

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 07-20160

Hon: Nancy G. Edmunds

NAJIB SHEMAMI,

Defendant.

RESPONSE TO GOVERNMENT'S MOTION TO ADMIT DOCUMENTS

The government has moved to admit at trial documents of the Iraqi Intelligence Service (IIS) that pertain to the Defendant's alleged intelligence collection and reporting activities on behalf of the Iraqi government.

The government has proffered several arguments upon which they believe that these documents are admissible including authentication pursuant to Fed. R. Evid. 901(a); co-conspirator's statement pursuant to Fed. R. Evid. 801(d)(2)(E); the residual hearsay exception rule, Fed. R. Evid. 807; and the business record exception rule, Fed. R. Evid. 802(6).

Contemporaneous with the filing of this response, Defendant has filed a Motion for Discovery pertaining to the authenticity of these very documents the government in their motion seeks to admit.

The documents that Defendant seeks pursuant to his Motion for Discovery are relevant and material to the authenticity of those documents and to the credibility of the government witnesses that they intend to call to lay the foundation for the admissibility of said documents.

Defendant submits that an evidentiary hearing will be required in order for the Court to make an informed ruling on the admissibility of the government's documents.

Furthermore, the documents Defendant requests in his Motion for Discovery will be needed for such an evidentiary hearing and should assist the Court in determining the admissibility of the documents.

Defendant reserves the right to submit a supplemental response to the government's Motion to Admit Documents after an evidentiary hearing, if and after the Court holds such a hearing as requested by Defendant.

Defendant respectfully requests that this Court hold an evidentiary with respect to the admission of the government's proffered trial documents of the IIS. Defendant further requests that Defendant be allowed to obtain the discovery requested in his Motion for Discovery, if the Court grants said motion, before holding an evidentiary hearing so as to allow the full and fair examination of witnesses as to the authentication of the documents and the credibility of the witnesses whose testimony the government will rely upon for the foundation for the admission of said documents.

Respectfully submitted,

/s/ Edward C. Wishnow
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Dated: December 1, 2007

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2007 I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send notification of such filing to the following: Barbara McQuade, Assistant United States Attorney.

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