# United States District Court Eastern District of Pennsylvania (Philadelphia) CRIMINAL DOCKET FOR CASE #: 2:15-cr-00204-RBS-1

Case title: USA v. XI Date Filed: 05/14/2015

Assigned to: HONORABLE R. BARCLAY SURRICK

**Defendant (1)** 

**XIAOXING XI** 

represented by MICHAEL A. SCHWARTZ

PEPPER HAMILTON LLP 3000 TWO LOGAN SQUARE 18TH & ARCH STREETS PHILADELPHIA, PA 19103-2799 215-981-4000

Email:

schwartzma@pepperlaw.com LEAD ATTORNEY ATTORNEY TO BE NOTICED

### PETER R. ZEIDENBERG

ARENT FOX LLP 1717 K STREET NW WASHINGTON, DC 20006-5344 202-857-6139

Email:

peter.zeidenberg@arentfox.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Designation: Retained

### **Pending Counts**

**Disposition** 

18:1343 - WIRE FRAUD; 18:2 - AIDING AND ABETTING (1-4)

## Highest Offense Level (Opening)

Felony

**Terminated Counts** 

**Disposition** 

None

Highest Offense Level (Terminated)

None

**Complaints** 

**Disposition** 

None

### <u>Plaintiff</u>

USA

represented by JENNIFER A. WILLIAMS

U.S. ATTORNEY'S OFFICE 615 CHESTNUT STREET

**SUITE 1250** 

PHILADELPHIA, PA 19106

215-861-8474

Email:

jennifer.a.williams@usdoj.gov

LEAD ATTORNEY

### ATTORNEY TO BE NOTICED

Designation: Retained

Date Filed	#	Docket Text
05/14/2015	1	SEALED INDICTMENT as to XIAOXING XI (1) count(s) 1-4. (Attachments: # 1 Designation Form) (jmvsl, ) (Entered: 05/14/2015)
05/14/2015	2	MOTION AND ORDER TO SEAL INDICTMENT AS TO XIAOXING XI. Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 5/14/15.5/14/15 Entered and Copies E-Mailed. (jmvsl, ) (Entered: 05/14/2015)
05/14/2015	<u>3</u>	MOTION AND ORDER FOR ISSUANCE OF BENCH WARRANT AS TO XIAOXING XI Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 5/14/15.5/14/15 Entered and Copies E-Mailed. (jmvsl, ) (Entered: 05/14/2015)
05/21/2015	<u>4</u>	Letter from AUSA Unsealing Indictment as to XIAOXING XI (tomgsl, ) (Entered: 05/21/2015)
05/21/2015		***INDICTMENT UNSEALED as to XIAOXING XI (tomgsl, ) (Entered: 05/21/2015)
05/21/2015	5	Minute Entry for proceedings held before MAGISTRATE JUDGE CAROL SANDRA MOORE WELLS: IA as to XIAOXING XI held on 5/21/2015. The Govt and Defense have agreed to conditions of release. See attached conditions of release order. Deft shall return on 6/4/2015 at 1:30 p.m., Courtroom 5A for arraignment. Signed by United States Magistrate Judge Carol Sandra Moore Wells. Court Reporter: ESR.(tomg,) (Entered: 05/22/2015)
05/21/2015	<u>6</u>	ORDER SETTING CONDITIONS OF RELEASE AS TO XIAOXING XI (1) THAT THE DEFT IS RELEASED ON BAIL IN THE AMOUNT OF \$100,000 SECURED BY

		PROPERTY AT 418 HIDDEN RIVER ROAD, PENN VALLEY, PA OR \$100,000 CASH WITH THE FOLLOWING CONDITIONS AS OUTLINED HEREIN. Signed by HONORABLE R. BARCLAY SURRICK on 5/21/2015.5/22/2015 Entered and Copies E-Mailed. (tomg, ) Modified on 5/22/2015 (tomg, ). (Entered: 05/22/2015)
05/21/2015		SURETY Bond Entered as to XIAOXING XI in amount of \$ 100,000. (tomg, ) Modified on 5/26/2015 (tomg, ). (Entered: 05/22/2015)
05/22/2015	7	ORDER AS TO XIAOXING XI THAT THE CLERK'S OFFICE REQUIREMENTS FOR THE PROPERTY AT 418 HIDDEN RIVER ROAD, PENN VALLEY, PA., BE WAIVED. Signed by MAGISTRATE JUDGE CAROL SANDRA MOORE WELLS on 5/22/15.5/22/15 Entered and Copies E-Mailed. (ke) (Entered: 05/22/2015)
05/22/2015	8	NOTICE Regarding United States Passport for Criminal Defendant as to XIAOXING XI (ap, ) (Entered: 05/22/2015)
05/22/2015		SURETY Bond Entered as to XIAOXING XI in amount of \$100,000.00 WITH AGREEMENT TO FORFEIT PROPERTY. (ke) (Entered: 05/22/2015)
05/27/2015	9	REPORT AND ORDER OF PROBATION OFFICER AS TO XIAOXING XI THAT THE DEFT'S TRAVEL CONDITION IS MODIFIED TO ALLOW HIM TO TRAVEL OUTSIDE THE EDPA WITH PRIOR APPROVAL FROM PRETRIAL SERVICES. Signed by MAGISTRATE JUDGE CAROL SANDRA MOORE WELLS on 5/27/2015.5/27/2015 Entered and Copies E-Mailed. (tomg, ) (Entered: 05/27/2015)
06/03/2015	<u>10</u>	ARREST Warrant Returned Executed on 5/21/2015 in case as to XIAOXING XI. (tomg, ) (Entered: 06/03/2015)
06/03/2015	11	MOTION for Pro Hac Vice for the admission of Peter R. Zeidenberg, Esq., proposed order, certificate of service

		by XIAOXING XI. (FILING FEE PAID, RECEIPT #PPE122050) (SCHWARTZ, MICHAEL) Modified on 6/3/2015 (tomg, ). (Entered: 06/03/2015)
06/04/2015	12	ORDER granting 11 MOTION FOR PRO HAC VICE ADMISSION OF PETER R. ZEIDENBERG as to XIAOXING XI (1). Signed by HONORABLE R. BARCLAY SURRICK on 6/4/2015.6/4/2015 ENTERED AND COPIES MAILED WITH ECF FORM TO ZEIDENBERG, E-MAILED.(tomg, ) (Entered: 06/04/2015)
06/05/2015	13	Minute Entry for proceedings held before MAGISTRATE JUDGE DAVID R. STRAWBRIDGE: ARRAIGNMENT as to XIAOXING XI (1) Count 1-4 held on 6/4/2015. Plea entered by XIAOXING XI: Not Guilty on all counts. Counsel have 14 days to file pretrial motions. Signed by United States Magistrate Judge David R. Strawbridge. Court Reporter: ESR.(tomg, ) (Entered: 06/05/2015)
06/05/2015	14	NOTICE OF ATTORNEY APPEARANCE PETER R. ZEIDENBERG appearing for XIAOXING XI (tomg, ) (Entered: 06/05/2015)
06/09/2015	<u>15</u>	NOTICE OF HEARING as to XIAOXING XI JURY TRIAL SET FOR 7/13/2015 AT 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R. BARCLAY SURRICK. (cfz) (Entered: 06/09/2015)
06/09/2015	<u>16</u>	NOTICE of Intent to Use FISA Information by USA as to XIAOXING XI (WILLIAMS, JENNIFER) (Entered: 06/09/2015)
06/09/2015	17	MOTION to Continue <i>Trial Date, Designate this a Complex Case, and for a Pretrial Conference Pursuant to the Classified Information Procedures Act</i> by USA as to XIAOXING XI. CERTIFICATE OF SERVICE. (WILLIAMS, JENNIFER) Modified on 6/10/2015 (ap, ). (Entered: 06/09/2015)
06/09/2015	<u>18</u>	MOTION Designate a Classified Information Security Officer by USA as to XIAOXING XI. CERTIFICATE OF

		SERVICE. (WILLIAMS, JENNIFER) Modified on 6/10/2015 (ap, ). (Entered: 06/09/2015)
06/12/2015	19	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK: Telephone Conference as to XIAOXING XI held on 6/11/2015.(tomg, ) (Entered: 06/12/2015)
06/15/2015	20	ORDER AS TO XIAOXING XI (1) THAT THIS COURT DESIGNATES DANIEL O. HARTENSTINE AS THE CLASSIFIED INFORMATION SECURITY OFFICER IN THIS CASE, TO PERFORM THE DUTRIES AND RESPONSIBILITIES PRESECRIBED IN THE SECURITY PROCEDURES PROMULGATED BY THE CHIEF JUSTICE, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 6/15/2015.6/16/2015 ENTERED AND COPIES E-MAILED.(tomg, ) (Entered: 06/16/2015)
06/15/2015	21	ORDER AS TO XIAOXING XI THAT THE GOVT'S MOTION TO DESIGNATE THIS A COMPLEX CASE, TO CONTINUE THE TRIAL DATE, AND FOR A PRETRIAL CONFERENCE PURSUANT TO THE CLASSIFIED INFORMATION PROCEDURES ACT IS GRANTED. COUNSEL FOR THE GOVT ONLY SHALL FIRST APPEAR ON 7/1/2015 AT 2:00 P.M., FOR AN EX PARTE IN CAMERA CLASSIFIED CONFERENCE WITH THE COURT. ALL COUNSEL SHALL THEN APPEAR ON 8/27/2015 AT 2:00 P.M., FOR AN IN CAMERA CONFERENCE TO DISCUSS THE DISCOVERY AND MOTION PLAN. Signed by HONORABLE R. BARCLAY SURRICK on 6/15/2015.6/16/2015 Entered and Copies E-Mailed. (tomg, ) (Entered: 06/16/2015)
08/04/2015	23	STIPULATION REGARDING PROTECTIVE ORDER AS OUTLINED HEREIN AS TO XIAOXING XI. Signed by HONORABLE R. BARCLAY SURRICK on 8/3/15.8/4/15 Entered and Copies E-Mailed and Faxed by Chambers. (mac, ) (Entered: 08/04/2015)

