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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

MARK S. IBRAHIM

Defendant.

CASE NO. 1:21-cr-00496-TJK-1

**DEFENDANT’S REPLY TO
THE UNITED STATES OF
AMERICA’S RESPONSE IN
OPPOSITION TO
DEFENDANT’S MOTION TO
COMPEL**

Defendant, Mark S. Ibrahim (“Mr. Ibrahim”), moved this Court to compel production of specific discovery, including those items that the Government knows of, and all discovery listed below that is in the custody, control, care, or knowledge of any “closely related investigative [or other] agencies” under *United States v. Bryan*, 868 F.2d 1032 (9th Cir. 1989). In the United States’ opposition to Defendant’s Motion to compel

Darren M. Richie (SBN 316116) darren@dre.law Marissa B. Hertzberg (SBN 340350) marissa@dre.law DRE, A.P.C. 222 N. Canon Drive, Suite 201 Los Angeles, CA 90210 (213) 265-7888 Attorneys for Defendant Mark S. Ibrahim UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA, CASE NO. 1:21-cr-00496-TJK-1, DEFENDANT'S REPLY TO MARK S. IBRAHIM THE UNITED STATES OF AMERICA'S RESPONSE IN Defendant. OPPOSITION TO DEFENDANT'S MOTION TO COMPEL Defendant, Mark S. Ibrahim ("Mr. Ibrahim"), moved this Court to compel production of specific discovery, including those items that the Government knows of and all discovery listed below that is in the custody, control, care, or knowledge of any "closely related investigative [or other] agencies" under United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989). In the United States' opposition to Defendant's Motion to compel 1 discovery, they requested discovery concerning the Special Agent or Calzadilla. The Government also contends that Mr. Ibrahim is not entitled to the

BACKGROUND

The Defense respectfully requests that this Court order the prosecution to disclose all items that were informally requested, but not disclosed, and that are described below. 1. Law enforcement presence on January 6, 2021 The Defendant respectfully requested that this Court compel the Government to produce items and information related to law enforcement present at the rally on January 6, 2021. The Government contends that it is not required to produce the requested discovery because Mr. Ibrahim's selective prosecution claim fails to make a credible showing of discriminatory effect where Mr. Ibrahim and these other individuals are not similarly situated. This assertion by the United States is false. Law enforcement presence is relevant to the Defendant's claims, and Mr. Ibrahim has shown discriminatory effect. Mr. Ibrahim and his brother were both located at the same place at the same time on January 6, 2021. Each brother carried his badge and firearm that day while at the U.S. Capitol. However, unlike Mr. Mark Ibrahim, Michael Ibrahim has not been indicted by the Government—and was never offered immunity—despite engaging in the exact same conduct as Mr. Ibrahim in an identical location. As such, Mr. Ibrahim makes a strong showing of discriminatory effect, sufficient to indicate that the government singled him out for prosecution. The fact that the Government is also prosecuting some federal agents who were present at the January 6 rally does not show that the United States has not engaged in selective prosecution of Mr. Ibrahim. As such, Mr. Ibrahim asks that this Court compel the Government to produce evidence of all federal agents who were present on January 6, 2021 so that Mr. Ibrahim can ascertain who exactly was prosecuted and who was not. This evidence goes directly to Mr. Ibrahim's selective prosecution claim, thus, Mr. Ibrahim is entitled to the discovery. 2. The pre-existing relationship between Special Agent Higley and Jorge Calzadilla The Defendant respectfully requests that this Court compel the Government to produce items and information related to law enforcement present at the rally on January 6, 2021. The Government contends that it is not required to produce the requested discovery because it has no bearing on the charged offenses in this case. However, this is simply not the case. The knowledge of any pre-existing prior relationship and information between the Special Agent Higley and Mr. Calzadilla is critical information that the Defendant needs to know prior to Mr. Calzadilla's testimony at trial to prepare for impeachment purposes. Jorge Calzadilla's relationship with the primary investigating officer is highly relevant to the Defendant's case; if the Government does have discovery related to this primary witness, it should be disclosed. As such, Mr. Ibrahim respectfully requests that this Court order the Government to immediately disclose all evidence in its possession favorable to Mr. Ibrahim on the issue of guilt and which tends to affect the credibility of the Government's case. This request specifically includes any impeaching evidence of similar witnesses in this case, namely Jorge Calzadilla. Since the USDOJ for the above-stated reasons the Defendant respectfully requests that this Court order the Government to produce the requested relevant and material evidence in the possession of the prosecution. The Defendant further requests that each of the above items be entered into the Defendant's file for the trial, and that Mr. Ibrahim be granted that as soon as possible after the date of this order are to be made available immediately to defense counsel. Dated: April 15, 2022 Respectfully Submitted DRE LAW, A.P.C. By: /s/Darren M. Richie DARREN M. RICHIE MARISSA B. HERTZBERG Attorneys for Defendant Mark S. Ibrahim 4

Mr. Ibrahim and his brother were both located at the same place at the same time on January 6, 2021. Each brother carried his badge and firearm that day while at the U.S. Capitol. However, unlike Mr. Mark Ibrahim, Michael Ibrahim has not been indicted by the Government—and was never offered immunity—despite engaging in the exact same conduct as Mr. Ibrahim in an identical location. As such, Mr. Ibrahim

makes a strong showing of discriminatory effect, sufficient to indicate that the government singled him out for prosecution.

The fact that the Government is also prosecuting *some* federal agents who were present at the January 6 rally does not show that the United States has not engaged in selective prosecution of Mr. Ibrahim. As such, Mr. Ibrahim asks that this Court compel the Government to produce evidence of all federal agents who were present on January 6, 2021 so that Mr. Ibrahim can ascertain who exactly was prosecuted and who was not. This evidence goes directly to Mr. Ibrahim's selective prosecution claim; thus, Mr. Ibrahim is entitled to the discovery.

2. The pre-existing relationship between Special Agent Higley and Jorge Calzadilla

The Defendant respectfully requests that this Court compel the Government to produce items and information related to the pre-existing relationship between Special Agent Higley and Jorge Calzadilla. The United States alleges that Mr. Ibrahim is not entitled to the requested discovery concerning the Special Agent or Calzadilla because it has no bearing on the charged offenses in this case. However, this is simply not the case. The knowledge of any pre-existing prior relationship and information between the Special Agent Higley and Mr. Calzadilla is critical information that the Defendant needs to know prior to Mr. Calzadilla's testimony at trial to prepare for impeachment purposes. Jorge Calzadilla's relationship with the primary investigating officer is highly relevant to

the Defendant's case; if the Government does have discovery related to this primary witness, it should be disclosed.

As such, Mr. Ibrahim respectfully requests this Court order the Government to immediately disclose all evidence in its possession favorable to Mr. Ibrahim on the issue of guilt and which tends to affect the credibility of the Government's case. This request specifically includes any impeaching evidence of any material witnesses in this case, namely Jorge Calzadilla.

III. CONCLUSION

For the above-stated reasons, the Defendant respectfully requests that this Court order the Government to produce the requested relevant and material evidence in the possession of the prosecution. The Defendant further requests that each of the above orders be continuing orders through the completion of the trial, and that items granted that become available after the date of this order are to be made available immediately to defense counsel.

Dated: April 15, 2022

Respectfully Submitted

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