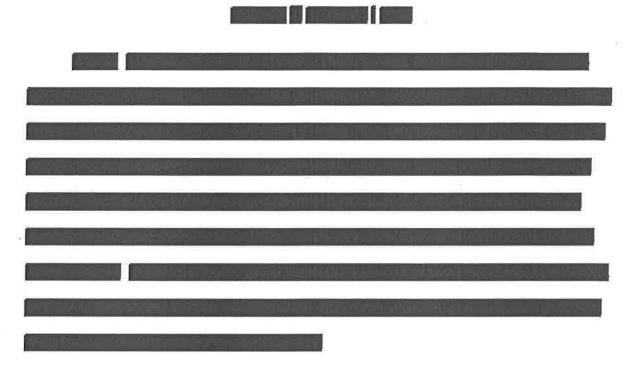
	Fried with Classified Information Security Officer
, ,	
)	Date 4/4/2022 -
UNITED STATES OF AMERICA)
) Criminal No. 19-148-1 (CKK)
v.) Francis SEALED (1 - 1 - 0)
PRAKAZREL MICHEL (1)) recrare, in camera, SEALED CONSIDER
	Ex Parie, In Camera, SEALED unacabl Ougust 23, 202> Judge CK ola-Ktyl
MEMOD	ANDUM OPINION
	pril 4, 2022)
This matter comes before th	e Court on the Government's Classified Ex Parte, In
Camera, Under Seal Motion and Memorand	lum of Law in Support of Protective Order Pursuant
to Section 4 of the Classified Information Pr	rocedures Act and Rule 16(d)(1) of the Federal Rules
of Criminal Procedure ("Motion" or "Mot.")	
Institution of the state of the	
For the reasons that follow, and up	on consideration of the briefing, the relevant
authorities, and the entire record, the Court s	hall GRANT the Motion.
I. (U) Background	
(U) On May 2, 2019, a grand jury ret	urned an eleven-count indictment against Michel
and his co-Defendant, Malaysian national Lo	ow Taek Jho ("Low"). Superseding Indictment, ECF
No. 85 at 1. The charges in the Superseding	Indictment arise from an alleged scheme between

Michel and Low to funnel money from Low and other straw donors into the 2012 Presidential

Election and to conceal the true contributions from the Federal Election Commission ("FEC").

Id. Beginning at some time in 2017, Michel and Low conspired with at least three other individuals, Elliott Broidy, Nickie Lum Davis ("Davis"), and George Higginbotham—who have all since either been charged or convicted in this Court or, in Davis' case, the United States District Court for the District of Hawaii—"to wage an illegal, back-channel lobbying campaign to: (1) convince the Administration of the President of the United States ('Administration') and the United States Department of Justice ('DOJ') to drop forfeiture proceedings and related investigations into Low for the embezzlement of billions of dollars from 1Malaysia Development Berhad ('1MDB'), a strategic investment and development company wholly owned by the Government of Malaysia; and (2) convince the Administration and DOJ to send a high-profile dissident of the [People's Republic of China] living in the United States back to the PRC." Id. at 2.

(U) Davis has since pled guilty to one count of aiding and abetting violations of the Foreign Agents Registration Act. Mem. Of Plea Agreement, ECF No. 15, Case No. 20-cr-68-LEK (D. Haw. Aug 31, 2020). The Government represents that she continues to cooperate with the Government in this case and others and appears to suggest that, should this case go to trial, the Government would call Lum as a witness in its case-in-chief. *See* Mot. at 4. In the meantime, the Court has held successive status conferences in this case, most recently on January 11, 2022. At that status conference, the Government, rather cryptically, discussed the possibility of a discovery dispute that the parties would attempt to resolve prior to the next status conference, currently set for April 4, 2022. It appears that the Government intends to resolve the discovery dispute by this pending Motion.



