

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

Alexandria Division

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

**DEFENDANT’S REPLY IN SUPPORT OF
MOTION FOR BILL OF PARTICULARS**

COMES NOW Jeffrey A. Sterling, by counsel, and for his reply in support of his Motion for a Bill of Particulars, states as follows:

The Government’s Opposition to the Motion for a Bill of Particulars only underscores the constitutional need for a bill of particulars in this case. The defendant is not seeking a bill of particulars as a substitute for discovery and does not argue that he is entitled to such relief as a matter of right. Rather, the defendant requests a bill of particulars so that he and his counsel can adequately prepare a defense, minimize the danger of surprise at trial, and plead double jeopardy. United States v. Schembari, 484 F. 2d 931, 934-935 (4th Cir. 1973) These are the purposes of a bill of particulars and the government cites no case for the proposition that issues of “national security” trump the requirement of adequate notice in a criminal case. And, by opposing this motion, the government is merely seeking to control the timing of the its disclosure of “national defense information” which information it must someday disclose publicly in order to seek to prove violations of 18 U.S.C. § 793. Because this information must eventually become

public and because the defense is prejudiced in the interim, this motion should be granted.

On page 4 of the Opposition, the Government parrots the allegations in the Indictment that are the subject of this motion as if restating them solves the problem here.

Human Asset No.1, a person known to the Grand Jury, moved to the United States in the early 1990s. Human Asset No.1 agreed to work for the CIA and provided highly valued information to the CIA. Human Asset No.1 later agreed to assist the CIA operationally in part to impede the progress of the weapons capabilities of certain countries and in return for monetary consideration.

Classified Program No.1 is a clandestine operational program of the CIA. The purpose of Classified Program No. 1, which had been authorized and approved at the appropriate levels of government in the late 1990s, was to impede the progress of the weapons capabilities of certain countries, including Country A.

(Opposition to Motion for Bill of Particulars, p. 5)

The Government then goes on to refer the Court to the various other references to Human Asset No. 1 and Classified Program No. 1 in the Indictment without ever offering any explanation as to why the identity of Human Asset No.1 or the details regarding Classified Program No. 1 cannot and should not be disclosed now instead of sometime later. These repeated references, it is argued, “clearly informs the defendant of the nature of the national defense information at issue.” (Opposition to Motion for Bill of Particulars, p. 5) This is simply untrue.

The fact that the government has briefed counsel or has provided some classified discovery does not satisfy the requirement that Mr. Sterling have notice of the substance of the public charges against him. Merely promising to someday provide a letter to counsel is also not a substitute for the requirement that Mr. Sterling have notice of the “national defense information” at issue in this case. And, it is clear that the government’s plan in this case is to publicly withhold the substance of the “national defense information” at issue in this case as long as it can

before making public, at trial, the actual facts behind the charges in this case. It has waited almost 5 years since Author A published his book and almost 10 years since Mr. Sterling left the CIA to bring this case. It now wants to court to bless a further delay of disclosure when that delay will only prejudice the defense and complicate the trial of this case.

By delaying the inevitable public airing of these issues, the government can continue to require the defense, through CIPA, to make disclosures to the government as to how it intends to defend this case. In the interim, the defense cannot even pursue leads generated by the classified discovery that has been produced without filing notices under CIPA and obtaining either declassification of the information or a substitute.¹ Further delay only complicates the preparation of a defense when it is clear that, in the end, the government must declassify or disclose at trial the identity of Human Asset No. 1 and details of Classified Program No. 1 simply in order to try and meet its burden. Their opposition to this motion merely delays the date when that will occur, and is not a proper basis upon which this Court should deny this motion.

WHEREFORE, the defendant requests that the instant motion be granted.

JEFFERY ALEXANDER STERLING
By Counsel

¹ The public filing of a Bill of Particulars would ameliorate many of the CIPA issues currently hampering the defense. The defense is preparing CIPA notices at this time.

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CERTIFICATE OF SERVICE

I hereby certify that I caused an electronic copy of the *Defendant's Reply in Support of Motion for Bill of Particulars* to be served via ECF upon James L. Trump, Attorney for the United States of America.

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