;


IT IS FURTHER ORDERED that the closure of the courtroom
be tailored by requiring the government and the defendant to move
this Court to unseal the transcript of the plea proceeding and
substitute the defendant's true name for "John Doe" in the
caption when the prejudice to the parties' interests no longer
outweighs the public's qualified right to access; and

IT IS FURTHER ORDERED that the public docket will
immediately be amended to reflect the occurrence of the hearing

on the motion to close the courtroom, the disposition of the motion and the fact of courtroom closure.

SO ORDERED.

Dated: Brooklyn, New York
January 8, 2010



THE HONORABLE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JHK:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

January 7, 2010

SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government writes to inform the Court that the parties in the above-captioned case expect the defendant Amanullah Zazi to waive indictment and plead guilty to an information charging him with aiding and abetting others in receiving military-type training from al-Qaeda, in violation of 18 U.S.C. § 2339D(a), and conspiracy to obstruct justice, in violation of 18 U.S.C. § 1512(k). Copies of the proposed information and cooperation agreement will be provided to the Court under separate cover.

For the reasons set forth below, the government respectfully moves the Court to close the courtroom for the guilty plea proceeding, seal the transcript of that proceeding, approve the use of the name "John Doe" in place of the defendant's true name in the case's caption, and seal this letter and any order the Court enters in connection with this motion. The government further respectfully requests that: (1) a hearing on this motion be scheduled; (2) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; (3) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion; and (4) the docket sheet and the Court's calendar for the dates of the hearing and the guilty plea not include the defendant's name, but rather use the caption United States v. John Doe.

Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

I. Background

In approximately September 2008, the defendant Amanullah Zazi assisted his cousin Najibullah Zazi and two other individuals in obtaining military-type training from al-Qaeda in the Waziristan region of Pakistan. Amanullah's role included meeting with two individuals in Peshawar, Pakistan for the purpose of getting Najibullah and the two other individuals into a terrorist training camp.

As set forth in the government's September 24, 2009 detention memorandum filed in United States v. Najibullah Zazi, 09-CR-663 (RJD), Najibullah Zazi and others conspired to manufacture and use explosive devices and acquired chemical components for these devices. On September 23, 2009, a grand jury in the Eastern District of New York indicted Najibullah Zazi for conspiring to use weapons of mass destruction, specifically explosive bombs, in violation of 18 U.S.C. § 2332a(a)(2). See Indictment, 09-CR-663 (RJD).

Beginning in November 2009, law enforcement agents from the Denver and New York Joint Terrorism Task Forces interviewed Amanullah Zazi on multiple occasions. During these interviews Amanullah admitted to facilitating the entrance of Najibullah Zazi and the two other individuals into an al-Qaeda training camp in the Waziristan region of Pakistan. In addition, Amanullah admitted that, together with others, he helped destroy evidence of Najibullah Zazi's bomb-making activities in Denver, Colorado, after learning that law enforcement was investigating Najibullah and others.

In December 2009, with the assistance of court-appointed counsel, Amanullah began meeting with the United States Attorney's Office. During these meetings, Amanullah admitted to his criminal conduct and agreed, in principle, to waive indictment and plead guilty to an information charging violations of 18 U.S.C. §§ 1512(k) and 2339D pursuant to a cooperation agreement.

Any public disclosure of the defendant's federal criminal case and cooperation with government authorities would undermine the significant value of the defendant's cooperation in ongoing grand jury investigations of serious and violent crimes. Specifically, revelation of the defendant's cooperation would

likely result in changes of behavior by targets of the grand jury investigation, including individuals associated with Najibullah Zazi. In addition, if the defendant's cooperation were revealed, targets of the investigation may destroy evidence which links them to the defendant or attempt to intimidate witnesses who can corroborate the defendant's information. Any such action would substantially impair ongoing grand jury investigations of serious and violent crimes.

In addition, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would endanger the defendant and his family. The defendant is cooperating against individuals who are responsible for serious and violent crimes. These individuals include persons affiliated with al-Qaeda, a designated foreign terrorist organization. A public guilty plea would place the defendant and his family at risk for violent retribution or intimidation.

Finally, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would substantially diminish the opportunity to gather valuable intelligence relating to national security. The utility of the defendant's cooperation in this regard, depends, in part, on secrecy.

II. Analysis

In United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), the Second Circuit set forth the procedures to be followed before a district court may close a proceeding. The court explained as follows:

[A] motion for courtroom closure should be docketed in the public docket files maintained in the court clerk's office. The motion itself may be filed under seal, when appropriate, by leave of court, but the publicly maintained docket entries should reflect the fact that the motion was filed, the fact that the motion and any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact of courtroom closure, whether ordered upon motion of a party or by the Court sua sponte.

*Check docket
is there any*

Entries on the docket should be made promptly, normally on the day the pertinent event occurs.

Id. at 200 (citations omitted). This letter constitutes the motion contemplated in Alcantara.

The Second Circuit in Alcantara also reiterated that "[b]efore excluding the public from [plea and sentencing] proceedings, district courts must make findings on the record demonstrating the need for the exclusion." Id. at 192. It observed that "[t]he power to close a courtroom where proceedings are being conducted during the course of a criminal prosecution . . . is one to be very seldom exercised, and even then only with the greatest caution, under urgent circumstances and for very clear and apparent reasons." Id. at 192 (quoting United States v. Cojab, 996 F.2d 1401, 1405 (2d Cir. 1993)).

The Second Circuit has identified "four steps that a district court must follow in deciding a motion for closure." United States v. John Doe, 63 F.3d 121, 128 (2d Cir. 1995). First, the district court must identify, through specific findings, whether there exists "a substantial probability of prejudice to a compelling interest of the defendant, government or third party." Id. The Circuit has provided specific, illustrative examples of such compelling interests, including the defendant's right to a fair trial, the privacy interests of the defendant, victims or other persons, "the integrity of significant government activities entitled to confidentiality, such as ongoing undercover investigations or detection devices," and danger to persons or property, id., as well as protection of the secrecy of grand jury matters and an ongoing criminal investigation. United States v. Haller, 837 F.2d 84, 87 (2d Cir. 1988) (upholding sealing portion of plea agreement to protect investigation). With respect to danger to persons, the Second Circuit has held that evidence of a direct threat, though powerful evidence of danger, is not "a strict condition precedent to a district court's granting of a closure motion." Doe, 63 F.3d at 130. Moreover, according to the Second Circuit, "[t]he problem of retaliatory acts against those producing adverse testimony is especially acute in the context of criminal organizations . . ." Id. With respect to the integrity of significant government activity, such as grand jury and criminal investigations, the Second Circuit has highlighted the concern that public proceedings and documents exposing a cooperating witness could alert "potential targets of the investigation,"

cause the witness "to be reluctant about testifying," and expose innocent subjects of the investigation to "public embarrassment." Haller, 837 F.2d at 88.

