

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : CASE NO. 21-CR-127 (ABJ)
 :
 JOSHUA BLACK, :
 :
 Defendant. :
 :

JOINT RESPONSE TO COURT’S MINUTE ORDER

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and defendant Joshua Black, by and through his counsel, respectfully submit this Joint Response to the Court’s December 20, 2022, Minute Order.

A. Background

On November 14, 2022, the government filed a motion *in limine* (ECF 54) indicating it intended to admit at trial portions of recorded statements Black made on social media and during two Federal Bureau of Investigation without admitting additional parts of those statements. The government identified these statements in the motion *in limine* (*id.* at Attachs. A-D) and labeled them in its proposed exhibit list as Exhibits 1.A through 1.I; 2.A and 2.B; 100.A through 100.H; and 101.A through 101.I (“Government’s Proposed Exhibits”) (ECF 61).

In the parties’ Joint Pretrial Statement filed on December 9, 2022 (ECF 61), the defense noted objections to admitting the Government’s Proposed Exhibits under Federal Rule of Evidence 106. The defense did not note any other objections to the Government’s Proposed Exhibits.

On December 16, 2022, the Court issued a minute order requiring the defense to provide a copy of any other part of Black’s recorded statements that the defense “maintains in fairness ought to be considered at the same time” as the Government’s Proposed Exhibits. On December 19,

2022, pursuant to the minute order, the defense identified and submitted to the Court additional parts of Black's recorded statements for which it sought admission ("Defense's Submissions"). (ECF 66.)

Following the joint pretrial conference on December 20, 2022, the Court issued a minute order requiring the parties to confer regarding whether the government opposes admission of or the defense agrees to withdraw any of the Defense's Submissions. During the pretrial conference, the Court specifically asked the parties to produce one set of transcripts in which the text from the Government's Proposed Exhibits are highlighted in yellow and the Defense's Submissions are highlighted in green. The Court also directed the parties to outline in red boxes any portion of the Defense's Submissions to which the government does not oppose admission, and to outline in black boxes any portions of the Defense's Submissions that the defense agrees to withdraw. Any of the green-highlighted Defense's Submissions not outlined in red or black boxes would remain disputed portions of the Defense's Submissions ("Disputed Portions").

To comply with the Court's order, the parties have attached to this Joint Response four transcripts with all the requested highlighting and box markings.

B. Argument as to Disputed Portions

The government rests on the arguments it laid out in its motion *in limine* (ECF 54 at 33-37) to oppose admission of the Disputed Portions. Mainly, admission of the Disputed Portions would be an end-run around the prohibition against hearsay, and those statements—which are self-serving, belied by the evidence, or both—should not be admitted without Black being subject to cross-examination. Further, the defense has yet to substantiate why the Disputed Portions should, in fairness, be considered at the same time as the Government's Proposed Exhibits, or how the Government's Proposed Exhibits—along with the Defense's Submissions to which the

government does not oppose admission (the red-boxed text in the transcripts)—would distort Black’s statements or mislead the Court about them.

The defense will file any additional argument it has regarding the Disputed Portions in a separate submission by the Court’s deadline of December 23, 2022.

FOR THE DEFENDANT:

JOSHUA BLACK
Defendant

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United States Attorney’s Office
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United States Department of Justice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 2022, I served a copy of this pleading on all parties to this matter as indicated in the Court's electronic case files system.

/s/ Seth Adam Meinero

SETH ADAM MEINERO
Trial Attorney (Detailee)