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5 Attorney for Defendant
Defendant
6

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) NO. CR 00-000-XYZ
10)
Plaintiff,) EX PARTE APPLICATION
11) REQUESTING RECONSIDERATION
v.) OF COURT'S DENIAL OF REQUEST
12) FOR CRIMINAL JUSTICE ACT
Defendant,) ("CJA") FUNDS; MEMORANDUM OF
13) POINTS AND AUTHORITIES;
Defendant.) DECLARATION OF COUNSEL.
14)
15 _____) Filed under seal and in
camera

16 Defendant by and through her counsel, Criminal Defense
17 Attorney, hereby requests that this Court reconsider the denial
18 of request for authorization to obtain Criminal Justice Act funds
19 to permit the Defendant to retain a forensic psychologist.

20 This request is made pursuant to the Criminal Justice Act,
21 18 U.S.C. Section 3006A(e) (1) and is based upon the
22 attached Memorandum of Points and Authorities, the attached
23 declaration of Criminal Defense Attorney and all files and
24 records in this matter.

25 Respectfully submitted,

26
27 CRIMINAL DEFENSE ATTORNEY
Attorney for Defendant

28 DATED: _____, 2007

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Counsel for a person who is financially unable to obtain
3 investigative, expert or other services necessary for adequate
4 representation may request them in an ex parte application.
5 "Upon finding, after appropriate inquiry in an ex parte
6 proceeding, that the services are necessary and that the person
7 is financially unable to obtain them, the court...shall authorize
8 counsel to obtain the services. Title 18 U.S.C. §3006(e)(1).

9 CJA funds to assist an indigent defendant in preparing for
10 sentencing are warranted in the appropriate cases and a court can
11 order that such funds be provided to assist an indigent defendant
12 in preparing for such sentencing.

13 Before authorizing the expenditure of such funds, however,
14 a court should first "satisfy itself that a defendant may have a
15 plausible defense." United States v. Alden, 767 F.2d 314, 318
16 (7th Cir. 1984) "The decision to grant or deny a motion under
17 section 3006A(e) is one committed to the discretion of the
18 district court, and a district court's decision will be disturbed
19 on appeal only if it constitutes an abuse of discretion." Id. at
20 319.

21 The test for whether expert services should be provided is
22 "whether a reasonable attorney would engage such services for a
23 client having the independent financial means to pay for them."
24 United States v. Alden, 767 F.2d 314, 318 (7th Cir. 1984).

25 In this case, the Defendant has requested funds to have a
26 forensic psychologist evaluate her family situation and to
27 consider the impact of the incarceration on her family. Because
28 this is a factor which this Court may consider in varying from

1 the applicable advisory guideline range, funds for such forensic
2 psychologist should be authorized.

3 If Defendant had the funds to retain such psychologist,
4 counsel for the Defendant would have retained such counsel to
5 assist in presenting evidence to this Court regarding this issue.

6 While the Court is correct in its order denying the initial
7 request for funds that counsel can obtain letters from family
8 members and close friends and the childrens' father and provide
9 this testimony to this Court, such is only part of the evidence
10 that needs to be presented. After obtaining such letters counsel
11 needs to make them available to the psychologist for his review.
12 After reviewing such letter, performing an evaluation of the
13 Defendant and personally interviewing the various family members
14 and friends, the psychologist can then submit an expert opinion
15 with respect to the impact of the Defendant's incarceration on
16 the children. Most of the children are too young to be able to
17 articulate their feelings of possible abandonment due to the
18 incarceration of their mother. Likewise they are unable to
19 express their feelings of confusion and possible anxiety as a
20 result of their mother's absence and the lack of parental care,
21 attention and love. Because their father must work to support
22 them and there is no one else available to care for the children,
23 the father has resorted to taking the children with him to work.
24 While counsel can provide these facts to this Court, it is the
25 psychologist who can express a professional opinion regarding
26 this issue and he can only do this after meeting with the family
27 members and observing the children for a period of time.

28 The two older children have run away from the home since

1 their mother is in custody. There is tremendous tension between
2 them and their mother's husband, the father of the four young
3 children. Certainly these two older children are suffering since
4 there is no one available to provide the love, care and attention
5 that they deserve. They have no immediate family members who are
6 available to take them in. As with the younger children, while
7 counsel can provide the facts, she is not qualified to provide a
8 professional opinion to this Court.

9 While defense counsel can present these and other facts to
10 this Court, what is still lacking is the professional opinion of
11 an expert with respect to the impact of the incarceration. The
12 opinion would be based on the facts that I would gather for such
13 expert.

14 If this case is appealed to the Ninth Circuit by either
15 side in this case, the issue would be the reasonableness of the
16 sentence. United States v. Cantrell, 433 F.3d 1269, 1279 (9th
17 Cir. 2006); see also United States v. Plouffe, 436 F.3d 1062,
18 1063 (9th Cir. 2006), as amended, 445 F.3d 1126 (establishing
19 jurisdiction to review sentences within the advisory
20 guide-lines).