Second, where a substantial probability of prejudice is found, the district court must consider whether reasonable alternatives to closure can protect the compelling interest. Doe, 63 F.3d at 128. Third, the district court must decide whether the prejudice to the compelling interest overrides the qualified First Amendment right of access. Id. Finally, if the determination is made that closure is warranted, the Court must devise a closure order that is narrowly tailored to protect the compelling interest. Id. It should be noted that the law does not require that closure be "the least restrictive means available to protect the endangered interest." Id. (citing Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984)).

Here, as is evident from the information set forth above, a public guilty plea proceeding would result in the substantial probability of prejudice to compelling interests of the government, as well as the defendant. In particular, because the defendant is cooperating in ongoing terrorism investigations, including open grand jury investigations of individuals associated with Najibullah Zazi, a public guilty plea proceeding would prejudice a compelling interest of the government in the integrity of ongoing grand jury investigations of serious and violent crimes. In addition, because of the nature of the investigation, a public guilty plea proceeding could negatively impact national security and safety by publically revealing that the defendant is providing important intelligence information regarding the activities of terrorists in Pakistan. Moreover, because the defendant is cooperating against individuals involved in dangerous and violent crime, a public guilty plea would place the defendant's own safety at risk. As noted above, the Second Circuit has expressly identified danger to persons and property and integrity of criminal investigations as compelling interests that can warrant closure of the courtroom and sealing of transcripts. Doe, 63 F.3d at 128 (citing United States v. Raffoul, 826 F.2d 218, 226 (3d Cir. 1987)); In re Herald Co., 734 F.2d 93, 100 (2d Cir. 1984); Haller, 837 F.2d at 87. Where the investigation relates to a matter of national security, as this one does, the compelling nature of the government's interest is enhanced. Moreover, under the circumstances, the defendant has a strong interest in ensuring that cooperation that he provides is confidential and effective.

Based on the information set forth above, it is also apparent that no reasonable alternatives to closure of the courtroom exist that would adequately protect the compelling interests of the government and the defendant. The government has a compelling interest in securing the defendant's guilty plea and cooperation as soon as possible to advance ongoing grand jury investigations into serious and violent crimes. The defendant must plead guilty to the information in a courtroom.

Finally, the government submits that the prejudice to compelling interests embodied in the danger to the defendant and his family and threat to the integrity of the government's investigation far outweigh the qualified First Amendment right of the public and the media to access the plea proceedings. The government's investigation concerns matters of national security, and secrecy is necessary to enable the information provided by the defendant to be utilized within the United States and abroad, as well as to gather additional intelligence and evidence in terrorism investigations. Moreover, by ordering that the government disclose the transcript of the proceedings as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure and requiring the parties to move to unseal the transcript once the likely prejudice to their compelling interests no longer outweighs the qualified right to access, the Court can narrowly tailor the closure.

Accordingly, the government respectfully requests that, after holding a public hearing, the Court enter the proposed order, which contains findings reflecting: (a) the substantial probability that a public plea proceeding would prejudice the compelling interests identified above; (b) the lack of reasonable alternatives to courtroom closure; (c) that the prejudice to the compelling interests overrides the qualified right of the public and the media to access the plea proceedings.

III. Conclusion

The government respectfully requests that the Court file this letter under seal and hold a public hearing on the motion to close the courtroom for the guilty plea proceedings. In order to comply with Alcantara's notice requirements, the government requests that: (1) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; (2) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion;

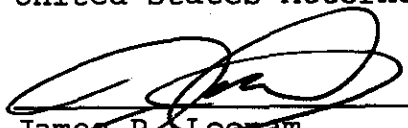
and (3) the docket sheet and the Court's calendar for the dates of the hearing and the guilty plea not include the defendant's name, but rather reflect the docket sheet entry of United States v. John Doe. Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

Counsel for the defendant, Mark DeMarco, Esq., joins in this letter and all motions and applications contained herein.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

By:



James P. Loenham
Jeffrey H. Knox
Berit W. Berger
David Bitkower
Assistant U.S. Attorneys
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)

JHK:JPL
F.# 2010R00017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

AMANULLAH ZAZI,

Defendant.

I N F O R M A T I O N

Cr. No. 10-0013 (RJD)
(T. 18, U.S.C., §§
1512(k), 2339D(a),
2339D(b)(3), 2 and 3551
et seq.)

- - - - -X

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

(Receiving Military-Type Training from
a Foreign Terrorist Organization)

In or about September 2008, within the extraterritorial jurisdiction of the United States, the defendant AMANULLAH ZAZI did knowingly and intentionally aid and abet others in receiving military-type training, as defined in 18 U.S.C. § 2339D(c)(1), from and on behalf of a foreign terrorist organization, to wit: Al Qaeda, which has been designated by the Secretary of State as a foreign terrorist organization since October 1999, pursuant to Section 219(a)(1) of the Immigration and Nationality Act.

(Title 18, United States Code, Sections 2339D(a),
2339D(b)(3), 2 and 3551 et seq.)

COUNT TWO

(Conspiracy to Obstruct Justice)

In or about September 2009, within the Eastern District of New York, the District of Colorado and elsewhere, the defendant AMANULLAH ZAZI, together with others, did knowingly and

intentionally conspire to corruptly alter, destroy, mutilate and conceal objects, to wit: glasses, masks, liquid chemicals and containers, with the intent to impair the objects' integrity and availability for use in an official proceeding, to wit: a federal grand jury investigation into federal crimes of terrorism, and otherwise obstruct, influence and impede that proceeding, in violation of Title 18, United States Code, Section 1512(c).

(Title 18, United States Code, Sections 1512(k) and 3551 et seq.)



BENJAMIN J. CAMPBELL
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of ____, 19__, at 10:30 o'clock in the forenoon.

Dated: Brooklyn New York, _____, 19__

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the ____ day of _____, in the office of the Clerk of the Eastern District of New York,

Dated: Brooklyn, New York _____, 19__

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

Criminal Action No. CR-10-0013 (RJD)

UNITED STATES DISTRICT COURT
Eastern District of New York

United States of America

—Against—

Amanullah Zazi

INFORMATION

Benton J. Campbell

United States Attorney,
Attorney for EDNY
Office and Post Office Address,
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
is hereby admitted.

Dated: _____, 19__

Attorney for _____

AUSA Marshall Miller (718)254-6421



U.S. Department of Justice

United States Attorney
Eastern District of New York

DMB:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

December 13, 2010

SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government respectfully requests that the Court revoke the defendant's pre-trial release pending his acceptance into the witness protection program. By way of background, the defendant pleaded guilty pursuant to a cooperation agreement before Your Honor in a sealed courtroom on January 8, 2010, to an information that charged him with aiding and abetting Najibullah Zazi and others in receiving military-type training from al-Qaeda, in violation of 18 U.S.C. § 2339D(a), and conspiring to obstruct justice, in violation of 18 U.S.C. § 1512(k). At the time of his guilty plea, Your Honor released the defendant on his own recognizance subject to GPS monitoring and supervision by the Federal Bureau of Investigation ("FBI") and pre-trial services, among other conditions.

