

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF NORTH CAROLINA, et al.,

*Defendants.*

No. 1:16-cv-00425-TDS-JEP

**STIPULATED CONFIDENTIALITY AGREEMENT  
AND PROTECTIVE ORDER**

This matter comes before the Court, pursuant to Fed. R. Civ. P. 26(c) and Local Rule 26.2, for the entry of a Stipulated Confidentiality Agreement and Protective Order (“Protective Order”) governing the disclosure by any Party of any non-public, confidential information produced, obtained, or exhibited in the above-captioned actions (the “Litigation”), including but not limited to the full names and other personal

identifying information (“PII”), including such information subject to the Privacy Act, 5 U.S.C. § 552a(b)(11), and other particularly sensitive and highly personal information of individuals identified or disclosed by Plaintiff United States, the *Carcaño* Plaintiffs, the State of North Carolina, Governor Patrick L. McCrory, the North Carolina Department of Public Safety, President Pro Tempore Phil Berger, Speaker Tim Moore, the University of North Carolina, the Board of Governors of the University of North Carolina, and Chairman W. Louis Bissette, Jr., in his official capacity.

The Court has previously permitted the United States to file the declarations of six witnesses anonymously in *United States v. State of North Carolina, et al.* (16-cv-425), using initials rather than their full names. Docket Text Order Granting Docket 71, dated 7/14/2016. Further, in *North Carolinians for Privacy, et al. v. United States Department of Justice, et al.* (16-cv-845), the Court permitted the North Carolinians for Privacy (“NCFP”) Plaintiffs to permit individuals named in NCFP’s Amended Complaint, as well as certain fact witnesses, who are minor children or parents of minor children, to proceed using initials rather than their full names. Docket 57 Order Granting Docket 51, dated 8/19/2016. These same NCFP Plaintiffs and fact witnesses who are parents of minor children have been identified as witnesses in initial disclosures by the Defendants in this Litigation. The Parties in this Litigation have agreed, as set forth in this Protective Order, to treat certain PII relating to two of the United States’ anonymous witnesses as “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY INFORMATION;” PII of the remaining four of the United States’ anonymous witnesses and the anonymous

witnesses identified in the Initial Disclosures of the State of North Carolina, Governor Patrick L. McCrory, the North Carolina Department of Public Safety, and President Pro Tempore Phil Berger and Speaker Tim Moore—all of whom are parents of minor children—as “HIGHLY CONFIDENTIAL INFORMATION;” and other highly personal and sensitive information, including information relating to the fact witnesses identified by the *Carcaño* Plaintiffs, the United States, and the State of North Carolina, Governor Patrick L. McCrory, the North Carolina Department of Public Safety, and President Pro Tempore Phil Berger and Speaker Tim Moore as “CONFIDENTIAL INFORMATION.”

Through this Protective Order, the Parties seek to limit the use of information and documents, identified herein, to protect witnesses from harm, and to maintain the confidentiality of highly personal and sensitive information. Accordingly, the Parties have agreed to entry of this Protective Order. For good cause shown, this Court finds that entry of this Protective Order is appropriate.

**IT THEREFORE IS ORDERED as follows:**

**I. Protected Confidential Information Defined** - “Protected Confidential Information”

shall include Confidential Information, Highly Confidential Information, and Highly Confidential – Attorneys’ Eyes Only Information.

- 1) “Protected Confidential Information” shall not include any information disclosed, gathered, or discovered outside this Litigation.
- 2) “Protected Confidential Information” also shall include medical records and any other documents or information relating to individuals’ medical conditions or

treatment (“Medical Information”). However, pursuant to the Court’s direction during its September 2, 2016 Status Conference with the Parties and its order of September 6, 2016, the Parties have agreed to address the treatment, handling, and confidentiality of Medical Information related to parties and witnesses in a separate supplemental protective order. If the Parties reach agreement as to the treatment of Medical Information within a reasonable time, they will submit a Stipulated Supplemental Confidentiality Agreement and Protective Order Regarding Medical Information to this Court for its review and approval. If the Parties are unable to reach agreement, they anticipate that this Court will set forth confidentiality obligations and handling limitations for Medical Information in an appropriate order after motion and briefing under the procedure described in the Rule 26(f) Report(s) to be filed on September 12, 2016 or the then-operative scheduling order of the Court.