08/31/2015	24	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK in Courtroom 8A: HEARING ON DISCOVERY & MOTION PLAN as to XIAOXING XI held on 8/27/2015. Counsel submitted to the Court a proposed scheduling order. Counsel then addressed the Court. Court Reporter: ESR.(tomg, ) (Entered: 08/31/2015)
08/31/2015	25	Minute Entry for proceedings held before HONORABLE R. BARCLAY SURRICK: Telephone Conference as to XIAOXING XI held on 8/28/2015.(tomg, ) (Entered: 08/31/2015)
08/31/2015	<u>26</u>	ORDER AS TO XIAOXING XI THAT DEFT'S MOTION CHALLENGING THE INDICTMENT SHALL BE FILED AND SERVED ON OR BEFORE 9/11/2015. RESPONSES TO THIS MOTION SHALL BE FILED ON OR BEFORE 9/25/2015. AN EVIDENTIARY HEARING ON THE MOTION IS SCHEDULED FOR THURSDAY, 10/1/2015 AT 10:00 A.M., IN COURTROOM 8A, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 8/28/2015.8/31/2015 Entered and Copies E-Mailed. (tomg, ) (Entered: 08/31/2015)
09/01/2015	27	AMENDED ORDER AS TO XIAOXING XI THAT DEFT'S MOTION CHALLENGING THE INDICTMENT SHALL BE FILED AND SERVED ON OR BEFORE 9/11/2015. RESPONSES TO THIS MOTION SHALL BE FILED ON OR BEFORE 9/25/2015. AN EVIDENTIARY HEARING ON THE MOTION IS SCHEDULED FOR WEDNESDAY, 9/30/2015 AT 9:30 A.M., IN COURTROOM 8A, ETC. Signed by HONORABLE R. BARCLAY SURRICK on 8/31/2015.9/1/2015 Entered and Copies E-Mailed. (tomg, ) Modified on 9/1/2015 (tomg, ). (Entered: 09/01/2015)
09/01/2015	<u>28</u>	NOTICE OF HEARING as to XIAOXING XI EVIDENTIARY HEARING SET FOR 9/30/2015 at 9:30 AM IN COURTROOM 8A BEFORE HONORABLE R.

		BARCLAY SURRICK. (cfz) (Entered: 09/01/2015)
09/01/2015		***Set/Reset Deadlines as to XIAOXING XI: MOTIONS DUE BY 9/11/2015. (ke) (Entered: 09/02/2015)
09/11/2015	<u>29</u>	MOTION to Dismiss <i>Indictment Without Prejudice</i> by USA as to XIAOXING XI. (WILLIAMS, JENNIFER) (Entered: 09/11/2015)

#### IN THE UNITED STATE DISTRICT COURT

#### FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 15-

v. : DATE FILED: May 14, 2015

XIAOXING XI : VIOLATIONS: 18 U.S.C. § 1343

:

(wire fraud – 4 counts)

: 18 U.S.C. § 2

(aiding and abetting)

18 U.S.C. 981(a)(1)(C)

(notice of forfeiture)

#### **INDICTMENT**

#### **COUNTS ONE THROUGH FOUR**

#### THE GRAND JURY CHARGES THAT:

At all times material to this Indictment:

- 1. "Superconductors" are high-technology materials that conduct electricity without electrical resistance, thus dramatically improving the performance and efficiency of certain technology. One method of achieving superconductivity involves the growth of superconducting thin films on substrates.
- 2. Defendant XIAOXING XI, a native of the People's Republic of China ("China") and naturalized United States citizen residing in Pennsylvania, was a university physics professor and world-renowned expert in the field of magnesium diboride thin film superconducting technology.
- 3. In or about 2002, defendant XIAOXING XI participated in China's National High Technology Research and Development Program (also known as the "863 Program") as a referee in the field of superconductivity. The 863 Program was a longstanding

Chinese government program intended to boost high-technology innovation and development in China.

- 4. From in or around 2002 through in or around 2012, defendant XIAOXING XI repeatedly and frequently collaborated with various entities in China, including government entities, regarding the field of superconductivity. During these collaborations, XI repeatedly offered to help Chinese entities become world leaders in the field.
- 5. From in or around 2002 through in or about 2003, defendant XIAOXING XI took a sabbatical from his university position and worked with a company ("U.S. COMPANY") in the field of thin film superconductivity research. During this time period, individuals at U.S. COMPANY invented a piece of technology ("Device") which revolutionized the field of superconducting magnesium diboride thin film growth.
- 6. From in or around 2002 through in or around 2012, XI repeatedly sought to orchestrate the obtaining of U.S. COMPANY technology and information for entities in China.
- 7. Starting in or about January 2004, defendant XIAOXING XI sought to purchase a custom-designed Device from U.S. COMPANY. In furtherance of these efforts, XI applied for and was awarded a U.S. Defense Department DURIP (Defense University Research Instrumentation Program) grant, to finance his purchase of the Device and other equipment for research relevant to the U.S. Department of Defense.
- 8. U.S. COMPANY initially resisted defendant XIAOXING XI's efforts to obtain the Device due to intellectual property concerns. However, in or about January 2006, U.S. COMPANY ultimately agreed to provide the Device to XI for a period of twelve months in exchange for XI's written and signed agreement ("Agreement") confirming that XI was being

granted "a license to use the [Device] solely for testing purposes and [that XI] agrees not to reproduce, sell, transfer or otherwise distribute the [Device], or any copies thereof, to any third party." The Agreement further provided that XI will "not disassemble, decompile, or in any way reverse engineer the [Device]," and that the "release of the [Device] to [XI] does not constitute a commercialization of the [Device], but rather is a release for testing purposes only."

#### THE SCHEME

9. From in or about 2004 through in or about 2012, defendant

#### XIAOXING XI

devised and intended to devise a scheme to defraud U.S. COMPANY in order to obtain its technology, provide it to entities in China, and to assist these entities in further exploitation and use of the technology, and to obtain for himself and for entities in China money and property by means of false and fraudulent pretenses, representations and promises.

#### **MANNER AND MEANS**

It was part of the scheme that:

- 10. In or about January 2006, defendant XIAOXING XI signed the Agreement with U.S. COMPANY, knowing and intending that the material misrepresentations contained therein would induce U.S. COMPANY to provide him the Device.
- 11. Defendant XIAOXING XI repeatedly reproduced, sold, transferred, distributed, and otherwise shared the Device and the technology of the Device with and exploited it for the benefit of third parties in China, including government entities, and attempted to do so, both personally and through the assistance of his post-doctoral students from China, in an effort to help Chinese entities become world leaders in the field of superconductivity.

- 12. In exchange for his efforts to advance the field of superconductivity in China, defendant XIAOXING XI repeatedly sought lucrative and prestigious appointments in China.
- 13. On or about the dates set forth below, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

#### XIAOXING XI,

for the purpose of executing the scheme described above, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate and foreign commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
One	May 14, 2010	E-mail communication from XIAOXING XI to J.L., an associate in China, confirming that certain technology had been delivered to a laboratory in China, and offering his personal assistance therewith.
Two	June 02, 2010	E-mail communication from XIAOXING XI to Y.W., an associate in China, offering to build a world-class thin film laboratory in China.
Three	June 02, 2010	E-mail communication from XIAOXING XI to X.J., an associate in China, offering to build a world-class thin film laboratory in China.
Four	December 09, 2010	E-mail communication from XIAOXING XI to J.Z., an associate in China, offering to build a world-class thin film laboratory in China.

All in violation of Title 18, United States Code, Sections 1343 and 2.

#### **NOTICE OF FORFEITURE**

#### THE GRAND JURY FURTHER CHARGES THAT:

As a result of the violations of Title 18, United States Code, Section 1343,
 set forth in this Indictment, defendant

#### **XIAOXING XI**

shall forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of such offenses.

- 2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:
  - a. cannot be located upon the exercise of due diligence;
  - b. has been transferred or sold to, or deposited with, a third party;
  - c. has been placed beyond the jurisdiction of the Court;
  - d. has been substantially diminished in value; or
  - e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461; and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

FOREPERSON

ZANE DAVID MEMEGER

United States Attorney

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : CRIMINAL NO.

