

In the United States District Court  
For the District of Colorado

Civil Action No. 14-cv-00245-MSK-MJW

Reverend Matt Hale,

Plaintiff,

v.

Federal Bureau of Prisons,

Defendant.

Plaintiff's Response to Defendant's Motion  
for Entry of Protective Order (Doc. 75)

Plaintiff, Reverend Matt Hale  
(hereafter "Hale"), opposes the Defendant's  
motion on numerous grounds, stating as follows:

The first reason why the Defendant's  
motion should be denied is that it fails

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UNITED STATES DISTRICT COURT  
DENVER, COLORADO

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JEFFREY P. COLWELL  
CLERK

to meet the standard for the issuance of a protective order as provided by Fed. R. Civ. P. 26(c), which states as follows in clear and unambiguous terms:

"The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...."

Here, since the Defendant and its employees are government actors, Hale denies that there is, or ever could be, "good cause" to "protect" their activities from the scrutiny of the general public, nor does the Defendant provide any support at all in its motion for the proposition that a protective order is necessary to protect it and its employees "from annoyance, embarrassment, oppression, or undue burden or expense" within the context of this case. The fact that this case is presently being discussed on a website (Motion at 2) is simply not sufficient

to meet the "annoyance, embarrassment" or "oppression" standard, nor is there even remotely a concern here that the Defendant and its employees may suffer "undue burden or expense" by virtue of the public dissemination of the details of this case on that website or anywhere else amongst the general public.

Second, and related to the above, is that the Defendant has provided no basis at all for the proposition that government agencies and employees, in the performance of their duties, should be allowed to keep those activities secret from the scrutiny of the general public. No case law is provided, nor suggested, by the Defendant on that point. It is, after all, the government of the United States that is supposed to serve the people in this country, not the other way around. Accordingly, there is far less of a justification for the issuance of a protective order when it is the activities of the government and its employees that are at issue. Open government, not secrecy, is the hallmark

of the republican form of government and this Court should frown on the issuance of a protective order accordingly here.

Third, the Defendant does not bother to explain the utility of a protective order in this case when "information that may implicate prison security and safety, the safety of persons both within and outside the prison, law enforcement techniques or investigations, and other sensitive personal information" (Motion at 3) will, at least in part, almost certainly be coming out at trial. Obviously that trial will, in turn, be public record notwithstanding the issuance of any protective order. It is furthermore likely that a fair number of Hale's supporters, as well as the news media, will be present at that trial and that the transcript of it will also eventually be posted at the Free Matt Hale website along with the other documents pertaining to this case that the Defendant mentions in its motion are already there (Motion at 2). Hence a protective order

seems to make little sense because, in effect, the information in question will eventually be aired to the public all the same.

Fourth, other than the Defendant's usual reminder to the Court that Hale was convicted of a crime more than eleven years ago, the Defendant's motion is singularly lacking in any basis that the dissemination of the discovery in this case poses a threat to the B.O.P. and its employees of "annoyance, embarrassment, or oppression" — the actual language of the rule — or that Hale and his supposed "followers" would, as a result of the dissemination of that discovery, pose any other threat to the Defendant and its employees that isn't listed in the rule. In other words, the Defendant provides no connection at all between Hale's more-than-eleven-year-old conviction and the (actual) purposes of the rule. The fact that Hale has supporters (not "followers") is simply not enough, standing alone, to justify the issuance of a protective order in this case, and as for Defendant's citation of United States v. White,

698 F.3d 1005 (7th Cir. 2012), that is totally improper since White is not a "follower" of Hale, nor even an adherent of the Creativity religion, nor at liberty to receive any communications from Hale since he himself is imprisoned. Furthermore, the evidence against White was weak in the extreme as reflected by the fact that the case against him was thrown out twice by the trial court.

It is likewise improper that the Defendant cites the sixteen-year-old shooting spree of Benjamin Smith, quoting what Hale said at his funeral service, since, as Hale will prove at trial, Smith was not a follower of Hale either and Hale was praising Smith for having passed out religious literature, not his alleged crimes as the Defendant insinuates.