21 The Ninth Circuit has previously explained that district
22 courts must provide specific reasons for their sentencing
23 decisions, such that the record on appeal demonstrates explicit
24 or implicit consideration of the sentencing factors set forth
25 pursuant to 18 U.S.C. § 3553(c); United States v. Miqbel, 444
26 F.3d 1173, 1181-82 (9th Cir. 2006); United States v. Menyweather,
27 431 F.3d 692, 701 (9th Cir. 2005), as amended, 447 F.3d 625; see
28 also United States v. Working, 224 F.3d 1093, 1102 (9th Cir.

1 2000) (en banc). For this Court to make the required record for
2 a consideration of the reasonableness of the sentence, it would
3 be helpful to have the assistance of a forensic psychologist in
4 this case.

5 In the Menyweather case, cited above, the defendant
6 retained a forensic psychologist to testify to various sentencing
7 issues. In that case, the defendant was indicted on 10 counts of
8 theft of government funds, mail fraud, and wire fraud. She
9 pleaded guilty to one count of mail fraud and admitted to having
10 used government credit cards for unauthorized personal purchases
11 of between \$ 350,000 and \$ 500,000. At sentencing, Defendant
12 requested, and the government opposed, a six-level downward
13 departure because of Defendant's family circumstances and mental
14 and emotional condition. In support of her request, Defendant
15 produced the evaluation of Dr. Barbara Cort Counter, a forensic
16 psychologist who characterized Defendant as suffering from
17 "severe symptoms of posttraumatic stress". Dr. Counter had
18 evaluated Defendant for three-and-one-half hours, administered
19 and reviewed a psychological test, spoken with Defendant's
20 counsel, and reviewed letters submitted by Defendant's family
21 members.

22 Defendant also argued for a departure because of the
23 unusually important role that she played in the life of her
24 daughter, who was 11 years old at the time of the first
25 sentencing hearing in 2001.

26 After hearing argument, the district court departed
27 downward by eight levels, resulting in a sentencing range of zero
28 to 6 months. The court sentenced Defendant to five years of

1 probation under various restrictive terms and conditions.

2 The government appealed, and the Ninth Circuit vacated the
3 sentence and remanded for resentencing because the district court
4 had given no reasons for the direction and the degree of the
5 departure.

6 After the first remand and after Dr. Counter was cross-
7 examined, the court reaffirmed its previous sentence. In support
8 of the sentence, the court recited and adopted specific findings
9 of fact and conclusions of law.

10 On appeal for the second time, the Ninth Circuit again
11 vacated the district court's sentence and remanded, holding that
12 the court (1) erred in relying on post-conviction rehabilitation
13 without giving notice to the government, and (2) failed to
14 explain the *extent* of the departure, as distinct from the *bases*
15 for departure. On remand, the district court again reaffirmed its
16 sentence. In support of the sentence, the court adopted expanded
17 findings of facts and conclusions of law that included citations
18 to cases in which downward departures of comparable degree had
19 been affirmed.

20 The government appealed the sentence again for the third
21 time. On appeal, the Ninth Circuit found that the sentencing
22 record of the district court provided "sufficiently specific
23 language to allow appellate review." The Ninth Circuit affirmed
24 the district court's sentence. United States v. Menyweather, 447
25 F.3d 625, 635 (9th Cir. 2006).

26 In this case, thus, it is necessary to permit the
27 allocation of funds for the defense to retain a forensic
28 psychologist to make the appropriate sentencing arguments at time

1 of sentencing, so that the Defendant is afforded due process of
2 law and equal protection under the law, and so that this Court
3 may have the requisite evidence to make the findings of fact and
4 reach the conclusions of law which are necessary to enable the
5 appellate court to make a determination regarding the
6 reasonableness of the sentencing.

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8 Respectfully Submitted,

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10 CRIMINAL DEFENSE ATTORNEY
11 Attorney for Defendant

12 Dated: _____, 2007
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1 DECLARATION OF CRIMINAL DEFENSE ATTORNEY

2 I, CRIMINAL DEFENSE ATTORNEY, declare and state as follows:

3 1. I am a member of the federal indigent panel. In such
4 capacity, I have been appointed to represent the Defendant in
5 this case.

6 2. The Defendant is charged with Illegal Alien Found in
7 the United States Following Deportation in violation of Title 8
8 U.S.C. §1326(a), (b) (2). The Defendant pleaded guilty to that
9 charge. The sentencing is scheduled for _____, 2007.

10 3. The plea agreement in this case contemplates that the
11 base offense level is eight (8) which will be enhanced by sixteen
12 (16) levels due to an aggravated felony; this total is then
13 reduced by three (3) levels for acceptance of responsibility and
14 four (4) levels for "fast-track" early disposition. In addition,
15 the plea agreement provides that the Defendant reserves the right
16 to argue at sentencing that her family circumstances are such
17 that a downward departure and/or variance from the applicable
18 sentencing range is warranted.

