

District Court, Boulder County, Colorado Court Address: 1776 6 <sup>th</sup> Avenue Boulder, CO 80306	<p style="text-align: center; color: blue;">DATE FILED August 14, 2024 3:50 PM</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>v.</p> <p><b>AHMAD AL ALIWI ALISSA</b> Defendant.</p>	
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. <b>21CR497</b>  Division 13
<b>MR. ALISSA’S MOTION FOR A PROTECTIVE ORDER (D-066)</b>	

AHMAD ALISSA, through counsel, hereby moves this Court for a protective order as follows:

- a. Prohibiting the prosecution and / or its agents from requesting and / or obtaining any of Mr. Alissa’s medical or mental health records, any information contained with such records, any individually identifiable health information, and / or any protected health information from the Boulder County Sheriff’s Office Jail Division Medical and Mental Health units unless: 1) Mr. Alissa provides signed written consent to the disclosure of such information to the prosecution or its agents; 2) the prosecution demonstrates that such disclosure is authorized under the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (hereinafter “HIPPA”); or 3) the prosecution demonstrates that such disclosure is otherwise permitted under state or federal law(s); and
  
- b. Prohibiting anyone from the Boulder County Sheriff’s Office Jail Division including Medical and Mental Health units and staff employed within those units from disclosing any of Mr. Alissa’s medical or mental health records, any information contained with such records, any individually identifiable health information, and / or any protected health information to the prosecution or its agents unless: 1) Mr. Alissa provides signed written consent to the disclosure of such information to the prosecution or its agents; 2) the prosecution demonstrates that such disclosure is authorized under HIPPA’s Privacy Rule; or 3) the prosecution demonstrates that such disclosure is otherwise permitted under state or federal law(s).

As grounds therefore, Mr. Alissa states:

1. Law enforcement arrested Mr. Alissa on March 22, 2021. He remained at the Boulder County Jail until he was transported to CDHS in Pueblo on December 15, 2021, after being found incompetent to proceed due to his serious mental illness, mainly schizophrenia.
2. On October 6, 2023, after a hearing regarding Mr. Alissa's restoration to competency, this Court found Mr. Alissa competent to proceed. Although Mr. Alissa was found competent to proceed, this Court ordered Mr. Alissa to remain at CDHS in Pueblo. A concern shared by the Court was Mr. Alissa's need for his Court ordered antipsychotic medication, namely Clozaril. At the hearing the Court heard testimony that Mr. Alissa was on involuntary medication due to his serious mental illness.
3. On November 14, 2023, after a preliminary hearing, Mr. Alissa entered a not guilty by reason of insanity plea. This Court ordered a sanity evaluation be conducted by CDHS. The Court ordered Mr. Alissa to continue to remain at CDHS in Pueblo.
4. On July 30, 2024, counsel for Mr. Alissa's filed a motion requesting Mr. Alissa be returned to the Boulder County Jail. Mr. Alissa resided at CDHS Pueblo since December 15, 2021. This Court granted Mr. Alissa's motion.
5. Mr. Alissa was transported to the Boulder County Jail on August 5, 2024.
6. On August 14, 2024, Chief Goetz of the Boulder County Jail informed counsel for Mr. Alissa that he contacted District Attorney Michael Dougherty to discuss Mr. Alissa's medical treatment at the jail.
7. Chief Goetz and Michael Dougherty (and possibly others) violated Mr. Alissa's HIPPA rights.
8. Because Mr. Alissa plead not guilty by reason of insanity, Colo. Rev. Stat. §16-8-103.6 applies. The applicable section of §16-8-103.6 states the following:

(2)(a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to [section 16-8-103](#) or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to [section 18-1.3-1201](#) for an offense charged prior to July 1, 2020, or pursuant to [section 18-1.4-102](#); or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to [section 16-8-107\(3\)](#) waives any claim of confidentiality or privilege *as to communications made by the defendant to a physician or psychologist* in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted pursuant to [section 18-1.3-1201](#) for an offense charged prior to July 1, 2020, or pursuant to [section 18-1.4-102](#). The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or

treated the defendant for the mental condition. (Emphasis added)

9. §16-8-103.6 is specific in its waiver of a defendant's waiver of confidentiality and privilege; it is only the defendant's statements that are made to a physician or psychologist in the course of an examination or treatment that Mr. Alissa cannot claim privilege or confidentiality. It is Mr. Alissa's belief that there was an extensive discussion regarding Mr. Alissa's treatment, medication and the jail's plan surrounding his medical treatment between Chief Goetz and Mr. Dougherty. That information does not fall under the waiver created by §16-8-103.6 and was a clear violation of Mr. Alissa's HIPPA rights.
10. To ensure that there are no further violations of Mr. Alissa's HIPPA rights, Mr. Alissa requests any communication made by Mr. Alissa that the Boulder County Jail feels falls within the waiver of §16-8-103.6, that the Boulder County Jail be ordered to put such communication in writing and provide it directly to the Court for an in-camera review.

WHEREFORE, Mr. Alissa requests a protective order to ensure his protected medical information is not inappropriately disseminated.



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Kathryn Herold #40075  
Supervising Deputy State Public Defender



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Samuel Dunn #46901  
Deputy State Public Defender

**Certificate of Service**

I hereby certify that on \_\_\_August  
14\_\_\_\_\_, 2024, I served the foregoing  
document through Colorado E filing to all  
opposing counsel of record.

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KH

Dated: August 14, 2024