- 3) “Confidential Information” refers to:
  - a) information relating to an individual’s Medical Information, and criminal or financial history; confidential academic, employment, or personnel information; confidential safety or security information; and/or other highly personal and sensitive information or information otherwise protected from disclosure by applicable federal or state law. Nothing in this paragraph shall waive an individual or parties’ right to object to the production of such information.
- 4) “Highly Confidential Information” refers to:
  - a) the full names and other similarly identifying information of the anonymous

witnesses identified in the Initial Disclosures of the State of North Carolina, Governor Patrick L. McCrory, the North Carolina Department of Public Safety, and President Pro Tempore Phil Berger and Speaker Tim Moore—witnesses who have been identified as Y.K., D.H. , R.F., S.B., E.S., D.H., and C.C.—and the fact witnesses with the initials D.S.B., C.W., A.T., H.K, who signed declarations that were submitted as exhibits to the United States’ Motion for Preliminary Injunctive Relief (Docket 76, at Exhibits 33, 39, 40, and 45);

b) the current home or cellular telephone number(s) or home address of any party, witness, or potential witness in this action; and

c) the full names of other similarly situated individuals who all Parties agree should be covered by the terms of this Protective Order relating to Highly Confidential Information.

5) “Highly Confidential – Attorneys’ Eyes Only Information” refers to:

a) the full name and other similar identifying information of the fact witnesses with the initials A.N. and D.B., who signed declarations which were submitted as exhibits to the United States Motion for Preliminary Injunctive Relief (Docket 76, at Exhibit 41 and 44); and

b) the full names of other similarly situated individuals who all Parties agree should be covered by the terms of this Protective Order relating to Highly Confidential – Attorneys’ Eyes Only Information.

- 6) “Documents and Information” shall include all documents and information exchanged during the course of formal or informal discovery and/or in preparation for any hearings and trial held in this Litigation. Such documents and information shall include, but are not limited to, documents produced in response to document requests, including all electronically stored information; answers to interrogatories; answers to requests for admission; and all portions of deposition testimony identified as “confidential,” and related deposition exhibits. It shall also include summaries and compilations, which would reveal the specific information subject to paragraph 1, 2, or 3 above, including but not limited to charts, tables, graphs, and models.
- 7) “UNC” means the University of North Carolina, the Board of Governors of the University of North Carolina, Chairman W. Louis Bissette, Jr., President Margaret Spellings, all campuses and affiliates of the University of North Carolina, and their Counsel in this Litigation who have direct responsibility for the preparation and trial of these lawsuits.

## **II. Limitations on Disclosure of Protected Confidential Information**

- 1) Protected Confidential Information disclosed in connection with this Litigation shall be used solely for the purposes of this Litigation.
- 2) Any Confidential Information or Highly Confidential Information may, without further agreement by the Signatories, be disclosed to the following persons:
  - a) Defendants and Plaintiffs and their employees and contractors in this Litigation (“Parties”) who are required in good faith to provide assistance in the conduct of

this Litigation.

- b) attorneys, legal assistants, paralegals, secretaries, and other employees of Counsel for Defendants and Plaintiffs in this Litigation (jointly, “the Parties’ Counsel”) employed in connection with the preparation and trial of this Litigation;
  - c) witnesses at depositions to whom the Documents and Information directly relate;
  - d) the court and its personnel; and
  - e) any court reporters present in their official capacity at any hearing, deposition, or other proceeding in this Litigation.
- 3) Highly Confidential – Attorneys’ Eyes Only Information, may, without further agreement by the Signatories, be disclosed to the Parties’ Counsel who have direct responsibility for the preparation and trial of the lawsuits, the court and its personnel, or any court reporters present in their official capacity at any hearing, deposition, or other proceeding in this Litigation.
- 4) Parties or witnesses in this Litigation, including parties or witnesses who have been identified as covered by the terms of this Protective Order relating to Highly Confidential Information and Highly Confidential – Attorneys’ Eyes Only Information, may allege in this Litigation discrimination or harassment occurring at UNC or involving persons, students, employees, entities, or other affiliates of UNC. The Parties recognize that such allegations by parties or witnesses may give rise to a need or obligation by UNC to conduct further investigations of the alleged discrimination or harassment in order to comply with its nondiscrimination policies or