19 4. The Defendant has six children. All six of these
20 children are having tremendous difficulties due to the absence of
21 their mother who was the primary caretaker. With respect to the
22 two older daughters, the Defendant is the only family they have
23 to care for them. I have been advised that both of them have run
24 away from home and are not attending school regularly. It is my
25 opinion that the impact of the incarceration of their mother on
26 these children is something which this Court should consider in
27 sentencing the Defendant .

28 5. To that end, I previously requested the amount of

1 \$5,250.00 so that I could retain a forensic psychologist to meet
2 with my client, her family and some family friends and prepare a
3 report regarding his findings regarding the impact of
4 incarceration on the children.

5 6. Before submitting this request, I contacted various
6 forensic psychologists to obtain the best price for the needed
7 evaluation. The psychologist that I selected provided me with
8 the best hourly price. In addition, I am familiar with his work
9 since I have retained him previously.

10 7. This Court denied my request on _____, 2007. This
11 Court indicated there was an inadequate showing that examination,
12 evaluation, and testimony of a psychologist was needed or even
13 relevant. Further, this Court indicated that facts from
14 percipient witnesses regarding the relationship between Defendant
15 and her children would appear to be more relevant and helpful to
16 sentencing issues than a psychologist's opinion. This Court
17 specifically stated, "Percipient witnesses who have firsthand
18 knowledge of the defendant's history and relationship with her
19 children may have probative, helpful information for the
20 sentencing court. These percipient witnesses could include the
21 Defendant, the childrens' father, and other family members and
22 close friends." Finally, this Court stated that the filing did
23 not show that "a psychologist's testimony would be so uniquely
24 useful as to justify the expenditure of CJA funds." This Court
25 stated, however, that the Defendant could re-submit this request
26 and if she chose to do so, the application should provide more
27 evidence to support the total amount sought such as evidence as
28 to how many hours the psychologist anticipated would be needed to

1 complete an examination and evaluation that would be relevant to
2 sentencing issues.

3 8. This application for reconsideration is submitted to
4 attempt to provide additional information and case law to justify
5 the request for CJA funds to retain a forensic psychologist.

6 9. I have spoke to Dr. Edgar Villamarin whom I wish to
7 retain in this case. Dr. Villamarin advised me that given the
8 facts as I had advised him, he believed it would take
9 approximately 30 hours to interview the defendant, meet with the
10 various family members and friends of the family, observe the
11 children in their interaction with their father and the siblings,
12 review various letters which I might obtain, and prepare a report
13 for this Court with respect to his findings. He advised me,
14 however, that if the amount of hours was a problem for this
15 Court, he could limit the time he spent with the various
16 individuals and rely in larger part on documentary evidence which
17 I can obtain for him. In addition, if I was able to limit the
18 waiting time with respect to meeting with my client at the jail
19 and meeting with the family, he believed that he could do the
20 required evaluation in 20 hours for a total of \$3,500.00.

21 10. I am prepared to assist Dr. Villamarin so that he can
22 accomplish his evaluation in the 20 hours.

23 11. Based on the foregoing and the attached memorandum of
24 points and authorities, I am requesting an allocation of Three
25 Thousand Five Hundred Dollars (\$3,500.00) of Criminal Justice Act
26 funds to retain Dr. Villamarin at the hourly rate of \$175.00 for
27 a total of 20 hours.

1 I declare under penalty of perjury under the laws of
2 the United States that the foregoing is true and correct to the
3 best of my knowledge. Executed this day at Any City,
4 California.

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CRIMINAL DEFENSE ATTORNEY
Attorney at Law

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Dated: November 4, 2007

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1 CRIMINAL DEFENSE ATTORNEY
Attorney at Law
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5 Attorney for Defendant
Defendant #1
6

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) NO. CR 00-000-XYZ
10)
Plaintiff,) EX PARTE APPLICATION
11) REQUESTING CRIMINAL JUSTICE
v.) ACT FUNDS; DECLARATION OF
12) COUNSEL.
DEFENDANT #1,)
13) Filed under seal and in
Defendant.) camera
14)
15 _____)

16 Defendant #1, by and through her counsel, CRIMINAL DEFENSE
17 ATTORNEY, hereby requests authorization to obtain five thousand
18 two hundred fifty dollars (\$5,250.00) of Criminal Justice Act
19 funds to permit the defendant to retain a forensic psychologist.

20 This request is made pursuant to the Criminal Justice Act,
21 18 U.S.C. Section 3006A(e) (1) and is based upon the
22 attached declaration of Criminal Defense Attorney and all files
23 and records in this matter.

