

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

_____)	
UNITED STATES OF AMERICA,)	
)	
vs.)	Case No. 1:10-cr-00485-LMB
)	
JEFFREY ALEXANDER STERLING,)	
)	
Defendant.)	
_____)	

**REPLY TO GOVERNMENT’S UNCLASSIFIED
RESPONSE TO DEFENDANT’S CIPA SECTION FIVE NOTICES**

COMES NOW Jeffrey A. Sterling, by counsel, and for his Reply to the Government’s Unclassified Response to the Defendant’s CIPA § Five Notices, states as follows:

The government served an unclassified response to the CIPA § Five Notices filed by the defense. As such, the defense will serve an unclassified reply which similarly contains no classified information. The defendant’s position is that the government is simply playing a game of hide and seek and delay by raising meritless issues in order to defer the Court’s involvement in this issue. In the end, however, the government properly suggests that this Court will need to schedule a closed hearing at which these issues can be discussed and resolved so that counsel can begin to prepare this case for trial. In this regard, the defense agrees.

There is no doubt that the defense needs to interview witnesses whose identity was not known to the defense until that information, in some form, was produced in the SCIF. All of the information about these witnesses was provided to the defense as statements and interview reports that were placed in the SCIF and designated classified. All of this information is therefore

presumptively classified and the defense cannot use that information whether at trial or to prepare the case unless it is declassified or substituted as provided under CIPA. Though the government often trumpets its plan to declassify everything in this case (Response p. 4) it has not yet done so and apparently will not do so on any schedule that will allow the defense sufficient time to prepare for trial. The issue then, which was previously raised by letter to the government, is how is the defense to use this information to prepare this case for trial while it remains classified.

If the defense ever learns the exact identity of the people whose interview reports and statements have been noticed for disclosure, the defense will want to interview them and in doing so, will have to disclose, directly or indirectly, to these persons, all of the information that is the subject of the CIPA designations. That same information may necessarily be disclosed to other witnesses who are identified during those interviews and are thus also witnesses. By providing to the government and the Court the precise information that will come up in the interviews - e.g. FBI 302s or statements - the defense has certainly complied with the specific notice requirement imposed under CIPA § Five and the cases cited by the government in its brief. Indeed, this same procedure was utilized in the Moussaoui case.

Finally, while we appreciate the offer to provide contact information for some witnesses, that generous offer does not solve the quandary posed here. Unless this information is declassified or substituted, counsel cannot use the information to interview a witness or to obtain later leads without running afoul of the Court's Protective Order or the strictures of Title 18. For all of this information there is no independent or unclassified source upon which the defense can rely to pose questions or develop leads. If the government would just declassify this information as it says it will, then there would be no need to involve the Court. Yet, since that event is still somewhere off in the future, the

government should now, as required by CIPA, either declassify this information or provide substitutes after a CIPA § Six hearing to be convened at the Court's convenience. All of these matters can be fully discussed in a closed setting.

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By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of April, 2011, I electronically filed the foregoing *Reply to Government's Unclassified Response to Defendant's CIPA Section Five Notices* with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record

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