CERTAIN PERSON(S) :

#### ORDER

AND NOW, this day of , 2015, upon consideration of the Government's Motion to Impound Indictment, and accompanying docket papers, and after balancing the public right of access to court documents with the government's interest in protecting an ongoing criminal investigation, it is hereby

#### **ORDERED**

that the within indictment and accompanying docket papers are IMPOUNDED and to be retained in the custody of the Clerk of Court until notified by the United States Attorney's Office that the indictment can be unimpounded, except that the Clerk is authorized to disclose to the attorney for the government the docket number and district court judge assigned to the case, and the attorney for the government is authorized to disclose the indictment to the district court judge assigned to the case. The Clerk of Court is directed to make no public docket entry of the sealed documents and motion and order to seal, and to provide copies of all sealed documents only to Jennifer Arbittier Williams, Assistant United States Attorney.

IT IS FURTHER ORDERED THAT, the Clerk is directed upon notice from the United States Attorney's Office to remove the docket papers hereby impounded and restore the same to the public docket.

BY THE COURT:	
<b>United States Magistrate Judge</b>	

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : CRIMINAL NO.

CERTAIN PERSON(S) :

#### **MOTION TO IMPOUND INDICTMENT**

The United States of America, by and through its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Jennifer Arbittier Williams, Assistant United States Attorney for the district, moves to impound the within documents and related docket entries and in support of its Motion states as follows:

- 1. The within information, and accompanying docket papers, are documents which, if made public would jeopardize the government's interest in protecting an ongoing criminal investigation in this matter.
- 2. Although the public has a common law right of access to judicial proceedings and papers, matters relating to protecting an ongoing criminal investigation, are traditionally conducted ex parte and in camera, with deference to the government's determination that the indictment should be sealed.
- 3. Accordingly, balancing the public's right of access to judicial documents with the government's interest in not jeopardizing an ongoing criminal investigation in this matter, the government respectfully requests that the government's Motion be GRANTED. The government further requests that the Clerk of Court be directed to make no public docket entry of the sealed documents and motion and order to seal, and to provide copies of all sealed documents

only to Jennifer Arbittier Williams, Assistant United States Attorney. It is further requested that the indictment be unimpounded upon notice of the United States Attorney's Office.

Respectfully submitted,

ZANE DAVID MEMEGER United States Attorney

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO.
XIAOXING XI	:	
ORDER FOR	BENCH	<u>WARRANT</u>
AND NOW, this	day of	, 2015, on motion of Zane
David Memeger, United States Attorney for	the Easte	rn District of Pennsylvania, it is
ORDERED that a bench warrant be issued for	or the arr	est of the defendant in the above-captioned
case.		
	BY THE	COURT:
	United S	tates Magistrate Judge

# IN THE UNITED STATES OF DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : CRIMINAL NO.

XIAOXING XI :

#### MOTION FOR BENCH WARRANT

AND NOW, this day of , 2015, Zane David

Memeger, United States Attorney for the Eastern District of Pennsylvania, and Jennifer Arbittier Williams, Assistant United States Attorney move the Court for the allowance of a bench warrant in the above-entitled case directed to the United States Marshal, Eastern District of Pennsylvania, or any other United States Marshal or officer authorized to execute same.

Respectfully submitted,

ZANE DAVID MEMEGER United States Attorney

Jennifer Arbittier Williams

Assistant United States Attorney

#### Case 2:15-cr-00204-RBS Document 4 Filed 05/21/15 Page 1 of 1



#### U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

Jennifer Arbittier Williams Direct Dial: (215) 861-8474 Facsimile: (215) 861- 8618

E-mail Address: Jennifer.A. William@usdoj.gov

615 Chestnut Street Suite 1250 Philadelphia, Pennsylvania 19106-4476 (215) 861-8200

May 21, 2015

U.S. District Court Clerk's Office Criminal Division 2609 United States Courthouse 601 Market Street Philadelphia, PA 19106

Re: United States v. Xiaoxing Xi; Criminal No. 15-204

Dear Clerk:

Please unimpound the Indictment in regard to the above-captioned case. The Indictment was filed on May 14, 2015.

Very truly yours,

ZANE DAVID MEMEGER United States Attorney

Jennifer Arbittier Williams

Assistant United States Attorney

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	: CRIMINAL
XI AOXING XI	NO. 15-CR-204
CONDITIONS	OF RELEASE ORDER
	BAIL
Waiver of Clerk's office	of \$ 100,000.00 m OR\$ 100,000 Cash smu, you or of 100,000 Cash smu, you ridden River Road, Penn Valley, PA Non trucket Checke, State College, PA requirements - Execute an Agreement to Forfeit the las indicia of ownership. One of to be presented
PRETRI	AL SERVICES CAM
Defendant shall report to Pretrial Service  as directed by Pretrial times per week in per times per week via tel	l Services.
Services.  Defendant shall submit to random dru	g testing as directed by Pretrial Services. treatment if necessary as determined by Pretrial monitoring at the following address:
	ence that Defendant has adequate financial resources, of the cost of the court-ordered monitoring program, al Services.
Curfew. You are restricted to y during which electronic monitoring w office or supervising officer.	your residence every day from to , ill be in place, or as directed by the pretrial services
employment; education; religious serv	stricted to your residence at all times except for vices; medical, substance abuse, or mental health rances; court-ordered obligations; or other activities rvices office or supervising officer;

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Home Incarceration. You are restricted to 24-hour-a-day lock-down at your
residence except for medical necessities and court appearances or other activities specifically approved by the court.
PASSPORT
Defendant shall surrender and/or refrain from obtaining **passport**. By 5:00 pm 15
TRAVEL
Travel is restricted to the Eastern District of Pennsylvania.  Travel is restricted to the  Unless prior permission is granted by Pretrial Services.
FIREARMS
Defendant shall surrender and/or refrain from obtaining any firearms. Any other firearms in any premises where the defendant resides while on supervised release must be removed from the premises and no firearms are to be brought into the premises during this period. The defendant shall execute a completed Prohibition on Possession of Firearms Agreement.
MISCELLANEOUS
Defendant shall have no contact with co-defendants, potential witnesses in this case, or individuals engaged in any criminal activity.  Defendant must maintain present employment.  Defendant must actively seek gainful employment.  Defendant shall undergo a mental competency evaluation.  Defendant must reside:  at:
with:
COMPUTERS/INTERNET'
The Defendant is subject to the following computer/internet restrictions which are to be monitored by U.S. Pretrial Services and may include manual inspection, use of minimally invasive internet detection devices, and/or installation of computer monitoring software to insure compliance with the imposed restrictions.
No computer: The Defendant is prohibited from possession and/or use of any computers and connected devices.

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Case 2.10 of 00204 NBC Bootiment of Filed 00/21/10 Tage 0 of 0
Computer, no internet access: The Defendant is permitted use of computers or connected devices, but is not permitted access to the Internet (as World Wide Web, FTP sites, IRC servers, instant messaging). Computer with internet access: The Defendant is permitted use of computers or connected devices, is permitted access to the internet for legitimate purposes, and is responsible for any fees connected with the installation and use of monitoring software.
Other Residents: By consent of other residents, all computers located at the address of record shall be subject to inspection to insure the equipment is password protected.
Other Restrictions:
OTHER CONDITIONS:
As a further condition of release, defendant shall not commit a Federal, State, or local crime during the period of release. The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than 10 years, if the offense is a felony; or a term of imprisonment of not more than 1 year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.
AUSA J. M. W. DEFENSE ATTORNEY
It is so ORDERED this 21 day of 77 ay , 2016.  BY THE COURT:  CAROL SANDRA MOORE WELLS

Last Revised: 2-19-14

CHIEF UNITED STATES MAGISTRATE JUDGE

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION

:

v.

XIAOXING XI : NO. 15-204

#### ORDER

AND NOW, this 22nd day of May, 2015, it is hereby ORDERED that the Clerk's Office requirements for the property at 418 Hidden River Rd, Penn Valley, PA be WAIVED.

BY THE COURT:

CAROL SANDRA MOORE WELLS

CHIEF UNITED STATES MAGISTRATE JUDGE

y

PS 8 Rev. 10/2005

# UNITED STATES DISTRICT COURT for the EASTERN DISTRICT OF PENNSYLVANIA

U.S.A. vs. Xiaoxing Xi

Docket No. 2:15CR00204-001

Petition for Action on Conditions of Pretrial Release

COMES NOW, Lourdes Roscoe, Pretrial Services Officer, presenting an official report upon the conduct of Xiaoxing Xi, who was placed under pretrial release supervision by the Honorable Carol Sandra Moore Wells sitting in the Court at Philadelphia, on May 21, 2015, under the following conditions:

- 1. Report to U.S. Pretrial Services as directed
- 2. Surrender and refrain from obtaining any passport
- 3. Travel is restricted to the Eastern District of Pennsylvania
- 4. Surrender and refrain from obtaining any firearms
- 5. No contact with co-defendants, potential witnesses or individuals engaged in criminal activity
- 6. Maintain present employment

Respectfully presenting petition for action of Court and for cause as follows:

The defendant advised he will need to travel to New York and Washington, D.C. because he is seeking to retain defense counsel in this matter. The defendant surrendered his passport on May 21, 2015, followed by a stop notice to the U.S. Department of State preventing him from being issued a new passport.

