

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA <i>ex rel.</i>)	
TZAC INC.,)	
)	
Plaintiff,)	Civil Action No. 15-2001 (RC)
)	
v.)	<u>FILED UNDER SEAL</u>
)	
THE CARTER CENTER, INC.,)	
)	
Defendant)	
_____)	

**TZAC’S MOTION TO UNSEAL AND FOR PUBLIC HEARING ON
GOVERNMENT’S MOTION TO DISMISS**

The Zionist Advocacy Center (“Relator”), by and through its undersigned counsel, respectfully moves the Court to unseal this action. Additionally, in allowing for an effective hearing under 31 U.S.C. 3730(c)(2)(A) of the False Claims Act (“FCA”), in response to the United States of America’s (“United States” or “Government”) motion to dismiss under 31 U.S.C. 3730(c)(2)(A), the Relator respectfully moves the court to deem that hearing to be public.

BACKGROUND

The Relator filed the complaint in this action under seal pursuant to the FCA on behalf of the United States against the Carter Center, Inc. (“Carter Center”). The Relator contends that the Carter Center violated the FCA by falsely certifying that it had not provided material support or resources to terrorists within the last ten (10) years, in order to obtain grants from the United States Agency for International Development (“USAID”). *See generally* Compls ¶¶ 22-48.

Despite the public nature of the documents revealing the conduct at issue in this case, a substantial amount of research was still required to uncover, consolidate, and analyze them. This reality is not consistent with potentially related concerns expressed in consideration of the FCA. Additionally, although the Carter Center allegedly reported its actions to one branch of the government, it is not at all clear that these actions would have been effectively communicated to those in charge of issuing the Carter Center's USAID grant.

These "foreign officials" referred to by the government in its motion to dismiss were no less than leaders of the listed terrorist organizations, Hamas, and the Popular Front for the Liberation of Palestine, who: have unlawfully retained power in key territories, preventing elections; make regular and significant payments to jailed terrorists and their families; oversee the construction, with unprecedented amounts of foreign aid, of terror tunnels through which attacks on Israeli citizens are frequently carried out; and organize the indoctrination and slaughter of their own people en masse.

The USAID grant prohibits "material support for terrorism." The Carter Center provided crucial services to these terrorist organizations. Despite The Carter Center's purported aims, there has not been any evidence presented that such aims are being, or have ever been realized, but rather, regular brutal acts of violence and incitement continue to be committed and spurred on by these organizations, as has been par for the course. Providing valuable services for those who are unquestionably committing such acts was, surely, conceived of in the USAID prohibition against providing "material support for terrorism." If there is any doubt, the context makes this clear. Regarding constitutional and statutory provisions, courts have acknowledged the presence of

“material support for terrorism” in comparable circumstances. Holder v. Humanitarian Law Project, 561 U.S. 1, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010).

PUBLIC HEARING ON MOTION TO DISMISS

According the 31 U.S.C. 3730(c)(2)(A) a Relator of a *qui tam* action must be given an opportunity for a hearing in the event that the government decides to move to dismiss the action. The Relator in this case, simply requests that this right be fully, and effectively realized. While it is true that the government is afforded a large amount of discretion in deciding whether to dismiss a case, the False Claims Act specifically makes provision for a hearing to be provided, prior to such an action, to ensure that the government has a complete and accurate understanding of the full picture of the case in making that determination. Analyses of the court’s great discretion suggest that that level of discretion is more pertinent to the post-hearing making of the decision, as opposed to, necessarily, the hearing proceeding itself, which, being specifically provided for in the FCA, should be held to the standards which were likely conceived of during its construction. The court, in discussion of that post-trial discretion has noted that

Because plaintiff was provided a hearing to attempt to convince the United States to pursue the action, the United States may now dismiss the action without regard for plaintiff’s objections under section 3730(c)(2)(A). After such a hearing, the government has ‘virtually unfettered discretion to dismiss’ this type of claim.” (citing *Hoyte v. Am. Nat’l Red Cross*, 518 F.3d 61, 65 (D.C. Cir. 2008) (internal citation and quotation marks omitted)).

United States ex rel. Roach v. Obama, No. CV 14-470 (RCL), 2014 WL 7240520, at *1 (D.D.C. Dec. 18, 2014).

In order to properly present the matter at issue in this case, the Relator will also need to call witnesses at the hearing in question. These witnesses would speak to the general impact of terrorism and normalization of relations with terrorists. The restriction

