

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

CASE NO. 8:04-cr-348-T-24TGW

v.

JOHN E. ALITE and
MICHAEL MALONE

**MOTION OF THE UNITED STATES TO PARTIALLY UNSEAL
THE SENTENCING MEMORANDUMS SUBMITTED BY THE GOVERNMENT
ON BEHALF OF DEFENDANTS ALITE AND MALONE**

The United States of America (the "United States" or "government"), in the interest of justice, requests that this Court enter an Order allowing the government to make a limited disclosure of the *In Camera Memorandum in Support of Government's Motion for Downward Departure of Defendant's Sentence Based upon Substantial Assistance*, filed separately on behalf of each of the above defendants. In support of this motion the government states as follows:

1. Defendants John E. Alite and Michael Malone pleaded guilty in this case to Count One, RICO conspiracy, acknowledging their respective roles and specific criminal activity in the charged conspiracy.
2. Both defendants thereafter participated in separate sentencing hearings during April 2011.
3. Prior to each sentencing hearing, the government filed a separate motion and supporting memorandum for a downward departure for each defendant, as a result of each defendant's participation and truthful substantial assistance in multiple federal criminal investigations and/or trial proceedings. While the motions were filed as part of

the public docket, the supporting memorandums, with the Court's permission, were filed and remain under seal (the "USSG § 5K1.1 Memorandums").

4. Presently, both defendants are still cooperating in the government's ongoing investigations and prosecutions, and are incarcerated in separate secure federal prison facilities.

5. It is currently planned by the government that Alite and Malone will be listed, and may testify, as witnesses for the government in *United States v. John Burke and David D'Arpino*, Case No. 1:09-cr-135-SJ-JO (the "Burke Case"), a case charged in the Eastern District of New York which, as to defendant D'Arpino, is currently set for the September 2011 trial docket. Defendant Burke will be tried following D'Arpino's September 2011 trial.

6. The undersigned Assistant U.S. Attorney has been advised by Assistant U.S. Attorneys working in the Eastern District of New York that they need to review the USSG § 5K1.1 Memorandums and, if permitted by this Court, to possibly submit some part or all of the memorandums, or the information therein, to Senior U.S. District Judge Sterling Johnson, Jr., the United States District Judge presiding over the Burke Case, for his review. Thereafter, if the Court in the Burke Case determines that any part of any such memorandum, or information within the memorandum, should be produced to defense counsel in the Burke Case, the government would like permission to do so.

7. Counsel for John E. Alite and for Michael Malone have no objection to this motion.

CONCLUSION

WHEREFORE, the United States hereby requests that this Court enter an Order allowing the government to make a limited disclosure of the *In Camera Memorandum in Support of Government's Motion for Downward Departure of Defendant's Sentence Based upon Substantial Assistance*, filed on behalf of John E. Alite and Michael Malone of the above defendants, to Senior U.S. District Judge Sterling Johnson, Jr. Further, the government requests that the Court Order also permit the government to provide any part of the memorandums, or any information contained within the memorandums, to an attorney representing any defendant in the Burke Case, should Senior U.S. District Judge Johnson, Jr., determine that such disclosure is appropriate.

Respectfully submitted,

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