II. (U) Legal Standards

(U) In general, the Government must provide a defendant with all exculpatory "material" relevant to the guilt or punishment of the accused. *Brady v. Maryland*, 373 U.S. 83 (1963). Evidence is "material" where, if not disclosed, "there is a reasonable probability that . . . the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). "Material" evidence includes that which a defendant could use to impeach a government witness. *United States v. Giglio*, 405 U.S. 150 (1972). Additionally, by statute, the government must disclose pretrial statements made by a witness that is related to the subject matter of their testimony. 18 U.S.C. § 3500(b). Local Rule 5.1 further requires the government to disclose various categories of information, including *Brady* material, "regardless of whether the information would itself constitution admissible evidence" and "in a reasonably usable form unless that is impracticable." LCrR 5.1(a). That said, "[a]t any time the [C]ourt may, for good cause, deny, restrict, or defer discovery for inspection." Fed. R. Crim. P. 16(d)(1).

(U) Where, however, such material has been classified, the Court looks to CIPA. United States v. Libby, 429 F. Supp. 2d 46, 48 (D.D.C. 2006) (RBW). CIPA "does not expand or restrict established principles of discovery and does not have a substantive impact on the admissibility of probative evidence." United States v. Sedaghty, 728 F.3d 885, 903 (9th Cir. 2013). Indeed, CIPA stands at equal stature with the Federal Rules of Criminal Procedure governing criminal discovery, and "contemplates an application of the general law of discovery in criminal cases to the classified information area with limitations imposed based on the sensitive nature of the classified information." United States v. Yunis, 867 F.2d 617, 622 (D.C. Cir. 1989). In relevant part, CIPA permits

[t]he court, upon a sufficient showing, [to] authorize the United States to delete specified items of classified information from documents to be made available to the defendant to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove.

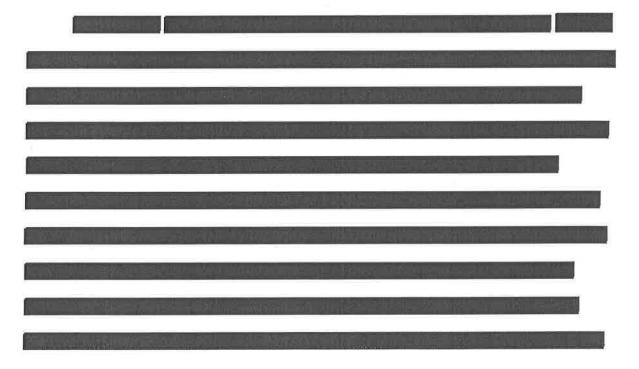
- CIPA § 4. To do so, the government must first move for ex parte review and, upon granting such relief, "the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of appeal." Id.
- (U) For a substitute summary of information, the Court has wide discretion to approve suitable substitutions. See Sedaghaty, 728 F.3d at 905. These unclassified substitutions "need not be of 'precise, concrete equivalence,' and the 'fact that insignificant tactical advantages could accrue to the defendant by use of the specified classified information should not preclude the court from ordering alternative disclosure." *Id*.
- (U) As for deletions, if the information to be deleted is irrelevant or unhelpful to the defense, the Court's inquiry is over. *Meija*, 448 F.3d at 455. If, however, the information is relevant, the Court must determine if the privilege claimed by the Government "is at least a

colorable one." *Yunis*, 867 F.2d at 623. If so, then the Court must balance the Government's (and public's) interest in national security against the defendant's need for the information. *Meija*, 448 F.3d at 445 (citation omitted). Special attention must be paid to whether producing the classified material would implicate the sources and methods used to collect the material. *Yunis*, 867 F.2d at 623 (citing *CIA v. Sims*, 471 U.S. 159, 175 (1985)).

