[redacted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	Criminal No.: 10-225 (CKK)
v.	Filed In Camera, and Under Seal with the Classified Information Security Officer
STEPHEN JIN-WOO KIM, also known as Stephen Jin Kim, also known as Stephen Kim, also known as Leo Grace,	
Defendant.	

Granted
Leave to file
C K Kollar-Kotelly
Judge
1/30/14

(U) GOVERNMENT'S REPLY IN SUPPORT OF ITS OBJECTIONS TO DEFENDANT'S SECOND CIPA SECTION 5 NOTICE

(U) On October 24, 2013, the United States submitted its objections ("Gov. Obj.") to the adequacy of the defendant's second notice under Section 5 of the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA") ("Second CIPA Section 5 Notice" or "Notice"). On November 12, 2013, the defendant filed his response to the government's objections ("Defendant's Response"). In responding to these objections, the defendant has added clarity and definition to some of the items in his original Notice. The Notice, however, is still deficient in many aspects, and the defendant's response demonstrates a misconstruction of his full obligation at the CIPA Section 5(a) stage, especially with regard to his obligation for noticing classified testimony. In order to "limit the issues and make the procedures under Section 6 to the point and manageable," United States v. Collins, 720 F.2d 1195, 1200 (11th Cir. 1983), the United States respectfully asks this Court to order the defendant to provide a particularized notice setting forth the specific classified information that he expects or desires to disclose at trial — whether through documents or testimony — or preclude the disclosure of any classified information for which the defendant has failed to provide the requisite particularity and specificity.

[redacted]

[redacted]

(U) **I. CIPA Section 5 Requires Particularized Notice of Specific Classified Information Defendant Seeks to Disclose Publicly**

(U) At the outset, the defendant's response minimizes what is required in a CIPA Section 5(a) notice by characterizing CIPA as "only requir[ing]" that the notice contain a "brief description of the classified information" at issue, paying little to no heed to the purpose of Section 5(a). Defendant's Response at 2 (emphasis added); see also id. at 3 ("Section Five requires the defendant to provide only a 'brief description . . . .'") (emphasis added). Just as the Court said in Collins, the defendant's characterization "overlooks that the 'brief description' is to be of *the classified information* expected to be disclosed. 'A brief description' is not to be translated as 'a vague description'; 'of the classified information' may not be interpreted as 'of the areas of activity concerning which classified information may be revealed.'" Collins, 720 F.2d at 1199 (emphasis in original).

(U) After displaying a misapprehension of the meaning of "brief description," the defendant accuses the United States of inventing the requirement that a CIPA Section 5(a) notice be "particularized" and contain "exactly" the information the defendant seeks to disclose. Defendant's Response at 2. But, this "particularized," "exact" description is precisely what the law requires from a CIPA Section 5(a) notice. See United States v. Badia, 827 F.2d 1458, 1465 (11th Cir. 1987) ("[T]he objective of CIPA is to provide the government with . . . a particularized description of the classified information prior to trial.") (emphasis in original); Collins, 720 F.2d at 1199 ("A Section 5(a) notice must be particularized, setting forth specifically the classified information . . . .") (emphasis added); see also id. ("The Section 5(a) notice requires that the defendant state, with particularity, which items of classified information entrusted to him he reasonably expects will be revealed . . . .") (emphasis added); United States v. North, 708 F. Supp.

[redacted]

[redacted]

389, 393 (D.D.C. 1988) (explaining defendant's CIPA notice "was rejected because it blatantly lacked any attempt at particularization") (emphasis added); see also United States v. Rewald, 889 F.2d 836, 855 (9th Cir. 1989) (explaining that the Court in United States v. Miller, 874 F.2d 1255, 1276 (9th Cir. 1989), interpreted a CIPA Section 5 notice to be adequate if it "informs '[t]he government . . . exactly to which documents [the defendant] was referring, and [to] what information was contained in them.'") (emphasis added).