PRAYING THAT THE COURT WILL ORDER the defendant's travel condition is modified to allow him to travel outside the Eastern District of Pennsylvania with prior approval from Pretrial Services.

ORDER OF COURT

Considered and ordered this 27<sup>th</sup> day of 70, 20, 15 and ordered filed and made a part of the records in the above case.

Carol Sandra Moore Wells Chief U.S. Magistrate Judge I declare under penalty of perjury that the foregoing is true and correct.

Louisles Kos coe

Lourdes Roscoe
U.S. Pretrial Services Officer

Place: Philadelphia

Date: May 27, 2015

### United States District Court

for the EASTERN District of United States of America v. Case No. 15-204 XIAOXING XI Defendant ARREST WARRANT To: Any authorized law enforcement officer YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay (name of person to be arrested) XIAOXING XI who is accused of an offense or violation based on the following document filed with the court: ☐ Complaint ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Violation Notice ☐ Order of the Court ☐ Probation Violation Petition ☐ Supervised Release Violation Petition This offense is briefly described as follows: 18:1343 - WIRE FRAUD; 18:2 - AIDING AND ABETTING - 4 COUNTS KIRK KOPACZ, DEPUTY-CLERK 05/14/2015 Date: Issuing officer's signature MICHAEL E. KUNZ, CLERK OF COURT City and state: PHILADELPHIA, PA Printed name and title Return This warrant was received on (date) 5-14-18 , and the person was arrested on (date) 5-11-15 at (city and state) 5-21-15 Arresting officer's signature Printed name and title

#### Case 2:15-cr-00204-RBS Document 15 Filed 06/09/15 Page 1 of 1

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Date of

Notice: June 9, 2015

:

XIAOXING XI : Criminal No. 15-204-01

418 Hidden River Rd Penn Valley, PA 19072

v.

#### **NOTICE**

TAKE NOTICE that the above-entitled case has been set for <u>trial</u> in the United States District Court, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, on <u>Monday</u>, <u>July 13, 2015</u> at <u>9:30 a.m.</u> before the Honorable <u>R. Barclay Surrick</u>. In Courtroom 8-A, 8th Floor.

ALL DEFENDANTS ARE DIRECTED TO REPORT TO THE COURTROOM ON THE DATE AND TIME STATED ABOVE. IF A DEFENDANT FAILS TO APPEAR AS DIRECTED, THE BAIL MAY BE FORFEITED AND A BENCH WARRANT ISSUED.

Counsel shall file their Trial Memorandum, Sentencing Memorandum or Change of Plea Memorandum **three (3) business** days prior to the scheduled proceeding unless otherwise ordered by the Court. Please **fax** a copy of the memorandum to the undersigned.

Very truly yours,

/s/Christina Franzese

Deputy Clerk to Judge R. Barclay Surrick

267-299-7639 (Office)

267-299-7638 (Fax)

Notice to:

Defendant

P. Zeidenberg, Defense Counsel (via email)

M. Schwartz, Defense Counsel (via email)

J. Williams, A.U.S.A. (via email)

U.S. Marshal (via email)

Probation Office (via email)

Pretrial Services (via email

NO INTERPRETER REQUIRED
[] RESCHEDULED FROM

Cr4 (rev. 8/98)

Case 2:15-cr-00204-RBS Document 16 Filed 06/09/15 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

amended, 50 U.S.C. §§ 1801-1812 and 1821-1829.

CRIMINAL NO.

15-204

V.

:

NOTICE

XIAOXING XI

•

NOTICE OF INTENT TO USE FOREIGN INTELLIGENCE SURVEILLANCE ACT INFORMATION

The United States of America, by its attorneys Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Jennifer Arbittier Williams, Assistant United States Attorney for the District, hereby provides notice to defendant Xiaoxing Xi and to the Court, that pursuant to Title 50, United States Code, Sections 1806(c) and 1825(d), the United States intends to offer into evidence, or otherwise use or disclose in any proceedings in the above-captioned matter, information obtained or derived from electronic surveillance and physical search conducted pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA), as

Respectfully Submitted,

ZANE DAVID MEMEGER United States Attorney

Dated: June 9, 2015

By:

ennifer Arbittier Williams

Assistant United States Attorney

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

:

v.	:	CRIMINAL NO. 15-204

XIAOXING XI :

UNITED STATES OF AMERICA

:

#### ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_\_ 2015, upon consideration of the Government's Motion to Designate this a Complex Case, to Continue the Trial Date, and for a Pretrial Conference Pursuant to the Classified Information Procedures Act, it is ORDERED AND DECREED that the government's motion is GRANTED.

In granting this motion, the Court makes the following findings:

- 1. In the instant case, defendant Xiaoxing Xi is charged with devising and intending to devise a scheme to defraud a U.S. company in order to obtain its technology, provide it to entities in China, assist these entities in further exploitation and use of the technology, and to obtain for himself and for entities in China money and property by means of false and fraudulent pretenses, representations and promises.
- 2. This indictment is the result of an intense investigation conducted by the Federal Bureau of Investigation, during which the government seized extensive electronic evidence and searched multiple hard drives.

- 3. The government is in the process of compiling a detailed inventory of discovery, and defense counsel will require considerable time to review this discovery adequately in preparation for the filing of pretrial motions and for trial.
- 4. In addition, the government has filed a Notice of Intent to Use Foreign Intelligence Surveillance Act Information, and the government anticipates that issues relating to classified information will arise. Thus, pretrial motions in this matter are anticipated to raise complex issues, including issues implicating the Classified Information Procedures Act ("CIPA"), codified at 18 U.S.C. App. III, and will require substantial time to prepare.
- 5. On June 9, 2015, this Court issued an Order scheduling trial in this matter to begin on July 13, 2015. Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, trial must ordinarily commence within seventy (70) days of the date on which a defendant makes his initial appearance. However, the Speedy Trial Act permits the Court to continue the trial when "the case is so unusual or so complex due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section." 18 U.S.C. § 3161(h)(8)(B)(ii). In the alternative, § 3161(h)(8)(B)(iv) provides that if the case, "taken as a whole, is not so unusual or so complex as to fall within clause (ii)," the Court may allow a continuance in the ends of justice if the failure to grant a continuance "would deny counsel for a defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence."

Accordingly, this Court finds that, due to anticipated issues relating to classified information, as well as due to the nature and quantity of the evidence in this case, this case is so

complex that it is unreasonable to expect adequate preparation for pretrial proceedings and trial within the time limits established by the Speedy Trial Act, 18 U.S.C. § 3161(c)(1). The Court further finds that the interests of justice to all parties served by a delay in the trial outweigh the interests of the public and the defendant in a speedy trial.

IT IS FURTHER ORDERED AND DECREED that the Counsel shall appear in chambers for a bifurcated <u>in camera</u> pretrial conference pursuant to Section 2 of CIPA, 18 U.S.C. App. III § 2, as follows:

	a.	Counsel for the government only shall first appear on			
		, at a	.m./p.m, for an ex parte, in can	nera classified	
conference wi	th the c	ourt; and			
	b.	All counsel shall then	appear on	, at	
a.m./p.m, for an in camera conference to discuss the discovery and motion plan more generally.					
	SO OI	RDERED, this day	of	_, 2015.	
			BY THE COURT:		
			HONORABLE R. BARCLAY	Y SURRICK	

Judge, United States District Court

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

:

UNITED STATES OF AMERICA

v. : CRIMINAL NO. 15-204

XIAOXING XI :

# GOVERNMENT'S MOTION TO DESIGNATE THIS A COMPLEX CASE, TO CONTINUE THE TRIAL DATE, AND FOR A PRETRIAL CONFERENCE PURSUANT TO THE CLASSIFIED INFORMATION PROCEDURES ACT

The United States of America, by and through its counsel, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Jennifer Arbittier Williams, Assistant United States Attorney for that district, respectfully requests that the Court designate this case a complex case under the Speedy Trial Act, 18 U.S.C. § 3161 (h)(8)(B)(ii), and continue the trial date pursuant to 18 U.S.C. § 3161(h)(8)(A). In addition, the government respectfully requests that the Court schedule a pretrial conference pursuant to the Classified Information Procedures Act, 18 U.S.C. App. III § 2 ("CIPA").

#### A. Motion to Designate this a Complex Case and Continue the Trial Date

On May 14, 2015, a grand jury sitting in the Eastern District of Pennsylvania returned an indictment charging Xiaoxing Xi with four counts of wire fraud. The indictment alleges that, in 2002, Xi participated in China's 863 Program, which was a Chinese government program intended to boost high-technology innovation and development in China. Thereafter, in 2002 to 2003, Xi took a sabbatical from his university position and worked with a U.S. company in the field of thin film superconductivity research. During his tenure at the company, individuals there invented a piece of technology which revolutionized the field of

superconducting magnesium diboride thin film growth. The indictment alleges that Xi made efforts to obtain the technology from the company, and that he applied for and was awarded a U.S. Defense Department grant to finance his purchase of the device for research relevant to the Department of Defense. In January 2006, Xi obtained the device for 12 months subject to an agreement that he not reproduce, sell, transfer or otherwise distribute the device or any copies of the device to any third party. The indictment charges that X signed this agreement as part of a scheme to defraud the company into providing him the technology, so that he could provide it to entities in China and assist those entities in further exploitation and use of the technology. The indictment further alleges that Xi repeatedly reproduced, sold, transferred, distributed, and otherwise shared the device with, and exploited it for the benefit of, government entities and other third parties in China. It is further alleged that, in exchange for his efforts, Xi repeatedly sought lucrative and prestigious appointments in China.