24 Respectfully submitted,

25 _____
26 CRIMINAL DEFENSE ATTORNEY
Attorney for Defendant
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28 DATED: _____, 2007

1 DECLARATION OF CRIMINAL DEFENSE ATTORNEY

2 I, CRIMINAL DEFENSE ATTORNEY declare and state as follows:

3 1. I am a member of the federal indigent panel. In such
4 capacity, I have been appointed to represent Leticia Esparza-
5 Gonzalez in this case.

6 2. Defendant is charged with Illegal Alien Found in the
7 United States Following Deportation in violation of Title 8
8 U.S.C. §1326(a), (b) (2). The Defendant has entered into a plea
9 agreement with the government wherein she has agreed that she
10 will plead guilty to the charge in the Information. The plea
11 agreement contemplates that the base offense level is eight (8)
12 which will be enhanced by sixteen (16) levels due to an
13 aggravated felony; this total is then reduced by three (3) levels
14 for acceptance of responsibility and four (4) levels for "fast-
15 track" early disposition. The plea is expected to be entered
16 pursuant to Rule 11 (c) (1) (C) which states in relevant part that
17 the parties may reach a plea agreement that specifies that an
18 attorney for the government will agree that a specific sentence
19 is the appropriate disposition of the case or that a particular
20 provision of the Sentencing Guidelines or policy statement or
21 sentencing factor does or does not apply. Such a recommendation
22 or request is binding on the court once the court accepts the
23 plea agreement. Notwithstanding this, the plea agreement provides
24 that Ms. Esparza-Gonzalez reserves the right to argue at
25 sentencing that her family circumstances are such that a downward
26 departure and/or variance from the applicable sentencing range is
27 warranted.

28 3. The Defendant has two children who desperately need

1 her. In addition, the Defendant was arrested almost two months
2 ago when she was still caring for her infant who at the time was
3 1 ½ months old. The bonding process was interrupted due to the
4 arrest and continued detention of the Defendant. Further, the
5 Defendant has three other children, ages 2, 3 and 5. These three
6 children are having difficulties due to the absence of their
7 mother. The youngest one, the 2 year old, has already begun to
8 forget his mother. His father has to constantly show him the
9 family photograph which contains the Defendant. The Defendant's
10 family circumstances are unusual and to properly bring them to
11 light, I believe I must retain a forensic psychologist. While I
12 can present facts to this Court relating to my client's family
13 circumstances, as I have in summary herein, I am not qualified to
14 state an opinion with respect to the long-term and short-term
15 effects that Defendant's incarceration is having and will
16 continue to have on her children.

17 4. For this reason, I would like for a forensic
18 psychologist to examine and evaluate my client and her family so
19 that he may prepare a report to this Court regarding her family
20 circumstances which are relevant to the sentencing herein.

21 5. I have spoken to Dr. Edgar Villamarin whom I have
22 retained in other cases. Dr. Villamarin is particularly
23 qualified because he has a Ph.D in clinical psychology and a
24 masters in science in marriage, family and child therapy. In
25 addition, Dr. Villamarin is particularly qualified since he is
26 familiar with Hispanic culture. Attached please find a copy of
27 Dr. Villamarin's resume.

28 6. Dr. Villamarin charges \$175.00 an hour and he expects

1 that the evaluation and preparation of the report will involve
2 approximately 30 hours.

3 7. Based on the foregoing, I am requesting an allocation of
4 Five Thousand Two Hundred Fifty Dollars (\$5,250.00) of Criminal
5 Justice Act funds to retain Dr. Villamarin at the rate of \$175.00
6 an hour.

7 I declare under penalty of perjury under the laws of the
8 United States that the foregoing is true and correct to the best
9 of my knowledge. Executed this day at Any City, California.

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DATED: _____, 2006

CRIMINAL DEFENSE ATTORNEY
Attorney at Law

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Attorney at Law
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Facsimile: (123) 456-7890
4 Email: anyperson@yahoo.com

5 Attorney for Defendant
Defendant #1

6 UNITED STATES DISTRICT COURT
7
8 CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) NO. CR 00-000-XYZ
10)
Plaintiff,) EX PARTE APPLICATION
11) REQUESTING CRIMINAL JUSTICE
v.) ACT FUNDS TO RETAIN SYSTEMS
12) ENGINEER; DECLARATION OF
DEFENDANT #1, et al.,) COUNSEL.
13)
Defendants.) Filed under seal and in
14) camera
15)

16 Defendant, Defendant #1, by and through his counsel,
17 Criminal Defense Attorney, hereby files this ex parte, in camera
18 and under seal application requesting authorization to obtain
19 Criminal Justice Act ("CJA") funds to permit him to retain a
20 systems engineer expert in retrieving files from various
21 computers using a specialized software.

22 This application is made on behalf of Defendant #1 and all
23 the other defendants in this case who have qualified for services
24 under the Criminal Justice Act ("CJA").

