

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 12-15893-RR

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 05 2013

JOHN LEY
CLERK

JONATHAN CORBETT,

Petitioner,

versus

TRANSPORTATION SECURITY ADMINISTRATION,

Respondent.

On Petition for Review of a Decision of the
Transportation Security Administration

ORDER:

Before the Court are Respondent's "Motion for Leave to File Portions of the Administrative Record Under Seal and Portions *Ex Parte* and Under Seal" and Petitioner's "Motion for Clarification or, in the Alternative, Appointment of Special Master."¹

I.

Respondent's "Motion for Leave to File ..." is GRANTED, TEMPORARILY, pending further order of the Court, with the exception that Petitioner is not required to sign the non-disclosure agreement before gaining access to the "copyrighted/proprietary" materials found in Volume 2 of the administrative record. Petitioner may not disclose any of the information

¹ For purposes of resolving Respondent's "Motion for Leave to File ...," this Court previously directed Respondent to submit, on an *ex parte* basis and under seal, the documents designated as containing "copyrighted/proprietary" information and "For Official Use Only" material.

contained in the documents that are filed under seal in this case. If Petitioner obtains the documents or information contained in Volume 2 by any means other than this litigation, nothing in this order shall limit his use of the documents and/or information.

If and when Petitioner signs a non-disclosure agreement similar to the one found at Exhibit D to Respondent's motion, Respondent shall provide Petitioner a copy of the documents designated as "For Official Use Only."

Respondent is directed to file the documents containing "Sensitive Security Information" *ex parte* and under seal. Respondent is directed to file, and serve Petitioner with, a redacted, public-use version of the documents containing "Sensitive Security Information" within fourteen (14) days of the date of this order.

Respondent is directed to file the documents containing "classified information" (Volume 5) *ex parte* and under seal for *in camera* inspection. Respondent and the Clerk are directed to treat and handle the documents containing classified information consistent with the established procedures related to classified materials.

The Court CARRIES WITH THE CASE the following issues: (1) whether the copyrighted materials should remain under seal, (2) whether Petitioner should have access to the "Sensitive Security Information," and (3) whether Respondent should be required to file a redacted version of the classified documents or an index with summaries of those documents. *See generally Ibrahim v. DHS*, 669 F.3d 983, 998 (9th Cir. 2012) ("Congress has authorized the disclosure of 'Sensitive Security Information' to civil litigants who show 'substantial need' for the information," provided that certain conditions are met); *United States v. Campa*, 529 F.3d 980, 995 (11th Cir. 2008) (stating, in the context of a *criminal* case, that a district court can permit the Government to either redact classified information or substitute a summary in place of

the classified documents). The parties are directed to address these issues in their merits briefs. Should this Court decide, after briefing is completed, that Petitioner should have access to the “Sensitive Security Information” and/or a redacted version of the classified documents, this Court may allow the parties to file supplemental briefs after Petitioner is given access to such materials.

Consistent with this Court’s rules, the Clerk is directed to issue the briefing notice once the last portion of the administrative record is filed with this Court.

II.

Petitioner’s “Motion for Clarification or ... Appointment of Special Master” is DENIED.

JOHN LEY
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 05, 2013

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 12-15893-RR

Case Style: Jonathan Corbett v. Transportation Security Admini

Agency Docket Number: 1:10-cv-24106-MGC

On April 1, 2013, this Court began **MANDATORY electronic filing**. All counsel are required to file documents electronically in appeals pending on April 1, 2013, and in appeals docketed in this Court on or after that date, unless exempted for good cause.

The enclosed order has been ENTERED.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Andrea G. Ware
Phone #: (404) 335-6218

MOT-2 Notice of Court Action