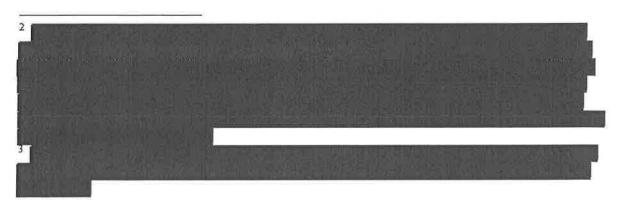
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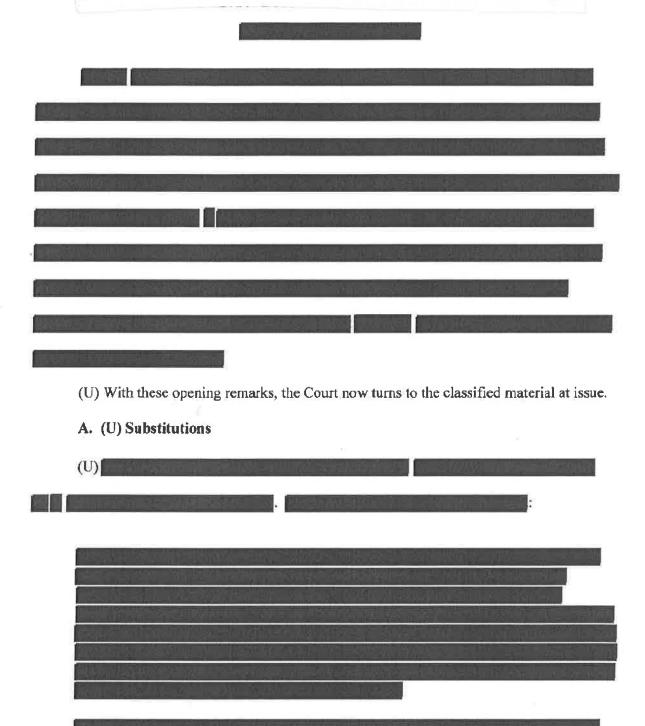
(U) Before continuing, it should be added that a defendant also has a right to file their own ex parte submission outlining their theory of the defense while the Court reviews the Government's classified, ex parte filing. See Sedaghaty, 728 F.3d at 906. Defendant Michel has made no such filing here.

