UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	**CASE NO. 1:21-cr-708-RCL**
LEO CHRISTOPHER KELLY,	:	
	:	
Defendant.	:	

SURREPLY IN SUPPORT OF THE OPPOSITION TO DEFENDANT'S EMERGENCY MOTION TO CONTINUE TRIAL OR IN THE ALTERNATIVE TO EXCLUDE UNTIMELY GOVERNMENT EXHIBITS REGARDING CELL PHONE

The government hereby respectfully submits this surreply in support of our opposition to the defendant's emergency motion and reply. ECF Nos. 87, 93. In the government's opposition to the defendant's motion, we explained that we had recently provided the defendant with some additional exhibits that consisted entirely of the defendant's own communications from the defendant's phone. ECF No. 91. As part of our opposition, we attached to our opposition an exhibit (Exhibit A), a redacted copy of these communications that we intend to introduce as evidence in the public trial. *See* ECF No. 91-1.

In his reply, replete with unnecessary invectives, the defendant now claims that the government's opposition and attachment "contains personal phone numbers and full names." ECF No. 93 at 1. The defendant asserts that the government has intentionally flouted the rules of privacy to "infect the jury pool." ECF No. 93 at 1-2. The defendant further contends that the government acted with "ill intent." *Id.* at 2. Sadly, this reply is entirely inaccurate.

First, the exhibit attached to our opposition contains text messages that we intend to introduce as evidence in a public trial. These text messages are heavily redacted to remove full names and phone numbers. Although we redacted the text messages using a white redaction tool

such that the redaction is not visible, the defendant's friends and family's phone numbers were not filed on the public docket, as he claims. ECF No. 93 at 2.

Second, we did not flout or break any rules, and there is nothing nefarious or careless about filing on the public docket an exhibit of this nature that we intend to introduce as evidence at a public trial. On the contrary, it would be odd to address an important pretrial evidentiary issue without providing the Court the specifics of the evidence that the party seeks to introduce. Upon information and belief, this is fairly common practice in the district (notwithstanding personal identifying information or matters of a sensitive nature).

Third, to the extent the government erred in any way when presenting its evidence, we certainly will own that mistake. But no such mistake occurred here, and perhaps more importantly, no ill intent exists.

Realistically, the defendant is attempting to make a mountain out of a non-existent mole hill. As we detailed in our opposition, the exhibits that we identified for the defense are the defendant's own statements. They were found on the defendant's own phone – the same evidence the defendant has had in his possession for over one year. Contrary to the rhetoric, the defendant is not being "punished," ECF No. 93 at 3, if he is held to face his own communications at his trial.

In this case, the defendant's argument that his own messages should be excluded because they are so prejudicial does not hold water. While we acknowledge that January 6 discovery is voluminous, the discovery underlying this litigation is not random closed-circuit video or open-source materials; it is the defendant's phone that he relinquished to the FBI as evidence in this case. Respectfully, the defendant's attempt to cry wolf lacks merits.

Respectfully submitted,

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