

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>UNITED STATES OF AMERICA</b>	)	
	)	<b>Crim. No. CR-08-360 (RMU)</b>
	)	
<b>v.</b>	)	<b>Judge Ricardo M. Urbina</b>
	)	
	)	
<b>PAUL A. SLOUGH,</b>	)	
<b>NICHOLAS A. SLATTEN,</b>	)	
<b>EVAN S. LIBERTY,</b>	)	
<b>DUSTIN L. HEARD,</b>	)	
<b>DONALD W. BALL,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**JOINT DEFENSE MOTION TO UNSEAL PROCEEDINGS  
PERTAINING TO MOTION TO QUASH GRAND JURY SUBPOENAS**

Pursuant to Local Criminal Rule 6.1, Defendants Paul Slough, Nicholas Slatten, Evan Liberty, Dustin Heard, and Donald Ball, though undersigned counsel, respectfully submits this motion to unseal any papers, orders, and transcripts of hearings pertaining to any motions to quash, for lack of jurisdiction, subpoenas issued in connection with the grand jury's investigation of the September 16, 2007, incident at Nisour Square, Baghdad, Iraq. The Defendants requested that the Government make this information available. The jurisdictional challenge to the grand jury's subpoenas is the same challenge the Defendants have raised to the Indictment. The Defendants expressed to the Government that they have no interest in learning the identities of the witnesses who moved to quash the subpoenas. The Defendants are interested only in the legal issues presented to the Court and the Court's rationale for its order. Notwithstanding, the Government has stated it opposes our request. Continued secrecy of these ancillary proceedings,

however, is not necessary to prevent disclosure of matters occurring before the grand jury. The reasons supporting the Defendants' motion are set forth below.

### **BACKGROUND**

For over a year, a federal grand jury convened in the District of Columbia has heard testimony from numerous witnesses in connection with the Government's investigation of the September 16, 2007, firefight involving Blackwater security contractors in Baghdad, Iraq. Several Blackwater security guards who were present during the September 16<sup>th</sup> incident were subpoenaed, not as targets, but as witnesses, to give testimony. These Blackwater security guards, like the Defendants, were under a contract to provide personal protective services to officials of the United States Department of State. It is the Defendants' understanding that some of the Blackwater security guards moved to quash the grand jury's subpoenas on the ground that the grand jury did not have jurisdiction to investigate this matter. The grand jury has since returned a thirty-five count indictment charging the Defendants with manslaughter, attempted manslaughter, and firearms violations.

### **ARGUMENT**

The Defendants do not request that the Court unseal any matters occurring before the grand jury. *See* Fed. R. Crim. P. 6(e). Instead, they request only that the Court unseal papers, orders, and transcripts of hearings pertaining to an ancillary judicial proceeding before this Court—the motion to quash the grand jury subpoenas. To date, these materials have been sealed. However, now that the grand jury has returned an indictment against the Defendants, it is no longer necessary to keep the records of this ancillary proceeding under seal. *See In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1138, 1140 (D.C. Cir. 2006) (noting that “[g]rand jury secrecy is not unyielding” when there is no secrecy left to protect).

Federal Rule of Criminal Procedure 6(e)(6) provides that records, orders, and subpoenas related to grand-jury proceedings should be sealed only “to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.” In light of this limitation, Local Criminal Rule 6.1 authorizes the Court on its own motion or the motion of any person to unseal “[p]apers, orders and transcripts of hearings” “upon a finding that continued secrecy is not necessary to prevent disclosure of matters occurring before the grand jury.” *See generally In re Mots. of Dow Jones & Co., Inc.*, 142 F.3d 496 (D.C. Cir. 1998) (discussing local rule permitting the unsealing of ancillary proceedings).

Grand jury investigations are conducted in secrecy to “encourage witnesses to testify ‘fully and frankly,’ to prevent those about to be indicted from fleeing, and to ensure that ‘persons who are accused but exonerated by the grand jury will not be held up to public ridicule.’” *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007) (quoting *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 219 (1979)). Unsealing the records pertaining to any motion to quash a grand jury subpoena will not implicate any of these considerations. The witnesses against the Defendants have already testified. The Indictment against the Defendants has been publicly filed and the Government, in a nationally televised press conference, revealed to the world the Defendants’ identities and the crimes they are alleged to have committed. The Defendants did not flee, but voluntarily surrendered to the U.S. Marshals.

The secrecy rule of Rule 6(e) also encompasses “‘the identities of witnesses or jurors, the substance of testimony’ as well as actual transcripts, ‘the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.’” *Dow Jones*, 142 F.3d at 500. Unsealing the proceedings pertaining to any jurisdictional challenge to the grand jury’s subpoenas will not reveal the identity, deliberations, or questions of any grand jury member.

Nor will it reveal any unknown strategy or direction of the Government regarding the jurisdictional basis for the charges against the Defendants, which has now been revealed by the allegations set forth in the Indictment. And, to the extent that the Government is concerned that unsealing the ancillary proceedings may reveal the identities of the witnesses who moved to quash the grand jury subpoenas, the Defendants have informed the Government that they do not oppose redacting the information so as to keep the identities of those individuals confidential.

The Court and the Defendants have a legitimate interest in accessing the papers, orders, and hearing transcripts related to any motions challenging the Government's assertion of jurisdiction. The Court has set an aggressive schedule in an effort to quickly resolve the threshold question of whether the Defendants are subject to prosecution under the Military Extraterritorial Jurisdiction Act. The Defendants' motion to dismiss the Indictment for lack of jurisdiction is due on January 13, 2009. Whether jurisdiction exists is a novel question and the Court's previous rulings on this subject will aid the Defendants in presenting their arguments and the Court in resolving this issue.

### **CONCLUSION**

WHEREFORE, for the reasons set forth above, the Defendants respectfully requests that the Court direct the Clerk of the Court to unseal the papers, orders, and transcripts of hearings pertaining to any motion to quash, for lack of jurisdiction, the grand jury's subpoenas.

Date: January 12, 2009

Respectfully submitted,

/s/ Thomas Connolly

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