(U) Similarly, the defendant's citations to case law inappropriately diminish the specificity required in a CIPA Section 5(a) notice, a finding which necessarily involves a case-specific fact-bound analysis. Initially, the defendant is correct that the Ninth Circuit found the list of documents in defendant Miller's notice adequate under Section 5.[1] Miller, 874 F.2d at 1276. A close analysis of the circumstances of the Miller case demonstrates, however, that while a CIPA Section 5(a) notice that consists "simply of a list indicating the length and title of each document," Miller, 874 F.2d at 1276, may be adequate under some circumstances (such as Miller's, and even some of the lists provided by the defendant in this case[2]), some of the mere lists provided by the defendant in his Second Section 5 Notice simply are not adequate.[3] Miller noticed all of the classified

[1] (U) The United States did not mean to imply otherwise in its objections when it quoted from a portion of the Miller case in which Miller was required to describe with more particularity the relevance of the classified information he sought to introduce at the CIPA Section 6 stage, rather than in the CIPA Section 5(a) notice itself. See Gov. Obj. at 4.

[2] (U) The United States notes that it lodged no objections to the defendant's First Section 5 Notice, which consisted of lists of documents, and did not object to the first, second, third, fourth, and sixth list of items in his Second Section 5 Notice.

[3] (U) Moreover, as will be explained in Section II., infra, and unlike in Miller, the defendant's Notice is not simply a list of documents that he may seek to introduce, but also contains general topics, non-exhaustive lists, and disguised discovery demands. The defendant's notice, therefore, is inadequate not only because of the confusion generated

[redacted]

[redacted]

information in "each document found" in his possession. Id. (emphasis added). Miller did so because of his proffered defense theory, in which he asserted that he collected classified documents because he was a "pack-rat"—not because he sought to pass the classified documents to the Soviet Union. Id. Because Miller was noticing all documents found in his possession in their entirety, "[t]he government knew exactly to which documents Miller was referring [in his Section 5 notice], and it knew what information was contained in them." Id. The Miller court did not say that simply listing the length and titles of each document in a CIPA Section 5(a) notice is sufficient in every case. Notably, the defendant has not identified any cases that relied on Miller in endorsing a similar "list-based" notice — let alone any case supporting the proposition that such a list is always sufficient. In fact, the Ninth Circuit later cited to Miller for the proposition that a CIPA Section 5(a) notice must inform the United States exactly to which documents the defense is referring. Rewald, 889 F.2d at 855. Although a list was sufficient for those purposes in Miller for the factual and contextual reasons set forth above, the lists provided by the defendant here, to which the United States objects, do not satisfy that test.[4]

---

by his lists of documents, but for other reasons as well.

[4] (U) The defendant's response to the government's objections added a very significant item missing from the original Notice: the defendant's claim that he expects to disclose all of the classified information in each of the documents he noticed. As will be explained in Part II., infra, that assertion strains credulity when considering all of the varied information in those documents and still leaves the United States guessing as to what information the defendant actually intends to disclose. In essence, it strains credulity that the defendant actually desires to disclose each word of classified information on the disparate topics covered in each of the documents listed in his Notice. This is not a case like Miller, where the defendant wanted to use every line of every document to show that he hoarded classified documents, without regard to what any of the documents said. If the defendant is not required to be more specific, then, in the absence of a proffered Miller-type defense, the United States is forced to chase down each piece of information, consult with the varying Intelligence Community equity holders, determine whether it will be invoking the classified information privilege as to

[redacted]

[redacted]