Hale can understand why defense counsel is not presently aware of these facts concerning White and Smith but they are indeed facts all the same and will be proven

by discovery and at trial in short order. Thus Hale objects to the issuance of a protective order in this case on the basis of anything having to do with White or Smith. There is, simply put, no record of any "follower" of Hale having ever committed a crime, on behalf of Hale or otherwise, or of Hale having ever praised same. Hale praised Smith for passing out the literature of his church, not violence. That distinction is obviously a meaningful one. There is no evidence that Hale had anything to do with Smith's or White's alleged crimes, no evidence that they "followed" him by committing them, and no support therefore for a protective order on such grounds.

Finally, while the Defendant points out that there is a Free Matt Hale website, it conveniently fails to ~~mention~~ mention why that website exists: that Hale maintains his innocence of having committed any crime. That is why a Free Matt Hale website exists in the first place. It is a website devoted to the freeing

of an innocent man, not a guilty one. Thus again, there is no connection between the fact that there is a website that supports Hale and any kind of basis for the issuance of a protective order in this case. People support Hale because he is innocent, not guilty. Yes, people care about Hale but that, standing alone as it does here, is insufficient to justify the issuance of a protective order. There is no reason to believe that Hale, who maintains his innocence, and who in fact has proven his innocence of having committed any crime in the first place (see again Amended Complaint, Doc. 10 at para. 24), would then turn around and seek to enlist his supporters to "annoy, embarrass, or oppress" the Defendant and its employees with the discovery produced in this case, or that they would take that upon themselves on their own. Hale is a law-abiding person, has always been, and has always expected his supporters to comport themselves the same way. As such, he naturally opposes any suggestion to



the contrary such as a protective order would evoke. The Defendant provides no basis whatever for the proposition that he would behave unethically in this case, nor will he. While his legal career and rightful freedom may well have been wrongly denied him in the past and hideously so at that, that does not mean that his character should continue to be maligned in the manner the Defendant suggests with its motion. In sum, if a protective order would not issue were Hale a free person suing the B.O.P., it should not issue here either. The mere fact that he was unfortunately convicted of a crime is not enough.

"The courts have insisted on a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements, in order to establish good cause" for the issuance of a protective order. Sanson v. Milyard, 2011 U.S. Dist. LEXIS 154423 (D. Colo. June 13, 2011 (emphasis added)), quoting Charles A. Wright + Arthur Miller, Fed. Practice and Pro.

(Civ.) sec. 2035 1.39. "Under Fed. R. Civ. P. 26(c), a party must demonstrate 'good cause' for entry of a protective order. Conclusory or stereotypical assertions are insufficient to show good cause." Exum v. United States Olympic Comm. 209 F.R.D. 201, 206 (D. Colo. 2002) (emphasis added). "Instead, the party seeking a protective order must show that disclosure will result in a clearly defined and serious injury to the party seeking protection." Id (emphasis added). The Defendant has not even remotely met this high burden. Instead, all it does is make conclusory and stereotypical assertions, at best. Saying that a protective order is necessary here because Hale was convicted of a crime and has supporters — as the Defendant does — falls within the very kind of conclusory and stereotypical assertions that are insufficient as a matter of law for the issuance of such an order.

For all of the above reasons, the Defendants' Motion for Entry of Protective

Order (Doc. 75) should be denied.

Respectfully submitted,

Reverend Matt Hale  
Reverend Matt Hale  
Plaintiff

December 4, 2015

**Rev. Matt Hale #15177-424  
U.S. Penitentiary MAX  
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### Certificate of Service

I hereby certify that on December 7, 2015, I mailed a copy of this Response to Defendant's Motion for Entry of Protective Order to Susan Prose, attorney for the Defendant, at 1225 17th St. Suite 700, Denver, CO 80202 via first class mail.

Reverend Matt Hale

Mailed  
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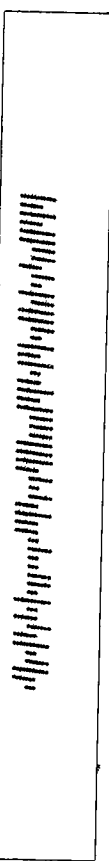
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