

No. 23-14

IN THE
Supreme Court of the United States

DELILAH DIAZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

**MOTION FOR LEAVE TO FILE PETITIONER'S
BRIEF UNDER SEAL WITH REDACTED COPY TO
BE MADE PUBLIC**

L. Nicole Allan
O'MELVENY & MYERS LLP
Two Embarcadero Center
San Francisco, CA 94111

Carlton F. Gunn
1010 North Central Ave.
No. 100
Glendale, CA 91202

Jeffrey L. Fisher
Counsel of Record
Pamela S. Karlan
Easha Anand
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

**MOTION FOR LEAVE TO FILE PETITIONER'S
BRIEF UNDER SEAL WITH REDACTED COPY
TO BE MADE PUBLIC**

Petitioner Delilah Diaz respectfully moves the Court for leave to file her opening brief under seal, with a redacted copy to be made public. Petitioner offers the following support for this request:

1. The Court granted certiorari in this case on November 13, 2023. The question presented is whether Federal Rule of Evidence 704(b) permits a governmental expert witness, in a prosecution for drug trafficking, to testify that most persons found at the border with large quantities of drugs hidden in their cars know they are carrying drugs and that drug-trafficking organizations do not entrust large quantities of drugs to unknowing transporters.

2. In order to file a comprehensive brief on the merits, petitioner would like to discuss materials she received from the Government during discovery in the district court. These materials document and describe numerous “blind mule” schemes the Government has uncovered over the years and thus provide important context for the question this Court has agreed to decide.

The Government provided these materials to petitioner under a protective order issued by the district court on January 5, 2021. *United States v. Diaz* (S.D. Cal. No. 3:20-cr-02546-AJB-1), Dkt. 42 (attached to this motion as Exhibit A). Pursuant to this protective order, the Government provided the materials to petitioner “for purposes of investigating, preparing for trial, trial, and any appeals of this matter.” *Id.* at 2. Counsel for petitioner is bound by

this order to “take all reasonable steps to (a) maintain the confidentiality of the materials, and (b) safeguard the materials produced in this case from inadvertent disclosure or review by any third party.” *Id.* The parties agreed “that any court filings containing any part of the materials shall be filed under seal.” *Id.* at 3.

3. To comply with the terms of this order and maintain the confidentiality of the cited materials, petitioner has tendered paper copies of her brief under seal and proposes to file a public, redacted version electronically. She served the Government’s counsel with an unredacted, electronic version of the brief at the time of filing.

Counsel for the Government has authorized petitioner to represent that it has no objection to this procedure.

Respectfully submitted,

L. Nicole Allan
O’MELVENY & MYERS LLP
Two Embarcadero Center
San Francisco, CA 94111

Carlton F. Gunn
1010 North Central Ave.
No. 100
Glendale, CA 91202

Jeffrey L. Fisher
Counsel of Record
Pamela S. Karlan
Easha Anand
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

Dated: December 27, 2023

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELILAH DIAZ,

Defendant.

Case No. 20-CR-2546-AJB

PROTECTIVE ORDER

Good cause being shown, the parties' Joint Motion for a Protective Order (ECF No. 41) is GRANTED. Pursuant to the Joint Motion, Federal Rule of Criminal Procedure 16(d), and General Order No. 514 of the United States District Court for the Southern District of California ("General Order No. 514"), IT IS HEREBY ORDERED as follows:

1. The materials produced in response to Defendant's request for personal identifying information of potential witnesses and material related to law enforcement investigations of other individuals (collectively, "the materials") is for use of defense counsel, any investigators, interpreters, experts, paralegals, legal assistants, or law clerks assisting counsel in this case (the "Defense").

2. If in the course of preparing the defense in this case, the Defense needs to disclose the materials to Defendant or any person outside of the Defense, including any third-party witness, the Defense must provide prior written notice to the United States, providing the United States reasonable opportunity to object, and thereafter, the Defense

1 must obtain prior written authorization from the Court, with such authorization to require
2 that any such person to whom the materials is disclosed agree to be bound by the terms of
3 the Protective Order, that materials be only shown to, and not left with, such person, and
4 that the materials remain in the custody and control of the Defense.

5 3. The materials provided to the Defense for purposes of investigating, preparing
6 for trial, trial, and any appeals of this matter and for no other purpose. The materials may
7 not be copied or further disseminated in any way to Defendant or any other person or entity
8 that is not part of the Defense.

9 4. The Defense must take all reasonable steps to (a) maintain the confidentiality
10 of the materials, and (b) safeguard the materials produced in this case from inadvertent
11 disclosure or review by any third party.

12 5. No member of the Defense, including defense counsel, will reveal to the
13 Defendant or any third-party any personal identification information, within the meaning
14 of General Order No. 514 (and amendments (a) through (e)), that is contained in the
15 materials, unless the Court orders that the Defendant or third-party may review such
16 personal identification information.

17 6. The Defense must return the materials to the United States within ten (10)
18 days should defense counsel withdraw or become disqualified from participation in this
19 case.

20 7. The Defense must return to the United States or destroy any and all copies of
21 the materials within 30 days of the conclusion of the proceedings in the above-referenced
22 case, including any appeal.

23 8. The parties must abide by Rules 16(d) and 49.1(e) of the Federal Rules of
24 Criminal Procedure along with General Order No. 514 of the United States District Court
25 for the Southern District of California, which, among other things, requires that any filings
26 referencing or containing an individual's personal information must be redacted in a
27 manner consistent with said General Order.


28

1 9. Defense counsel must ensure that every member of the Defense is advised of
2 the Protective Order and has agreed to be bound by its terms before accessing the materials.

3 10. The parties agree that any court filings containing any part of the materials
4 shall be filed under seal.

5 IT IS SO ORDERED.

6
7 Dated: January 5, 2021


8 Hon. Anthony J. Battaglia
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28