(U) On the other hand, the principal cases relied upon by the United States in its Objections are instructive in determining the adequacy of the defendant's Notice. The defendant claims that these cases are "easily distinguishable," Defendant's Response at 4, but the defendant's argument on this point is based on the flawed premise that precedent cannot be instructive unless a court actually passed specific judgment on the adequacy of a CIPA Section 5 notice. The defendant then goes further to suggest that if a notice discussed in a case was more egregiously inadequate than the defendant's, the case cannot be useful here. Id. at 4-5. In so doing, the defendant ignores that each of these cases sets forth a consistent standard for the specificity and particularization required in a CIPA Section 5 notice that is equally applicable to him. For example, although the notice in Collins was even more broad, vague, and undefined than the defendant's, that does not render the defendant's notice adequate. Nor does it render inapplicable the standards of general applicability enunciated in Collins, which have been followed by numerous other courts. The Collins standard, as well as examples of courts that have followed it, were provided in the government's Objections, see Gov. Obj. at 4-7, and above. That standard addresses "how much specificity" is required in a CIPA Section 5 notice, see Defendant's Response at 5; in short, it must allow the United States to determine the precise classified information that may be revealed by the defense.

[redacted] Finally, at the last hearing on October 28, 2013, the Court suggested that some of the noticed items appeared vague, and the defense conceded as much in the hearing and now in its filing. The defendant attempts to justify that vagueness now by

---

each piece of information, and then prepare materials for the Court justifying that privilege. This burden would be enormous, the attempted imposition of which appears to be nothing short of process graymail. Further, the Court would have to review all of this material, even for items of information the defendant may not actually expect to use. This is an improper burden to impose where it does not appear that the defendant seriously expects to use each and every item of classified information he has noticed.

[redacted]

essentially arguing that a lower specificity standard should apply to classified information that he seeks to disclose through testimony. As explained in the government's initial objections, the defendant's Notice lists a number of items that do not proffer what classified information may be revealed at trial, but instead pose an open-ended inquiry to the United States. See, e.g., Item 7(c) ("Sources of information relied upon by [redacted] for the statement in his 8:51 a.m. email on June 11, 2009, that he was aware that [redacted] 'should be out in minutes.'"). For the first time in his Response to the government's Objections, the defendant suggests that the classified information in these types of noticed items will be revealed through testimony, presumably at trial. Also for the first time, the defendant explains that the phrase "including but not limited to" was used because additional details about documents could be revealed through witnesses. The defendant seeks to invoke a lower specificity standard and attempts to justify this lower standard by baldly claiming that he cannot know how a witness will respond to questions at trial. Yet the defendant surely has some area of classified testimony that he expects or hopes to elicit at trial, or else he would not be noticing these items. The defendant can, and must, in order to permit for an efficient and complete CIPA Section 6(a) hearing, set forth what classified information he believes he will elicit from a witness, or hopes he will elicit.

(U) The defendant fails to recognize that the lower specificity standard he seeks to invoke is plainly at odds with the case law, which does not provide for it under any circumstances, including anticipated testimony.[5] Breaking down the Notice by topics is

[5] (U) Other cases also suggest measures taken to comply with CIPA Section 5's requirements when noticing testimony. Undersigned counsel has reviewed the Second CIPA Section 5 Notice in the case of United States v. I. Lewis "Scooter" Libby, in which defendant Libby, in addition to listing documents from which he reasonably expected to disclose the classified information (by Bates Number, in which the documents never exceeded eight pages, and were most often identified by only a single page number),

[redacted]

inadequate. See United States v. Smith, 780 F.2d 1102, 1105 (4th Cir. 1985) (en banc) (citing Collins, 720 F.2d at 1199)). So is providing non-exclusive lists of what information may be disclosed. By merely providing examples of the types of classified information that will be disclosed, instead of a complete list, the United States cannot possibly know exactly what information the defendant intends to rely on, contrary to Miller, as interpreted in Rewald, and Collins.

