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Lawyers for Latifi pursuing charges

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Defense contends evidence withheld by fed prosecutors

Lawyers for Huntsville defense contractor Alex Latifi are arguing the government withheld evidence and intentionally misled the court during Latifi's 2007 trial.

Latifi and his company, Axion Corp., were acquitted on export control violation and fraud charges in October 2007.

His attorneys contend that the government had information in advance of the trial that disproved one of the counts against Latifi, but the prosecution did not share that information with them as required by law.

Latifi's attorney Jim Barger said they became aware of the information in late August through work on a civil suit Latifi has filed against a former supplier. Barger said he and Latifi's lead counsel, Henry Frohsin, went to the government attorneys for an explanation but are still waiting for a response.

They are asking U.S. District Judge Inge Johnson to consider contempt of court charges against former U.S. Attorney Alice Martin and others involved in the case.

On Sept. 14 Johnson gave government lawyers 14 days to show cause why they should not be held in contempt of court.

U.S. Attorney Joyce White Vance, who succeeded Martin, said her office will respond to the charges. Vance said they are aware that the defense intended to file the accusations against Martin, two current assistant U.S. attorneys, two U.S. Army criminal investigators and a prosecution witness.

"This filing by defense counsel is, of course, an advocate's point of view," Vance said.

On the criminal charge in question, the government alleged Latifi could not have provided a test report on a part used for an Army helicopter contract because the tungsten part had not been provided to him until January 2004, too late to conduct the test on schedule.

But e-mails obtained from the lawsuit against Tungsten Products, his lawyers argue, show a different set of facts. They say the e-mails indicate government attorneys were aware of documents showing that Latifi had obtained the materials in time. The e-mails also point to planned discussions by government attorneys, investigators in the case and a Tungsten Products manager, who later testified at the trial for the prosecution.

The documents - work orders indicating a Dec. 22, 2003, delivery date and interview notes with witnesses in the case - were not turned over by the government, according to Latifi's court filing.

Latifi's lawyers argue in the filing that the prosecution hid "plainly exculpatory evidence.

"No disclosure was ever made to defendants of this documentary or other evidence tending to disprove the government's case," the court filing argues. "The above-cited e-mails demonstrate that the government was well aware of the import of these documents and was desperate to have them explained prior to trial.

"Yet, upon receiving whatever explanation was forthcoming, the government elected to bury this evidence."

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