

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	Case No. 1:21-cr-138
	)	
AARON MOSTOFSKY,	)	<b>Judge James E. Boasberg</b>
	)	
Defendant.	)	
_____	)	

**NOTICE OF WITHDRAWAL OF DEFENDANT MOSTOFSKY’S MOTION TO  
COMPEL PRODUCTION OF DEVICE**

Defendant Mostofsky, through his counsel, moved the Court to compel the production of his mobile phone. ECF No. 28. Mostofsky hereby withdraws the motion for the following reasons.

As his motion explained, Mostofsky executed the standard stipulation used by the U.S. Attorney’s Office for this district to negotiate the return of a seized device before trial. At that point, the government changed substantive language in the agreement, described the change to counsel as relating to a “typo,” and asked Mostofsky to execute the stipulation again. Mostofsky responded that the government should honor the original device return stipulation and the government declined. ECF No. 28, pp. 2-3.

Following the filing of Mostofsky’s motion, a supervisor in the U.S. Attorney’s Office contacted counsel and said that the government would agree to the terms of the stipulation Mostofsky originally executed. The Assistant U.S. Attorney assigned to this matter added that a new stipulation nevertheless needed to be executed so that an additional warrant could be referenced in the agreement. Mostofsky requested that the new stipulation reflect that the parties had already entered into a device return agreement and that the terms of the new stipulation were

the same as those already agreed to. The government agreed and added that language to the new stipulation. A copy of the device return agreement is attached to this notice. Exh. 1.

Dated: July 2, 2021

Respectfully submitted,

/s/ David B. Smith

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*Counsel to Mostofsky*

**Certificate of Service**

I hereby certify that on the 2nd day of July, 2021, I filed the foregoing notice with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

Graciela Lindberg  
Assistant United States Attorney  
555 4th Street, N.W.  
Washington, D.C. 20530

And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

/s/ David B. Smith

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>CRIMINAL NO. 21-MJ-123-JEB</b>
<b>v.</b>	:	
	:	
<b>AARON MOSTOFSKY</b>	:	
	:	
<b>Defendant.</b>	:	

**SECOND STIPULATION REGARDING RETURN OF DIGITAL MEDIA EVIDENCE  
AND ADMISSIBILITY AND USE OF DIGITAL MEDIA EVIDENCE**

The United States of America, by and through the undersigned, and defendant ARRON MOSTOFSKY (“Defendant”), by and through his counsel listed below, hereby agree and stipulate as follows:

**RECITALS**

On or about January 12, 2021, pursuant to Eastern District of New York Search Warrants, Case No. 21-M-28 and Case No. 21-M-29, government agents seized the defendant’s digital device belonging from Neil Mostofsky. See attached Receipt for Property incorporated by reference in this Stipulation.

Defendant seeks return of specified digital media described below (the “Digital Media”).

Following this seizure, the government has imaged the Digital Media. The government has conducted and will continue to conduct a search of the imaged Digital Media (the “Images”).

The government intends to use materials discovered as a result of those searches as evidence in the pending and ongoing investigation and prosecution including, possibly, introducing those materials into evidence at trial or other proceedings.

Defendant has requested the return of the Digital Media listed below, and in the interest of expediting the return of the seized equipment and evidence, has agreed to stipulate to the following terms applicable to the specified Digital Media – itemized in the attached receipt.

**DIGITAL MEDIA**

The Digital Media for which Defendant seeks return consist of Samsung Galaxy mobile phone/device, that was seized on January 12, 2021 from Neil Mostofsky.

**STIPULATION**

Accordingly, the parties AGREE and STIPULATE as follows:

1. The government has agreed to return the Digital Media to defendant or defense counsel now that the Images of the Digital Media have completed.
2. The government will retain the Images of the Digital Media, including all evidence thereon, for use at trial and any other proceedings in this matter.
3. The Images of the Digital Media and/or any other copies are admissible at trial or any other proceeding in this matter to the same extent as the original Digital Media and evidence thereon (including original hard drive and computer disks), including but not limited to copies of the hard drive and printed copies of matters from the Digital Media.
4. Defendant waives any and all objections, and will not object, to the admissibility of the Images (and/or any portion of thereof) from the Digital Media on the grounds of foundation, authentication, and/or that the images are duplicates of, or not the original Digital Media, and/or any other objection under Articles IX and X of the Federal Rules of Evidence.
5. The government may retain and continue to examine the Images for materials identified in the search warrant.

6. Defendant retains the right to move to suppress the Images of the Digital Media pursuant to Fed. R. Crim. P. 41.

7. The terms of this stipulation are identical to those agreed to by the Defendant by signature on June 29, 2021.

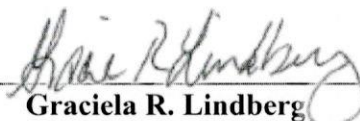
So stipulated.

Respectfully submitted and agreed,

CHANNING D. PHILLIPS  
Acting United States Attorney  
D.C. Bar Number 415793

Date: 7-1-2021

By:



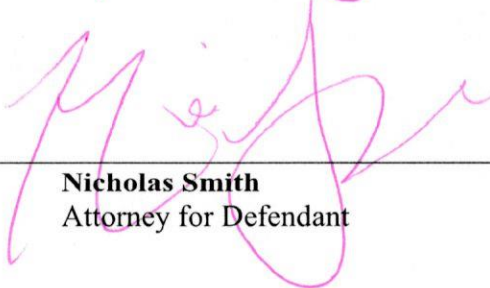
**Graciela R. Lindberg**  
Assistant United States Attorney  
Detailee-Federal Major Crimes  
Texas Bar Number 00797963  
555 4th Street, N.W.  
Washington, D.C. 20530

Date: 7/2/21



**Aaron Mostofsky**  
Defendant

Date: 7/2/21



**Nicholas Smith**  
Attorney for Defendant