On Friday, December 10, 2010, the FBI was required to move the defendant from the FBI-sponsored residence he had been staying at, out of concerns for the defendant's safety and to accommodate demands made by the property management company to evict the defendant from the property based on the defendant's violations of the management company's rules. On such short notice, the FBI was unable to locate an alternate living arrangement for the defendant that would allow pre-trial services to monitor the defendant in a way that was consistent with Your Honor's order dated January 8, 2010. As a result, the FBI transported the defendant to the Metropolitan Detention Center ("MDC") where he is currently housed.

12/13/10
Bail revoked w/o
prejudice to further
application.
So ordered
[Signature]

The defendant's application to the witness protection program is complete, pending a resolution of his immigration status by Immigration and Customs Enforcement ("ICE"). The government anticipates that the defendant's immigration status will be resolved by ICE shortly. The government requests that Your Honor revoke the terms of the defendant's pre-trial release so that the defendant may be housed at the MDC until he is admitted into the witness protection program. The government also requests that the Court set this matter down for a status conference in approximately one week.

Counsel for the defendant, Mark DeMarco, Esq., does not object to this request. Because disclosure of the defendant's cooperation with the government could jeopardize his safety, the government requests to file this letter under seal.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: 

James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

cc: Mark DeMarco, Esq.



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMB:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

January 20, 2010

ENCLOSURES SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Chief Judge Dearie:

The government respectfully submits the enclosed motion and proposed order to close the courtroom and requests that the motion and any order entered by the Court be filed under seal. The government further writes to confirm that a hearing on the motion to close the courtroom has been scheduled for January 21, 2011 at 11:00 a.m. in Courtroom number 10A South.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: _____/s_____
James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)



U.S. Department of Justice

United States Attorney
Eastern District of New York

DMB:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

January 19, 2011

SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government writes to inform the Court that the parties in the above-captioned case expect the defendant Amanullah Zazi to enter a plea statement in support of a judicial order of removal at the status conference which is scheduled for Friday, January 21, 2011. Copies of the defendant's written plea statement, the factual allegations in support of judicial removal, and the proposed order for judicial removal are enclosed herein.

For the reasons set forth below, the government respectfully moves the Court to close the courtroom for the status conference, seal the transcript of that proceeding, and seal this letter and any order the Court enters in connection with this motion. The government further respectfully requests that: (1) a hearing on this motion be scheduled; (2) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; and (3) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion. Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

I. Background

On January 8, 2010, the defendant Amanullah Zazi waived indictment and pleaded guilty, pursuant to a cooperation agreement, to an information that charged him with aiding and abetting others in the receipt of military-type training from a designated foreign terrorist organization, to wit: al-Qaeda, and conspiracy to obstruct justice in a terrorism investigation, in violation of 18 U.S.C. §§ 2339D and 1512(k) respectively. At that guilty plea proceeding, the Court entered an order which closed the courtroom to the public, sealed the transcript of the proceeding, and changed the caption of the case to United States v. John Doe. All court filings and transcripts in this case, except public notices of courtroom closure proceedings, remain sealed.

The defendant has admitted to facilitating the entry of Najibullah Zazi, Zarein Ahmedzay and Adis Medunjanin into an al-Qaeda training camp in the Waziristan region of Pakistan in September 2008. The defendant has also admitted that he helped destroy evidence of Najibullah Zazi's bomb-making activities in Denver, Colorado, after learning that FBI agents were investigating Zazi's activities. In addition, the defendant has provided the government with information concerning individuals who remain the subject of ongoing criminal and intelligence investigations.

The defendant has petitioned to enter the United States Marshals Service ("USMS") Witness Security Program. The USMS will not accept the defendant into the program until his immigration status is resolved. The defendant obtained entry into the United States in April 2009 under fraudulent pretenses by claiming to be the biological child of Mohammad Wali Zazi (a naturalized U.S. citizen) when in fact, he was not. To resolve the defendant's status, the government requests that the Court enter the proposed Judicial Order of Removal, which will take effect after the defendant completes any term of incarceration imposed by the Court at sentencing. Immigration and Customs Enforcement concurs with this request.

Any public disclosure of the defendant's federal criminal case and cooperation with government authorities would undermine the significant value of the defendant's cooperation in ongoing grand jury investigations of serious and violent crimes. Specifically, revelation of the defendant's cooperation would likely result in changes of behavior by targets of criminal and intelligence investigations, including individuals associated with Najibullah Zazi, Zarein Ahmedzay and Adis Medunjanin. In

addition, if the defendant's cooperation were revealed, targets of the investigation may destroy evidence which links them to the defendant or attempt to intimidate witnesses who can corroborate the defendant's information. Any such action would substantially impair ongoing grand jury investigations of serious and violent crimes.

In addition, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would endanger the defendant and his family, much of which is located in Pakistan, including the defendant's father and mother. The defendant is cooperating against individuals who are responsible for serious and violent crimes. These individuals include persons affiliated with al-Qaeda, a designated foreign terrorist organization. A public proceeding would place the defendant and his family at risk for violent retribution or intimidation. Likewise, a public proceeding would potentially vitiate much of the benefit the defendant will incur from entry into the witness security program.

Finally, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would substantially diminish the opportunity to gather valuable intelligence relating to national security. The utility of the defendant's cooperation in this regard, depends, in part, on secrecy.

II. Analysis

In United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), the Second Circuit set forth the procedures to be followed before a district court may close a proceeding. The court explained as follows:

[A] motion for courtroom closure should be docketed in the public docket files maintained in the court clerk's office. The motion itself may be filed under seal, when appropriate, by leave of court, but the publicly maintained docket entries should reflect the fact that the motion was filed, the fact that the motion and any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact of courtroom closure, whether ordered upon motion of a party or by the Court sua sponte.

Entries on the docket should be made promptly, normally on the day the pertinent event occurs.

Id. at 200 (citations omitted). This letter constitutes the motion contemplated in Alcantara.

The Second Circuit in Alcantara also reiterated that "[b]efore excluding the public from [plea and sentencing] proceedings, district courts must make findings on the record demonstrating the need for the exclusion." Id. at 192. It observed that "[t]he power to close a courtroom where proceedings are being conducted during the course of a criminal prosecution . . . is one to be very seldom exercised, and even then only with the greatest caution, under urgent circumstances and for very clear and apparent reasons." Id. at 192 (quoting United States v. Cojab, 996 F.2d 1401, 1405 (2d Cir. 1993)).

