

**United States District Court for the District of Columbia**

**United States of America**

\*

v.

\*

**No. 1:21-CR-00032-DLF-1**

**Guy Wesley Reffitt**

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**Defendant's Response to Government's Motion to Compel and Objection to Government's Proffer**

Defendant Guy Wesley Reffitt objects to the government proceeding by proffer in the paper it filed on June 18, 2021, seeking production of a computer. Doc. 27. In support, he states:

1. For more than five months, the government has had the computer that it wants the Court to order the defendant to produce.

2. The government concedes that it let a search warrant expire. *Id.* at 4 n4.

3. The government has omitted that it has held Mr. Reffitt in custody, since January 19, 2021. Doc. 5.

4. Much of that time has been in solitary confinement. *See* <https://www.washingtonpost.com/dc-md-va/2021/04/23/dc-jail-covid-lockdown-officials/> (Last accessed June 28, 2021).

5. It took the government two months to have Mr. Reffitt's initial appearance in Washington.

6. While in the government's custody and care, Mr. Reffitt had to be hospitalized for three days in intensive care, because he was not given his prescribed medication.

7. Mr. Reffitt does not believe he used either a passcode or PIN, but if he did, after more than five months, he does not remember what it would be.

8. If the Court were to compel him, then he would be in the impossible position of either being held in contempt for not entering a passcode or PIN that he does not remember, and which might not even exist; or facing additional charges, if the government believes that the system freezes or deletes after too many incorrect attempts. Doc. 27 at 11.

9. None of the government's authorities involved a person, who did not believe he used a passcode or a PIN. Doc. 27 at 12 – 16.

10. Nor do they involve a person, who after five months did not remember what it would be. *Ibid.*

11. Mr. Reffitt does not currently know a passcode or PIN, or even whether there is one.

12. Accordingly, the government's request that he provide what he does not have is unreasonable.

13. In part, the government has relied on generalization, mischaracterization, and exaggeration. Doc. 10 at 4 n1, 14 – 17; *compare* App'x to Doc. 12 at 1 – 2; *see also* <https://texasthreepercenters.org/>; <https://www.ttpsecurity.org/> (Last accessed Mar. 14, 2021).

14. The government has relied on bragging. Doc. 10 at 2, 13.

15. The government has also relied on comments in the news media. *Id.* at 16 n8.

16. Even after testimony clarified that no force was used or attempted, the government continues claiming otherwise.

17. The Court should be extremely skeptical of believing just anything posted on the internet, bragging, and comments in the news media.

18. Of course, none of such things are under oath.

19. In addition, while some publishers and broadcasters take their First Amendment responsibilities seriously, others might simply exploit vulnerable people.

### **Conclusion**

While an attempt to biometrically unlock might be appropriate, ordering someone to remember something, which he does not, and which might not even exist, is unreasonable. Punishing someone either for that would be cruel and unusual. U.S. Const. amend. VIII. Prosecuting someone for the inability to remember something, which might never have existed, would violate due process. U.S. Const. amend. V, XIV.

Even if the Court concludes that an order might be appropriate, then Mr. Refitt reserves and maintains all objections to the government offering or arguing that he unlocked anything.

*1/s/ William L. Welch, III*

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(Appointed by this Court)

**Certificate of Service**

I hereby certify that on this 28<sup>th</sup> day of June 2021 a copy of the foregoing Response to Government's Motion to Compel and Objection to Government's Proffer were delivered electronically to Mr. Jeffrey S. Nestler (jeffrey.nestler@usdoj.gov) and Ms. Risa Berkower (risa.berkower@usdoj.gov), Office of the United States Attorney, 555 Fourth Street, NW, Washington, DC 20530.

*1/s/ William L. Welch, III*

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