III. (U) Discussion





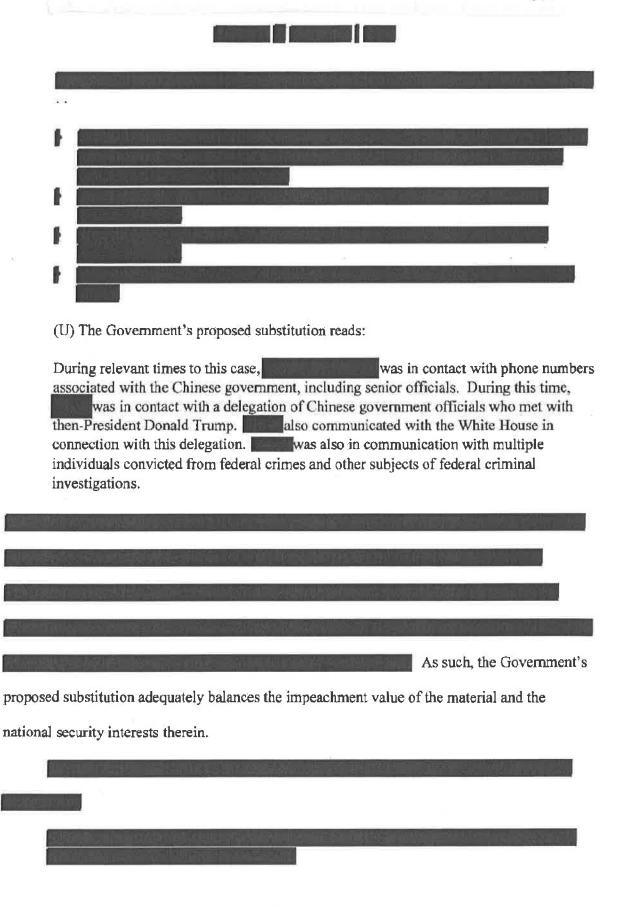




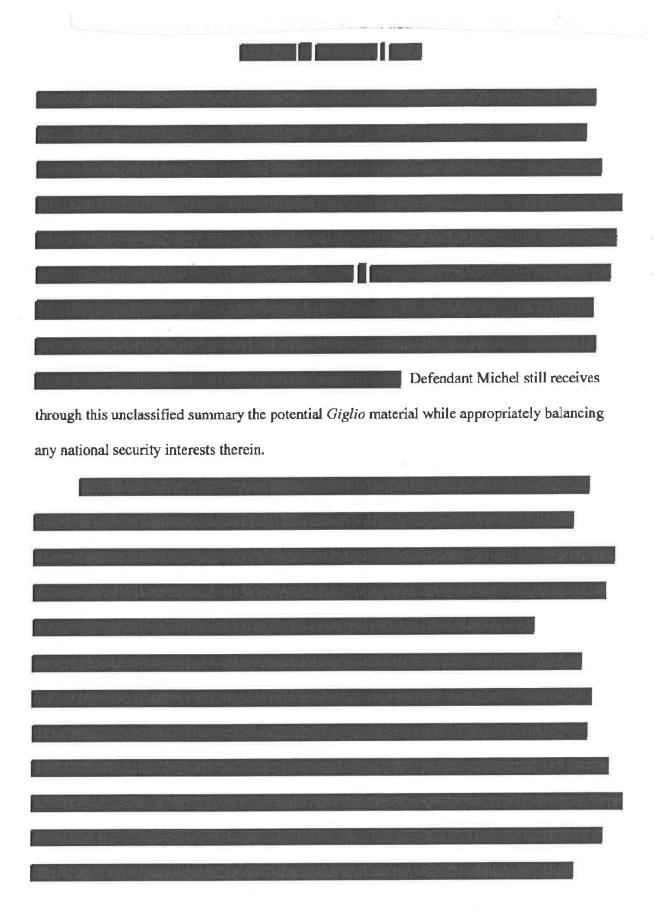
The Government proposes the following substitution:
The U.S. Government assesses that, during times relevant to this case, had contact with a known intelligence officer affiliated with Israel. may have facilitated business contacts for this individual, potentially to include Chinese investors. The U.S. Government further assesses that this known intelligence officer devoted substantial time in recent years to developing investors from Asia for Israeli-owned business, efforts that included hosting Chinese delegations in Los Angeles.
The substitution therefore
adequately describes the nature of the acts for which Defendant might seek to impeach
while also protecting the national security interest at play.
The Government proposes the following substitution:
The United States Government assesses that used and her family's political networks to route foreign money to political campaigns and to make other direct payments. has affiliations with Chinese political organizations.