(U) The defendant also overlooks that a CIPA Section 5 notice is filed after the defense has received discovery, and engaged in whatever independent investigation it chooses, in order to allow the defendant to provide "a complete CIPA § 5 proffer of the classified evidence he hope[s] to offer at trial." United States v. Giffen, 473 F.3d 30, 36 (2d Cir. 2006). By using his CIPA Section 5 notice to pose questions, as will be further explained below, the defendant impermissibly shifts the burden to the United States to identify witnesses who could answer the questions posed and to identify what classified information those witnesses might possess, inexorably setting up the United States for graymail. See Collins, 720 F.2d at 1200. It is difficult to see how the CIPA Section 6(a) proceedings could occur, and the United States could argue that the classified information the defendant seeks to introduce is not relevant, without the United States being forced to undertake burdensome open-ended inquiries posed by the defendant's questions on the defendant's behalf. As a result of this process, the United States could be forced to disclose classified information obtained during the course of its inquiries that would not otherwise be discoverable, or even information that the United States was authorized to withhold from discovery earlier in the litigation under Section 4 of CIPA. This time-consuming undertaking could delay this trial indefinitely.

---

offered an approximately five-and-a-half page narrative summary of the classified information he reasonably expected to disclose through trial testimony.

[redacted]

[redacted]

(U) At minimum, the defendant should be ordered to produce narrative summaries instead of inquiries in his CIPA Section 5 Notice that would identify the witnesses from whom he intends to elicit potentially classified information, the questions he would pose to those witnesses, and the potentially classified answers that he seeks that would be relevant and helpful to his defense. Similar narrative summaries were produced by defendant Libby at the CIPA Section 5 stage. See United States v. Libby, 467 F. Supp. 2d 1, 4, 14-15 (D.D.C. 2006). Providing such summaries is a means for the defendant to adequately notice classified information, see Defendant's Response at 8 (complaining that the United States offered complaints but no solutions), and would allow the Court to conduct a proper CIPA Section 6(a) hearing, while recognizing that the burden of demonstrating the relevance and admissibility of the noticed classified information rests with the defendant, see Miller, 874 F.2d at 1277.[6]

(U) **II. The Specific Items Noticed by Defendant**

(U) The specific items noticed by the defendant are discussed below, grouped as in the Defendant's Response, while separately addressing the subparts of Items 7 through 12 at the end.

A. Item 5 (FBI 302s)

[redacted] As the defendant notes in his Response, Item 5 consists of "FBI 302s reflecting interviews of [redacted] on the 'List of 118' who accessed the intelligence

[6] (U) It is within the district court's discretion to order a defendant to provide pre-trial disclosures to the United States, including disclosures pertaining to trial witnesses, and to exclude defense evidence when the defense does not abide by the court's order. See United States v. Combs, 267 F.3d 1167, 1178-80 (10th Cir. 2001) (citing United States v. Russell, 109 F.3d 1503, 1510-12) (10th Cir. 1997)). This exercise of discretion is particularly appropriate and may be mandated in a classified information case, where CIPA—which was enacted to provide procedures for alerting the United States to the classified information that may be compromised by a prosecution, and specifically provides for the exclusion of evidence where a defendant does not comply with its notice procedures—applies. See Badia, 827 F.2d at 1464-66.

[redacted]

[redacted]

report at issue." As discussed above, unlike the list in Miller, which – *under the facts of that case* informed the United States exactly what information the defendant intended to notice, the defendant's list here is insufficient because it does not allow the United States to know precisely what classified information defendant reasonably expects to reveal. The defendant claims for the first time in his Response that he "obviously intends to notice the classified, portion-marked information in these three to four page [302s], which take no more than a few minutes to review" (i.e. all classified information within every listed FBI 302). But the amount of time to review the FBI 302s does not determine whether the United States can know which information defendant intends to use. The reality is that these FBI 302s cover a number of diverse classified topics within a single interview. For example, an interview may cover whether the individual saw the intelligence report at issue on the day of the unauthorized disclosure; whether the report was viewed electronically or in hard copy; whether the interviewee recalled the details of the intelligence report; what specific time the intelligence report was prepared; to whom the report would likely have been disseminated; the dissemination process; follow-up questions related to a pre-interview questionnaire; sources of intelligence relied upon for the intelligence report; and [redacted] among other classified topics. See, e.g., CLASS_2839-54.[7] This example of a single noticed document contains at least thirty-three classified paragraphs. The defendant's noticing of all of this diverse classified information causes the United States to doubt whether he reasonably expects to elicit all of the noticed information at trial.

