

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

|                          |   |                        |
|--------------------------|---|------------------------|
| UNITED STATES OF AMERICA | ) |                        |
| Plaintiff                | ) |                        |
|                          | ) | Criminal Case 21-CR-28 |
| v.                       | ) |                        |
|                          | ) | Judge Amit P. Mehta    |
| WILLIAM ISAACS           | ) |                        |
| Defendant                | ) |                        |

---

**MOTION IN LIMINE TO EXCLUDE VIDEO OF PROFFERED EVIDENCE**

Defendant William Isaacs, through the undersigned counsel, hereby moves this Honorable Court to bar the Government's use in any manner of the video (not audio) of Mr. Isaacs' statements, likeness, acts, reaction, and conduct during a proffer interview ("proffer") amongst the Government, Mr. Isaacs and his counsel (Charles M. Greene). The videotaping of the proffer was made without informed consent (express or implied) by Mr. Isaacs or his counsel, in direct violation of controlling principles of law, including, but not limited to, the Due Process Clause of the United States Constitution and Fed. R. Evid. 403.

We wish to punctuate the point that we do not allege any bad faith on the part of the Government. However, we respectfully submit to the Court that the video recording of the proffer lacked a true meeting-of-the-minds. Thus, the video should be stricken from being used directly or indirectly and banned for any purpose whatsoever by the Government.

## II. Background

In or about early March 2021, Mr. Isaacs (via Mr. Greene) voluntarily reached out to the FBI and offered to be interviewed. Soon thereafter, a March 15, 2021, standard off-the-record proffer letter (attached) was signed. As is typical, the plain terms of the letter agreement described the possible allowable uses of any proffered information or statements. Furthermore, the agreement specifically waived the crucial protection provided by Fed. R. Crim. P. 11, which would have been triggered in the absence of such an express waiver. Equally important, the agreement did not state that the Government would be recording the proffer session by audio or visual means.

Pursuant to the letter agreement, Mr. Isaacs was interviewed on March 18, 2021, at the FBI's Resident Agency in Orlando, Florida. At the proffer session, the in-person attendees were FBI Special Agents Matthew R. Oliver and Raneisha Lamar, as well as Messrs. Isaacs and Greene. Assistant U.S. Attorney Jeffrey Nestler conducted the session via telephone. In the very beginning, AUSA Nestler thoroughly went over the significant terms of the proffer letter, but he neglected to mention whatsoever that the session would be *recorded* (video or audio). In addition, there was neither discussion nor communications between the Government and Mr. Greene on the issue of the recording *before the proffer*. Nonetheless, we acknowledge to the Court that in the first part of the interview, Agent Oliver made two wholly unexpected and defacto "bait-and-switch" references to a recording: "hopefully it's recording" (time 00:09) (start of session); and "we're going to remain live recording, just so everyone knows" (51:55)

(during a break). These comments do not support the argument that the Government has fair game to make a video of the proffer.

After the fact and during the course of discovery, in which we received on February 23, 2023, the video of the second part of the proffer session, Mr. Isaacs and his counsel were surprised and dismayed to learn that the Government had videotaped the *entire* proffer (2.5 hours from *two concealed* cameras no less). What is most concerning is that Mr. Greene, who should not have been videotaped by any means without his express consent, is prominently videotaped with Mr. Isaacs.

Under no conditions would Mr. Greene, who was very casually dressed during the proffer, have consented to allowing his image and likeness to be possibly used as a prop in a criminal trial for impeachment or other purposes with respect to Mr. Isaacs or his defense. Moreover, Mr. Greene has been the head of the CJA panel for six years for the entire Middle District of Florida, which includes Orlando. He has practiced law for thirty-four years, including several years with the U.S. Justice Department's Tax Division. He has vast criminal experience working with the U.S. Attorney's Office for the MDFL. He has never heard of a federal prosecutor *in that district* recording (audio or video) a proffer session--with or without consent.

As set forth below, because neither Mr. Isaacs nor Mr. Greene expressly consented to the invasive video recording of the proffer, the video should not be used for any purpose whatsoever in this matter.