The Second Circuit has identified "four steps that a district court must follow in deciding a motion for closure." United States v. John Doe, 63 F.3d 121, 128 (2d Cir. 1995). First, the district court must identify, through specific findings, whether there exists "a substantial probability of prejudice to a compelling interest of the defendant, government or third party." Id. The Circuit has provided specific, illustrative examples of such compelling interests, including the defendant's right to a fair trial, the privacy interests of the defendant, victims or other persons, "the integrity of significant government activities entitled to confidentiality, such as ongoing undercover investigations or detection devices," and danger to persons or property, id., as well as protection of the secrecy of grand jury matters and an ongoing criminal investigation. United States v. Haller, 837 F.2d 84, 87 (2d Cir. 1988) (upholding sealing portion of plea agreement to protect investigation). With respect to danger to persons, the Second Circuit has held that evidence of a direct threat, though powerful evidence of danger, is not "a strict condition precedent to a district court's granting of a closure motion." Doe, 63 F.3d at 130. Moreover, according to the Second Circuit, "[t]he problem of retaliatory acts against those producing adverse testimony is especially acute in the context of criminal organizations . . ." Id. With respect to the integrity of significant government activity, such as grand jury and criminal investigations, the Second Circuit has highlighted the concern that public proceedings and documents exposing a cooperating witness could alert "potential targets of the investigation,"

cause the witness "to be reluctant about testifying," and expose innocent subjects of the investigation to "public embarrassment." Haller, 837 F.2d at 88.

Second, where a substantial probability of prejudice is found, the district court must consider whether reasonable alternatives to closure can protect the compelling interest. Doe, 63 F.3d at 128. Third, the district court must decide whether the prejudice to the compelling interest overrides the qualified First Amendment right of access. Id. Finally, if the determination is made that closure is warranted, the Court must devise a closure order that is narrowly tailored to protect the compelling interest. Id. It should be noted that the law does not require that closure be "the least restrictive means available to protect the endangered interest." Id. (citing Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984)).

Here, as is evident from the information set forth above, a public proceeding would result in the substantial probability of prejudice to compelling interests of the government, as well as the defendant. In particular, because the defendant is cooperating in ongoing terrorism investigations, a public proceeding would prejudice a compelling interest of the government in the integrity of ongoing grand jury investigations of serious and violent crimes. In addition, because of the nature of the investigation, a public proceeding could negatively impact national security and safety by publically revealing that the defendant is providing important intelligence information regarding the activities of terrorists and terrorist facilitators in Pakistan. Moreover, because the defendant is cooperating against individuals involved in dangerous and violent crime, a public proceeding would place the defendant's own safety and the safety of his family at risk. As noted above, the Second Circuit has expressly identified danger to persons and property and integrity of criminal investigations as compelling interests that can warrant closure of the courtroom and sealing of transcripts. Doe, 63 F.3d at 128 (citing United States v. Raffoul, 826 F.2d 218, 226 (3d Cir. 1987)); In re Herald Co., 734 F.2d 93, 100 (2d Cir. 1984); Haller, 837 F.2d at 87. Where the investigation relates to a matter of national security, as this one does, the compelling nature of the government's interest is enhanced. Moreover, under the circumstances, the defendant has a strong interest in ensuring that cooperation that he provides is confidential and effective.

Based on the information set forth above, it is also apparent that no reasonable alternatives to closure of the courtroom exist that would adequately protect the compelling interests of the government and the defendant. The government has a compelling interest in securing the defendant's plea statement to resolve his immigration status and as soon as possible to advance the defendant's application to enter the witness security program. The defendant must enter his plea statement before a judge in a courtroom.

Finally, the government submits that the prejudice to compelling interests embodied in the danger to the defendant and his family and threat to the integrity of the government's investigation far outweigh the qualified First Amendment right of the public and the media to access the proceedings. The government's investigation concerns matters of national security, and secrecy is necessary to enable the information provided by the defendant to be utilized within the United States and abroad, as well as to gather additional intelligence and evidence in terrorism investigations. Moreover, by ordering that the government disclose the transcript of the proceedings as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure and requiring the parties to move to unseal the transcript once the likely prejudice to their compelling interests no longer outweighs the qualified right to access, the Court can narrowly tailor the closure.

Accordingly, the government respectfully requests that, after holding a public hearing, the Court enter the proposed order, which contains findings reflecting: (a) the substantial probability that a public proceeding would prejudice the compelling interests identified above; (b) the lack of reasonable alternatives to courtroom closure; (c) that the prejudice to the compelling interests overrides the qualified right of the public and the media to access the proceedings.

III. Conclusion

The government respectfully requests that the Court file this letter under seal and hold a public hearing on the motion to close the courtroom for the status conference. In order to comply with Alcantara's notice requirements, the government requests that: (1) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; (2) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed,

as well as the date, time and place of the hearing on the motion; and (3) the docket sheet and the Court's calendar for the dates of the hearing and the status conference not include the defendant's name, but rather reflect the docket sheet entry of United States v. John Doe. Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

Counsel for the defendant, Mark DeMarco, Esq., joins in this letter and all motions and applications contained herein.

Respectfully submitted,

LORRETTA E. LYNCH
United States Attorney

By: 

James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)

BEFORE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE

CRIMINAL CAUSE FOR STATUS CONFERENCE

JANUARY 21, 2011 FROM 12:00PM TO 12:20PM

DOCKET NUMBER: CR 10-13 (RJD)

U.S.A. -v- JOHN DOE (IN CUSTODY)
COUNSEL: MARK DEMARCO (CJA)

AUSA: JAMES LOONAM

COURT REPORTER: BURT SULZAR

X CASE CALLED FOR STATUS CONFERENCE, RE:
GOVERNMENT MOTION TO SEAL COURTROOM.
FOR THE REASONS RECITED ON THE RECORD, THE COURT
APPROVES THE GOVERNMENT MOTION. COURTROOM SEALED.

DMB:JPL
F.# 2010R00017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-against-

SEALED ORDER FOR JUDICIAL
REMOVAL

JOHN DOE,

10 CR 0013 (RJD)

Defendant.

- - - - -X

Upon consideration of the joint motion of the United States of America and the defendant AMANULLAH ZAZI, filed under seal, for an Order for Judicial Removal; upon the Factual Allegations in Support of Judicial Removal, the Plea Statement in Support of Judicial Removal, and upon all prior proceedings and submissions in this matter the Court finds:

1. The defendant is not a citizen or national of the United States.
2. The defendant is a native and citizen of Afghanistan.
3. The defendant was admitted to the United States on or about April 16, 2009 as an immediate relative beneficiary - "IR2" - child of naturalized U.S. citizen Mohammed Wali Zazi.
4. The defendant is not the child of Mohammed Wali Zazi.

5. At the time of sentencing in this case, the defendant will be convicted in this Court of aiding and abetting others in the receipt of military-type training from a designated foreign terrorist organization, to wit: al-Qaeda, in violation of 18 U.S.C. § 2339D(a); and of conspiracy to obstruct justice in a federal terrorism investigation, in violation of 18 U.S.C. § 1512(k).

6. A sentence of 10 years' imprisonment may be imposed for a violation 18 U.S.C. § 2339D(a), and a maximum sentence of 20 years' imprisonment may be imposed for a violation 18 U.S.C. § 1512(k).

7. The defendant is subject to removal under section 237(a)(1)(A) of the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1227(a)(1)(A), as an alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: pursuant to section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the INA, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document was required under the regulations issued by the Attorney General under INA section 211(a), 8 U.S.C. § 1181(a).