(U) To adequately notice the FBI 302s in Item 5, the defendant should be required to specify the particular classified information within the FBI 302s that the defendant

[7] (U) These Bates numbers refer to documents produced to the defense in classified discovery. .

[redacted]

[redacted] expects to disclose publicly at trial. The defendant could do so either by specifying the paragraphs within the documents that he reasonably expects to disclose, or by at least providing a list of the topics in the interview reports for which he reasonably expects to disclose classified information, along the lines of the topic list provided above.

B. Items 7 to 12

(U) For each of Items 7 through 12, the defendant sets forth a topic at the beginning, and then provides a non-exhaustive list of examples of information he may disclose pertaining to the topic. It is undisputable that the United States cannot know exactly what information the defendant reasonably expects to disclose if it does not provide an exhaustive list. Moreover, the Court cannot know whether all of the areas of potentially classified trial testimony have been appropriately dealt with through CIPA in advance of trial. Because of the vague and non-exhaustive nature of the Notice, it will be unnecessarily difficult for the Court to rule on any objection(s) that the defendant is precluded from eliciting certain information at trial because it was not included in his Section 5 Notice. This Court should order the defendant to provide an exhaustive list, with the understanding that if the defendant is using the non-exhaustive language to preserve its ability to elicit testimony about certain documents, see Defendant's Response at 10, the defendant should properly notice the testimony according to the guidelines set forth above (identifying witnesses, questions, and the potentially classified answers that he desires to elicit).

C. Items 13 and 14

[redacted] In Item 13, the defendant notices "[t]he 'Eleven Questions' document relating to the alleged disclosure." This document provides the response of the relevant [redacted] to eleven questions posed to it concerning the June 11, 2009 unauthorized

[redacted]

[redacted] disclosure. The questions and/or answers to four out of these eleven questions are classified, and these four questions/answers (like all eleven) are distinct from each other. The defendant's noticing of this entire document again emphasizes why his claim that he reasonably expects to use all classified information in the noticed documents cannot be accepted at face value. In noticing the entire document, the defendant has included [redacted] information contained under Question 2 on page CLASS_28. This information pertains to [redacted] and the course of this litigation has made clear that the parties are not going to put this information at issue in trial. This inclusion is evidence that the defendant does not actually expect to disclose every item of classified information in every document he has noticed, as he claims in his Response. The defendant should be required to specify which of the questions noticed in Item 13, and which of the answers, he actually anticipates disclosing at trial, including addressing [redacted] information.

[redacted] In Item 14, the defendant notices [redacted] correspondence relating to the alleged disclosure dated June 12, 2009, June 18, 2009, and November 12, 2009." As an initial matter, because of the use of the phrase "relating to," the defendant should be asked to clarify whether the list of Bates Numbers provided with Item 14 is intended to be exhaustive. Like many of the other items, Item 14 contains many varied pieces of classified information. The noticed [redacted] letters commented on a range of different topics, such as: the accuracy and classification of the disclosed information in the Fox News article; [redacted] resulting from the disclosure; highlighted specific relevant language from the Fox News article; the intelligence report that formed the basis of the Fox News article; the distribution of the intelligence report; and the impact of the disclosure on our

[redacted]

national defense, among other classified topics. The defendant should be required to specify which of this classified information he reasonably expects to disclose.

D. Items 15 and 16

Item Numbers 15 and 16 assert that the defendant intends to disclose:

> 15. Information relating to the systems and procedures for the classification and declassification of documents and information in each government agency relevant to this case, including but not limited to
>
> 16. Information relating to the practices and procedures by which an agency of the United States government (such as the State Department) prepares a public or media statement that is derived from or relates to classified information, or otherwise communicates or discusses information with the media that is derived from classified information.