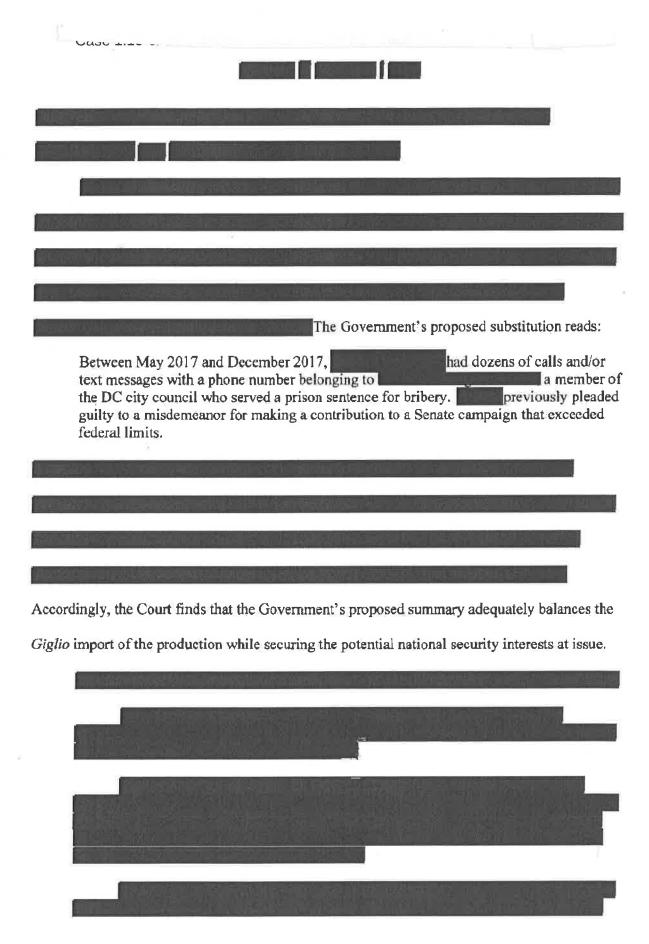
(U) The Government proposes the following substitution:
The United States Government assesses that and the family, together with counterparts in China, are potentially involved in criminal activities, including the funneling of money from China into the United States and conspiring to improperly influence U.S. officials.
As such, the Government's proposed substitution adequately
balances the impeachment value of the material and the national security interests therein.
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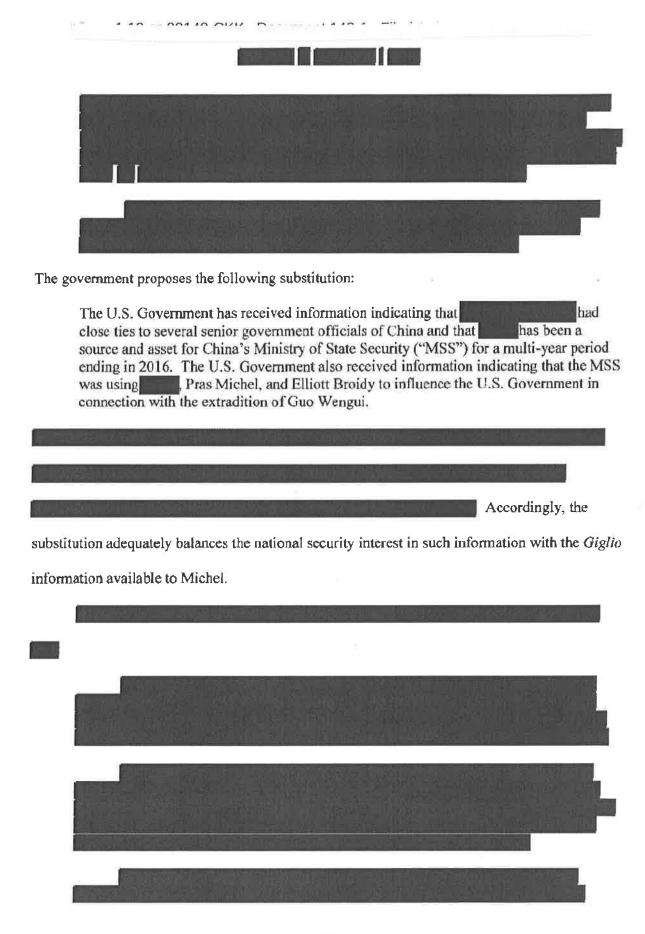
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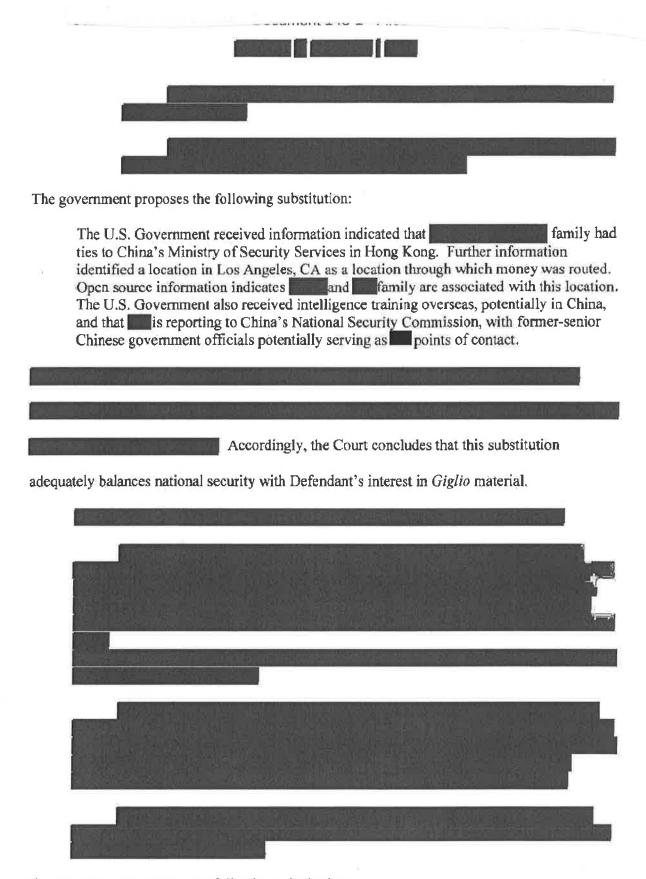
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(U) The Government's proposed substitution reads:
For a multi-year period ending in 2018, sent and/or received thousands of calls and/or text messages from a phone number belonging to who fled the Congo in 1998. sent and received money from Congo and France from at least 2003 until 2017. Members of the family have an interest in raw materials mined heavily in Congo, and three companies associated with the family are based in the Congo. Members of the family appear to be transferring money in and out of the DRC using wire transfers and by physically carrying case.
에 무슨 1일 시간 시간 시간 시간 시간 이 전 시간 이 보고 있는 것이 되었다. 그 보고 있는 것이 되었다. 그런 그 없는 그 것이 되었다. 그 것으로 되었다. 그 것으로 보고 있는 것으로 받는
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Accordingly, the Government's proposed
substitution adequately balances the evidentiary value of the material and the national security
interests therein.
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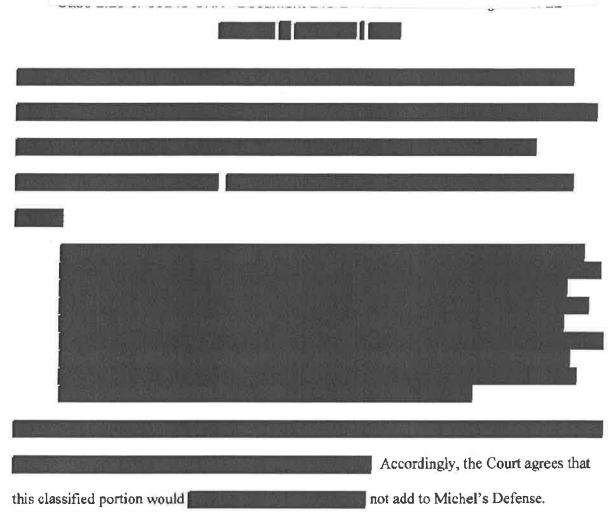