applicable federal or state law. The Parties further recognize that such investigations may require disclosure of Protected Confidential Information to persons, employees, entities, or other affiliates of UNC other than those designated for disclosure of Protected Confidential Information under the terms of this Protective Order. Should UNC determine that a Party or non-Party witness has made a disclosure triggering a need or obligation by UNC to conduct such a further investigation and to make such a disclosure of Protected Confidential Information, it shall notify counsel for the Party, counsel for the non-Party witness if that witness is represented by counsel in connection with this Litigation, or counsel for the Party who offered the non-Party witness if that non-Party witness is not represented by counsel. UNC and the notified Party shall discuss on a case-by-case basis the need for further disclosure and the manner and scope of such disclosure. The Parties shall conduct all such discussions in good faith. If the Parties are unable to agree on a resolution, UNC may file a motion with the Court requesting a determination as to its obligations under its policies or federal or state law and an order from the Court granting appropriate relief from any Party.

- 5) Before making a disclosure of documents containing Protected Confidential Information to persons permitted under this Protective Order, such persons shall be advised of the terms of this Protective Order and be given a copy of it. With the exception of the court and its personnel, such persons shall be required to execute a non-disclosure agreement in the form of Attachment A. The signed non-disclosure

agreement shall be retained by counsel for the signatory making the disclosure.

- 6) The terms of this Protective Order also apply to information produced and testimony given by non-Parties to this Litigation (such as non-Party anonymous witnesses and non-Party fact witnesses). Such information produced and testimony given by non-Parties is protected by the terms, remedies, and relief provided by this Protective Order, and counsel for non-Parties may invoke the terms, remedies, and relief provided by this Protective Order on behalf of non-Parties on the same bases and to the same extent that counsel for the Parties may on behalf of the Parties or non-Party witnesses. Nothing in these provisions shall be construed as prohibiting a non-Party witness from seeking additional protections from the Court under appropriate circumstances and as allowed by law.

### **III. Handling and Use of Confidential Information**

- 1) The Parties and Parties' Counsel must not disclose or permit the disclosure of any Documents or Information designated as Protected Confidential Information, except as is otherwise permitted under this Protective Order.
- 2) Designation of Protected Confidential Information must be made by placing or affixing on the document in a manner that will not interfere with its legibility the word/phrase "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as appropriate. Designation of electronically stored information as Protected Confidential Information must be made by identifying the electronically stored information or the media on which the

electronically stored information is stored as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The designation of Protected Confidential Information should be made prior to, or contemporaneously with, the production or disclosure of that information; however, inadvertent disclosure of such information shall be handled as discussed in paragraphs 10 and 12 *infra*. A Party may also designate Documents or Information obtained through a subpoena as Protected Confidential Information. The parties must have a good-faith basis in fact and law to designate material as Protected Confidential Information.

- 3) Where a document contains both Protected Confidential Information and information that is not Protected Confidential Information, only the portion that constitutes the Protected Confidential Information shall be so designated.
- 4) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of Documents or Information designated as Protected Confidential Information under this Protective Order, or any portion thereof, must be immediately affixed with the words/phrase “Confidential Information,” “Highly Confidential Information,” or “Highly Confidential – Attorneys’ Eyes Only Information,” as appropriate, if such designation does not already appear.
- 5) Before disclosure may be made to a court reporter, the reporter must be alerted that the Documents and Information he or she is about to receive must be designated in the deposition transcript as “Confidential Information,” “Highly Confidential

Information,” or “Highly Confidential – Attorneys’ Eyes Only Information,” as appropriate, in the deposition transcript and on the deposition exhibit. If a party does not designate Documents and Information as Protected Confidential Information during the deposition, the party may do so within seven (7) calendar days after receipt of the deposition transcript.

- 6) For any deposition transcript that contains Protected Confidential Information in either the testimony or exhibits, the court reporter must create two versions of the transcript: (1) a copy with the Protected Confidential Information with the transcript and/or exhibits redacted; and (2) a copy with the Protected Confidential Information included but available and produced either electronically using a special password-protected format OR in hardcopy produced in a sealed envelope labeled “Confidential Information,” “Highly Confidential Information,” or “Highly Confidential – Attorneys’ Eyes Only Information,” as appropriate.
- 7) When Highly Confidential – Attorneys’ Eyes Only Information is used or such testimony is solicited at a deposition, only those to whom such material may be disclosed may remain in attendance.
- 8) Prior to calling any of the anonymous witnesses to testify in open court, the party seeking to examine an anonymous witness must notify the other Parties so that the appropriate Party may move the court (a) to be referred to solely by their initials during their testimony; (b) for the exclusion of sketch artists and cameras from the court room during the testimony of the anonymous witness; and (c) for the assistance

of the United States Marshals Service to move anonymous witnesses in and out of the courthouse without being observed or photographed.

