

United States v. Ghailani: CIPA Electronic Filing Order

Hon. Lewis A. Kaplan
Southern District of New York
October 27, 2009

The following order specifies how defense counsel should file documents containing classified information in *United States v. Ghailani*, No. 1:98-cr-1023 (S.D.N.Y. Sept. 21, 1998).

Order

Pursuant to, *inter alia*, the Classified Information Procedures Act (“CIPA”), 18 U.S.C. app. 3 §§ 1–16, and the Classified Information Protective Order, dated July 21, 2009, the following procedures shall govern the electronic filing (*i.e.*, “ECF” filing) of material related to classified information in the instant case:

- (1) Three unredacted copies of the filing must be provided to the Courtroom Security Officer (“CSO”), or his/her designee.
- (2) The CSO (or his/her designee) must possess the necessary security clearance required to be permitted to transport or review said files.
- (3) The Court understands that CSO Michael Macisso possesses the necessary security clearance required by CIPA and this Order.
- (4) The CSO (or his/her designee) must then deliver one copy of the unredacted filing directly to a cleared member of chambers staff and one unredacted copy directly to the United States Attorney’s Office, specifically an Assistant United States Attorney (or his/her designee) who is assigned to this case and who possesses the necessary security clearance required to be permitted to transport or review said files.
- (5) The CSO (or his/her designee) must then deliver the final unredacted copy of the filing to a separate “review team” composed of members of the United States intelligence community who review the unredacted document(s) for potential classified information and redact any information that is determined to be classified.
- (6) For each document that is provided by the defendant to the CSO (or his/her designee) for filing, a self-redacted copy of the filing must also be immediately filed by ECF. This self-redacted copy is referred to as a “half-sheet” and may contain only the cover-page and/or caption of the document itself. For example, if the defendant intends to file a 30-page memorandum containing potentially classified information, only the cover page is filed by ECF to ensure that only non-classified material is electronically filed. The purpose of filing the half-sheet by ECF is to alert the public that the filing occurred, and to make a public record of when it occurred, but at the same time protecting the integrity of the potentially classified information.

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- (7) In order to alert the Clerk's Office that a half-sheet is being filed in conjunction with this Order, a stamp indicating that a copy was "Filed With The Court Security Officer" should be affixed to the document. The stamp stating that a copy was "Filed With The Court Security Officer" may be placed on half-sheets as well as on other appropriate documents as determined by the CSO.
- (8) Once the unredacted filing has been thoroughly reviewed and appropriately redacted by the "review team," a redacted copy shall be provided to the defendant for public filing via ECF.
- (9) The version of the document that has been returned to the defendant after review for redaction by the "review team" then shall be filed by the defendant via ECF, with a notation that it relates to the previously filed half-sheet.
- (10) The final version of the document may or may not contain redactions, depending on the determinations of the "review team."
- (11) At no time, however, is any person permitted to possess, file, or review the unredacted copy of the filing prior to its review and release by the "review team," unless that person has the necessary security clearance required to be permitted to possess or review said document(s).

SO ORDERED

Dated: New York, New York

October 27, 2009

/s/ Lewis A. Kaplan

United States District Judge