(U) From these requests, the United States cannot even begin to understand or appreciate the classified information that the defendant reasonably expects to disclose. The defendant begins both items with the incredibly broad language "[i]nformation relating to," with no indication of how broadly this is meant to sweep. For instance, neither Item specifies a time period. Regarding Item 15, "the systems and procedures for the classification and declassification of documents and information" in all of the government agencies "relevant to this case" could cover potentially limitless information. The defendant leaves the United States guessing as to what even constitutes an agency "relevant to this case." The defendant is asking the United States to engage in the burdensome process of identifying all of the individuals who may have knowledge of such topics and all of the agencies' documents relating to such procedures, and then to inform the defense of all this information by way of objection. Moreover, the defendant does not specify whether he intends "systems and procedures" to include computer programs, communications methods, and the like, and whether he intends to include

every component of "each government agency relevant to this case," or only those components "relevant to this case," whatever that means. Further, the defendant does not specify whether he intends to introduce evidence or elicit testimony related to specific examples of documents or information being classified or declassified. If he does intend to elicit such information, the defendant surely must include that with specificity in his notice. At trial, he should not be heard to say that such testimony was fairly included in this broad, vague, and almost meaningless Item noticed.

(U) The same is true of Item 16, which relates to all government contact with the media relating to classified information. The defendant does not even limit this item to agencies "relevant to this case," so it seems that the defendant is asking the United States to track down this information with respect to every government agency. The defendant also does not specify whether "[i]nformation relating to" the "practices" at these myriad agencies includes examples of specific instances in which federal agencies dealt with media inquiries related to classified information. It is not clear from Item 16 whether the defendant intends to elicit classified information at trial about other instances of unauthorized disclosures to the media. And, no time period is specified for either Item 15 or 16.

(U) In sum, distilled to their essence, Item Number 15 is a notice that the defendant seeks to elicit information about how any government agency classifies or declassifies information on any topic or has ever done so, and Item Number 16 is a notice that the defendant seeks to elicit information about how any government agency deals with the media on any issue involving classified information, or has ever done so. This does nothing to enable the United States or the Court to fulfill their roles in the important pre-trial processes set forth by CIPA. As with the other topics where the defendant does not even purport to identify the classified information which he reasonably expects to

[redacted]

disclose, the defendant should be ordered to identify the witnesses from whom he intends to elicit potentially classified information, the questions he would pose to defendants, and the potentially classified answers that he seeks that would be relevant and helpful to his defense.

E. Subparts of Items 7 to 12

[redacted] Some of the subparts of Items 7 through 12 are objectionable for additional reasons. In Items 7(c), 7(d), 7(e), 7(f), 7(g), 8(b), 9(b), 10(d), and 10(e), the defendant does not even purport to identify the classified information which he reasonably expects to disclose. For the reasons stated above, the defendant should be ordered to produce narrative summaries, in which he identifies the witnesses from whom he intends to elicit potentially classified information, the questions he would pose to witnesses, and the potentially classified answers that he seeks that would be relevant and helpful to his defense. In addition, regarding Item 7(g), the United States has also objected on the ground that the very wording of the item is vague; the United States is unsure what defendant means by "[t]he intended . . . distribution of the [redacted] In Item 7(a), the defendant notices "[t]he drafts of [redacted] provided in discovery and email correspondence relating to the drafting of [redacted] With this item, defendant notices forty-three pages of classified discovery (CLASS_3085-3125, 3205-18).[8] These pages discuss possible responses to the intelligence report; include a [redacted] internal correspondence about preparing other briefs based on the intelligence report; and inter-agency correspondence related to the intelligence report, among other classified topics. The defendant should be ordered to specify which of these topics he reasonably expects to

[8] (U) There are fifty-four pages contained in this range, but eleven are blank.