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1 This ex parte application is made pursuant to the Criminal
2 Justice Act, 18 U.S.C. Section 3006A(e)(1) and is based upon the
3 attached declaration of Criminal Defense Attorney and all files
4 and records in this matter.

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6 Respectfully submitted,

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9 CRIMINAL DEFENSE ATTORNEY
10 Attorney for Defendant
11 Defendant #1

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DATED: _____, 2007

1 DECLARATION OF CRIMINAL DEFENSE ATTORNEY

2 I, CRIMINAL DEFENSE ATTORNEY, declare and state as follows:

3 1. I am a member of the federal indigent panel. In
4 such capacity, I was appointed to represent Defendant #1 in this
5 case.

6 2. Defendant #1 is charged, along with other
7 defendants, with a violation of law, including, Title 18 U.S.C.
8 §2339B (a) (1): Providing Material Support or Resources to
9 Designated Foreign Terrorist Organization. The first superseding
10 indictment alleges that beginning on or about a certain date, and
11 continuing until on or about a certain date, Defendant #1, and
12 others, knowingly and willfully conspired and agreed with each
13 other to provide material support to an organization which had
14 been designated as a foreign terrorist organization.

15 3. In a recent discovery letter, the government
16 advised us that it was making available to us various floppy
17 disks that represent the disks seized during the execution of the
18 search warrant. The government did not convert those disks into
19 a PC-usable format. We therefore need to have this material
20 converted from Apple to PC and thus we need to enlist the
21 assistance of a computer specialist. By doing so, we will be
22 able to open the disks that are provided in this recent
23 discovery.

24 4. For this reason, I would like to retain a systems
25 engineer to assist in this matter. I would like to retain Marc
26 Knudson who is a Microsoft Certified Systems Engineer and has
27 experience in using the required software. Attached is his
28 resume.

1 5. As noted above, although Defendant #1 is requesting
2 the funds for this expert, it is expected that this expert will
3 provide assistance to all the defense attorneys in this case who
4 are primarily appointed under the Criminal Justice Act.

5 6. Mr. Knudson charges \$75.00 an hour. While it is
6 difficult to anticipate how many hours will be necessary to
7 accomplish the goals in this case, at a minimum, I believe that
8 200 hours is a reasonable prediction at this time.

9 7. Based on the foregoing, I respectfully request an
10 authorization of funds in the amount of \$15,000.00 for this
11 expert.

12 I declare under penalty of perjury under the laws of
13 the United States that the foregoing is true and correct to the
14 best of my knowledge. Executed this day at Any City, California.

15
16 Dated: _____, 2007

CRIMINAL DEFENSE ATTORNEY
Attorney at Law

1 CRIMINAL DEFENSE ATTORNEY
Attorney at Law
2 123 E. Anywhere St.
Any City, California
3 Telephone: (123) 456-7890
Facsimile: (123) 456-7890
4 Email: anyperson@yahoo.com

5 Attorney for Defendant
Defendant #1

6 UNITED STATES DISTRICT COURT
7
8 CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) NO. CR 00-000-XYZ
10)
Plaintiff,) EX PARTE APPLICATION
11) REQUESTING CRIMINAL JUSTICE
v.) ACT FUNDS; DECLARATION OF
12) COUNSEL.
Defendant #1, et al.,)
13) Filed under seal and in
Defendants.) camera
14)
15)

16 Defendant, CLIENT, by and through his counsel, Criminal
17 Defense Attorney, hereby files this ex parte, in camera and under
18 seal application requesting authorization to obtain Criminal
19 Justice Act ("CJA") funds to permit the five (5) defendants who
20 have CJA counsel retain a digital services vendor to create an
21 electronic database for use by the defense.

22 This application is made on behalf of all five (5)
23 defendants who qualified for CJA counsel. They are:
24 Defendant #2 represented by a Criminal Defense Attorney;
25 Defendant #3 represented by a Criminal Defense Attorney;
26 Defendant #4 represented by a Criminal Defense Attorney;
27 Defendant #5 represented by a Criminal Defense Attorney; and
28 Defendant #1 represented by a Criminal Defense Attorney.

1 This ex parte application is made pursuant to the Criminal
2 Justice Act, 18 U.S.C. Section 3006A(e)(1) and is based on the
3 attached declaration of Criminal Defense Attorney and all files
4 and records in this matter.

5 Respectfully submitted,

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7 _____
8 CRIMINAL DEFENSE ATTORNEY
9 Attorney for Defendant
10 Defendant #1

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DATED: __, 2007

1 DECLARATION OF CRIMINAL DEFENSE ATTORNEY

2 I, CRIMINAL DEFENSE ATTORNEY, declare and state as follows:

3 1. I am a criminal defense attorney. In such capacity, I
4 was appointed to represent Defendant #1 in this case.