This indictment is the result of an intense investigation conducted by the Federal Bureau of Investigation, during which the government seized extensive electronic evidence and searched multiple hard drives. The government is in the process of compiling a detailed inventory of discovery, and defense counsel will require considerable time to review this discovery adequately in preparation for the filing of pretrial motions and for trial.

In addition, the government has filed a Notice of Intent to Use Foreign Intelligence Surveillance Act Information, and the government anticipates that issues relating to classified information will arise. Thus, pretrial motions in this matter are anticipated to raise complex issues, including issues implicating the Classified Information Procedures Act ("CIPA"), codified at 18 U.S.C. App. III, and will require substantial time to prepare.

On June 9, 2015, this Court issued an Order scheduling trial in this matter to begin on July 13, 2015. Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, trial must ordinarily commence within seventy (70) days of the date on which a defendant makes his initial appearance. However, the Speedy Trial Act permits the Court to continue the trial when "the case is so unusual or so complex due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section." 18 U.S.C. § 3161(h)(8)(B)(ii). In the alternative, § 3161(h)(8)(B)(iv) provides that if the case, "taken as a whole, is not so unusual or so complex as to fall within clause (ii)," the Court may allow a continuance in the ends of justice if the failure to grant a continuance "would deny counsel for a defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence."

The government respectfully submits that this case is complex due to anticipated issues relating to classified information, as well as due to the nature and quantity of the evidence, such that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act. In the alternative, the government submits that the ends of justice favor a continuance as the parties would otherwise be denied the reasonable time necessary for effective preparation.

Accordingly, the government respectfully requests that the Court designate this matter a complex case under 18 U.S.C. § 3161(h)(8)(B)(ii), and grant a continuance of the trial date under 18 U.S.C. § 3161(h)(8)(A).

A proposed form of Order is attached.

## B. Motion for a Pretrial Conference Pursuant to the Classified Information Procedures Act

The government respectfully submits this motion for a bifurcated <u>in camera</u> pretrial conference pursuant to the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. III § 2.

#### 1. Applicability of CIPA in this Case

The government has filed a Notice of Intent to Use Foreign Intelligence

Surveillance Act Information and anticipates that issues relating to classified information will arise

over the course of this prosecution. To that end, this case will implicate the Classified Information

Procedures Act ("CIPA"), codified at 18 U.S.C. App. III.

#### 2. Description of CIPA

CIPA contains a set of procedures by which federal district courts and magistrate courts rule on pretrial matters concerning the discovery, admissibility and use of classified information in criminal cases. <u>United States v. Baptista-Rodriguez</u>, 17 F.3d 1354, 1363 (11th Cir. 1994).

The Supreme Court has acknowledged the importance of protecting the nation's secrets from disclosure: "The Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." <u>CIA v. Sims</u>, 471 U.S. 159, 175 (1985) (quoting <u>Snepp v. United States</u>, 444 U.S. 507, 509 n.3 (1980) (per curiam)); <u>accord Chicago & Southern Air Lines</u>, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 111 (1948) ("The [executive branch] has available intelligence services whose reports are not and ought not to be published to the world."). Accordingly, federal courts have long recognized that "[i]t is not in the

national interest for revelation of either the existence or the product of [foreign intelligence operations and information] to extend beyond the narrowest limits compatible with the assurance that no injustice is done to the criminal defendant." <u>United States v. Lemonakis</u>, 485 F.2d 941, 963 (D.C. Cir. 1973).

CIPA "evidence[s] Congress's intent to protect classified information from unnecessary disclosure at any stage of a criminal trial." <u>United States v. Apperson</u>, 441 F.3d 1162, 1193 n.8 (10th Cir. 2006). However, CIPA neither creates any new rights of discovery nor expands the rules governing the admissibility of evidence. <u>United States v. Johnson</u>, 139 F.3d 1359, 1365 (11th Cir. 1998) ("CIPA has no substantive impact on the admissibility or relevance of probative evidence."); <u>accord United States v. Dumeisi</u>, 424 F.3d 566, 578 (7th Cir. 2005) ("CIPA does not create any discovery rights for the defendant."); <u>United States v. Smith</u>, 780 F.2d 1102, 1106 (4th Cir. 1985) (en banc). Rather, CIPA applies preexisting general discovery law to the classified-information arena, and it restricts the discovery of such classified information to protect the government's national security interests. <u>Baptista-Rodriguez</u>, 17 F.3d at 1363-64; <u>United States v. Klimavicius-Viloria</u>, 144 F.3d 1249, 1261 (9th Cir. 1998); <u>United States v. Yunis</u>, 867 F.2d 617, 621 (D.C. Cir. 1989). Put another way, CIPA's fundamental purpose is to "harmonize a defendant's right to obtain and present exculpatory material [at] trial and the government's right to

<sup>&</sup>lt;sup>1</sup> CIPA does not "expand the traditional rules of discovery under which the government is not required to provide criminal defendants with information that is neither exculpatory nor, in some way, helpful to the defense." <u>United States v. Varca</u>, 896 F.2d 900, 905 (5th Cir. 1990); accord <u>United States v. McVeigh</u>, 923 F. Supp. 1310, 1314 (D. Colo. 1996) ("CIPA does not enlarge the scope of discovery or of <u>Brady</u>."). Nor does it provide that the admissibility of classified information be governed by anything other than the well-established standards set forth in the Federal Rules of Evidence. <u>Baptista-Rodriguez</u>, 17 F.3d at 1364.

protect classified material in the national interest." <u>United States v. Pappas</u>, 94 F.3d 795, 799 (2d Cir. 1996).

A more detailed summary of CIPA is set forth below:

## a. Section 1 - Definitions

Section 1 of CIPA sets forth certain definitions used within the statute. First, for the purposes of CIPA, "classified information" includes any information or material that has been determined by the United States Government pursuant to law or regulation to require protection against unauthorized disclosure for reasons of national security. 18 U.S.C. App. III § 1(a). "National security" means the national defense and foreign relations of the United States. <u>Id.</u> at § 1(b).

Notably, CIPA applies equally to classified testimony and classified documents.

See United States v. Lee, 90 F. Supp. 2d 1324, 1326 n.1 (D.N.M. 2000) (citing United States v.

North, 708 F. Supp. 399, 399-400 (D.D.C. 1988)); Kasi v. Angelone, 200 F. Supp. 2d 585, 596-97 (E.D. Va. 2002) (applying CIPA to classified testimony).

#### b. Section 2 - Pretrial Conference

Section 2 of CIPA – the section the government is invoking in the instant motion – authorizes the district court, upon motion by any party or at its own discretion, to hold a pretrial conference "to consider matters relating to classified information that may arise in connection with the prosecution." 18 U.S.C. App. III § 2. Following such motion, the court shall promptly hold the pretrial conference to establish: (1) the timing of requests for discovery by the defense; (2) the provision of the requisite written pretrial notice to the United States of the defendant's intent to

disclose classified information, pursuant to Section 5 of CIPA<sup>2</sup>; and (3) the initiation of hearings concerning the use, relevance and admissibility of classified information pursuant to Section 6 of CIPA. <u>Id.</u> In addition, the court may consider any matters that relate to classified information or that may promote a fair and expeditious trial. <u>Id.</u> No substantive issues concerning the use of classified information are to be decided in a Section 2 pretrial conference. <u>See</u> S. Rep. No. 96-823, at 5-6, reprinted in 1980 U.S.C.C.A.N. 4294, 4298-99 (96th Cong. 2d Sess.).

To foster open discussions at the pretrial conference, Section 2 provides that no admission made by the defendant or his attorney at the pretrial conference may be used against the defendant unless the admission is in writing and signed by both the defendant and his attorney. 18 U.S.C. App. III § 2.

In this case, the government proposes a bifurcated <u>in camera</u> Section 2 conference. In the first part of the conference, the government proposes that it provide details to the Court regarding the classified information implicated by this prosecution, in an <u>ex parte</u>, <u>in camera</u> classified conversation. In the second part of the conference, the government proposes that all counsel participate in an <u>in camera</u> conference to discuss the discovery and motion plan more generally.

# c. <u>Section 3 - Protective Order</u>

Section 3 of CIPA mandates that the district court issue a protective order upon motion by the United States to protect against the disclosure of any classified information that is disclosed by the government to a defendant. <u>Id.</u> at § 3. Section 3 was intended "to codify the well-

<sup>&</sup>lt;sup>2</sup> The government is not aware of any classified information in the possession of the defense in this case. Thus, the government does not anticipate any invocation of CIPA Section 5.

