

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

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1: 08cr0079 (JCC)
	)	
KYLE DUSTIN FOGGO,	)	
aka "DUSTY" FOGGO,	)	
	)	
Defendant.	)	
	)	

**NOTICE OF GOVERNMENT’S INTENTION TO RELY ON EVIDENCE OTHER  
THAN GRAND JURY TRANSCRIPTS**

On January 28, 2009, this Court issued a memorandum opinion and order establishing parameters for the use of grand jury transcripts in connection with the sentencing of defendant Foggo. The Court’s order permits the United States to submit for in camera review grand jury transcripts that will assist the Court in sentencing defendant Foggo. In light of the concerns raised in the Court’s memorandum opinion, however, the United States intends to take whatever steps are necessary to avoid having to rely on grand jury transcripts at sentencing. Doing so will reduce the volume of material to be submitted to the Court, eliminate litigation over the breadth of submitted grand jury transcripts (i.e., arguments over whether unredacted portions are necessary to the Court’s sentencing determination), obviate the need to file redacted sentencing memoranda, and avoid having to close any portion of the sentencing hearing.

In lieu of grand jury transcripts, the United States will obtain declarations from witnesses who may or may not have previously testified before a grand jury (including a declaration of an agent summarizing information obtained during witness interviews). The United States estimates



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**CERTIFICATE OF SERVICE**

I certify that on February 3, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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