

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

Alexandria Division

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

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY

COMES NOW Jeffrey A. Sterling, by counsel, and for his Supplemental Memorandum in Support of his Motion for Discovery, states as follows:

1. On October 7, 2014, Mr. Sterling filed a Motion for Discovery.(Docket No. 322) That motion sought discovery, pursuant to *Brady* and its progeny, of any agreements or understandings between the United States and Mr. James Risen regarding his testimony in this case. In support of that motion, Mr. Sterling attached a news article confirming that the Attorney General of the United States has already publicly stated that Mr. Risen will not be subject to prison if he refuses to testify in this case. (Memorandum of Points and Authorities in Support of Motion for Discovery, p. 2)(Docket No. 323) Such a promise is plainly an offer of favorable treatment to a prospective witness and thus discoverable.

2. The United States has not responded to this motion in writing while the Attorney General freely discusses the matter in public.

3. Just yesterday, the Attorney General apparently gave another interview in which he states, in detail, that the Government is on the verge of some sort of agreement with Mr. Risen. In

an article published in Politico, the Attorney General is quoted as follows:

Attorney General Eric Holder said Wednesday that he expects “a resolution” of the dispute over federal prosecutors’ demand for New York Times reporter James Risen’s testimony in a leak case against his alleged source.

Speaking at the Washington Ideas Forum, Holder also repeated what appeared to be a firm promise that Risen will not face jail for refusing to identify his source or sources.

“We have been in touch with Mr. Risen’s lawyers. We have talked about a variety of things,” Holder said in an onstage interview with Washington Post columnist Jonathan Capehart. “If what we’ve talked about remains true, I think there’ll be a resolution of that that will be satisfactory to everybody. But as I said, no one’s going to jail - no reporter’s going to jail as long as I’m attorney general.”

Holder sees ‘resolution’ of in Risen Case, Politico. Josh Gerstein, October 30, 2014. (copy attached)

4. All of the information that the Attorney General discloses to political reporters is “news” to the defense. If the Government has reached some agreement with Mr. Risen, who is a witness in the case against Mr. Sterling, that agreement is discoverable. If the United States has made offers to Mr. Risen and communicated those offers to Mr. Risen, the offers and the letters making such offers are discoverable. To this date, the defense simply is being left in the dark in a manner that ignores the Government’s obligation to provide exculpatory evidence.

5. As such, the defense requests a written reply to the Motion for Discovery that would respond to these discovery requests and disclose the existence of any and all understandings or promises that may exist at this time between the United States and Mr. Risen regarding his testimony in this case. This matter can be set for a hearing on November 20, 2014, consistent with the Court’s prior Scheduling Order.

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

By: _____ /s/
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