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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, ) CASE NO. 1:08-cr-00224 OWW  
12 )  
Plaintiff, ) GOVERNMENT'S OPPOSITION TO  
13 v. ) DEFENDANT HOLLOWAY'S MOTION FOR  
IMMEDIATE DISCLOSURE OF  
14 ) POSSIBLE GOVERNMENT MISCONDUCT  
ROBERT C. HOLLOWAY, et al., ) Date: TBD  
15 ) Time: TBD  
Defendants. ) Courtroom: Three  
16 ) Hon. Oliver W. Wanger

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17  
18 The United States hereby submits its Opposition to defendant  
19 Robert C. Holloway's Motion for Immediate Disclosure of Evidence of  
20 Possible Government Misconduct.

21 I.

22 INTRODUCTION

23 On May 15, 2009, the government sent correspondence to counsel  
24 for defendant Holloway alerting them to certain allegations made on a  
25 blog that had come to the attention of the government. The blog  
26 first came to the attention of the attorneys for the government  
27 shortly before the trial of United States v. Raul DeLeon, and indeed  
28 counsel for the government notified counsel for Mr. DeLeon of its

1 existence. After the DeLeon trial, counsel for the government then  
2 notified all counsel of the blog, pursuant to its Brady obligations.

3 II.

4 THE FORM OF THE INFORMATION PROVIDED

5 The information provided to counsel was in the form of a website  
6 that linked to a blog. The blog at issue is written anonymously, as  
7 are hundreds of thousands, if not millions, of other blogs on the  
8 world wide web. The writer does not identify himself or herself,  
9 save for the fact that the writer states he/she is a retired ATF  
10 Agent from the San Francisco Field Division.

11 III.

12 THE CONTENT OF THE BLOG

13 The blog begins with a rambling statement of all the wrongs the  
14 writer allegedly has suffered as an ATF Agent. It clearly reveals  
15 that the writer is a disgruntled former employee. It is not until  
16 page 3 of the blog that the writer addresses the issue of the wiretap  
17 in this case.

18 Succinctly put, the writer states he/she was a member of the  
19 team investigating Mr. Holloway and accuses the investigating  
20 officers at the time, along with the U.S. Attorney's Office, of  
21 purposely curtailing an ATF undercover investigation into Road Dog  
22 Cycle in favor of instituting a wiretap, even though, in the opinion  
23 of the writer, the undercover operation was bearing fruit. No dates,  
24 names (save for AUSA Laurel Montoya), locations, witnesses,  
25 conversations, documents, memos or other evidence are set forth by  
26 the writer.

27 Interestingly, and what defendant's counsel failed to point out,  
28 the writer also states, on page 4, that "[T]here have been attempts

1 to contact me by \* \* \* \* \* 's defense attorneys. They apparently have  
2 become aware of the true story." If the writer is to be believed on  
3 this statement, any insinuation by counsel for Mr. Holloway that the  
4 government somehow withheld this information to the detriment of  
5 defense counsel is undermined by this statement.

6 Nevertheless, despite the vacuum of details in the blog (no  
7 names, dates, locations, documents, conversations, etc.) counsel for  
8 the defendant are now requesting that the government institute a  
9 burdensome process to provide, inter alia, information concerning  
10 discussions among the officers and the U.S. Attorney's Office  
11 regarding the efficacy of the wiretap and questioning the necessity  
12 of a wiretap, along with evidence revealing "conflict" among the Task  
13 Force officers about the necessity of a wiretap. Counsel has also  
14 requested that the Court "seriously consider" recusing the U.S.  
15 Attorney's Office from litigating this matter, without providing any  
16 basis or authority for such a request. Finally, counsel requests a  
17 hearing wherein the government is to produce the requested items and  
18 "testimony may be taken."

19 The government objects to defendant's requests.

20 IV.

21 THE GOVERNMENT OBJECTS TO THE DEFENDANT'S REQUESTS

22 The government objects to the defendant's requests for the  
23 following reasons:

24 First, the blog is anonymous. The government should not have to  
25 be forced to respond to every anonymous posting on the web regarding  
26 what any person can allege occurred during the course of a federal  
27 investigation. To require the government to do so would open the  
28 door to the government doing nothing but, i.e., would open the door

1 to the government responding to anonymous postings on the web by any  
2 person alleging wrongdoing by the government during the course of  
3 litigation.

4 Second, the government has fulfilled its obligation under Brady.  
5 Despite knowing the falsity of the accusations, the government  
6 alerted counsel to the website. Presumably, by the writer's own  
7 admission, defense counsel knows the identity of the individual.<sup>1</sup>  
8 With the appropriate motion, at the appropriate time, counsel for the  
9 defendant can submit a detailed Declaration from the individual and  
10 subject the Declaration to scrutiny and review by the government.  
11 Should the court deem it appropriate, a hearing can be held whereupon  
12 the individual can be subject to cross-examination by the government.

13 The government can then respond with particularity to the  
14 individual's accusations, whereupon, should the court deem it  
15 appropriate, the court can order the government to produce additional  
16 evidence. However, ordering the government to respond at this time  
17 with a burdensome production of documents to an anonymous blog on a  
18 website that accuses unnamed individuals, at unknown points in time,  
19 at unknown locations, with unknown witnesses, referencing unknown  
20 conversations, with wrongdoing should not be condoned by the court.

21 V.

22 CONCLUSION

23 For the foregoing reasons, the United States respectfully  
24 requests that defendant's Motion for Immediate Disclosure of Evidence  
25 of Possible Government Misconduct be denied.

26 \_\_\_\_\_  
27 <sup>1</sup> Mr. Holloway has only had Mr. Kirk McAllister and current  
28 counsel as his counsel for several years, so presumably it would be  
either Mr. McAllister or current counsel.

LAWRENCE G. BROWN  
Acting United States Attorney

Date: May 20, 2009

By: /s/  
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Assistant United States Attorneys

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