

requests for discovery. Specifically, the United States produced approximately 453 pages of unclassified material, including an FBI 302 and underlying agent's notes, phone logs, State Department press materials, and emails, badge records, and phone records for an additional State Department employee. In total, the United States has produced approximately 16,283 pages of unclassified material in this matter. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

III. Classified Discovery

Since the last Status Hearing, the United States has made additional productions of classified material. Specifically, the United States produced approximately 136 pages of classified material, including classified FBI 302s, underlying agents' notes, emails, and phone records. In total, the United States has produced approximately 3,053 pages of classified discovery in this matter. The Parties note that some of the newly produced classified material was produced to the defense in response to requests set forth in the defense's most-recent discovery letter, dated June 22, 2012. The latest production of classified discovery occurred on August 27, 2012, at which time the government produced, among other things, a volume of emails involving an individual whom the defense contends is central in the case. With respect to much of this material, the United States has produced it to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

IV. Meet-and-Confer Sessions and Exchange of Letters

As described in prior Joint Status Reports and at prior Status Hearings, the Parties have held numerous meet-and-confer sessions to discuss the production of additional material in response to the defense's discovery requests and to narrow any issues for the Court's resolution.

The Parties also agreed that the defense would provide the United States with a revised discovery letter that would supersede its October 6, 2011 letter, with the goal of memorializing the Parties' progress to date in satisfying or narrowing the defense's requests, and the United States would provide a written response to that revised letter. At the June 14, 2012 Status Hearing, the defense agreed to provide its revised letter on June 22, and the government stated its intent to provide its response by July 23, 2012.

As agreed, the defense provided its revised discovery letter on June 22, 2012. The Parties held a meet-and-confer session on July 13, 2012, to discuss specific items in that letter. While preparing its response, the United States continued to produce unclassified and classified material, including material specifically called for in the defense's letter. By agreement of the parties to extend time, the United States provided its written response to the defense's revised discovery letter in a letter dated August 27, 2012. This response indicates that the government still expects to produce additional materials in response to the defendant's requests. On August 30, 2012, the government informed the defense that the amount of time needed to complete that production remains to be determined. The United States intends to file with the Court shortly a Notice of Filing, attaching this latest comprehensive exchange of letters (i.e., the defense's revised discovery letter dated June 22, 2012, and the government's responsive letter dated August 27, 2012), reflecting in detail the progress made to date in resolving or narrowing the defense's requests.

Additionally, on August 30, 2012, the Parties held another meet-and-confer session, during which the undersigned prosecutors advised the defense that the United States was working on another discrete matter related to classified discovery. In short, the undersigned prosecutors have learned that the intelligence report identified in the Indictment had been used

for purposes of drafting a separate intelligence product, which product was never finalized prior to the unauthorized disclosure at issue. Some of the drafting occurred within the time period deemed relevant by the Parties. The undersigned prosecutors are investigating this drafting process to determine its scope and what discoverable material may arise from it. The undersigned prosecutors have advised that their review of this additional information could take two additional months to complete before any materials related thereto are produced to the defense. While counsel for the defendant have not been informed of the content of this new information, counsel reasonably expect that it could have a material impact on their understanding of the government's case, and likely will prompt additional discovery requests.

V. Proposed Briefing Schedule on Motions to Compel

The undersigned prosecutors have advised the defense that they are prepared to litigate now the outstanding discovery disputes reflected in the parties' June 22, 2012, and August 27, 2012, discovery letters.

Defense counsel agree that there are discrete issues in the outstanding discovery letters that could, theoretically, be litigated now. It may not be appropriate to proceed with discovery motions at this time, however, given that the government's production of discovery materials remains ongoing. It is not presently known when the current round of discovery will be completed, particularly with respect to the information disclosed to the defense on August 30 concerning the additional intelligence product. Materials produced months hence could bear on motions filed earlier, requiring amended motions and responses to be filed. Further discovery could also necessitate the filing of a second wave of discovery motions. Such a two-track process could prove inefficient, and the defense respectfully wishes to raise this issue with the Court and ask the Court to consider whether, given the time that has been devoted to the process

thus far, it is not the better course to have only one comprehensive motion to compel discovery after the government has completed its production.

Should a two-track approach to discovery motions (i.e., one for items that could be addressed now and another for when the discovery is complete) be preferable to the Court, the Parties have conferred and would respectfully propose in this regard that the Court impose a schedule providing: (a) the defendant 60 days from September 5, 2012 (i.e., November 5, 2012), to file its initial discovery motions; (b) the government 45 days from that date (i.e., December 20, 2012) to file its responses; and (c) the defendant until January 10, 2013, to file any replies. Hearings on that motion would be scheduled at the Court's convenience.

VI. Witness Issues

a. Fact Witnesses

The Parties have no issues to report concerning fact witnesses.

b. Expert Witnesses

Neither Party has indicated a decision to use any expert witnesses nor has identified any such witnesses. Defense counsel will seek a procedure where potential expert witnesses may have access to the classified materials in the case.

VI. Motions

a. Dispositive Motions

In a written memorandum opinion and order, issued on August 24, 2011, the Court denied three pretrial motions filed by the defense. Pending before the Court is the defense's fourth pretrial motion, a motion to suppress statements.

b. Discovery Motions

See above.

VII. CIPA

Once classified discovery has been completed, the Parties can address with the Court the various CIPA procedures and schedule for addressing the use of classified material at trial. It is not possible to suggest such a schedule until the discovery issues have been resolved.

VIII. Trial

Given the complexity and sensitivity of the issues likely to be raised in CIPA proceedings in this case, as well as the delays that are frequently concomitant with that process, the Parties estimate that this matter will not be ready for trial before 2013.

Dated: August 31, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2012, I caused a true and correct copy of the foregoing
be served via the Court's ECF filing system to all counsel of record in this matter.

/s/ _____
Jonathan M. Malis
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