



James L. Trump  
Senior Litigation Counsel  
United States Attorney's Office  
Eastern District of Virginia

By: \_\_\_\_\_ /s/

James L. Trump  
Justin W. Williams U.S. Attorney's Building  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Phone: 703-299-3726  
Fax: 703-299-3981  
Email Address: [jim.trump@usdoj.gov](mailto:jim.trump@usdoj.gov)



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

Alexandria Division

UNITED STATES OF AMERICA                    )  
  )  
                  v.                                    ) No. 1:10cr485 (LMB)  
  )  
JEFFREY ALEXANDER STERLING                )

**PRE-HEARING MEMORANDUM ON DISCOVERY ISSUES AND OTHER  
OUTSTANDING MATTERS**

The United States, through the undersigned counsel, hereby submits this memorandum regarding the discovery issues scheduled for hearing on August 30, 2011, and other outstanding matters.

**DISCOVERY MOTIONS SET FOR HEARING**

By order entered August 17, 2011, the court indicated that two discovery motions will be heard on August 30, 2011, during the previously scheduled CIPA hearing. Those two motions are:

(1) Defendant’s Motion for Discovery. This motion was originally docketed as Dkt. 116 and filed under seal. The public filing is Dkt. 133. The government’s response, Dkt. 123, was also filed under seal. The public filing is Dkt. 129. The public record copies of these pleadings are identical to the under seal documents. The defendant’s reply is Dkt. 135.

The discovery issues addressed in these pleadings generally fall into two categories. The first category concerns what is alleged by the government to be true or accurate in Chapter 9 of *State of War*. The second category is the issue of the “harm” caused by the alleged disclosures about Classified Program No. 1.

(2) Defendant's Second Motion to Compel. This motion was originally filed as Dkt. 149; the public record copy is Dkt. 152 (with an attachment, Dkt. 152-1). The only difference between the under seal and public record copies of the motion is that, on page three of the publicly filed motion, one phrase was redacted from the under seal version. The government's response to the motion to compel is Dkt. 164, with three attachments, Dkt. 164-1, 2 and 3.

The motion to compel concerns the defendant's request for discovery of classified reports regarding Iranian nuclear weapons development.

As to both of these discovery motions, some of the underlying facts remain classified, and, as a result, any discussion of these facts at the hearing should also remain classified.

#### **OTHER MATTERS**

There are several other outstanding discovery matters that have not been resolved and may require a hearing in the future. These are:

(1) Defendant's Motion for Issuance of Rule 17(c) Subpoenas, Dkt. 130, 131, 131-1 through 5. This motion asks that Rule 17(c) subpoenas be issued and served on three Senate Select Committee on Intelligence staffers (two former and one current). The government's response is Dkt. 138. The defendant's reply is Dkt. 145, filed under seal.

Senate and SSCI counsel have been trying to resolve the discovery issues raised by the defendant's motion by producing certain information voluntarily, and that process is ongoing.

(2) Defendant's Motion for Issuance of a Rule 17(c) Subpoena to "Human Asset No. 1," filed under seal on August 24, 2011 (Dkt. 159, 160 and 161). The United States has not filed its response to this motion (due on September 6, 2011).

(3) Defendant's Motion in Limine Regarding Expert Witnesses Proffered by the

United States, filed on August 29, 2011 (Dkt. 165). The United States has not filed its response to this motion (due on September 9, 2011).

The other outstanding motion is the Government's Motion for Reconsideration of the Court's Memorandum Opinion and Order regarding the testimony of James Risen, Dkt. 162, filed August 24, 2011. Responses to the motion are due September 6, 2011. The United States did not notice the motion for hearing and asked that the Court rule on the motion without additional argument.

Finally, the Court had directed the government to undertake a classification review of several grand jury pleadings regarding the grand jury subpoenas issued to James Risen, so that these pleadings could be made part of the public record. The government asked the Court to reconsider its ruling, given the recent briefing and argument on the Risen issue and the Court's Memorandum Opinion. Dkt. 144 (under seal). The Court has not ruled on that request. The classification review is ongoing as to these pleadings.

Respectfully submitted,

Neil H. MacBride  
United States Attorney

William M. Welch II  
Senior Litigation Counsel  
Criminal Division  
United States Department of Justice

Timothy J. Kelly  
Trial Attorney  
Public Integrity Section  
United States Department of Justice

James L. Trump  
Senior Litigation Counsel  
United States Attorney's Office  
Eastern District of Virginia

By: \_\_\_\_\_ /s/  
James L. Trump  
Attorney for the United States of America  
United States Attorney's Office  
Justin W. Williams U.S. Attorney's Building  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Phone: 703-299-3726  
Fax: 703-299-3981  
Email Address: jim.trump@usdoj.gov

