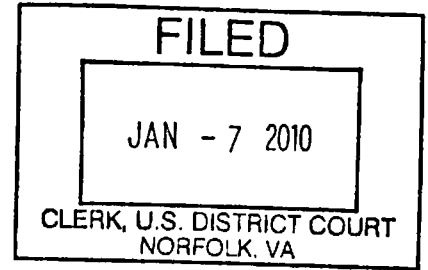


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division



IN RE:) UNDER SEAL
)
GRAND JURY PROCEEDINGS) CASE NUMBER 2:10cr 1

MOTION TO AMEND SEALING ORDER

The United States of America, by and through its attorneys, Neil H. MacBride, United States Attorney for the Eastern District of Virginia, and Randy Stoker, Assistant United States Attorney, pursuant to Local Criminal Rule 49(B) and Rule 6(e)(3)(D) moves to amend the order to seal the indictment and arrest warrant(s) in this case.

Rule 6(e)(3) of the Federal Rules of Criminal Procedure provides for exceptions to the general rule of secrecy regarding grand jury matters. Specifically, subparagraph (D) provides that:

“An attorney for the government may disclose any grand-jury matter involving foreign intelligence information to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official’s duties.”

The term “foreign intelligence information” is defined as “information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to ... the conduct of foreign affairs of the United States.” Fed. R. Crim. P. 6(e)(3)(D)(iii)(b).

Here, the indictment alleges the murder of two Afghan nationals in Kabul, Afghanistan, in May 2009, by United States defense contractors. The government in Afghanistan has expressed a high degree of interest in the case. Further, the events surrounding the alleged conduct has caused diplomatic difficulties for United States State Department representatives in Afghanistan. The United States Ambassador to Afghanistan has expressed concern that press coverage of this case will require heightened security within the United States Embassy, which is the sovereign territory of the United States.

Given the effect that this case has had and will continue to have on the conduct of the foreign affairs and the national security interests of the United States, counsel for the United States request authorization to disclose grand jury information, specifically, the existence of this indictment to the following officials:

- (a) Ambassador Karl Eikenberry, United States Ambassador to Afghanistan
- (b) Frank Ricciardone, Deputy United States Ambassador to Afghanistan
- (c) Tom Swanton, Senior Legal Advisor at United States Embassy, Kabul, Afghanistan

All other aspects of the original sealing order should remain in effect.

Neil H. MacBride
United States Attorney



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