

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*)
)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA, *et al.*)
)
 Defendants.)

No. 1:14-cv-254

**United States District Court
Southern District of Texas
ENTERED**

AUG 20 2015

David J. Bradley, Clerk of Court

STIPULATED PROTECTIVE ORDER

WHEREFORE, Defendants are undertaking to correct certain post-injunction actions, as described in Defendants' May 7 Advisory (ECF No. 247) and July 9 Advisory (ECF No.282), and counsel for Plaintiffs have requested identifying information regarding certain individuals maintained in a system of records by U.S. Citizenship and Immigration Services (USCIS), a federal agency within the Department of Homeland Security (DHS), without obtaining prior written consent of those individuals;

WHEREFORE, the information that Plaintiffs have requested is treated as highly sensitive by DHS;

WHEREFORE, such identifying information is personally identifiable information (PII), as defined by the DHS Handbook for Safeguarding Sensitive Personally Identifiable Information (March 2012) (attached), the dissemination or unauthorized release of which would create a potential for fraud or identity theft,

IT IS HEREBY STIPULATED AND AGREED by, between and among Plaintiffs and the United States, by and through undersigned counsel, and ordered by this Court, that:

- 1) **Purpose:** This Order governs the use and disclosure of certain information provided to Plaintiffs in the course of the proceedings in this case and sets forth the mandatory procedures for persons who receive or review documents or information covered by this Order.
- 2) **Definitions:**
 - a) **“Identified Affected Individuals”:** The term Identified Affected Individuals means those individuals who received three-year Employment Authorization Documents (“EADs”) that subsequently have been invalidated, as described in Defendants’ May 7 Advisory (ECF No. 247) and July 9 Advisory (ECF No.282).
 - b) **“Covered Information”:** The term Covered Information means the following information about the Identified Affected Individuals: name, Alien Registration Number (“A Number”), date of birth, the EAD card number that corresponds to the I-765 form submitted by an individual (also known as the “Receipt Number”), Social Security Number, certain SAVE query information for driver’s license queries, and home address.
 - c) **“Covered Documents”:** The term Covered Documents means any documents that contain Covered Information.
- 3) **Disclosure to Plaintiffs’ Counsel:** DHS and USCIS and their counsel hereby agree and are authorized to release Covered Information and/or Covered Documents to Plaintiffs’ counsel. In so doing, DHS and USCIS shall mark Covered Information and Covered Documents with “SUBJECT TO PROTECTIVE ORDER” or a similar designation.
- 4) **Persons To Whom Plaintiffs’ Counsel May Disclose:** Plaintiffs’ counsel must not disclose Covered Documents and Covered Information to anyone, other than:

- a) The Court and its personnel, to the extent requested or ordered by the Court, subject to the provisions of Paragraph 11 below;
 - b) The Defendants and their counsel, subject to this Protective Order;
 - c) Persons regularly in the employ of Plaintiffs' counsel who have a need for the Covered Documents or Covered Information in the performance of their duties in this case (and any appeals), for the purposes outlined in, and subject to, this Protective Order; or,
 - d) Persons in the employ of each state benefit or license-issuing agency or other institution in Plaintiff states who have a need for the Covered Documents or Covered Information to evaluate the cost of potential corrective actions being considered by Plaintiffs and undertake any such corrective action. Plaintiffs shall limit the number of individuals to whom such information is disclosed to as few as possible.
- 5) **Procedures for Disclosure by Plaintiffs' Counsel:** Any person described in paragraph 4(c) or 4(d) to whom Plaintiffs' counsel wish to make a disclosure must, before disclosure, be required to read the terms of this Protective Order and sign the Acknowledgement of Protective Order attached to this Order. Plaintiffs' counsel must maintain a log of all individuals (including position and agency) of all persons to whom the information is disclosed, and retain all signed Acknowledgements for the pendency of this case (including any appeals). Disclosure of information shall be limited to agencies that grant licenses or benefits based on the EAD validity period and the particular validity of the EADs described in paragraph 2(a). Any person who receives disclosures under paragraph 4(c) or 4(d) may not disclose the Covered Documents or Covered Information to anyone else. Covered Documents or Covered Information provided to state agencies must be destroyed or returned to Plaintiffs' Counsel as soon as the agency's evaluation of cost and/or undertaking of

corrective action is complete. State agencies shall endeavor to complete their evaluation of the cost of corrective action, and/or their undertaking of corrective action, within 60 calendar days of receiving Covered Documents or Covered Information. Agencies are permitted to retain Covered Information or Covered Documents beyond 60 calendar days to the extent necessary to complete such evaluation and/or corrective action.