8. The defendant has waived his right to notice and a ³
hearing under section 238(c) of the INA, 8 U.S.C. § 1228(c).


9. The defendant has waived the opportunity to pursue
any and all forms of relief and protection from removal.

10. The defendant has designated Afghanistan as the
country for removal pursuant to section 240(d) of the INA, 8
U.S.C. § 1229a(d).

WHEREFORE, IT IS HEREBY ORDERED, pursuant to section
238(c) of the INA, 8 U.S.C. § 1228(c), that promptly upon his
sentencing, an order of removal from the United States to
Afghanistan is entered against the defendant.

SO ORDERED.

Dated: Brooklyn, New York
January 21, 2011


THE HONORABLE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

DMB:JPL
F.# 2010R00017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-against-

JOHN DOE,

Defendant.

SEALED ORDER TO CLOSE COURTROOM
AND FILE DOCUMENTS UNDER SEAL

10 CR 0013 (RJD)

- - - - -X

Upon consideration of the joint motion of the United States of America and the defendant AMANULLAH ZAZI, filed under seal, for an Order: to close the courtroom during the status conference scheduled for Friday, January 21, 2011, and to seal the transcripts of that proceeding and this Order;

Having scheduled a public hearing on the motion and notified the public of the hearing by listing the date, time and location of the hearing on the public docket and the Court's public calendar; and

Having held a public hearing on the motion at which the parties and any intervenors were provided an opportunity to be heard;

Based on the submissions of the parties, the Court makes the following findings:

1. There is a substantial probability that a public proceeding would prejudice a compelling interest of the defendant

AMANULLAH ZAZI in his own safety and that of his family by placing the defendant and his family in danger;

2. There is a substantial probability that a public proceeding would prejudice a compelling interest of the government in the integrity of significant government activities entitled to confidentiality, including ongoing grand jury investigations of serious and violent crimes;

3. There is a substantial probability that a public proceeding would prejudice a compelling interest of the government in gathering information of potential importance to protect national security.

4. No reasonable alternatives to closure of the courtroom exist that can adequately protect the compelling interests that would be prejudiced by a public proceeding, identified above.

5. The prejudice to the compelling interests identified above overrides the public's and the media's qualified First Amendment right to access the proceedings.

Accordingly, pursuant to United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), and United States v. John Doe, 63 F.3d 121 (2d Cir. 1995),

IT IS ORDERED that the motion to close the courtroom during the status conference scheduled for Friday, January 21, 2011, and to seal the transcripts of the proceeding and this Order is hereby granted;

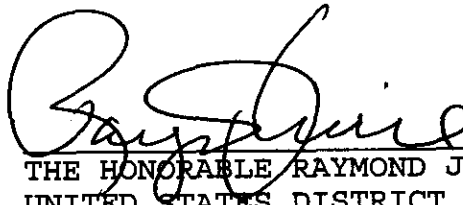
IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government, with advance notice to the defendant, to disclose the transcript as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure;

IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government and the defendant to move this Court to unseal the transcript of the proceeding when the prejudice to the parties' interests no longer outweighs the public's qualified right to access; and

IT IS FURTHER ORDERED that the public docket will immediately be amended to reflect the occurrence of the hearing on the motion to close the courtroom, the disposition of the motion and the fact of courtroom closure.

SO ORDERED.

Dated: Brooklyn, New York
January 21, 2011



THE HONORABLE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMB:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

April 18, 2011

ENCLOSURES SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government respectfully submits the enclosed motion and proposed order to close the courtroom and requests that the motion and any order entered by the Court be filed under seal for the reasons set forth therein. The government further writes to confirm that a hearing on the motion to close the courtroom has been scheduled for April 19, 2011 at 10:00 a.m. in courtroom number 10A south.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: _____/s_____
James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)



U.S. Department of Justice

United States Attorney
Eastern District of New York

DMB:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

April 18, 2011

SUBMITTED UNDER SEAL

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD)

Dear Judge Dearie:

The government writes to inform the Court that the United States Marshals Service ("USMS") has notified the Office that it has accepted the defendant Amanullah Zazi into the witness security program (the "program") and is prepared to take custody of the defendant and move him into the program on April 19, 2011. The parties will appear before Your Honor on April 19, 2011 at 10:00 a.m. to request the defendant's release on his own recognizance, with the condition that he abide by the terms of the program.

For the reasons set forth below, the government respectfully moves the Court to close the courtroom for the scheduled appearance, seal the transcript of that proceeding, and seal this letter and any order the Court enters in connection with this motion. The government further respectfully requests that: (1) a hearing on this motion be scheduled; (2) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; and (3) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion. Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

I. Background

On January 8, 2010, the defendant Amanullah Zazi waived indictment and pleaded guilty, pursuant to a cooperation agreement, to an information that charged him with aiding and abetting others in the receipt of military-type training from a designated foreign terrorist organization, to wit: al-Qaeda, and conspiracy to obstruct justice in a terrorism investigation, in violation of 18 U.S.C. §§ 2339D and 1512(k) respectively. At that guilty plea proceeding, the Court entered an order which closed the courtroom to the public, sealed the transcript of the proceeding, and changed the caption of the case to United States v. John Doe. All court filings and transcripts in this case, except public notices of courtroom closure proceedings, remain sealed.

The defendant has admitted to facilitating the entry of Najibullah Zazi, Zarein Ahmedzay and Adis Medunjanin into an al-Qaeda training camp in the Waziristan region of Pakistan in September 2008. The defendant has also admitted that he helped destroy evidence of Najibullah Zazi's bomb-making activities in Denver, Colorado, after learning that FBI agents were investigating Zazi's activities. In addition, the defendant has provided the government with information concerning individuals who remain the subject of ongoing criminal and intelligence investigations.

On January 21, 2011, the defendant appeared before Your Honor to resolve his immigration status, which was a prerequisite to being accepted into the program.¹ At that appearance, the Court entered an order which closed the courtroom to the public and sealed the transcript of the proceeding. The government requests that the Court enter a similar order now that the defendant is about to enter the program.

Any public disclosure of the defendant's federal criminal case and cooperation with government authorities would undermine the significant value of the defendant's cooperation in ongoing grand jury investigations of serious and violent crimes. Specifically, revelation of the defendant's cooperation would likely result in changes of behavior by targets of criminal and intelligence investigations, including individuals associated with Najibullah Zazi, Zarein Ahmedzay and Adis Medunjanin. In

¹ The Court entered an Order of Judicial Removal which takes effect upon the defendant's sentencing.

addition, if the defendant's cooperation were revealed, targets of the investigation may destroy evidence which links them to the defendant or attempt to intimidate witnesses who can corroborate the defendant's information. Any such action would substantially impair ongoing grand jury investigations of serious and violent crimes.

In addition, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would endanger the defendant and his family, much of which is located in Pakistan, including the defendant's father and mother. The defendant is cooperating against individuals who are responsible for serious and violent crimes. These individuals include persons affiliated with al-Qaeda, a designated foreign terrorist organization. A public proceeding would place the defendant and his family at risk for violent retribution or intimidation. Likewise, a public proceeding would potentially vitiate much of the benefit the defendant will incur from entry into the witness security program.