- 9) If any document which reveals Protected Confidential Information is filed with the Court, the portion(s) of the document which constitute the Protected Confidential Information shall be redacted from the document when filing, and the party seeking to file such papers must file a motion to file under seal the portion of that document containing the Protected Confidential Information in accordance with Local Rule 5.4 and the Court's "Sealed Document Guidance."
- 10) If Protected Confidential Information is disclosed inadvertently or otherwise to any person other than in the manner authorized under this Protective Order, then the signatory responsible for the disclosure or who learns of the disclosure, must immediately upon learning of the disclosure, inform counsel for the other signatories of all pertinent non-privileged facts relating to such disclosure in writing and shall make reasonable efforts to prevent any disclosure by each unauthorized person who received the Protected Confidential Information.
- 11) The designation of Protected Confidential Information by a Party or non-Party may be challenged by an opposing Party or Parties by serving written notice on the designating Party or non-Party. After notice has been given, the Parties and, if relevant, non-Parties, will make a good faith effort to resolve the designation issue. If the Parties and, if relevant, non-Parties, are unable to resolve the designation issue after sincere, good faith efforts, the Party or Parties opposing the designation may file

a motion with the Court requesting a determination as to the confidential nature of the documents and information at issue. In the event of a failure to reach agreement upon the designation as Protected Confidential Information, the designation shall remain in effect unless or until the Court orders otherwise.

12) Inadvertent disclosure of Documents and Information to an opposing party without identifying the same as Protected Confidential Information shall not be deemed a waiver of such confidentiality with regard to the material inadvertently disclosed, nor shall it be deemed a waiver of confidentiality with regard to similar material. If such inadvertent disclosure occurs, the producing party may subsequently produce a copy of that document marked with the Protected Confidential Information designation, which copy shall be substituted for the copy produced previously and the Protected Confidential Information contained therein shall be treated thereafter as Protected Confidential Information under this Protective Order. Any such Documents or Information inadvertently disclosed without the Protected Confidential Information designation shall be returned to the disclosing party promptly upon receipt by the receiving party of notice of the inadvertent disclosure, and the receiving party shall keep no copies or reproductions, and shall make no use whatsoever of the Documents or Information inadvertently disclosed.

13) Within sixty (60) calendar days of the final conclusion of this Litigation (including all time for appeals, or the expiration or dissolution by the Court of any consent decree, order, or judgment, whichever is later), all material not received in evidence

and treated as Protected Confidential Information under this Protective Order, including all copies thereof, must be returned to the producing party. If the Parties so stipulate, the material may be destroyed.

- 14) Each Party agrees to notify counsel of record for all other Parties of any request or demand made by a non-Party for Protected Confidential Information, including but not limited to requests and demands made pursuant to the North Carolina Public Records Law (G.S. § 132) or pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Such notice shall be given promptly upon receipt of such request or demand and prior to complying with such request or demand, to allow any other Party the opportunity to oppose such request or demand, or to seek the Court's enforcement of this Protective Order, and/or to assert any statutory exemptions or privileges as may apply.
- 15) Nothing in this Order shall be construed to limit the Parties' right to seek modification of this Confidentiality Agreement and Protective Order or to apply for additional protective orders as may become necessary due to a substantial change in circumstances or for other good cause shown.

IT IS SO ORDERED.

This, the 20th day of September, 2016.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge

**Attachment A**

NON-DISCLOSURE AGREEMENT

The undersigned hereby acknowledges that (s)he has read the Protective Order entered by the United States District Court for the Middle District of North Carolina on \_\_\_\_\_, 2016, in the action entitled *United States v. State of North Carolina, et al.* (16-cv-425) or, the action entitled *Carcaño v. McCrory* (16-cv-236) (together, this “Litigation”). The undersigned agrees not to use the Protected Confidential Information described in the Protective Order for any purpose other than in connection with this Litigation and agrees to be bound by the terms and conditions of the Protective Order unless and until modified by further order of the Court in this Litigation.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name