

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 08-CR-231 (EGS)
)	
THEODORE F. STEVENS,)	COUNTS ONE: 18 U.S.C. § 1001
)	THROUGH SEVEN: (False Statements)
Defendant.)	
)	
)	
_____)	

**UNITED STATES' INITIAL RESPONSE TO DEFENDANT'S
MOTION FOR DISCOVERY AND FOR AN EVIDENTIARY HEARING**

The United States hereby submits its initial response to defendant's Motion for Discovery and for an Evidentiary Hearing Concerning David Anderson. Although the government intends to provide a more detailed submission to the Court on Monday, we provide this initial submission for the immediate consideration of the Court and the parties.

Simply put, Mr. Anderson's November 2008 letter is false. In his letter, Mr. Anderson states that he lied during his testimony in the *Stevens* trial concerning whether the federal government provided immunity, for all criminal acts committed in a ten-year period, to thirteen of Mr. Anderson's relatives. Mr. Anderson's statement in his November 2008 letter is not true, and the Court is aware that it is not true.

First, in March 2008, Anderson signed an affidavit, which he did not prepare, in which Mr. Anderson swore that the government had agreed to immunize Anderson and his thirteen family members (the "March Affidavit"). A copy of the March Affidavit was previously provided to defendant, and a redacted copy has also been attached hereto.

Second, when the government first learned of the March Affidavit in August 2008, Mr. Anderson was contacted by two FBI agents and asked about the contents of it. In that August 13, 2008, meeting, which was memorialized in a Form 302 report of the same date, Anderson told the government that he knew the affidavit contained inaccurate information. Anderson stated he realized the government had agreed not to make Anderson provide direct testimony against his

family members, but that Anderson knew that there had been no agreement relative to immunity or promises of immunity by the government as to anyone. Anderson further stated that the March Affidavit was drafted by another person, who was the subject of an unrelated federal investigation and who purportedly received immunity in the March Affidavit, and that Anderson felt pressure by that individual to sign the March Affidavit. Again, a copy of the Form 302 was also previously produced to defendant, and a redacted copy of that document has also been attached hereto.

Third, during his trial testimony in the *Stevens* case, Anderson was asked questions on direct examination about whether his statements in the March Affidavit were true. Anderson specifically stated that they were not:

Q. Okay. Mr. Anderson, let me ask you about something that occurred earlier this year. Did you sign an affidavit that wasn't completely accurate?

A. Yes, I did.

Q. Tell the jury about that.

A. Okay. We drafted, basically I tried to keep like my loved ones protected in the best way that I can through all this. It's been a long road. I mean, it's been a long, hard road, so, you know, I tried to keep them protected as much as I can, you know, through all this, because it has been a long road.

Q. All right. Did you sign an affidavit that said that a number of people had been given immunity by the United States government from criminal prosecution?

A. Yes, I did.

Q. Do you know that that was not true?

A. Yes. That was never said. It was kind of a gentlemen's agreement, you know. You know, that's what I work off of.

Q. All right.

A. A handshake, you know, so, you know, I take it as an immunity, but it was never -- that was never said.

Q. Did you draft that affidavit?

A. I didn't draft it, but I signed it.

Q. Did you know that it wasn't true when you signed it?

A. Yes.

10/9/08 Tr. (A.M.) at 80-81.

Fourth, armed with the March Affidavit, the Form 302 reflecting Mr. Anderson's repudiation of the March Affidavit, and substantial other information bearing on Mr. Anderson's credibility and truthfulness, defense counsel elected not to cross-examine Mr. Anderson. See 10/9/08 Tr. (A.M.) at 83. Taken together, this evidence – again, all of which defendant had in his possession at the time of Mr. Anderson's trial testimony – demonstrates that Mr. Anderson's March Affidavit was false, and that Mr. Anderson's testimony in the *Stevens* trial was consistent with his prior, repeated admissions to the government that the March Affidavit was false. Mr. Anderson's new statements to the contrary are like his statements in the March Affidavit itself: not true.

Mr. Anderson's letter also makes a series of allegations about the conduct of certain government personnel in connection with Mr. Anderson's preparation for trial. These statements are also untrue. The government has now obtained substantial additional evidence, including both documents and video surveillance, that prove the falsity of Mr. Anderson's allegations and that further explicitly prove Mr. Anderson's collusion with an interested party in the preparation and transmission of Mr. Anderson's letter. We will describe and submit that additional

information to the Court in a subsequent filing on Monday.

Respectfully submitted,

WILLIAM M. WELCH II
Chief, Public Integrity Section

/s/ Brenda K. Morris
BRENDA K. MORRIS
Principal Deputy Chief

NICHOLAS A. MARSH
EDWARD P. SULLIVAN
Trial Attorneys

JOSEPH W. BOTTINI
JAMES A. GOEKE
Assistant United States Attorneys
for the District of Alaska

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2008, a copy of the United States' Initial Response to Defendant's Motion for Discovery and for an Evidentiary Hearing was served electronically, via the District Court's ECF system, on defense counsel as set forth below:

Robert Cary, Esq.
Williams & Connolly LLP
725 Twelfth St. NW
Washington, D.C. 20005

/s/ Brenda K. Morris
Brenda K. Morris