

*Form*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09 CR 383-3
	)	
JESUS VICENTE ZAMBADA-NIEBLA,	)	Judge Ruben Castillo
	)	
Defendant.	)	

**ORDER**

Presently pending before the Court is Defendant Jesus Vicente Zambada-Niebla’s motion to bar *ex parte* submissions under the Classified Information Procedures Act, 18 U.S.C. App. III, § 4 (“CIPA Section 4”), without a particularized showing of exceptional circumstances by the Government. (R. 126, Def.’s Mot. to Bar.) In this motion, Zambada-Niebla requests that the Court reject the Government’s request to proceed *ex parte* “unless it makes a particularized showing of exceptional circumstances in an adversarial proceeding.” (*Id.* at 2.) Alternatively, if the Court permits an *ex parte* filing by the Government, Zambada-Niebla requests a “corresponding opportunity” to submit an *ex parte* filing in support of Zambada-Niebla’s discovery requests. (*Id.* at 1.) For the reasons that follow, Zambada-Niebla’s motion is denied.


First, the Court denies Zambada-Niebla’s request to bar an *ex parte* CIPA filing by the Government absent a showing of exceptional circumstances. While the Court agrees with Zambada-Niebla that *ex parte* proceedings are generally disfavored, CIPA clearly permits the Court, in its discretion, to allow the Government “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. Because the Government’s justification for the CIPA filing would require the Government to disclose the

information it contends falls under the protections of CIPA, the Court will permit the Government to submit its justifications for the CIPA filing *ex parte*. The Court, however, will not allow the government to make any discovery or evidentiary arguments in its *ex parte* filing. Additionally, the Court will require a concurrent filing of a redacted version of the Government's justifications for its CIPA filing on the docket for Zambada-Niebla's review and for the public record. The Court understands the concerns raised by Zambada-Niebla regarding his right to a fair trial, and will carefully observe its duty to scrutinize any *ex parte* filings by the Government to determine whether they should remain *ex parte* or should be served on Zambada-Niebla.<sup>1</sup>

The Court also denies, without prejudice, Zambada-Niebla's request to file an *ex parte* presentation to the Court in support of his discovery requests. If, after reviewing the documents in the Government's CIPA submissions, the Court finds that such a filing would be helpful to its determination, the Court will advise the parties and revisit the issue.

For the foregoing reasons, Zambada-Niebla's motion to bar *ex parte* submissions under CIPA without a particularized showing (R. 126) is denied.

Entered: \_\_\_\_\_

  
Judge Ruben Castillo  
United States District Court

Dated: November 16, 2011

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<sup>1</sup> Should the Court determine that an *ex parte* filing must be served on Zambada, the Court will afford the Government an opportunity to appeal the decision pursuant to Section 7 of CIPA.