5 2. The Defendant is charged, along with other defendants,
6 with a violation of law, including, Title 18 U.S.C. §2339B
7 (a)(1): Providing Material Support or Resources to Designated
8 Foreign Terrorist Organization. The first superseding indictment
9 alleges that beginning on or about a certain date, and continuing
10 until on or about a certain date, Defendant #1, and others,
11 knowingly and willfully conspired and agreed with each other to
12 provide material support to the an organization which had been
13 designated as a foreign terrorist organization.

14 3. Pursuant to Rule 16 of the Federal Rules of Criminal
15 Procedure and this Court's order, the government has provided the
16 defense with various discovery materials which consist of hard
17 copies of documents and various discs, including digital
18 versatile discs ("DVD") and compact discs ("CD"). To date, the
19 government has produced over a large volume of images or pages of
20 discovery. Further, the government continues to produce
21 additional discovery materials.

22 4. The manner in which the discovery materials have been
23 produced, however, has created some difficulties in reviewing the
24 discovery. For example, the government produced hundreds of
25 documents on each disc that were scanned and produced as a single
26 portable document format ("pdf") files. Thus, while defense
27 counsel are able to scroll through and review each page, defense
28 counsel are not able to do any searches by documents by Bates

1 number or term. This makes it very difficult for defense counsel
2 to isolate any particular topic and/or find any references to
3 his/her client without scrolling through each electronic image in
4 the pdf files.

5 5. For these reasons and so that we may more properly and
6 efficiently review and search the discovery materials document-
7 by-document, we need to send the discovery materials to a digital
8 services vendor who would be able to do the following:

9 (1) logically unitize the documents; (2) make the documents
10 electronically searchable using optical character recognition
11 (OCR); (3) Bates label the documents that are missing Bates
12 numbers; and (4) capture the electronic Bates labels on the
13 documents labeled by the government. Once this is done, counsel
14 for Defendant #2 has offered to have their internal litigation
15 support specialists put the electronic documents on a database
16 for review by counsel for each of the defendants.

17 6. Logical unitization has been explained to me as the
18 process in which the vendor inputs the correct breaks between the
19 documents, which allows the reviewers to move from document to
20 documents in the electronic database.

21 In this case, some of the discovery items produced by the
22 government are one page or image. Other items are multiple pages.
23 Because the government scanned in thousands of images and saved
24 those images as a single pdf file, we cannot distinguish the
25 beginning or end of the documents in that pdf file without
26 clicking through each image. Some of the pdf files are as large
27 as 6,000 pages or images. Contained in that single pdf file,
28 however, are hundreds of different documents. In order to move

1 from one document to the next where each document has multiple
2 pages, the documents have to be separated electronically. For
3 example, this will allow defense counsel to review the first page
4 of Document 1, decide if defense counsel want to review the other
5 pages of Document 1, and, if defense counsel want to skip the
6 rest of Document 1, move to Document 2 without clicking through
7 each page of Document 1.

8 Another example of the need for logical unitization in this
9 case is Disk 1 which was produced by the government on a certain
10 date. On this disk is a file named a certain Box Number that
11 contains numerous pages. Within those numerous pages, there are
12 hundreds of documents of varying numbers of pages. At this time,
13 given the format of the files, we cannot review the production
14 documents-by-document and take searchable electronic notes
15 showing the relevance of the documents in a useful manner. If
16 the documents were logically unitized, the reviewer could move
17 from document to document without the necessity of clicking
18 through each page of each document.

19 7. Optical Character Recognition (OCR) is the electronic
20 translation of the typewritten text into electronically
21 searchable text. If the disks are transferred into searchable
22 text, this will allow the reviewer to quickly locate documents
23 using search terms.

24 The disks that we have received from the government are not
25 searchable electronically. By undergoing the OCR process, defense
26 counsel would be able to type in a term in the "Search" feature
27 (for example, "Defendant #1") and be able to pull up only those
28 documents with that search term. This process saves a lot of time

1 in pulling together the documents we may need for a particular
2 defendant or issue.

3 8. Nearly half of the documents produced by the government
4 either have duplicative bates numbers or have no bates labels at
5 all. To manage and locate the documents and more efficiently use
6 the documents, it is necessary for each page to be assigned a
7 unique Bates number. Defense counsel recently advised the
8 government of the problems we encountered with the bates labeling
9 system and suggested that the government undertake the
10 relabeling. The government rejected our request.

11 9. In addition to properly labeling the documents with
12 Bates numbers, the specialist we retain in this case must perform
13 a scan on the label to capture the Bates. This must be done so
14 that we may search the discovery via Bates numbers.

15 10. As noted above, after the specialist/vendor puts the
16 discovery on electronic documents as per the above requests, the
17 internal litigation support specialist in the office of Defense
18 Counsel, who represent Defendant #2 have offered to put the
19 electronic documents on the database. Defense Counsel will not
20 require that CJA counsel pay any maintenance fees. Rather, they
21 will require that each counsel purchase a token in the amount of
22 \$100.00 which will be necessary for secure access to the database
23 hosted by Defense Counsel.

