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*ADMITTED IN DC ONLY

September 24, 2012

Re: *United States v. Sterling*, No. 11-5028

Dear Ms. Connor:

Pursuant to Rule 28(j), we write in response to the Government's letter of September 17, 2012, which cites *In re Request from the United Kingdom*, 685 F.3d 1 (1st Cir. 2012) as further support for "the government's argument that James Risen does not have a 'reporter's privilege' to refuse to identify his source in this case." (Letter 2) Nothing could be further from the truth.

As we made clear in both our briefs and at oral argument, because every court of appeals to have examined the issue has concluded that there is a federal reporter's privilege in the context of a criminal trial, the Government mistakenly relies on cases holding that there is no such privilege in the context of a criminal investigation. *See* Risen Br. 43-47; Gov't Br. 26-27; Gov't Reply Br. 10-13. In citing *In re Request*, the Government compounds this error.

In *In re Request*—which does not even involve a claim of reporter's privilege—the First Circuit held that the district court did not abuse its discretion when compelling testimony after

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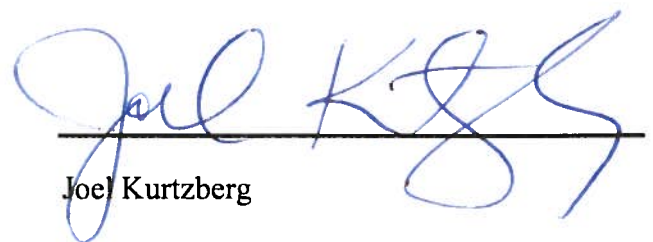
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performing a balancing test in the face of an assertion of “an academic privilege.” *In re Request*, 685 F.3d at 15, 19. The court emphasized that the case involved an even stronger governmental interest than that at issue in *Branzburg* because it sought testimony for a governmental investigation initiated “by a foreign sovereign” that had a treaty with our country. *Id.* at 18 (citing *Branzburg v. Hayes*, 408 U.S. 665 (1972)).

Notably, the court acknowledged that it has already held that *Branzburg* does give rise to a reporter’s privilege in certain contexts. *Id.* at 17 n.23. In support of that proposition, the court cited *United States v. LaRouche Campaign*, 841 F.2d 1176, 1181-82 (1st Cir. 1988), a decision unequivocally holding that a reporter’s privilege applies in federal criminal trials, even in cases involving nonconfidential information. *See Risen* Br. 45.

In this case, the Government seeks confidential source information *for a criminal trial*. *In re Request* thus reaffirms that a reporter’s privilege applies in such cases in the First Circuit.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, I filed the foregoing letter with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to the following registered users:

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