

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Defendant's reply to Government's response to Defendant's emergency motion and motion for an order to strike Government's exhibit A showing personal identifiers of information and order to show cause

COMES NOW Defendant, Leo Christopher Kelly, by and through undersigned counsel, and hereby replies to the government's response to the defendant's emergency motion to preclude additional exhibits, and a motion to strike and motion for an order to show cause and in support states the following:

1. The government has intentionally and carelessly filed an exhibit¹ to their response to defendant's emergency motion which contains personal phone numbers and full names which identify friends and family of the defendant.² *See ECF No. 91, Ex. A.* This reckless behavior by the government is an intentional flouting of the rules of privacy that all counsel must follow when filing documents on ECF. The government did this to infect the jury pool (which cannot be reversed) and allow the many news reporters who tweet

¹ The government also published the defendant's personal cell phone number in their reply, also filed on the public docket.

² The government states that the exhibit was redacted. If that's the case, Tucker Carlson will be taking Don Lemon's time slot on CNN.

daily and hourly on Twitter about all things J6 to spread their version of events before the jury has even been picked. The Court should not let this stand, especially in light of the fact that the supervisor of all January 6 cases just entered his appearance on the case and has taken over the case.

2. This is not “gamesmanship” as the government states. It is in fact the government that is engaging in gamesmanship of the worst kind—an intentional, public display of evidence that should not be admitted at trial and should never see the light of day. As this Court knows from his many years on the bench, the government could have easily filed this exhibit under seal or submitted it to chambers via email for in camera inspection. Having not done so is *prima facie* evidence of ill intent. Therefore, the defendant respectfully requests that this Court issue an order to show cause to the government and hold a hearing to make them explain this reckless and lawless behavior.³
3. It matters not what 50,000 plus documents⁴ the government gave the defense in discovery. The government and the defense (to a lesser degree) are to exchange exhibits long before the jury is picked and this Court has ordered just that with the pretrial scheduling order and subsequent hearings. The government is asking this Court to hold that it’s “OK” for the government to give tens of thousands of documents to defense counsel and say “good luck with that.” This is Federal Court. The lawyers are expected to follow the rules.
4. Finally, the government’s reliance on the Circuit decision in *Slatten* is misplaced. What THIS Court stated was that “[t]o punish a person because he has done what the law

³ Instead of getting ready for trial, undersigned counsel has had to confer with her client, witnesses, family members and the like to head off the disaster the government has created.

⁴ For the Court’s edification, the “cellebrity report” referenced by the government contains tens of thousands of documents.

plainly allows him to do is a due process violation of the most basic sort," *United States v. Slatten*, 22 F. Supp. 3d 9, 14 citing *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C. Cir 1987). Here, Mr. Kelly is being punished by the government because he raised a discovery and rule violation by the government. Shame on the government.

Wherefore, the defendant again respectfully asks this Court to exclude the use of these late noticed exhibits which have no relevance, are highly prejudicial, strike from the ECF record Exhibit A of the government's reply and issue an order to show cause to the government.

Respectfully submitted,

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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 28th day of April, 2023.

s/
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Attorney for Leo Kelly