

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

UNITED STATES OF AMERICA)
)
 v.)
)
GRADY DOUGLAS OWENS,)
 Defendant.)
_____)

Case No. 21-cr-00286-BAH

DEFENDANT’S MOTION TO DISMISS INDICTMENT

On January 6, 2021, hundreds of police officers bravely responded to a riot at the United States Capitol caused by the former president. A leader who misled his followers and betrayed their trust. As we ponder that dreadful day, we should also gently cabin our concerns and measure this specific case.

Defendant Grady Owens, through undersigned counsel, respectfully moves this Honorable Court to dismiss the superseding indictment filed on November 17, 2021 (ECF No. 63) because the Due Process Clause of the Fifth Amendment protects him from standing trial on an indictment based on no factual support or materially false evidence. To date, counsel has received no proof that the superseding indictment (Grand Jury 21-6) incorporated the agent’s prior grand jury testimony for the original indictment (Grand Jury 21-1) filed on April 7, 2021 (ECF No. 6). If record evidence of inclusion is discovered, then the agent’s initial testimony repeated the officer’s false claims of facial assault and concussion.

During his past service with grand juries in this District, counsel would mark a prior grand jury transcript as an exhibit and ask the witness to review and affirm its veracity before a new grand jury. This gave the witness a chance to correct any mistakes or omissions. There is

no evidence of adoption or inclusion in this record. *See* Exhibit A (Grand Jury 21-6 transcript of agent's testimony on November 17, 2021, pgs 2 - 4).

Fifty days after the original indictment, this Court released Grady on May 28th and observed that evidence of the officer's concussion injury was "*at best, inconclusive*" (Memo. Op. ECF No. 14 at 19; *emphasis* added). Then almost six months later the agent appeared before the second grand jury. He testified about Grady's father Jason Owens who would soon become a superseded co-defendant.

Understandibly, the agent may have been reluctant to repeat the false claims about an officer struck in the face with a skateboard or that said officer suffered a concussion confirmed by an MRI. *See* Exhibit B (Grand Jury 21-1 transcript of agent's testimony on April 7, 2021 at 4 & 16). No medical records confirm such an alarming violent injury to the officer. In fact, the only exhibit "evidence" of the alleged assault shown to either grand jury pictured a skateboard held in a defensive posture near the officer. *See* Exhibit C (Grand Jury 21-1, GJ Ex. 6).

"[A] court's use of its supervisory power to dismiss an indictment directly encroaches upon the fundamental role of the grand jury," so "dismissal is granted only in unusual circumstances." *United States v. Harmon*, 474 F.Supp.3d 76, 86 (D.D.C. 2020) (quoting *United States v. Ballestas*, 795 F.3d 138, 148 (D.C. Cir. 2015)). But when there is no evidence or false material claims then surely fundamental fairness and due process of law require judicial intervention. *See United States v. Basurto*, 497 F.2d 781, 785 (9th Cir. 1974) (holding that the "Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached.") Indeed, the very existence

