

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff - Appellant

v.

JEFFREY ALEXANDER STERLING

Defendant - Appellee

) No. 11-5028

) (1:10-cr-00485-LMB-1)

**RESPONSE OF APPELLEE JAMES RISEN TO MOTION
OF THE UNITED STATES REGARDING BRIEFING
SCHEDULE AND MOTION ON CONSENT REGARDING
BRIEFING SCHEDULE AND BRIEF LENGTH
EXTENSION**

With the permission of all parties to this case, Counsel for Appellee James Risen submits this response to the Motion of the United States Regarding Briefing Schedule and informs the Court that the Parties have reached an agreement concerning the briefing schedule for this matter. The agreed-upon schedule differs from that proposed by the United States in its original motion and is as follows:

Appellant's Brief due January 13, 2012;

Appellees' Briefs due February 14, 2012; and

Appellant's reply brief, if any, due February 28, 2012.

In addition, the Parties have also reached an agreement regarding the length of opening briefs in this case. **Specifically, Mr. Risen requests on the consent of all Parties that the Court grant a limited extension of word limits for principal briefs to 18,000 words (from 14,000 provided for by Local Rule 32(b)).**

The important and complex issues raised on this appeal warrant a modest extension of the briefing schedule and word limits provided in the Local Rules. The Parties agree that the issues raised by this appeal are complex. *See* Motion of the United States Regarding Briefing Schedule at 2. Among other issues on this appeal, the Government asks this Court to reverse the trial court and deny James Risen's rights as a journalist, secured by the First Amendment and federal common law, to protect the confidentiality of his sources. The scope of the reporters' privilege with respect to confidential information in a criminal trial is, to the best of our knowledge, a matter of first impression for this Court.

When the issue was briefed before the trial court, the Government similarly consented to, and the District Court granted, Mr. Risen's request for an extended page limit of 50 pages for principal briefing, which equated to slightly over 18,000 words. (Dkt 112) The District Court also granted several extensions of time for briefing by all parties. (Dkt. 76, 185, 210)

This appeal raises the same constitutional and common law issues raised below. Moreover, this Court lacks familiarity with the substantial procedural history, which spans three subpoenas for Mr. Risen's testimony and multiple rounds of briefing over the course of more than three years. In light of the complex and important constitutional issues and the extended procedural history that bears on those issues, Mr. Risen respectfully submits that the modest extensions of briefing time and word limits outlined above — that are agreed upon by all Parties —are appropriate.

November 21, 2011

Respectfully submitted,

/s Joel Kurtzberg

David N. Kelley
Joel Kurtzberg
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

Attorneys for James Risen

CERTIFICATE OF SERVICE

I certify that on November 21, 2011 the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s Joel Kurtzberg
Joel Kurtzberg