

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)
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	)
v.	) Case No. 1:21-CR-708 (RCL)
	)
LEO CHRISTOPHER KELLY,	)
	)
Defendant.	)
	)

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**Defendant’s emergency motion to continue trial or in the alternative to exclude untimely government exhibits regarding cell phone**

COMES NOW Defendant, Leo Christopher Kelly, by and through undersigned counsel, and hereby respectfully requests that this Court grant a continuance of trial or in the alternative, exclude exhibits from cell phone extract not previously identified by the government as trial exhibits and in support states the following:

1. This Court ordered the joint pretrial statement to be filed by January 2, 2023. *See* Scheduling order, 8/9/22, ECF No. 45.
2. The parties met and conferred for over an hour on objections and additions to individual exhibits on Tuesday, April 18, 2023. *See* Exhibits 1 and 2. On that date, the government added additional text messages as exhibits and undersigned counsel did object to those additions and the parties agreed that this would be the amended exhibit list in final form.
3. The Court will recall at the pretrial conference on April 25, 2023 that AUSA Akers was prepared and eager to argue all exhibits and objections at that time. Because of a time crunch, the parties agreed to take this up at trial.

4. Meanwhile, Chief AUSA Rosen enters his appearance on the case (due to untimely sickness of assigned AUSA) in the late evening hours of April 26, 2023, two business days before trial, and the evidence and exhibits magically start to change.
5. Mr. Kelly's phone has been in the possession of the government for more than two years. It is not possible for the defendant to prepare for trial to defend these new exhibits which are a part of more than 14,000 entries on Mr. Kelly's phone. These particular texts have never before been called to the defendant's attention. The government cannot list as an exhibit the entire contents of Mr. Kelly's phone, the vast majority which is irrelevant and has no evidentiary value to the case or the charges. Additional witnesses would have to be subpoenaed with regard to these texts. The government's argument that Mr. Kelly has had his entire phone extract of over 14,000 documents in discovery is not how the rules of discovery work. It's the same old government story: "if it's on relativity, we've complied with our discovery obligations." Mr. Kelly does not see that hiding the needle in the haystack is acting in a transparent and just way and according to the rules of discovery or this Court's previous scheduling order.
6. Undersigned counsel believes this is classic government obstruction of defense counsel's ability to defend Mr. Kelly.

Wherefore, the defendant respectfully asks this Court to exclude the use of these late noticed exhibits which have no relevance and are highly prejudicial.

Respectfully submitted,

By: Kira Anne West

/s/ Kira Anne West

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Certificate of Service

I certify that a copy of the forgoing was filed electronically for all parties of record on this 27<sup>th</sup> day of April, 2023.

s/  
Kira Anne West  
Attorney for Leo Kelly