Finally, any public disclosure of the defendant's federal criminal case and cooperation with government authorities would substantially diminish the opportunity to gather valuable intelligence relating to national security. The utility of the defendant's cooperation in this regard, depends, in part, on secrecy.

II. Analysis

In United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), the Second Circuit set forth the procedures to be followed before a district court may close a proceeding. The court explained as follows:

[A] motion for courtroom closure should be docketed in the public docket files maintained in the court clerk's office. The motion itself may be filed under seal, when appropriate, by leave of court, but the publicly maintained docket entries should reflect the fact that the motion was filed, the fact that the motion and any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact of courtroom closure, whether ordered upon motion of a party or by the Court sua sponte.

Entries on the docket should be made promptly, normally on the day the pertinent event occurs.

Id. at 200 (citations omitted). This letter constitutes the motion contemplated in Alcantara.

The Second Circuit in Alcantara also reiterated that "[b]efore excluding the public from [plea and sentencing] proceedings, district courts must make findings on the record demonstrating the need for the exclusion." Id. at 192. It observed that "[t]he power to close a courtroom where proceedings are being conducted during the course of a criminal prosecution . . . is one to be very seldom exercised, and even then only with the greatest caution, under urgent circumstances and for very clear and apparent reasons." Id. at 192 (quoting United States v. Cojab, 996 F.2d 1401, 1405 (2d Cir. 1993)).

The Second Circuit has identified "four steps that a district court must follow in deciding a motion for closure." United States v. John Doe, 63 F.3d 121, 128 (2d Cir. 1995). First, the district court must identify, through specific findings, whether there exists "a substantial probability of prejudice to a compelling interest of the defendant, government or third party." Id. The Circuit has provided specific, illustrative examples of such compelling interests, including the defendant's right to a fair trial, the privacy interests of the defendant, victims or other persons, "the integrity of significant government activities entitled to confidentiality, such as ongoing undercover investigations or detection devices," and danger to persons or property, id., as well as protection of the secrecy of grand jury matters and an ongoing criminal investigation. United States v. Haller, 837 F.2d 84, 87 (2d Cir. 1988) (upholding sealing portion of plea agreement to protect investigation). With respect to danger to persons, the Second Circuit has held that evidence of a direct threat, though powerful evidence of danger, is not "a strict condition precedent to a district court's granting of a closure motion." Doe, 63 F.3d at 130. Moreover, according to the Second Circuit, "[t]he problem of retaliatory acts against those producing adverse testimony is especially acute in the context of criminal organizations . . ." Id. With respect to the integrity of significant government activity, such as grand jury and criminal investigations, the Second Circuit has highlighted the concern that public proceedings and documents exposing a cooperating witness could alert "potential targets of the investigation,"

cause the witness "to be reluctant about testifying," and expose innocent subjects of the investigation to "public embarrassment." Haller, 837 F.2d at 88.

Second, where a substantial probability of prejudice is found, the district court must consider whether reasonable alternatives to closure can protect the compelling interest. Doe, 63 F.3d at 128. Third, the district court must decide whether the prejudice to the compelling interest overrides the qualified First Amendment right of access. Id. Finally, if the determination is made that closure is warranted, the Court must devise a closure order that is narrowly tailored to protect the compelling interest. Id. It should be noted that the law does not require that closure be "the least restrictive means available to protect the endangered interest." Id. (citing Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984)).

Here, as is evident from the information set forth above, a public proceeding would result in the substantial probability of prejudice to compelling interests of the government, as well as the defendant. In particular, because the defendant is cooperating in ongoing terrorism investigations, a public proceeding would prejudice a compelling interest of the government in the integrity of ongoing grand jury investigations of serious and violent crimes. In addition, because of the nature of the investigation, a public proceeding could negatively impact national security and safety by publically revealing that the defendant is providing important intelligence information regarding the activities of terrorists and terrorist facilitators in Pakistan. Moreover, because the defendant is cooperating against individuals involved in dangerous and violent crime, a public proceeding would place the defendant's own safety and the safety of his family at risk. As noted above, the Second Circuit has expressly identified danger to persons and property and integrity of criminal investigations as compelling interests that can warrant closure of the courtroom and sealing of transcripts. Doe, 63 F.3d at 128 (citing United States v. Raffoul, 826 F.2d 218, 226 (3d Cir. 1987)); In re Herald Co., 734 F.2d 93, 100 (2d Cir. 1984); Haller, 837 F.2d at 87. Where the investigation relates to a matter of national security, as this one does, the compelling nature of the government's interest is enhanced. Moreover, under the circumstances, the defendant has a strong interest in ensuring that cooperation that he provides is confidential and effective.

Based on the information set forth above, it is also apparent that no reasonable alternatives to closure of the courtroom exist that would adequately protect the compelling interests of the government and the defendant. The parties have a compelling interest in securing the defendant's release as soon as possible so that he may enter the witness security program. The defendant must appear before a judge in a courtroom to be released from custody.

Finally, the government submits that the prejudice to compelling interests embodied in the danger to the defendant and his family and threat to the integrity of the government's investigation far outweigh the qualified First Amendment right of the public and the media to access the proceedings. The government's investigation concerns matters of national security, and secrecy is necessary to enable the information provided by the defendant to be utilized within the United States and abroad, as well as to gather additional intelligence and evidence in terrorism investigations. Moreover, by ordering that the government disclose the transcript of the proceedings as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure and requiring the parties to move to unseal the transcript once the likely prejudice to their compelling interests no longer outweighs the qualified right to access, the Court can narrowly tailor the closure.

Accordingly, the government respectfully requests that, after holding a public hearing, the Court enter the proposed order, which contains findings reflecting: (a) the substantial probability that a public proceeding would prejudice the compelling interests identified above; (b) the lack of reasonable alternatives to courtroom closure; (c) that the prejudice to the compelling interests overrides the qualified right of the public and the media to access the proceedings.

III. Conclusion

The government respectfully requests that the Court file this letter under seal and hold a public hearing on the motion to close the courtroom for the status conference. In order to comply with Alcantara's notice requirements, the government requests that: (1) the Court's public calendar for the date of the hearing reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; (2) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion;

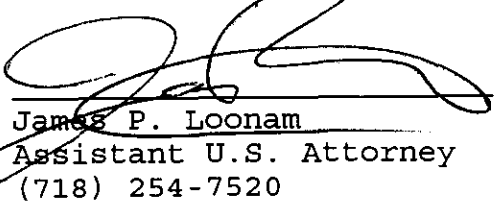
and (3) the docket sheet and the Court's calendar for the dates of the hearing and the status conference not include the defendant's name, but rather reflect the docket sheet entry of United States v. John Doe. Finally, the government respectfully requests that, after holding a public hearing, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

Counsel for the defendant, Mark DeMarco, Esq., joins in this letter and all motions and applications contained herein.