Pappas, 94 F.3d at 801, as well as to supplement the district court's authority under Rule 16(d)(1) to issue protective orders in connection with the discovery process.<sup>3</sup> In contrast to Rule 16(d)(1)'s discretionary authority, however, Section 3 "makes it clear that protective orders are to be issued, if requested, whenever the government discloses classified information to a defendant in connection with a prosecution, e.g. Brady and Jencks material." Id.

# d. Section 4 - Protection of Classified Information During <u>Discovery</u>

Section 4 of CIPA authorizes the district court "upon a sufficient showing" to deny or otherwise restrict discovery by the defendant of classified documents and information belonging to the United States. 18 U.S.C. App. III § 4; see e.g. United States v. Rezaq, 134 F.3d 1121, 1142 (D.C. Cir. 1998); Yunis, 867 F. 2d at 619-625. Similarly, the Federal Rules of Criminal Procedure provide, in pertinent part, that "[u]pon a sufficient showing," a district court "may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." Fed. R. Crim. P. 16(d)(1). The legislative history of CIPA makes it clear that Section 4 was intended to clarify the district court's power under Rule 16(d)(1) to deny or restrict discovery in order to protect national security. See S. Rep. No. 96-823 at 6, 1980 U.S.C.C.A.N. at 4299-4300; see also United States v. Pringle, 751 F. 2d 419, 427 (1st Cir. 1985).

Section 4 provides, in pertinent part, that a district court:

upon a sufficient showing may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the

Rule 16(d)(1) provides in relevant part that "at any time the court may, for good cause, deny, restrict or defer discovery or inspection, or grant other appropriate relief."

information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The Court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone.

18 U.S.C. App. III § 4.

In essence, Section 4 allows the United States to request that the court review, exparte and in camera, classified information to determine whether it is discoverable under Rule 16, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), or the Jencks Act, and to protect such classified information from disclosure through various means if it is discoverable. See United States v. Libby, 429 F. Supp. 2d 18, 22 (D.D.C. Apr. 5, 2006) (amended by United States v. Libby, 429 F. Supp. 2d 46, 47 (D.D.C. May 3, 2006)); also United States v. Klimavicius-Viloria, 144 F.3d 1249, 1261-62 (9th Cir. 1998); Rezaq, 134 F.3d at 1142; Yunis, 867 F.2d at 619-25; Pringle, 751 F.2d at 427-28; Kasi, 200 F. Supp. 2d at 596 n.6.

For example, the government may request that the Court deny discovery of a classified document in its entirety pursuant to Section 4 because it is not discoverable under the relevant legal standard. Libby, 429 F. Supp. at 48. Alternatively, the government may file a motion under Section 4 to delete specific classified information from a document that either the government or the Court has deemed discoverable, or to substitute an unclassified summary or admission in the place of the document. Id. at 47. If the court determines that the disputed document is not subject to discovery or, if it is, permits deletion or substitution of the classified information, then the entire text of any ex parte in camera pleadings shall be sealed and preserved in the court's record to be made available to the appellate court in the event of an appeal. 18

U.S.C. App. III § 4; see also United States v. Aref, No. 04-CR-402, 2006 WL 1877142, at \*2

(S.D.N.Y. July 6, 2006).

# e. Sections 5 and 6 - Procedure for Cases Involving Classified Information Possessed by the Defendant

Sections 5 and 6 of CIPA apply when a criminal defendant who already possesses classified information seeks to disclose such information during the course of a trial or proceeding. See, e.g., Baptista-Rodriguez, 17 F.3d at 1363; Sarkissian, 841 F.2d at 965-66; Collins, 720 F.2d at 1199-1200. The government does not anticipate these Sections to be implicated in this case.

## f. Section 7 - Interlocutory Appeal

Section 7 permits the United States to take an interlocutory expedited appeal to the appellate court if the district court: (a) authorizes the disclosure of classified information; (b) imposes sanctions for nondisclosure of classified information; or (c) refuses to issue a protective order sought by the United States to prevent the disclosure of classified information. <u>Id.</u> at § 7. If an appeal is taken, trial shall not commence, or must be adjourned if already commenced, until the appeal is resolved. <u>Id.</u> Such an appeal and decision do not affect the defendant's right to lodge a subsequent appeal upon conviction of an adverse ruling by the trial court. <u>Id.</u> at § 7(b).

# g. <u>Section 8 - Procedures Governing the Introduction of</u> Classified Information at Trial or at Pretrial Proceeding

Section 8 prescribes additional protections and procedures governing the

Section 5 requires the defendant to provide timely written notice to the court and the government describing any classified information that he reasonably expects to disclose. See 18 U.S.C. App. III § 5(a). Section 6 provides that, after the defendant files the requisite notice, the government may request a hearing at which the court will make "all determinations concerning the use, relevance or admissibility" of the proposed defense evidence. 18 U.S.C. App. III § 6(a). Section 5 specifically prohibits the defendant from disclosing any classified information in a trial or pretrial proceeding until such notice has been given, the government has had the opportunity to seek a determination pursuant to Section 6, and any appeal by the government under section 7

introduction of classified information into evidence. <u>Id.</u> at § 8. Specifically, Section 8(a) provides that classified documents may be admitted into evidence without changing their classification status. This provision allows the classifying agency, upon completion of the trial, to decide whether information has been so compromised that it could no longer be regarded as classified. See S. Rep. No. 96-823 at 10, 1980 U.S.C.C.A.N. at 4304.

Section 8(b) permits the court to order admission into evidence of only a part of a document when fairness does not require the whole document to be considered. The purpose of this provision is to clarify Federal Rule of Evidence 106, known as the rule of completeness, in order to prevent unnecessary disclosure of classified information. <u>Id.</u> at 10-11, 1980 U.S.C.C.A.N. at 4304.

Last, Section 8(c) provides a procedure to address the problem presented at a proceeding when the defendant's counsel asks a question or embarks on a line of inquiry that would require the witness to disclose classified information. Id. at 11, 1980 U.S.C.C.A.N. at 4304. Specifically, under Section 8(c), the government may object to any question or line of inquiry that may require the witness to disclose classified information that was not previously held to be admissible. 18 U.S.C. App. III § 8(c). Following an objection, the court shall take suitable action to determine whether the response is admissible "as will safeguard against the compromise of any classified information." Id. In effect, this procedure supplements the notice provision under Section 5 and the hearing provision in Section 6(a) to cope with situations that cannot be handled effectively by those sections, such as where the defense counsel does not realize that the answer to a given question will reveal classified information. S. Rep. No. 96-823 at 11, 1980 U.S.C.C.A.N.

has been decided or the time for filing an appeal has expired. 18 U.S.C. App. III § 5(a).

at 4304-5.

## h. Section 9 - Security Procedures

Section 9 requires the Chief Justice of the United States, in consultation with executive branch officials, to prescribe rules establishing procedures to protect classified information in the custody of federal courts from unauthorized disclosure. 18 U.S.C. App. III § 9(a). Should the government file a Motion For a Protective Order Pursuant to Section 3 of CIPA, it will include a discussion of the security procedures established by former Chief Justice Burger pursuant to this provision. Further, the security procedures themselves are codified directly following Section 9 of CIPA.

### i. Section 9A - Coordination Requirement

Section 9A requires an official of the Department of Justice and the appropriate United States Attorney to provide timely briefings of the fact and status of a prosecution involving classified information to a senior official of the agency in which the classified information originated. <u>Id.</u> at § 9A(a).

## j. <u>Section 10- Identification of Information Related to National</u> Defense

This section applies in espionage or criminal prosecutions in which the government must prove as an element of the crime charged that certain material relates to the national defense or constitutes classified information. See S. Rep. 96-823 at 11-12, 1980 U.S.C.C.A.N. at 4305. As such, this section does not apply here.

#### k. Sections 11-15 - Miscellaneous Provisions

The remaining sections of CIPA contain various housekeeping provisions

not relevant here.5

#### 3. Procedures Requested in This Case

As described above, the government is proposing a bifurcated <u>in camera</u> Section 2 conference in this case. In the first part of the conference, the government proposes that it provide details to the Court regarding the classified information implicated by this prosecution, in an <u>exparte</u>, <u>in camera</u> classified conversation. In the second part of the conference, the government proposes that all counsel participate in an <u>in camera</u> conference to discuss the discovery and motion plan more generally.

Prior to the conference, the government will endeavor to identify all possible classified material and determine its potential applicability, nature and volume. This will allow the government, at the Section 2 pretrial conference, to provide a strong estimate of the time necessary to conduct a complete review of any potentially relevant classified information. Further, at the pretrial conference, the government intends to ask the Court, pursuant to Section 4 of CIPA, to authorize an <u>in camera</u>, <u>ex parte</u> submission regarding classified materials that the government believes should be subject to deletion, substitution or disclosure pursuant to a protective order. <u>Id.</u>
Courts have consistently held that such submissions are proper. <u>See</u>, <u>e.g.</u>, <u>United States v. Mejia</u>, 448 F.3d 436, 455 (D.C. Cir. 2006); United States v. Gurolla, 333 F.3d 944, 951 (9th Cir. 2003).