[redacted]

[redacted] disclose. In Item 7(b), the defendant notices [redacted] classified statements to the FBI on July 12, 2012." [redacted] classified statements in this document range from discussing whether he received an advance copy of documents on the date of the charged disclosure; answering questions on emails containing a [redacted] addressing a publication on [redacted] and explaining why [redacted] never materialized, among other classified topics. Again, the defendant should be ordered to specify which of these statements he reasonably expects to disclose.[9]

[redacted] In Items 10(b), 11(g), 11(h), 11(k), and 11(m), the defendant notices classified statements in FBI interviews of Daniel Russel, Darlene Bartley, Charles Lutes, Matthew Spence, and Thomas Donilon, respectively. The interview reports of these five individuals -- which often include multiple interviews of the same individual -- each cover numerous distinct classified topics. For example, Russel's classified statements include him discussing [redacted] North Korea; comparing the similarity of information in the Fox News article to the intelligence report; Russel's request of a U.S. government employee to conduct an intelligence assessment of the information contained in the Fox News article; the results of that assessment; and speculation regarding the identity of the leaker, among other classified statements. As another example, Lutes's classified statements cover several distinct topics, including his past access to several types of compartmented programs; access and review of the intelligence report; correspondence with Bartley on the date of the charged disclosure; discussions with other colleagues about the intelligence reports; Lutes's

---

[9] [redacted] At the top of page 10 of the Government's Objections, there is an example provided from defendant's Notice. See Gov. Obj. at 10 ("For example, in Item Number 7 the defendant states that he intends to elicit '[i]nformation relating to the distribution of copies of [redacted] to persons within the White House . . . ."). This quotation actually appears in defendant's Item 11, not Item 7.

[redacted]

[redacted] assessment of the information contained in the intelligence report; explanation that he received daily briefings from [redacted] press contacts; assessment of information contained in the Fox News article; comparison of Fox News to other news organizations, and in particular that Lutes found Fox News's mention of [redacted] North Korea particularly concerning; information about other unauthorized disclosures; and statements regarding possible arrests related to this charged unauthorized disclosure. For all of these interviews, the defendant should be ordered to specify which statements he reasonably expects to disclose, or at least provide a list of the topics in the interview reports for which defendant reasonably expects to disclose classified information.

(U) III. Conclusion

(U) As the Eleventh Circuit said in Collins, "[t]he Section 5(a) notice is the central document in CIPA." Collins, 720 F.2d at 1199. It is the central document because it frames the discussion for all future CIPA proceedings. Because defendant has not adequately set forth the classified information he reasonably expects to reveal at trial in his CIPA Section 5(a) Notice, he has not properly framed or limited the classified information involved in this case in a meaningful way. In order to streamline the CIPA Section 6(a) proceedings, this Court should order the defense to identify more precisely at this stage exactly what classified information it intends to use, or preclude the disclosure of any classified information for which the defendant has failed to provide the requisite particularity and specificity. See id. at 1199-1200.

[redacted]

[redacted]

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY
D.C. Bar No. 447889

G. MICHAEL HARVEY (D.C. Bar No. 447465)
Assistant United States Attorney
United States Attorney's Office
(202) 252-7810
Michael.Harvey2@usdoj.gov

JONATHAN M. MALIS (D.C. Bar No. 454548)
Assistant United States Attorney
United States Attorney's Office
(202) 252-7806
Jonathan.M.Malis@usdoj.gov

THOMAS A. BEDNAR (D.C. Bar No. 493640)
Assistant United States Attorney
United States Attorney's Office
(202) 252-7877
Thomas.Bednar@usdoj.gov

DEBORAH A. CURTIS (CA Bar No. 172208)
Trial Attorney
Department of Justice
(202) 233-2113
Deborah.Curtis@usdoj.gov

JULIE A. EDELSTEIN (D.C. Bar No. 976558)
Trial Attorney
Department of Justice
(202) 233-2260
Julie.Edelstein@usdoj.gov

[redacted]

[redacted]

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 19th day of November, 2013, I caused a true and correct copy of the foregoing filing to be served on counsel of record through the Classified Information Security Officer.

G. Michael Harvey
Assistant United States Attorney

[redacted]