24 11. The cost for this work will be \$12,060. The cost
25 divided by seven (7) defendants is \$1,723 plus \$100 for the
26 secure access or \$1,823 for each of the five CJA clients.

27 12. Based on the foregoing, Defendant #2 requests CJA funds
28 in the amount of \$9115.00 or \$1823 for each of the five (5) CJA

1 clients.

2

3 I declare under penalty of perjury under the laws of
4 the United States that the foregoing is true and correct to the
5 best of my knowledge. Executed this day at Any City, California.

6

7 Dated:

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CRIMINAL DEFENSE ATTORNEY
Attorney at Law

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1 CRIMINAL DEFENSE ATTORNEY
Attorney at Law
2 123 E. Anywhere St.
Any City, California
3 Telephone: (123) 456-7890
Facsimile: (123) 456-7890
4 Email: anyperson@yahoo.com

5 Attorney for Defendant
Defendant #1
6

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)	NO. CR 00-000 (A) -XYZ
)	
12 Plaintiff,)	DEFENDANT'S APPLICATION FOR
)	ORDER SEALING DOCUMENTS;
13 v.)	DECLARATION OF CRIMINAL
)	DEFENSE ATTORNEY
14 DEFENDANT #1, et al.,)	
)	Filed under seal and in
15 Defendants.)	camera
)	

16
17 Defendant, Defendant #1, by and through his counsel,
18 Criminal Defense Attorney, applies ex parte for an order that EX
19 PARTE APPLICATION REQUESTING CRIMINAL JUSTICE ACT FUNDS TO RETAIN
20 SYSTEMS ENGINEER; DECLARATION OF COUNSEL.

21 as well as this ex parte application, be filed under seal.

22 This ex parte application is based on the attached
23 declaration of Criminal Defense Attorney.

24 Respectfully submitted,

25
26 CRIMINAL DEFENSE ATTORNEY
Attorney for Defendant
27 DEFENDANT #1

28 DATED: _____, 2007

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DECLARATION OF CRIMINAL DEFENSE ATTORNEY

I, CRIMINAL DEFENSE ATTORNEY declare and state as follows:

1. I am an attorney admitted to practice in the Central District of California and appointed to represent Defendant #1 in the above entitled action.

2. I request leave to file the EX PARTE APPLICATION REQUESTING CRIMINAL JUSTICE ACT FUNDS TO RETAIN SYSTEMS ENGINEER; DECLARATION OF COUNSEL under seal. The basis for this request is that any ex parte application for Criminal Justice Act requests for funds must be filed under seal pursuant to the E-Government Act of 2002.

3. Should the court deny this application, I request that the pleading and this application not be filed, but be returned to me, without filing of the documents or reflection of the name or nature of the documents on the clerk's public docket.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed this day at Any City, California.

CRIMINAL DEFENSE ATTORNEY
Attorney at Law

DATED: _____, 2007

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[REDACTED]

Attorney for Defendant

[REDACTED]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

[REDACTED],

Defendant.

NO. [REDACTED]

DEFENDANT'S EX PARTE
APPLICATION FOR CRIMINAL
JUSTICE ACT FUNDS

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[REDACTED]

Attorney for Defendant
[REDACTED]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.
[REDACTED]

Defendant.

NO. CR [REDACTED]

DEFENDANT'S EX PARTE
APPLICATION FOR CRIMINAL
JUSTICE ACT FUNDS TO RETAIN
STATE ATTORNEY TO
COLLATERALLY ATTACK STATE
CONVICTION; DECLARATION OF
COUNSEL.

FILED UNDER SEAL AND IN
CAMERA

Defendant, [REDACTED] by and through his
attorney of record, [REDACTED], hereby respectfully requests
an authorization of Criminal Justice Act ("CJA") funds in the
amount of \$2,000.00 to permit him to retain an attorney to file a
motion in state court to withdraw his "no contest" plea case
number [REDACTED].

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This application is made pursuant to the Criminal Justice Act, 18 U.S.C. § 3006 (a)(e)(1) and is based upon the attached Declaration of [REDACTED], all files and records in this case and any such further information as shall be made available prior to a ruling hereon.

Respectfully submitted,

DATED: [REDACTED] 2007

Attorney for Defendant

1 DECLARATION OF [REDACTED]

2 I, [REDACTED], state and declare as follows:

3
4 1. I am an attorney admitted to practice in the Central
5 District of California and appointed to represent the defendant
6 in the above entitled action. I was appointed by this Court
7 because [REDACTED] is indigent and unable to afford the
8 services of retained counsel in this matter.

