

II. Unclassified Discovery

Since the last Status Hearing, the United States has made an additional production of unclassified material to the defense pursuant to its disclosure obligations and the defense's requests for discovery. Specifically, the United States produced approximately 33 pages of unclassified material, including an FBI 302, underlying agent's notes, and telephone records. In total, the United States has produced approximately 15,762 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 two additional productions of classified material, totaling approximately 88 pages including classified FBI 302s, underlying agents' notes, and classified emails. In total, the United States has produced approximately 2,892 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 October 6, 2011. 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

The Parties continue to engage in meet-and-confer sessions to discuss the production of additional material in responsive to the defense's discovery requests and to narrow any issues for the Court's resolution. Since the last status conference, the parties have met five times, on November 16, 2011, November 22, 2011, November 30, 2011, December 9, 2011, and

December 19, 2011. Each of these sessions were held in the U.S. Attorney's Office's SCIF and lasted approximately two-and-a-half hours. To illustrate the number and complexity of the issues that the Parties are discussing, it has taken all of the meet-and-confer sessions to date (including the two meet-and-confer sessions prior to the last status report on October 20, 2011 and October 28, 2011) for the Parties to review *a single time* the discovery requests in the defense's October 6, 2011, discovery letter.¹

To date, the Parties have found the meet-and-confer sessions to be very productive, both in elucidating the grounds for the defense requests and affording the Parties an opportunity to narrow the discovery issues in dispute. As a result of the meet-and-confer sessions, many defense requests for documents and information have been satisfied. Other requests have been narrowed. With the goal of memorializing the Parties' progress to date in satisfying or narrowing the defense's requests, the defense has agreed to provide the United States with a revised discovery letter that will supercede its October 6, 2011 letter. Further, the Parties have agreed to meet-and-confer to review a draft of the defense's revised letter to see if any further resolution of the issues can be accomplished. The defense anticipates providing the draft revised discovery letter to the United States on or before January 25, 2012. The Parties will then meet-and-confer within the week following this letter to discuss that draft revised letter.

As the meet-and-confer process has progressed, the United States has also engaged with the relevant Intelligence Community members concerning their equities that are implicated by the defense requests, and has made follow-up requests for information. The United States anticipates that these requests will result in additional disclosures to the defense. The United States anticipates that it will make additional requests for information from the Intelligence

¹ The defendant's October 6, 2011, discovery letter is 18 single-spaced pages in length and contains in excess of 100 requests for documents or information, much of it classified. If the Court would like to review that letter, it was filed under seal on October 13, 2011. See Docket #58.

Community once it has received the defendant's revised draft discovery letter. Again, as most of the information the defense is seeking is classified, the production of that material to the defense will be both complicated and time consuming.

The Parties respectfully suggest that the process described herein is the most appropriate and orderly manner to address the sensitive equities raised by the defense's discovery requests. The Parties believe that the orderly completion of the process ultimately will serve to preserve judicial resources by sharpening the remaining issues for judicial resolution. Until the Parties have completed this process, it is uncertain whether the outstanding discovery requests may be susceptible to resolution without the intervention of the Court, or whether a briefing schedule for discovery motions is appropriate. The Parties request that the Court set the next Status Hearing in this matter either March 19th, 20th or 21st.

V. 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

The Parties believe that any discovery motions should follow completion of the above-described meet-and-confer process and of classified discovery in this case.

VII. CIPA

Once classified discovery has been completed, the Parties can address with the Court the various CIPA procedures and schedule for addressing classified material. It is not possible to suggest a CIPA 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 September 1, 2012.

Dated: January 17, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2012, I caused a true and correct copy of the foregoing to be served via the Court's ECF filing system to all counsel of record in this matter.

/s/
G. Michael Harvey
Assistant United States Attorney