

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-5028
(1:10-cr-00485-LMB-1)

UNITED STATES OF AMERICA

Plaintiff-Appellant

v.

JEFFREY ALEXANDER STERLING

Defendant - Appellee

**APPELLEE'S RESPONSE TO MOTION OF UNITED
STATES REGARDING BRIEFING SCHEDULE**

COMES NOW Jeffrey A. Sterling, appellee, and for his Response to the Motion of the United States Regarding Briefing Schedule, states as follows:

1. On November 16, 2011, the United States, appellant, filed a motion regarding a briefing schedule (DE 14). The United States argued that one of the three issues it seeks to appeal raises issues under the Classified Information and Procedures Act (CIPA) and that it is therefore entitled to an expedited briefing schedule; however, the United States sought a briefing schedule pursuant to this Court's Local Rule 31(a). The appellee, Mr. Sterling, does not agree that this appeal raises any issues appealable under CIPA and therefore does not believe that the United States is entitled to any expedited consideration of its appeal. No order has been entered

by the District Court allowing the defendant, over the Government's objection, to disclose any classified information. No sanctions have been imposed upon the Government for refusing to allow for the disclosure of any classified information by the defendant in any manner.

2. On November 17, 2011, the Court requested a response to the Government's motion regarding a briefing schedule by today's date, November 21, 2011 (DE 15).

3. Counsel for the United States, for Mr. Sterling, and for third-party James Risen have been conferring regarding a consent briefing schedule to suggest to the Court. Counsel for Mr. Sterling, Edward B. MacMahon, Jr., informed the United States that he has a pending three week trial that is set to begin on January 17, 2012. In addition, counsel for the parties and Mr. Risen discussed the complexities of the issues raised in this appeal and discussed the appropriate length for opening briefs in this matter.

4. Based on these discussions, counsel for the United States, for Mr. Sterling, and for Mr. Risen have all agreed to the following and submit it as a joint proposal:

The opening brief of the United States be due on Friday, January 13, 2012;

The opening briefs for Mr. Sterling and Mr. Risen be due on Tuesday, February 14, 2012;

The reply brief of the United States be due on Tuesday, February 28, 2012;

Each opening brief be subject to an 18,000 word limit.

WHEREFORE, Mr. Sterling requests that the Court set a briefing schedule and word limitation order consistent with the proposal set forth above, which is acceptable to the United States, Mr. Sterling and Mr. Risen.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2011, I electronically filed the foregoing *Appellee's Response to Motion of United States Regarding Briefing Schedule* 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/
Barry J. Pollack
Miller & Chevalier Chartered
655 Fifteenth St. N.W. Suite 900
Washington, DC 20005
(202) 626-5830
(202) 626-5801 (facsimile)
bpollack@milchev.com

Counsel for Mr. Sterling, Appellee