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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEONEL MICHEL VARGAS,

Defendant.

No. CR-13-6025-EFS

**ORDER REQUIRING THE PARTIES TO
FILE SUPPLEMENTAL BRIEFS**

12 The Court has reviewed the supplemental material relating to
13 Defendant Leonel Michel Vargas' Motion to Suppress Evidence from
14 Continuous Video Surveillance Pole Cam, ECF No. 47. ECF Nos. 80, 82,
15 88, & 95. Relying on the law-enforcement privilege, the U.S.
16 Attorney's Office (USAO) declines to disclose the make, model, and
17 other technological information regarding the video camera used to
18 covertly survey Defendant's front yard, as well as associated
19 technologies used to communicate the camera footage to the agent's
20 office computer. Amicus curiae, the Electronic Frontier Foundation
21 (EFF), highlights that the Supreme Court's Fourth Amendment analysis
22 in *Kyllo v. United States*, 533 U.S. 27, 34 (2001), focuses in part on
23 whether the technology used by law enforcement was in general public
24 use.

25 Under the circumstances, and in compliance with *Kyllo*, Federal
26 Rule of Criminal Procedure 16, and *Brady v. Maryland*, 373 U.S. 83

1 (1963), the Court is inclined to require the USAO to file, under seal,
2 detailed information pertaining to the camera and technology used by
3 law enforcement to survey Defendant's front yard. By filing this
4 information under seal, its disclosure will be limited to Defendant,
5 defense counsel, and the Court. In their briefs, the parties should
6 also discuss 1) what relevance, if any, the manner and mode of
7 "concealment" of the camera, which was installed on a telephone pole,
8 has on the Court's Fourth Amendment analysis, and 2) whether the
9 manner/mode of concealment must be disclosed by the USAO under seal as
10 well.

11 Accordingly, **IT IS HEREBY ORDERED:** No later than **April 25,**
12 **2014**, the USAO and Defendant shall file the above-ordered supplemental
13 briefs, limited to ten pages.

14 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
15 Order and provide copies to counsel (including counsel for the
16 Electronic Frontier Foundation).

17 **DATED** this 10th day of April 2014.

18
19 s/ Edward F. Shea
EDWARD F. SHEA
20 Senior United States District Judge
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