on discussion of the case, however, will make the procuring of such witnesses very difficult, and may in fact be prohibitive. In addition, the Relator would like to attempt a lobbying campaign in connection with the hearing. The Relator, of course, has a right to lobby the government. *See Vermont Soc. of Ass'n Executives v. Milne*, 172 Vt. 375, 379, 779 A.2d 20, 24 (2001) (Nevertheless, it is beyond dispute that lobbying directly involves core political speech that lies at the very heart of what the First Amendment was designed to safeguard.). In this way, the effectiveness of the hearing would likely be subverted. Due to this reality, should the Relator be denied a public hearing, the hindrance would be so severe that preparing for the hearing would no longer be worth the resources that it would cost the Relator. As such, if the court should decide that the hearing should be confidential and sealed, the Relator would like to postpone and or waive such hearing pending appellate review. Denial of a public hearing, would constructively deny the Relator its right to attempt to persuade the government of the merits of its claim, while simultaneously denying the public of its right of access that is encouraged in government and court proceedings. *See Application of The Herald Co.*, 734 F.2d 93, 101 (2d Cir. 1984), *United States v. Smith*, 985 F. Supp. 2d 506, 518–19 (S.D.N.Y. 2013). The purpose of the witnesses that the Relator intends to call is to present the government with the unique perspective those witnesses have to offer as victims of terror, not to spring unexpected evidence on the government. The Relator here feels that this perspective is crucial to a comprehensive understanding of the situation, which is highly relevant to appreciating the merits of its case.

MOTION TO UNSEAL

There is no basis for maintaining the seal in this case, as the sealed content does not disclose confidential investigative techniques, information that could endanger a continuing investigation, or material that could injure non-parties. The court in a case from the Southern District of New York Court found no ground for retaining a seal of the court's files in a *qui tam* Relator's action under False Claims Act (FCA), in which the government had decided not to intervene; the contents of the files "did not disclose any confidential investigative techniques, information which could jeopardize ongoing investigation, or matters which could injure nonparties but, rather, except for complaint, documents described routine, general investigative procedures and did not implicate specific people or provide any substantive details." *U.S. by Dep't of Def. v. CACI Int'l Inc.*, 885 F. Supp. 80, 81 (S.D.N.Y. 1995). This case was cited, and its evaluation of whether a document should remain sealed enforced, by other courts as well.

In *United States v. CACI International, Inc.*, the court examined documents that the government sought to keep sealed. The court found that "[t]he content of the court's files do not disclose any confidential investigative techniques, information which could jeopardize an ongoing investigation, or matters which could injure non-parties" and that the documents merely described "routine, general investigative procedures and do not implicate specific people or provide any substantive details." *CACI International, Inc.*, 885 F.Supp . at 83 . The court therefore, found no ground for retaining the documents under seal." *U.S. ex rel. Goodstein v. McLaren Reg'l Med. Ctr.*, No. 97-CV-72992-DT, 2001 WL 34091259, at *2 (E.D. Mich. Jan. 24, 2001).

The District Court for the District of Columbia has emphasized the substantial public interest that exists in access to information in *qui tam* actions. That court also

acknowledged that should the litigation be abandoned for some reason, the great public interest persists.

In making this argument, however, the Relator ignores the inherent public interest in being able to access records in FCA cases. *See Durham*, 818 F.Supp.2d at 67; *Schweizer*, 577 F.Supp.2d at 172. Indeed, the public's interest in the disclosure of documents in this case is particularly strong given that the case implicates improprieties with taxpayer money by one of the largest entities in the mortgage and financial services industry in the wake of the 2008 housing crisis. By filing a *qui tam* action, the Relator purported to be bringing a claim on behalf of and in the interest of the public; the fact that the Relator, himself, is abandoning the litigation does not lessen or change the public's interest in hearing allegations that the Government was defrauded of millions of dollars. *See Durham*, 818 F.Supp.2d at 67 (“Voluntary Dismissals of FCA actions do not render the allegations any less relevant to the taxpaying public”). Accordingly, given the “generalized needs for public access” in FCA cases, the Court finds that this factor weighs in favor of lifting the seal. *Schweizer*, 577 F.Supp.2d at 173.

United States ex rel. Grover v. Related Companies, LP, 4 F. Supp. 3d 21, 26 (D.D.C. 2013).

CONCLUSION

For the Foregoing reasons, The Relator respectfully requests that this case be unsealed, and that the hearing provided according to 31 U.S.C. 3730(c)(2)(A) of the FCA, be public.

Dated: November 14, 2017
New York, NY

Respectfully submitted,

DAVID ABRAMS
Attorney for the Relator

By: 

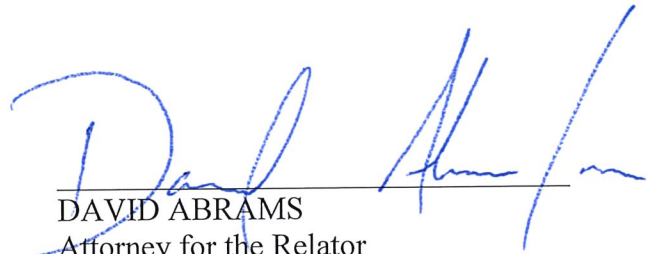
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CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on this 14th day of November, 2017, I caused a true and correct copy of the foregoing to be served on the United States of America through the Assistant United States Attorney by first-class mail to:

Brian P. Hudak
555 Fourth Street, NW
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Because this action is under seal pursuant to 31 USC § 3729, *et seq.*, defendant has not been served with copies of the foregoing.



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