Respectfully submitted,

LORRETTA E. LYNCH
United States Attorney

By:



James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

Encl.

cc: Mark DeMarco, Esq. (w/ encl.)

DMB:JPL
F.# 2010R00017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-against-

SEALED ORDER TO CLOSE COURTROOM
AND FILE DOCUMENTS UNDER SEAL

JOHN DOE,

10 CR 0013 (RJD)

Defendant.

- - - - -X

Upon consideration of the joint motion of the United States of America and the defendant AMANULLAH ZAZI, filed under seal, for an Order: to close the courtroom during the appearance scheduled for Tuesday, April 19, 2011, and to seal the transcripts of that proceeding and this Order;

Having scheduled a public hearing on the motion and notified the public of the hearing by listing the date, time and location of the hearing on the public docket and the Court's public calendar; and

Having held a public hearing on the motion at which the parties and any intervenors were provided an opportunity to be heard;

Based on the submissions of the parties, the Court makes the following findings:

1. There is a substantial probability that a public proceeding would prejudice a compelling interest of the defendant

AMANULLAH ZAZI in his own safety and that of his family by placing the defendant and his family in danger;

2. There is a substantial probability that a public proceeding would prejudice a compelling interest of the government in the integrity of significant government activities entitled to confidentiality, including ongoing grand jury investigations of serious and violent crimes;

3. There is a substantial probability that a public proceeding would prejudice a compelling interest of the government in gathering information of potential importance to protect national security.

4. No reasonable alternatives to closure of the courtroom exist that can adequately protect the compelling interests that would be prejudiced by a public proceeding, identified above.

5. The prejudice to the compelling interests identified above overrides the public's and the media's qualified First Amendment right to access the proceedings.

Accordingly, pursuant to United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), and United States v. John Doe, 63 F.3d 121 (2d Cir. 1995),

IT IS ORDERED that the motion to close the courtroom during the appearance scheduled for Tuesday, April 19, 2011, and to seal the transcripts of the proceeding and this Order is hereby granted;

IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government, with advance notice to the defendant, to disclose the transcript as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure;

IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government and the defendant to move this Court to unseal the transcript of the proceeding when the prejudice to the parties' interests no longer outweighs the public's qualified right to access; and

IT IS FURTHER ORDERED that the public docket will immediately be amended to reflect the occurrence of the hearing on the motion to close the courtroom, the disposition of the motion and the fact of courtroom closure.

SO ORDERED.

Dated: Brooklyn, New York
April 19, 2011

/

s/ Judge Raymond J. Dearie

THE HONORABLE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

BEFORE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE

CRIMINAL CAUSE FOR MOTION TO SEAL COURTROOM & STATUS CONFERENCE

APRIL 19, 2011 FROM 10:20AM TO 10:30AM

DOCKET NUMBER: CR 10-13(RJD)

U.S.A. -v- JOHN DOE (IN CUSTODY)
COUNSEL: MARK DEMARCO (CJA)

AUSA: JAMES LOONAM

COURT REPORTER: ANTHONY FRISOLONE

X CASE CALLED FOR JOINT MOTION TO SEAL COURTROOM.
FOR THE REASONS RECITED ON THE RECORD, COURT GRANTS MOTION.
ORDER SIGNED.
DAILY CALENDAR IS MARKED AS COURT EXHIBIT "1".
CLERK OF THE COURT IS DIRECTED TO SEAL THE COURTROOM.
COURTROOM SEALED.
STATUS CONFERENCE HELD.

COURT EXHIBIT

United States District Court
Eastern District of New York
Senior Judge DEARIE , RAYMOND
Tuesday, April 19, 2011
Courtroom 10A S

09:30 AM

Criminal Cause for Suppression Hearing

10cr00708

USA V. SOLER ET AL

Def. 1 - WILLIAM SOLER

In Custody

(Continuation of Suppression Hearing)

Def. 2 - SAMI WATERS

In Custody

*

10:00 AM

Criminal Cause for Motion

10cr00013

USA V. JOHN DOE

Def. - JOHN DOE

In Custody

(MOTION TO SEAL COURTROOM)

(STATUS CONFERENCE)

*



U.S. Department of Justice

United States Attorney
Eastern District of New York

JHK:JPL
F.# 2010R00017

271 Cadman Plaza East
Brooklyn, New York 11201

February 5, 2010

UNDER SEAL

The Honorable Steven M. Gold
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Doe
Criminal Docket No. 10 CR 0013 (RJD) (SMG)

Dear Judge Gold:

The government respectfully requests that the Court modify the conditions of pre-trial release for the cooperating defendant in the above-captioned sealed case. At present, the defendant's travel is restricted to the District of New Jersey as directed by the Federal Bureau of Investigation ("FBI"). The government requests that the Court strike this condition and add a new travel restriction which limits the defendant's travel to Suffolk County, as directed by the FBI. The defense and pre-trial services are aware of this request and have no objection.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

By: _____/s
James P. Loonam
Assistant U.S. Attorney
(718) 254-7520

cc: Mark DeMarco, Esq.

[Handwritten signature of James P. Loonam]
[Handwritten signature of Mark DeMarco]
2/5/10

United States District Court

DISTRICT OF _____

UNITED STATES OF AMERICA

v.

John Doe

WAIVER OF INDICTMENT

CASE NUMBER: GR 10-13 (RJD)

I, Amanullah Zazi, the above named defendant, who is accused of
aiding and abetting the receipt of military type training in
violation of 18 U.S.C. 2339D, and conspiracy to obstruct
justice in violation of 18 USC 1512(K)

being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive
in open court on January 6, 2009 Date prosecution by indictment and consent that the
proceeding may be by information rather than by indictment.

Amanullah Zazi
Defendant

Ull
Counsel for Defendant

Before [Signature]
Judicial Officer

BEFORE RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE

DATE: JANUARY 8, 2010 @2:30PM TO 3:25PM

CRIMINAL CAUSE FOR PLEADING
SEALED

DOCKET # CR 10-0013 (RJD)

CASE: USA -V- JOHN DOE (ON BOND)
COUNSEL: MARK DEMARCO (CJA)

AUSA: JAMES LOONAM
PRE TRIAL SERVICES: ROBERT LONG

COURTREPORTER: MICKEY BRYMER

- X CASE CALLED FOR PLEA.**
- X FOR THE REASONS RECITED ON THE RECORD, COURT GRANTS GOVERNMENT'S MOTION TO SEAL THE COURTROOM. ORDER SIGNED. CLERK OF THE COURT DIRECTED TO SEAL COURTROOM. DAILY CALENDAR ENTRY IS MARKED AS COURT EXHIBIT "1".**
- X DEFT SWORN.**
- X PLEA AGREEMENT IS MARKED AS COURT EXHIBIT "2".**
- X INFORMATION HANDED UP TO COURT. WAIVER OF INDICTMENT EXECUTED.**
- X DEFENDANT ENTERS PLEA OF GUILTY TO COUNTS ONE(1) AND TWO(2) OF THE TWO COUNT INFORMATION.**
- X COURT FINDS THAT THE PLEA WAS MADE KNOWINGLY & VOLUNTARILY AND NOT COERCED. COURT FINDS FACTUAL BASIS FOR THE PLEA & ACCEPTS PLEA OF GUILTY TO COUNTS ONE AND TWO OF THE TWO COUNT INFORMATION.**
- X DEFENDANT EXECUTED PERSONAL RECOGNIZANCE BOND WITH CONDITIONS. COURT APPROVES BOND.**
- X AUSA MOVES TO SEAL RECORD AND ALL DOCUMENTS. MOTION GRANTED.**
- X CONTROL DATE: OCTOBER 1, 2010**