## II. Legal Arguments

### 1. The Government's Videotaping Violated the Proffer Agreement

“As a general proposition, pre-trial agreements such as cooperation and proffer agreements are interpreted according to principles of contract law.” *United States v. \$87,118.00 in U.S. Currency*, 95 F.3d 511, 516 (7th Cir. 1996) (citing *United States v. Liranzo*, 944 F.2d 73, 77 (2d Cir.1991)). Proffer agreements are an integral part of the criminal justice process involving the waiver of Constitutional rights and therefore “such agreements are unique contracts and the ordinary contract principles are supplemented with a concern that the bargaining process not violate the defendant's rights to fundamental fairness under the Due Process Clause.” *Id.* at 517 (internal quotation marks omitted). Thus, “contract-law principles that courts use in construing [proffer agreements] are glossed with a concern that the defendant's consent to appear at a proffer session should not become a lever that can be used to uproot his right to fundamental fairness under the Due Process Clause.” *United States v. Melvin*, 730 F.3d 29, 39 (1st Cir. 2013).

The foregoing cases recognize the Government's heightened legal obligations under a proffer agreement. “The moral of this story is that, especially when dealing with criminal defendants at proffer sessions, the government must turn square corners.” *Id.* at 32; see also *United States v. Scott*, 12 F. Supp. 3d 298, 302 (D. Mass. 2014) (“when executing its obligations under a proffer agreement, the government must turn square corners”).

In *Scott*, the court considered whether the Government complied with its obligations under a proffer agreement, when it provided the defendant with a “consent to search” form during a proffer session and then used evidence from the subsequent search directly against the defendant at trial, even though it never informed the defendant or his counsel that signing the form could operate as a waiver or modification of the protections otherwise afforded by the proffer agreement. 12 F. Supp. 3d. at 302. Finding the Government’s use of the newly obtained evidence to be a violation of its obligations under the proffer agreement, the court held that “in this case, the prosecution far from squaring the corners, lopped them off at their edges.” *Id.* at 302.

Moreover, the *Scott* court rejected the Government’s argument that its error was harmless because it could have obtained a search warrant for the same evidence, noting that “the due process inquiry is not concerned with what the government might have done *but, rather, with what the government did.*” *Id.* at 303 (emphasis added). The court precluded the Government from using any of the information obtained as the result of the consent to search form against the defendant at trial.

In the case at bar, there can no dispute that a signed consent form for the video recording was neither sought nor obtained by Mr. Greene. Absent such a form, the prudent and fairest course of action, which was not taken, would have been for the Government to include a detailed recording provision in the proffer agreement. Instead, the Government relied on Agent Oliver to make his two essentially “bait-and-switch” comments, the first one of which is almost unintelligible about a “recording”.

2. Fed. R. Evid. 403 Bars Use of the Video

Last, we ask that this Court should bar the use of the highly-prejudicial video for any purpose, pursuant to Rule 403. The Government should not be rewarded for its failure to get express and informed consent.

**IV. Conclusion**

We respectfully ask that this Honorable Court should grant Mr. Isaacs' motion in limine to ban use in any form the video of the proffer session.

Thursday, March 2, 2023

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Gene Rossi, Esquire  
Virginia Bar Number 93136  
Carlton Fields, P.A.  
Suite 400 West  
1025 Thomas Jefferson Street, NW  
Washington, DC 20007-5208  
Telephone: 202-965-8119  
Email: grossi@carltonfields.com

Natalie A. Napierala, Esquire  
New York State Bar Number 2445468  
Carlton Fields, P.A.  
36<sup>th</sup> Floor  
405 Lexington Avenue  
New York, NY 10174-0002  
Telephone: 212-785-2747  
Email: nnapierala@carltonfields.com

Charles M. Greene  
Florida Bar Number 938963  
Law Offices of Charles M. Greene, P.A.  
55 East Pine Street  
Orlando, FL 32801  
Telephone: 407-648-1700  
Email: [cmg@cmgpa.com](mailto:cmg@cmgpa.com)