- 6) **Permissible Uses:** Plaintiffs' counsel, and persons to whom disclosures were permissibly made under paragraph 4(c) or 4(d), may use Covered Documents and Covered Information only for the purpose of evaluating the cost of potential corrective actions being considered by Plaintiffs and for the purpose of undertaking such corrective action, and may not use, disclose, or share the information to any other person or for any other purpose. Before undertaking any corrective action against an individual, a state agency that currently uses the SAVE system to determine the immigration status of license or benefit applicants shall ensure that they are using the most up-to-date information on that individual by re-querying the SAVE system for such individual as contemporaneously as reasonably possible prior to taking any corrective action. To the extent a state agency does not use the SAVE system but intends to undertake some form of corrective action regarding certain individuals on the basis of Covered Documents or Covered Information, the state agency shall ensure that they are using the most up-to-date information to determine the immigration status of such individual prior to taking any corrective action.
- 7) **Privacy:** Plaintiffs' counsel, and persons to whom disclosures are made under paragraph 4, will comply with any laws, regulations, and DHS policies that apply to DHS employees with regard to Covered Information. A copy of DHS guidance on protecting personally identifiable information is attached hereto. Any person to whom disclosures were made

under paragraph 4 will confirm, by signing the Acknowledgement of Protective Order form, that they have reviewed the copy of DHS guidance on protecting personally identifiable information that is attached hereto.

- 8) **Safekeeping:** Except as provided in paragraph 4, Plaintiffs' counsel must keep all Covered Documents and Covered Information within their exclusive possession and must place and maintain such material in a secure area. Further, Plaintiffs' counsel, and persons to whom disclosures were permissibly made under paragraph 4, must:
 - a) safeguard the security, confidentiality, and integrity of Covered Documents and Covered Information and the systems on which such Documents and Information are stored, processed, and transmitted; and,
 - b) report any actual or suspected breach of this Order (*e.g.*, loss of control, compromise, unauthorized disclosure, access for an unauthorized purpose, or other unauthorized access, whether physical or electronic), immediately, and in no event later than one day after discovery, to the Defendants.
- 9) **Return of Material at End of Litigation:** Within 30 business days of the termination of this case (including any appeals), Plaintiffs' counsel must return to the Defendants, or destroy, all Covered Documents and Covered Information and must certify to the Defendants that all such documents have been returned or destroyed.
- 10) **Filing with the Court:** The portions of any filings with the Court that include Covered Documents or Covered Information must be filed under seal in accordance with Local Rule 83.6. No Covered Documents or Covered Information shall be used at any hearing, trial, or appellate proceeding in this action, except as it relates to the evaluation of the cost of potential corrective actions being considered by Plaintiffs in the granting of a benefit or

license and for the purpose of undertaking such corrective action, or as otherwise ordered by the Court. In such situations, provisions shall be made to exclude the public or otherwise reasonably protect the confidentiality of the Covered Documents or Covered Information. Where Covered Documents or Covered Information are used in any court proceeding in this action, the appropriate portion of the transcript shall be placed under seal. Such designation shall be limited to those portions of the transcript the sealing of which is reasonably necessary to preserve the confidentiality of the Covered Documents or Covered Information. Any reference to the production of Covered Information shall include that it was produced pursuant to this protective order.

- 11) **Failure to Designate:** An inadvertent failure to designate released materials as Covered Documents or Covered Information does not waive the Defendants' right to designate, within a reasonable time of learning of the inadvertent failure, the materials as such.
- 12) **Miscellaneous:** Agreement to this Protective Order does not waive any rights of any party to assert a claim of privilege as to these or similar documents, shall not affect the right of any party to seek additional protection against the disclosure of documents or materials, shall not be construed as a waiver by either party of their right to seek a subsequent protective order permitting the use of such Covered Documents or Covered Information in the underlying merits of this action, and shall not be construed to require the production of any discovery by the Federal Defendants.

Dated: August 18, 2015

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United States Attorney

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Respectfully submitted,

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* To the extent a signatory has not been admitted to practice in the U.S. District Court for the Southern District of Texas or entered an appearance in this litigation, such individual is signing this order only to reflect the respective plaintiff's agreement to the terms of the Stipulated Protective Order.

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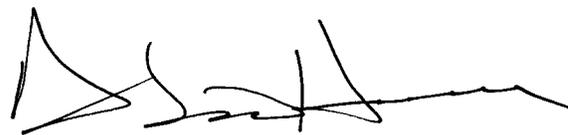
/s/ Cally A. Younger

Cally A. Younger

Counsel for the Governor of Idaho

It is SO ORDERED.

Signed on August 19, 2015.

A handwritten signature in black ink, appearing to read 'A. Hanen', written over a horizontal line.

The Honorable Andrew S. Hanen
United States District Judge

Acknowledgement of Protective Order

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND:

I, _____ [print or type full name], of
_____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Southern District of Texas in the case of *State of Texas v. United States*, No. 14-cv-00254. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. I solemnly promise that I will not disclose in any manner any information or item that is the subject of this Stipulated Protective Order to any person or entity, except in strict compliance with the provisions of this Order. I also certify that I have reviewed a copy of the DHS guidance on protecting personally identifiable information.

Date: _____

City and State where sworn and signed: _____

Signed Name: _____

Title/Position: _____

Name of Agency: _____