<sup>&</sup>lt;sup>5</sup> Section 11 provides for amendments to Sections 1 through 10 of CIPA. Section 12 requires the Attorney General to issue guidelines regarding the exercise of prosecutorial discretion over cases in which classified information may be revealed and requires preparation of written findings when prosecution of such cases is declined. Section 13 requires the Attorney General periodically to report such declination decisions to Congress and, where necessary, to report on the operation and effectiveness of CIPA. Section 14 identifies the senior officials to whom the functions and duties of the Attorney General under CIPA may be delegated. Last, Section 15 provides the effective date of CIPA.

## C. Conclusion

For the foregoing reasons, the government respectfully requests that the Court designate this matter a complex case under 18 U.S.C. § 3161(h)(8)(B)(ii), and grant a continuance of the trial date under 18 U.S.C. § 161(h)(8)(A). In addition, the government respectfully requests that the Court hold a conference pursuant to Section 2 of CIPA, in order to establish a discovery and motion plan relating to classified information. A proposed form of Order is attached.

ZANE DAVID MEMEGER UNITED STATES ATTORNEY

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

## CERTIFICATE OF SERVICE

I certify that a copy of the Government's Motion to Designate this a Complex Case, to Continue the Trial Date, and for a Pretrial Conference Pursuant to the Classified Information Procedures Act was served by e-mail on the following defense counsel:

Peter Zeidenberg, Esquire Arent Fox LLP 1717 K Street, NW Washington, DC 20006-5344

Michael A. Schwartz, Esquire Pepper Hamilton LLP 3000 Two Logan Square Eighteenth and Arch Streets Philadelphia, PA 19103

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

Date: 06-09-2015

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERIC	CA	:
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CRIMINAL NO. 15-204

XIAOXING XI

v.

## ORDER DESIGNATING CLASSIFIED INFORMATION SECURITY OFFICERS

The United States has filed a motion to designate a Classified Information Security Officer, pursuant to the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA") and Section 2 of the Security Procedures established under Pub. L. 96-456, 94 Stat. 2025 by the Chief Justice of the United States.

Accordingly, this Court designates Daniel O. Hartenstine as the Classified Information Security Officer in this case, to perform the duties and responsibilities prescribed in the Security Procedures promulgated by the Chief Justice. This Court further designates the following persons as Alternate Classified Information Security Officers, to serve in the event Mr. Hartenstine is unavailable: Jennifer H. Campbell, Branden M. Forsgren, Joan B. Kennedy, Michael P. Macisso, Maura L. Peterson, Carli V. Rodriquez-Feo, Harry J. Rucker, and W. Scooter Slade.

SO ORDERED, this day	of	_, 2015.
	BY THE COURT:	
	HONORABLE R. BARCLAY	Y SURRICK

Judge, United States District Court

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 15-204

XIAOXING XI

GOVERNMENT'S MOTION TO DESIGNATE A

CLASSIFIED INFORMATION SECURITY OFFICER

The United States of America, by and through the undersigned counsel, respectfully requests that the Court designate a Classified Information Security Officer ("CISO"), pursuant to the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3, and Section 2 of the Security Procedures established under Pub. L. 96-456, 94 Stat. 2025 by the Chief Justice of the United States and promulgated pursuant to Section 9 of CIPA. In support of this motion the government states the following:

## CASE BACKGROUND

On May 14, 2015, a grand jury sitting in the Eastern District of Pennsylvania returned an indictment charging Xiaoxing Xi with devising and intending to devise a scheme to defraud a U.S. company in order to obtain its technology, provide it to entities in China, assist these entities in further exploitation and use of the technology, and to obtain for himself and for entities in China money and property by means of false and fraudulent pretenses, representations and promises. On June 9, 2015, the government filed a Notice of Intent to Use Foreign Intelligence Surveillance Act Information. On the same date, the government filed a Motion to Designate this a Complex Case, to Continue the Trial Date, and for a Pretrial Conference Pursuant to the Classified Information Procedures Act ("CIPA"), codified at 18 U.S.C. App. 3.

#### CIPA SECURITY PROCEDURES

Due to the nature of the charges and the expected evidence in this case, the United States anticipates that issues relating to classified information will arise. To that end, this case will implicate CIPA. Pursuant to CIPA, 18 U.S.C. App. 3, and Section 2 of the Security Procedures established under Pub. L. 96-456, 94 Stat. 2025 by the Chief Justice of the United States and promulgated pursuant to Section 9 of CIPA, the Court shall designate a CISO in any proceeding in a criminal case in which classified information is reasonably expected to be referenced or filed with the Court.

To assist the Court and court personnel in handling any motions, pleadings and implementing any orders relating to the CIPA proceedings, the government requests that the Court designate Daniel O. Hartenstein as the CISO for this case, to perform the duties and responsibilities prescribed for CISOs in the Security Procedures promulgated by the Chief Justice.

The government further requests that the Court designate the following persons as Alternate CISOs, to serve in the event Mr. Hartenstine is unavailable: Jennifer H. Campbell, Branden M. Forsgren, Joan B. Kennedy, Michael P. Macisso, Maura L. Peterson, Carli V. Rodriquez-Feo, Harry J. Rucker, and W. Scooter Slade.

Respectfully submitted, ZANE DAVID MEMEGER United States Attorney

By:

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

# CERTIFICATE OF SERVICE

I certify that a copy of the Government's Unopposed Motion to Designate a

Classified Information Security Officer was served by e-mail on the following defense counsel:

Peter Zeidenberg, Esquire Arent Fox LLP 1717 K Street, NW Washington, DC 20006-5344

Michael A. Schwartz, Esquire Pepper Hamilton LLP 3000 Two Logan Square Eighteenth and Arch Streets Philadelphia, PA 19103

JENNIFER ARBITTIER WILLIAMS

Assistant United States Attorney

Date: 6-9-2015

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

٧.

CRIMINAL NO. 15-204

XIAOXING XI

# ORDER DESIGNATING CLASSIFIED INFORMATION SECURITY OFFICERS

The United States has filed a motion to designate a Classified Information Security Officer, pursuant to the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA") and Section 2 of the Security Procedures established under Pub. L. 96-456, 94 Stat. 2025 by the Chief Justice of the United States.

Accordingly, this Court designates Daniel O. Hartenstine as the Classified Information Security Officer in this case, to perform the duties and responsibilities prescribed in the Security Procedures promulgated by the Chief Justice. This Court further designates the following persons as Alternate Classified Information Security Officers, to serve in the event Mr. Hartenstine is unavailable: Jennifer H. Campbell, Branden M. Forsgren, Joan B. Kennedy, Michael P. Macisso, Maura L. Peterson, Carli V. Rodriquez-Feo, Harry J. Rucker, and W. Scooter Slade.

so ordered, this day of June, 2015

BY THE COURT:

HOMORABLE R. BARCLAY SURRICK

Judge, United States District Court

6/15/15 Faxed to: Williams Zeidenberg Schwortz

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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v. : CRIMINAL NO. 15-204

XIAOXING XI :

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ORDER

AND NOW, this day of June	2015, upon consideration of
the Government's Motion to Designate this a Complex Case, to Con-	atinue the Trial Date, and for a
Pretrial Conference Pursuant to the Classified Information Procedur	es Act, it is ORDERED AND
DECREED that the government's motion is GRANTED.	

In granting this motion, the Court makes the following findings:

- 1. In the instant case, defendant Xiaoxing Xi is charged with devising and intending to devise a scheme to defraud a U.S. company in order to obtain its technology, provide it to entities in China, assist these entities in further exploitation and use of the technology, and to obtain for himself and for entities in China money and property by means of false and fraudulent pretenses, representations and promises.
- This indictment is the result of an intense investigation conducted by the
   Federal Bureau of Investigation, during which the government seized extensive electronic evidence
   and searched multiple hard drives.

- 3. The government is in the process of compiling a detailed inventory of discovery, and defense counsel will require considerable time to review this discovery adequately in preparation for the filing of pretrial motions and for trial.
- 4. In addition, the government has filed a Notice of Intent to Use Foreign Intelligence Surveillance Act Information, and the government anticipates that issues relating to classified information will arise. Thus, pretrial motions in this matter are anticipated to raise complex issues, including issues implicating the Classified Information Procedures Act ("CIPA"), codified at 18 U.S.C. App. III, and will require substantial time to prepare.
- 5. On June 9, 2015, this Court issued an Order scheduling trial in this matter to begin on July 13, 2015. Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, trial must ordinarily commence within seventy (70) days of the date on which a defendant makes his initial appearance. However, the Speedy Trial Act permits the Court to continue the trial when "the case is so unusual or so complex due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section." 18 U.S.C. § 3161(h)(8)(B)(ii). In the alternative, § 3161(h)(8)(B)(iv) provides that if the case, "taken as a whole, is not so unusual or so complex as to fall within clause (ii)," the Court may allow a continuance in the ends of justice if the failure to grant a continuance "would deny counsel for a defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence."