COURT EXHIBIT

CR 10-0013
1/8/10

United States District Court
Eastern District of New York
Chief Judge DEARIE , RAYMOND
Friday, January 8, 2010
Courtroom 10A S

10:00 AM

Criminal Cause for Status Conference

08cr00506

USA V. FIRTH

Def. - SHAWN FIRTH DEFENDANT ON BOND

*

11:00 AM

Criminal Cause for Status Conference

09cr00727

USA V. MOQUETE SANTOS

Def. - NOEL MOQUETE SANTOS DEFENDANT IN CUSTODY (SPANISH INTERPRETER)

*

02:30 PM

USA -v- JOHN DOE (CR 10-00013)

Motion To Close Courtroom

*

IN UNITED STATES		<input type="checkbox"/> MAGISTRATE	<input type="checkbox"/> DISTRICT	<input type="checkbox"/> APPEALS COURT or	<input type="checkbox"/> OTHER PANEL (Specify below)
IN THE CASE OF		FOR			LOCATION NUMBER
_____ V.S. _____		AT			
_____		_____			
PERSON REPRESENTED (Show your full name) ZAZI, AMANULLAH		1 <input checked="" type="checkbox"/> Defendant—Adult 2 <input type="checkbox"/> Defendant - Juvenile 3 <input type="checkbox"/> Appellant 4 <input type="checkbox"/> Probation Violator 5 <input type="checkbox"/> Parole Violator 6 <input type="checkbox"/> Habeas Petitioner 7 <input type="checkbox"/> 2255 Petitioner 8 <input type="checkbox"/> Material Witness 9 <input type="checkbox"/> Other			DOCKET NUMBERS Magistrate District Court 10-CR-0013 Court of Appeals
CHARGE/OFFENSE (describe if applicable & check box →) 18 USC 1512, 2339		<input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor			

ASSETS	EMPLOYMENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed Name and address of employer: _____ IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____ How much did you earn per month? \$ 7.50/hr <i>2 mos ago from Deli delivery</i>										
		If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____										
	OTHER INCOME	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES <table style="width: 100%;"> <thead> <tr> <th style="width: 50%;">RECEIVED</th> <th style="width: 50%;">SOURCES</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>			RECEIVED	SOURCES						
	RECEIVED	SOURCES										
CASH	Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ 0											
	PROPERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, GIVE THE VALUE AND \$ DESCRIBE IT <table style="width: 100%;"> <thead> <tr> <th style="width: 40%;">VALUE</th> <th style="width: 60%;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>			VALUE	DESCRIPTION						
VALUE	DESCRIPTION											
OBLIGATIONS & DEBTS	DEPENDENTS		MARITAL STATUS	Total No. of Dependents	List persons you actually support and your relationship to them							
	<input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED		<input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED	0	_____ _____ _____							
DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)		APARTMENT OR HOME:	Creditors	Total Debt	Monthly Paymt.							
		_____ _____ _____	_____ _____ _____	\$ _____ \$ _____ \$ _____	\$ _____ \$ _____ \$ _____							

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)
 Amanullah Zazi

United States District Court
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

V.

**ORDER SETTING CONDITIONS
OF RELEASE AND BOND**

John Doe
Defendant

Case No.: 10 CM 0013 (RJD)

RELEASE ORDER

It is hereby ORDERED that the above-named defendant be released as follows, subject to the Standard Conditions of Bond on the reverse and:

☒ Upon Personal Recognizance Bond on his/her promise to appear at all scheduled proceedings as required, or

☐ Upon Unsecured Bond executed by defendant in the amount of \$ _____, or

☐ Upon Secured Appearance Bond as provided herein.

Additional Conditions of Release

Upon finding that release under the standard conditions detailed on the reverse will not by themselves reasonably assure the appearance of the defendant and the safety of other persons and the community, IT IS FURTHER ORDERED that the defendant is subject to the following additional conditions of release:

- ☒ 1. The defendant must remain in and may not leave the following areas without Court permission: _____
- ☒ 2. The defendant shall avoid all contact and not associate with any of the following persons or entities: any and all persons as directed by FBI
- ☐ 3. The defendant shall avoid and not go to any of the following locations: _____
- ☐ 4. The defendant shall surrender any and all passports to the U.S. Pretrial Services Agency by _____ and shall not apply for any other passport.
- ☒ 5. Defendant is placed under the express supervision of the Pretrial Services Agency, subject to the Special Conditions on the reverse, if applicable, and
- ☒ is subject to random visits by a Pretrial Services officer at defendant's home and/or place of work;
- ☒ must report to that agency () in person _____ times per _____ and/or () by telephone _____ times per _____
- ☒ is subject to home detention with electronic monitoring with the following conditions: Court appearances, medical emergencies, attorney visits and other activities as directed by the FBI
- ☒ must undergo random drug testing [X] evaluation and/or [X] treatment for: [X] substance abuse [] alcoholism [] mental health problems.
- ☐ must pay the cost of treatment and/or electronic monitoring by with personal funds and/or insurance.
- ☐ 6. Other Conditions: GPS monitoring — FBI direction

APPEARANCE BOND

The undersigned defendant and sureties jointly and severally acknowledge that I/we and my/our personal representatives, jointly and severally, are bound to pay to the United States of America the sum of \$ _____. The undersigned agree(s) that this obligation is secured with his/her/their interest in the following property ("Collateral") which he/she/they represent is/are free and clear of liens except as otherwise indicated:

- ☐ cash deposited in the Registry of the Court the sum of \$ _____;
- ☐ premises located at: _____ owned by _____
- ☐ I/We also agree to execute a confession of judgment in form approved by the U.S. Attorney which shall be duly filed with the proper local and state authorities on or before _____
- ☐ Other Conditions: _____

Surety	Address: _____
Surety	Address: _____
Surety	Address: _____

The Court has advised the defendant of the conditions of release per 18:3142(h)(1) and (h)(2). This bond is conditioned upon the appearance of the defendant and is subject to the Standard Conditions of Bond set forth on the reverse. If the defendant fails to appear as ordered or notified, or any other condition of this bond is not met, this bond shall be due forthwith.

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth on the reverse of this form.

Anwarullah Zazi
Signature of Defendant

Release of the Defendant is hereby ordered on Jan 8, 2010

Distribution: White-Original Canary - Courtroom Deputy Pink - Pretrial Services Goldenrod - Defendant