9 2. I have reviewed the discovery materials in this case,
10 done substantial research and engaged in some independent
11 investigation. Based on this and my conversations with my
12 client, I have concluded that if [REDACTED] pleads guilty
13 and/or is found guilty in this case, the advisory sentencing
14 guidelines will include a 16 level enhancement due to a crime of
15 violence, kidnaping, to which [REDACTED] pleaded "no
16 contest".

17 3. That conviction will therefore be used against [REDACTED]
18 [REDACTED] in two respects. One is that he will receive three (3)
19 criminal history points; and two, he will qualify for a sixteen
20 (16) level enhancement under the guideline computation.

21 4. [REDACTED] was the only defendant in that state
22 case who pleaded "no contest". The other ten (10) defendants
23 proceeded to a trial at which the alleged victim testified and
24 yet the jury found all ten (10) defendants not guilty of the
25 charges.

26 5. [REDACTED] advised that he was not guilty of the
27 charges but pleaded "no contest" due to the urging of his
28 attorney who advised him that if he did not enter such plea, he

1 would receive life imprisonment.

2 6. Based on my own investigation, I believe that [REDACTED]
3 [REDACTED] has grounds to withdraw his plea to the kidnaping
4 charge. He was not properly advised of the immigration
5 consequences of his "no contest" plea.

6 7. Case law clearly holds that a defendant cannot
7 collaterally attack a conviction in state court, Custis v. United
8 States, 511 U.S. 485 (1994) (holding that collateral attacks at
9 sentencing are permissible only where the prior conviction was
10 obtained in violation of the right to counsel); United States v.
11 Martinez-Martinez, 295 F.3d 1041, 1044-45 (9th Cir. 2002)
12 (applying Custis to sentencing guidelines). However, there is no
13 prohibition to filing a motion in state court to withdraw a plea.

14 8. In this case, I believe that it is in [REDACTED]
15 [REDACTED] best interest to attempt to withdraw his plea to the
16 kidnaping conviction. As noted above, I believe he has adequate
17 grounds for such withdrawal. At a trial in state court, if the
18 case were to proceed to such, it is likely based on the previous
19 jury acquittals, that the jury would likewise find [REDACTED]
20 [REDACTED] not guilty of the charges.

21 9. While the Criminal Justice Act does not prohibit me from
22 filing such motion in state court, since this is a matter which
23 is affecting [REDACTED] in the federal case, I do not
24 believe that I am sufficiently familiar with state court practice
25 to proceed with such motion. In addition, I believe that if I
26 attempted to do so, I would risk possible ineffective assistance
27 of counsel. Given the time passage of 15 years, this motion must
28 be handled by someone with experience in such matters.

1 10. I contacted the attorney who was appointed to represent
2 [REDACTED] in [REDACTED] but he is unwilling to file such
3 motion since his appointment ended in [REDACTED].

4 11. I contacted another attorney whom I know specializes in
5 motions to withdraw and other post-conviction remedies in state
6 court, [REDACTED]. [REDACTED] advised me that he
7 typically charges \$2,500 for this work but since [REDACTED]
8 [REDACTED] is indigent, he is willing to accept this case as an
9 appointment from this Court and/or as an expert and that his fee
10 would be \$2,000. [REDACTED] advised me that this fee would cover
11 his investigation, including obtaining relevant documents,
12 meeting with [REDACTED] as needed, filing the motion and
13 arguing it, if necessary. This fee would not cover any possible
14 trial. [REDACTED] advised me that if he is successful in
15 withdrawing the plea, a public defender could be appointed to
16 represent [REDACTED] for a possible trial, if necessary.

17 12. If [REDACTED] is successful in withdrawing his
18 plea to the kidnaping case and he is successful in having that
19 case dismissed and/or the conviction vacated due to an acquittal,
20 then the sentencing guidelines in this case would be
21 substantially less than those anticipated by the plea agreement
22 offered to [REDACTED] and/or the guidelines which would
23 apply at the present time. The guidelines would be in the range
24 of 8-14 months of custody.

25 13. On [REDACTED], I expect that [REDACTED]
26 will enter a guilty plea in this, the federal, case.
27 Notwithstanding such entry of guilty plea, either pursuant to a
28 plea agreement or as open plea, I believe that the relief

1 requested herein is still needed. The request herein relates to
2 the sentencing of [REDACTED], not to the merits of a
3 possible defense.

4 14. On [REDACTED], I inquired of Randall Schnack, CJA
5 Supervising Attorney, whether he would honor an order from this
6 Court to have [REDACTED] paid for services in connection with
7 this matter. Mr. Schnack advised me that he would honor such
8 court order since this would be similar to a request for funds to
9 retain an expert.

10 15. Based on the foregoing, I respectfully request that
11 this Court grant this application.

12
13 I declare under penalty of perjury that the foregoing
14 is true and correct to the best of my knowledge. Executed this
15 date at [REDACTED], California.

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17 DATED: [REDACTED] 2007

[REDACTED]
18 Attorney at law
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