

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : 1:21-CR-618-ABJ
 :
 v. :
 :
 RILEY JUNE WILLIAMS :

**DEFENDANT’S RESPONSE TO THE
GOVERNMENT’S PROFFER REGARDING AGENT TESTIMONY**

Defendant Riley June Williams, by and through her attorneys, submits the within response to the government’s proffer regarding agent testimony (ECF 106) in conformity with this Honorable Court’s Minute Order dated November 4, 2022.

I. THE GOVERNMENT’S PROFFERED TESTIMONY IS EXPERT TESTIMONY

Article VII of the Federal Rules of Evidence governs the admissibility of lay opinion and expert testimony in federal trials. *See generally*, Federal Rules of Evidence, Article VII. Rules 701 and 702 explain the difference between lay opinion and expert testimony. Rule 701 provides:

Rule 701. Opinion Testimony by Lay Witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

F.R.E. 701. In turn, Rule 702 defines expert testimony, relevantly providing:

Rule 702. Testimony by Expert Witnesses.

A witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if:

- (a) the expert's . . . specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue . . .

F.R.E. 702.

Here, the proffered agent's testimony goes to the heart of Rule 702 because the agent's "specialized knowledge" about Nick Fuentes and the America First or Groyper Army "will help the trier of fact to understand the evidence or determine a fact in issue." The Court is well-familiar with the government's proposed trial exhibits, dozens of which are connected in some way to Nick Fuentes, Groypers, and Pepe the Frog. Standing alone, these items of government evidence have no context and a typical juror will not understand what they mean or how they are related to elements of the charges against Ms. Williams. *See United States v. Dawson*, Crim. Action No. 1:21-57; 2022 WL 2483688 *2, n. 1, 2022 U.S. Dist. LEXIS 118574 (W.D. Va. July 6, 2022) (noting that "America First" and "Pepe the Frog" have been used or co-opted by the alt-right and that the use of these terms is "beyond the ken of the average citizen or juror."); *see also Sines v. Kessler*, Civ. Action No. 3:17-72, 2021 WL 1431296 *5 (W.D. Va. Apr. 15, 2021) (admitting expert reports and testimony that explains the potentials meaning of Pepe the Frog). Thus, the government intends to call an FBI agent or agents to educate the jury as to who Nick Fuentes is, what he and the Groyper Army stand for, as well as have the FBI agent provide his interpretation of the various meanings of the Pepe the Frog memes and cartoons that Ms. Williams attached to certain of her Discord communications. By so educating the jury about the meanings and intentions of Nick Fuentes/Groypers/Pepe the Frog through this expert testimony,

the government hopes to satisfy the “corrupt intent” element of the obstruction of an official proceeding charge contained in Count Two.

Decoding the meanings of various alt-right symbols is not dissimilar from decoding the code words and jargon used by drug traffickers, and the government routinely qualifies expert witnesses to explain these coded meanings in drug trafficking cases. *See United States v. Walls*, 70 F.3d 1323, 1326 (D.C. Cir. 1995) (“[j]urors as well as judges often need help in deciphering the jargon of those engaged in the drug trade.”); *see also United States v. Eiland*, Crim. Action No. 04-379-RCL, 2006 U.S. Dist. LEXIS 72019 *17-18 (D.D.C. Oct. 2, 2006) (“courts have consistently found that drug experts may testify on the basis of their experience concerning the meaning of alleged code words and terms to assist the jury in accurately interpreting conversations between drug conspirators” and citing a collection of cases in D.C. Circuit). The symbolism of Pepe the Frog and the themes and meanings of the Groyper Army movement can only be explained to the jury through a qualified expert, not a FBI agent who watched videos of Nick Fuentes on the internet during the course of this investigation and drew his own conclusions therefrom.¹

It is Ms. Williams’ position that the government’s proffered testimony by the FBI agent is not lay opinion testimony. Further, it is Ms. Williams’ position that, at this late juncture, it is inappropriate and prejudicial for the government to seek to qualify an agent as an expert to

¹ There is a particular danger here of the FBI agent becoming a “quasi-expert:” a witness that has no particular expert status, but a witness in the middle, who has one foot in each category, lay opinion and expert witness. *See* Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence*, §7.6 (4th Ed., July 2022 update); *see also United States v. Dukagjini*, 326 F.3d 45, 53 (2d Cir. 2003) (noting that when the case agent testifies as an expert and as a fact witness there are particular concerns about a prejudicial aura of trustworthiness projected onto the agent).

interpret the meanings of the various Pepe the Frog memes in evidence, or to explain the messaging of Nick Fuentes or the ideology of the Groyper Army.

Date: November 8, 2022

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Lori J. Ulrich, Esquire, of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **Defendant's Response to the Government's Proffer Regarding Agent Testimony** via Electronic Case Filing, and/or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, and/or by hand delivery, addressed to the following:

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