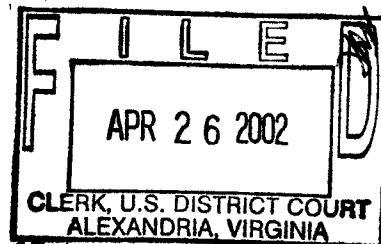


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 JOHN PHILLIP WALKER LINDH )

Criminal No. 02-37-A

**ORDER**

The matter is before the Court on the government's Motion for a Protective Order Regarding Reports of Detainees at QIJ With No Specific Information Regarding the Defendant, pursuant to Rule 16(d)(1), Fed. R. Crim. P.<sup>1</sup>

In its *ex parte* motion, the government requests the entry of an order protecting from disclosure to the defense reports of interviews taken of seven detainees currently housed at Guantanamo Bay, Cuba who were present during the QIJ uprising. Specifically, the government contends that because the seven interview reports do not contain any specific reference to the defendant, and because the government has already disclosed to the defense all of the information contained in the reports concerning the QIJ uprising,<sup>2</sup> it is not required to disclose the actual interview reports to the defense under either *Brady v. Maryland*, 373 U.S. 83 (1963) or this Court's

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<sup>1</sup> The government filed two additional motions for protective orders concerning detainee interview reports. The first motion, seeking a protective order as to thirteen detainee interview reports disclosed, in part, to the defense pursuant to the government's obligations under *Brady*, was granted in part and denied in part by Order dated April 25, 2002. *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. Apr. 25, 2002). The second motion, filed *ex parte*, seeking a protective order as to thirteen non-exculpatory detainee interview reports, was granted by order dated April 26, 2002. *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. Apr. 26, 2002).

<sup>2</sup> Specifically, in a five-page discovery letter dated April 12, 2002, the government provided the defense with a detailed recitation of the QIJ-related facts provided by each of the seven detainees, who were identified in the discovery letter as DT-1 through DT-7.

April 1, 2002 discovery order.<sup>3</sup> To ensure full compliance with its discovery obligations, however, the government has submitted the seven interview reports and the April 12, 2002 discovery letter for an *ex parte* and *in camera* review by the Court.

Based on an independent, *ex parte* and *in camera* comparison of the seven detainee interview reports at issue to the April 12, 2002 discovery letter provided by the government to the defense, it is clear that the government already disclosed to the defense, nearly verbatim, all of the information contained in the seven interview reports concerning the QIJ uprising. It is also apparent that none of the reports contain any specific references to the defendant, or to his alleged involvement or non-involvement in the QIJ uprising or the death of Johnny Michael Spann. Nor do the reports contain any additional materials that can reasonably be construed as either exculpatory under *Brady* or discoverable under Rule 16, Fed. R. Crim. P.

The government has also established good cause for protecting the actual detainee interview reports from disclosure, as the status of, the methods used in, and the information obtained from the ongoing investigation of the subject detainees may be of critical importance to national security. Indeed, given the nature of al Qaeda and its activities, and the ongoing federal law enforcement investigation into al Qaeda, the identities of the detainees, as well as the questions asked and the techniques employed by law enforcement agents in the interviews are highly sensitive and confidential. *See* Rule 16, Fed. R. Crim. P., Advisory Committee Notes to 1966 Amendment (recognizing that in determining whether a protective order is appropriate, district courts may consider, *inter alia*, “the protection of information vital to the national security”); *see also Alderman*

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<sup>3</sup> In the April 1, 2002 Order, the government was directed to disclose to the defense all exculpatory materials in its possession “that indicate or reflect that defendant was not involved in the planning of or participation in the QIJ prison uprising or in the death of Johnny Michael Spann.” *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. Apr. 1, 2002) (Order).

v. *United States*, 394 U.S. 165, 185 (1969).

Accordingly, for these reasons, and for good cause shown, it is hereby **ORDERED** that the government's Motion for a Protective Order Regarding Reports of Detainees at QIJ With No Specific Information Regarding the Defendant is **GRANTED**.

Therefore, it is further **ORDERED** that the government is not required to disclose the seven detainee interview reports to the defense.

It is further **ORDERED** that the seven detainee interview reports at issue and the government's April 12, 2002 discovery letter to the defense be (i) placed in an envelope marked as Attachment A to the Government's Motion for a Protective Order Regarding Reports of Detainees at QIJ With No Specific Information Regarding the Defendant and (ii) maintained *ex parte* and under seal for appellate review, if necessary.

The Clerk is directed to send a copy of this Order to all counsel of record.

/S/

Alexandria, VA  
April 26, 2002

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T.S. Ellis, III  
United States District Judge