

From: "[REDACTED]" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]> [REDACTED] (CRM)" <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up
Date: Thu, 25 Jun 2020 22:45:04 +0000
Attachments: Material_Witness_PA_4.02_Final___signed.pdf

The MLAT is attached for reference, thanks.

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, June 25, 2020 6:28 PM
To: [REDACTED] (CRM) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Thanks, [REDACTED] I appreciate the concern and am open to working to address it, to the extent possible. We, of course, would never simply turn this material over to a civil litigant, as you suggest. The problem is, irrespective of our intent, this is not Rule 6 material (unless, of course, he testifies before a grand jury), and we are trying to be mindful of not simply our criminal case, but obligations we may have under other aspects of U.S. law, FOIA and/or *Touhy*, spring to mind, for example. Again, we never voluntarily turn this stuff over, and we frequently oppose FOIA requests and the like to the extent we can under the law. But particularly given the history and concern, we don't want to make promises we may not be able to keep.

Do you by any chance have handy a copy of the MLAT itself (if not, certainly happy to locate myself, just figured you might have it already). I'd like to see what, if anything, the treaty says about this subject.

From: [REDACTED] (CRM) <[REDACTED]>
Sent: Thursday, June 25, 2020 2:47 PM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Thanks. This is helpful. One clarification which they will seek – because it seems to loom large in their suspicions – is whether his statement will be provided to victims for purposes of civil litigation. I know this is not something that ordinarily happens (I don't think I have ever done this) – but I think we need to say something about that to move this forward.

Maybe something like, "Absent a court order directing otherwise, the SDNY will not use or disclose the statement in any matter other than a criminal investigation, prosecution, or related asset forfeiture action initiated by the United States government."

What do you think?

From: [REDACTED] (USANYS)
Sent: Thursday, June 25, 2020 7:36 PM
To: [REDACTED] (CRM) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

██████ Thanks for your patience. I've now had a chance to raise your suggestion on our end, and we are amenable to discussing a confidentiality agreement along the lines you propose, with some revisions. Below is our proposed language which we would be comfortable with. Happy to discuss our position further at your convenience. Thanks, Ted

Prior to the in-person interview:

- From now until August 14, 2020, neither the witness nor any person representing him will make any statement to anyone (other than counsel) about the plans for or terms of the interview. Likewise, the SDNY agrees to make no public comment about the matter during this period. If an interview has not been concluded by August 14, this confidentiality agreement will not bar any further public or private comments on the matter.

After an in-person interview:

- If the witness completes an interview with U.S. law enforcement, both parties may confirm publicly or privately that: "the witness has met with law enforcement authorities in the United States and answered questions about matters under investigation. We will not comment further." Further comment by the witness or any person representing or speaking for him will void this agreement.
- The content of the witness's statements to law enforcement as part of any interview arranged pursuant to the MLA will only be used or disclosed as permitted under U.S. law, including in connection with a criminal investigation or proceeding, as ordered or authorized by a court in the United States, or as otherwise required by law.

Nothing in this agreement will bar any party from disclosing to a Court any communications related to setting up or executing the interview or the contents of the interview.

From: ██████████ (CRM) <██████████>
Sent: Tuesday, June 23, 2020 5:00 AM
To: ██████████ (USANYS) <██████████>; ██████████ <██████████>
Cc: ██████████
Subject: RE: Following up

Sounds good.

From: ██████████ (USANYS)
Sent: Monday, June 22, 2020 10:06 PM
To: ██████████ (CRM) <██████████>; ██████████ <██████████>
Cc: ██████████
Subject: RE: Following up

Thanks ████████ I am in the process of raising this internally on our end, but given recent events, and as I'm sure you can imagine, it make take me a bit more time than usual to get back to you. I can tell you the conditions below are unlikely to be acceptable to us as drafted, but provided it is in fact a rough outline, I am working on some proposed modifications that folks here may be able to get comfortable with. I will circle back when I know more.

From: ██████████ (CRM) <██████████>
Sent: Monday, June 22, 2020 6:50 AM
To: ██████████ <██████████>; ██████████ (USANYS) <██████████>
Cc: ██████████
Subject: Following up

Before this weekend's events, I was planning on writing an email proposing that you put together some very specific terms for an in-person interview that we can share with the Home Office and the police force which makes the first formal approach to the witness's solicitors. Most of the terms are already noted in the MLA request: who will be present, where it will take place (UK), whether it will be recorded or written, etc. What isn't covered is any kind of a description or agreement about confidentiality. Absent this, a MLA police interview will get hung up like your efforts at a voluntary interview.

This weekend's events, which are troubling on many levels, also provide an opportunity in this case. Blackfords's and the witness's anger have been focused on your former USA's public statements. They may now have some greater confidence that they can rely on any statements of confidentiality. Or at least they can now save face by agreeing to an interview. In any event, given the history of this, I think absent a mutual agreement on confidentiality, this matter will get mired in litigation, and you may never get the interview.

Here is a rough outline of what might be acceptable on confidentiality. This may give you heartburn, but I think it is the most expeditious way forward:

Prior to the in-person interview:

- An agreement that for a period lasting no longer than eight (8) weeks, neither the witness nor any person representing him will make any statement to anyone (other than counsel) about the plans for or terms of the interview. Likewise, the USDOJ agrees to make no public comment about the matter during this period. If an interview has not been concluded within eight weeks, this confidentiality agreement will not bar any further public or private comments on the matter.

After an in-person interview:

- If the witness makes a statement, both parties may confirm publicly or privately that: "the witness has provided a formal statement to law enforcement authorities in the United States about matters under investigation. Further comment would not be appropriate." Further comment by the witness or any person representing or speaking for him will void this agreement.
- The content of witness's statement will be treated in the same manner as testimony taken before a Federal Grand Jury under Fed.R.Crim.P. 6(e). Among other things, unless used in connection with a criminal proceeding, required to be disclosed in connection with a criminal proceeding, or otherwise ordered disclosed by a court in the United States, the content of the statement will not be made public.

Nothing in this agreement will bar any party from disclosing to a Court any communications related to setting up or executing the interview or the contents of the interview.

Putting something like this together will pave the way for getting the interview done.

Thanks,



United States Embassy – London

U.K. Mobile:

From the U.S.