The government proposes the following substitution: The U.S. Government received information indicating that, according to senior Chinese government officials, was an agent for the Ministry of State Security ("MSS"), and that was trained in various intelligence techniques and strategies, including human collection, technical collection, and cyber activity. The U.S. Government further received information indicating that was tasked by the MSS to perform various intelligence functions inside the United States, of which was apparently knowledgeable.
Accordingly, the Court concludes that this substitution adequately balances
national security with Defendant's interest in Giglio material.



The Government proposes the following substitution:

The U.S. Government received information indicating that attended a meeting in China in 2017 attended by senior Chinese government officials. The meeting was also attended by Elliot Broidy. Subsequent travel records show
was in China at the time of the meeting.
Accordingly,
the Court concludes that this substitution adequately balances national security with Defendant's
interest in Giglio material.
The Government's proposed redaction would read:
was provided as a U.S. contact for multiple visa applications submitted between 2005 and 2010 on behalf of Chinese nationals traveling to the United States, one of whom was married to an individual FBI assesses to be a known intelligence officer for the Ministry of State Security in China.
Accordingly, the Court finds that the proposed substitution adequately balances
national security interests with Michel's interest in Giglio material.
B. (U) Deletions



IV. (U) CONCLUSION

(U) For the foregoing reasons, the Court shall **GRANT** the Motion in its entirety. An appropriate order accompanies this Memorandum Opinion.

Dated: April 4, 2022

COLLEEN KOLLAR-KOTELLY
United States District Judge