Accordingly, this Court finds that, due to anticipated issues relating to classified information, as well as due to the nature and quantity of the evidence in this case, this case is so

complex that it is unreasonable to expect adequate preparation for pretrial proceedings and trial within the time limits established by the Speedy Trial Act, 18 U.S.C. § 3161(c)(1). The Court further finds that the interests of justice to all parties served by a delay in the trial outweigh the interests of the public and the defendant in a speedy trial.

IT IS FURTHER ORDERED AND DECREED that the Counsel shall appear in chambers for a bifurcated in camera pretrial conference pursuant to Section 2 of CIPA, 18 U.S.C. App. III § 2, as follows:

		a.	Comiser for the government on	y snan mst appe	au on	
July	1,	2015	, at2:00p.m., fo	or an <u>ex parte, in</u>	ı camera classifie	:d
confere	ence	with t	ne court; and			
		ъ.	All counsel shall then appear on	August 27,	2015 , at _	2:00p.m.
	1		camera conference to discuss the di	•	tion plan more ge	enerally.
		90	OPPERED this / day of To	-	2015	

BY THE COURT:

HONORABLE R. BARCLAY SURRICK Judge, United States District Court

6/15/15 Faxed to: Williams Zeiderbry Schwortz

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

ν.

: CRIMINAL NO. 15-204

XIAOXING XI

### STIPULATION REGARDING PROTECTIVE ORDER

WHEREAS, the parties desire to prevent the unauthorized disclosure or dissemination of certain sensitive but unclassified discovery materials to anyone not a party to the court proceedings in this matter;

WHEREAS, the parties agree that entry of a stipulated protective order is appropriate;

IT IS HEREBY AGREED AND STIPULATED that:

- This Court may enter a protective order pursuant to Rule 16(d) of the Federal Rules of Criminal Procedure, and its general supervisory authority.
- 2. This Stipulated Protective Order pertains to: all materials containing e-mail addresses, e-mail content, alleged co-conspirator identities or contact information, and/or any personal identifying information, which have been and/or may be provided by the government to defense counsel as part of discovery in this case. Said material shall hereinafter be referred to collectively as "sensitive information."
  - 3. Defense counsel shall not disclose or disseminate any of the sensitive

<sup>1/ &</sup>quot;Disclose" or "disseminate" means to provide, show or describe to another person either a particular piece of discovery or quotations, excerpts, or summaries derived therefrom.

information to any person other than: (a) the defendant, (b) any other attorneys, law clerks, paralegals, or secretaries who are working under defense counsel's direction in the representation of the defendant, and (c) expert witnesses with whom defense counsel is consulting on behalf of the defendant. Defense counsel must contact the government and obtain its explicit written consent to disseminate this information to any individual(s) other than those noted.

- 4. All sensitive information is provided to the defense solely for the purpose of allowing the defendant to prepare his defense.
- 5. The sensitive information is now and will forever remain the property of the United States Government. Defense counsel will return the sensitive information to the government at the conclusion of this case.
- 6. Defense counsel, and anyone to whom defense counsel discloses or disseminates this information pursuant to this agreement, will store and maintain custody of the sensitive information in a secure place and will use reasonable care to insure that it is not disclosed to third persons in violation of this Stipulated Protective Order.
- 7. If defense counsel discloses any of the sensitive information to any person described in paragraph 3, including the defendant, defense counsel shall provide such recipients with a copy of this Stipulated Protective Order and advise them that: (a) all recipients of the sensitive information are bound by all the terms of this Stipulated Protective Order, including those terms which prohibit dissemination of the information to any other person; (b) the sensitive information is the property of the United States Government; and (c) an unauthorized use or dissemination of the information may constitute a violation of law and/or contempt of court.

- 8. Nothing herein constitutes a waiver of any right of the defendant, nor does anything herein restrict in any way the right of the defense, to use the sensitive information in connection with the preparation of the defense.
- 9. Any papers to be served upon the Court by either party which include sensitive information or refer to sensitive information shall be filed under seal.
- 10. Each party reserves the right to seek modification of these terms by application to the Court.
- 11. A copy of this Stipulated Protective Order shall be issued forthwith to defense counsel, who shall be responsible for advising the defendant and employees of the contents of this Stipulated Protective Order.

DATED: 7/29/15

MICHAEL A. SCHWARTZ

Counsel to Defendant Xiaoxing Xi

DATED: 7/09/15

Jugust 3, 2015

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

IT IS SO ORDERED.

DATED: 2

BY THE COURT

HONORABLE R. BARCLAY SURRICK

Judge, United States District Court

## Case 2:15-cr-00204-RBS Document 28 Filed 09/01/15 Page 1 of 1

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Date of

: Notice: September 1, 2015

:

XIAOXING XI : Criminal No. 15-204-01

418 Hidden River Rd Penn Valley, PA 19072

v.

#### NOTICE

TAKE NOTICE that the above-entitled case has been set for evidentiary hearing on defense motion in the United States District Court, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, on Wednesday, September 30, 2015 at 9:30 a.m. before the Honorable R. Barclay Surrick. In Courtroom 8-A, 8th Floor.

ALL DEFENDANTS ARE DIRECTED TO REPORT TO THE COURTROOM ON THE DATE AND TIME STATED ABOVE. IF A DEFENDANT FAILS TO APPEAR AS DIRECTED, THE BAIL MAY BE FORFEITED AND A BENCH WARRANT ISSUED.

Counsel shall file their Trial Memorandum, Sentencing Memorandum or Change of Plea Memorandum **three (3) business** days prior to the scheduled proceeding unless otherwise ordered by the Court. Please **fax** a copy of the memorandum to the undersigned.

Very truly yours,

/s/Christina Franzese

Deputy Clerk to Judge R. Barclay Surrick

267-299-7639 (Office)

267-299-7638 (Fax)

Notice to:

Defendant

P. Zeidenberg, Defense Counsel (via email)

M. Schwartz, Defense Counsel (via email)

J. Williams, A.U.S.A. (via email)

U.S. Marshal (via email)

Probation Office (via email)

Pretrial Services (via email

NO INTERPRETER REQUIRED
[] RESCHEDULED FROM

Cr4 (rev. 8/98)

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL ACTION

v.

:

NO. 15-204

XIAOXING XI

## **AMENDED ORDER**

AND NOW, this \_\_\_\_\_\_ day of August, 2015, upon agreement between the parties, it is ORDERED that the Scheduling Order entered on August 28, 2015, is amended as follows:

- 1. Defendant's motion challenging the indictment shall be filed and served on or before September 11, 2015. Responses to this motion shall be filed on or before September 25, 2015. An evidentiary hearing on the motion is scheduled for Wednesday, September 30, 2015 at 9:30 a.m. in Courtroom 8A.
- 2. Any Government motion pursuant to the Classified Information Procedures Act ("CIPA") shall be filed *ex parte* and an *in camera*, on or before October 30, 2015. An unclassified version of said motion shall be publicly filed and served on defense counsel on or before the same date.

IT IS SO ORDERED.

BY THE COURT:

R.`BARCLAX SURRICK, J.

Faxed to: 8/31/2017 Ausa Scidenberg Schwortz

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 15-204
XIAOXING XI		
	ORDE	R
AND NOW, this	day of	, 2015, upon consideration
of the Government's Unopposed Motion	n to Dismiss	Indictment Without Prejudice, it is hereby
	ORDERI	ED
that Indictment No. 15-204 is dismissed	d without pre	judice to the refiling of charges.
	BY TH	IE COURT:

HONORABLE R. BARCLAY SURRICK

Judge, United States District Court

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. : CRIMINAL NO. 15-204

XIAOXING XI

# GOVERNMENT'S UNOPPOSED MOTION TO DISMISS INDICTMENT WITHOUT PREJUDICE

The United States of America, by its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Jennifer Arbittier Williams, Assistant United States Attorney for the district, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, moves this Court to dismiss without prejudice the indictment in the above-captioned matter, and in support of its motion states:

- On May 14, 2015, a grand jury sitting in the Eastern District of
   Pennsylvania returned an indictment charging Xiaoxing Xi with four counts of wire fraud.
- 2. Thereafter, additional information came to the attention of the government.
- 3. The government submits that it is in the interests of justice to dismiss the indictment without prejudice in order to pursue this additional information.
- 4. The government has discussed this motion with counsel for the defendant, who advised that the defense has no objection to dismissal of this indictment without prejudice.

# Case 2:15-cr-00204-RBS Document 29 Filed 09/11/15 Page 3 of 4

WHEREFORE, the government respectfully requests that the Court dismiss the indictment against the defendant without prejudice to the refiling of charges.

Respectfully submitted,

ZANE DAVID MEMEGER

United States Attorney

JENNIFER ARBITTIER WILLIAMS

Assistant United States Attorney

Dated: September 11, 2015

# CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Unopposed Motion To Dismiss Indictment Without Prejudice has been served via email upon:

Peter Zeidenberg, Esquire Arent Fox LLP 1717 K Street, NW Washington, DC 20006-5344

Michael A. Schwartz, Esquire Pepper Hamilton LLP 3000 Two Logan Square Eighteenth and Arch Streets Philadelphia, PA 19103

JENNIFER ARBITTIER WILLIAMS

Assistant United States Attorney

Date: September 11, 2015