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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Criminal Case No. 21-582 (CRC)**
	:	
MICHAEL A. SUSSMANN,	:	
	:	
Defendant.	:	

GOVERNMENT'S MOTION TO INQUIRE INTO POTENTIAL CONFLICTS OF INTEREST

1. The United States of America, by and through its attorney, Special Counsel John H. Durham, respectfully moves this Court to inquire into potential conflicts of interest arising from the representation of the defendant by his current counsel, Latham & Watkins LLP ("Latham"). The Government has discussed these matters with the defense and believes that any potential conflicts likely could be addressed with a knowing and voluntary waiver by the defendant upon consultation with conflict-free counsel as appropriate. The Government believes that any such waiver should be put on the record prior to trial. As set forth in further detail below, it is possible that conflicts of interest could arise from the fact that Latham and/or its employees (i) previously represented others in the Special Counsel's investigation whose interests may conflict with those of the defendant, (ii) previously represented the defendant and his prior employer in connection with events that likely will be relevant at trial or at any sentencing, and (iii) maintained professional and/or personal relationships with individuals who could be witnesses in these proceedings. Accordingly, for the reasons set forth below, the government respectfully requests that the Court inquire into the potential conflicts of interest set forth herein. Defense counsel has advised that the defendant has

been apprised of these issues, understands that he has the right to consult independent counsel, and presently intends to waive any potential conflict of interest. In support of this Motion, the government represents the following:

FACTUAL BACKGROUND

2. The defendant is charged in a one-count indictment with making a materially false statement to the FBI, in violation of Title 18, United States Code, Section 1001 (the "Indictment"). As set forth in the Indictment, on Sept. 19, 2016 – less than two months before the 2016 U.S. Presidential election – the defendant, a lawyer at a large international law firm ("Law Firm-1") that was then serving as counsel to the Clinton Campaign, met with the FBI General Counsel at FBI Headquarters in Washington, D.C. The defendant provided the FBI General Counsel with purported data and "white papers" that allegedly demonstrated a covert communications channel between the Trump Organization and a Russia-based bank ("Russian Bank-1"). The Indictment alleges that the defendant lied in that meeting, falsely stating to the General Counsel that he was not providing the allegations to the FBI on behalf of any client. In fact, the defendant had assembled and conveyed the allegations to the FBI on behalf of at least two specific clients, including (i) a technology executive ("Tech Executive-1") at a U.S.-based Internet company ("Internet Company-1"), and (ii) the Clinton Campaign.

3. The defendant's billing records reflect that the defendant repeatedly billed the Clinton Campaign for his work on the Russian Bank-1 allegations. In compiling and disseminating these allegations, the defendant and Tech Executive-1 also had met and communicated with another law partner at Law Firm-1 who was then serving as General Counsel to the Clinton Campaign ("Campaign Lawyer-1").

4. The Indictment also alleges that, beginning in approximately July 2016, Tech Executive-1 had worked with the defendant, a U.S. investigative firm retained by Law Firm-1 on behalf of the Clinton Campaign, numerous cyber researchers, and employees at multiple Internet companies to assemble the purported data and white papers. In connection with these efforts, Tech Executive-1 exploited his access to non-public and/or proprietary Internet data. Tech Executive-1 also enlisted the assistance of researchers at a U.S.-based university who were receiving and analyzing large amounts of Internet data in connection with a pending federal government cybersecurity research contract. Tech Executive-1 tasked these researchers to mine Internet data to establish "an inference" and "narrative" tying then-candidate Trump to Russia. In doing so, Tech Executive-1 indicated that he was seeking to please certain "VIPs," referring to individuals at Law Firm-1 and the Clinton Campaign.

5. The Government's evidence at trial will also establish that among the Internet data Tech Executive-1 and his associates exploited was domain name system ("DNS") Internet traffic pertaining to (i) a particular healthcare provider, (ii) Trump Tower, (iii) Donald Trump's Central Park West apartment building, and (iv) the Executive Office of the President of the United States ("EOP"). (Tech Executive-1's employer, Internet Company-1, had come to access and maintain dedicated servers for the EOP as part of a sensitive arrangement whereby it provided DNS resolution services to the EOP. Tech Executive-1 and his associates exploited this arrangement by mining the EOP's DNS traffic and other data for the purpose of gathering derogatory information about Donald Trump.)

6. The Indictment further details that on February 9, 2017, the defendant provided an updated set of allegations – including the Russian Bank-1 data and additional allegations relating

to Trump – to a second agency of the U.S. government ("Agency-2"). The Government's evidence at trial will establish that these additional allegations relied, in part, on the purported DNS traffic that Tech Executive-1 and others had assembled pertaining to Trump Tower, Donald Trump's New York City apartment building, the EOP, and the aforementioned healthcare provider. In his meeting with Agency-2, the defendant provided data which he claimed reflected purportedly suspicious DNS lookups by these entities of internet protocol ("IP") addresses affiliated with a Russian mobile phone provider ("Russian Phone Provider-1"). The defendant further claimed that these lookups demonstrated that Trump and/or his associates were using supposedly rare, Russian-made wireless phones in the vicinity of the White House and other locations. The Special Counsel's Office has identified no support for these allegations. Indeed, more complete DNS data that the Special Counsel's Office obtained from a company that assisted Tech Executive-1 in assembling these allegations reflects that such DNS lookups were far from rare in the United States. For example, the more complete data that Tech Executive-1 and his associates gathered – but did not provide to Agency-2 – reflected that between approximately 2014 and 2017, there were a total of more than 3 million lookups of Russian Phone-Provider-1 IP addresses that originated with U.S.-based IP addresses. Fewer than 1,000 of these lookups originated with IP addresses affiliated with Trump Tower. In addition, the more complete data assembled by Tech Executive-1 and his associates reflected that DNS lookups involving the EOP and Russian Phone Provider-1 began at least as early 2014 (*i.e.*, during the Obama administration and years before Trump took office) – another fact which the allegations omitted.

7. In his meeting with Agency-2 employees, the defendant also made a substantially similar false statement as he had made to the FBI General Counsel. In particular, the defendant

asserted that he was not representing a particular client in conveying the above allegations. In truth and in fact, the defendant was representing Tech Executive-1 – a fact the defendant subsequently acknowledged under oath in December 2017 testimony before Congress (without identifying the client by name).

APPLICABLE LAW

8. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defense." U.S. Const. Amend. VI. A defendant's Sixth Amendment right includes the "right to representation that is free from conflicts of interest," *Wood v. Georgia*, 450 U.S. 261, 271 (1981), but also carries a "presumption in favor of counsel of choice," *Wheat v. United States*, 486 U.S. 153, 160 (1988). At the same time, a criminal defendant's right to retain counsel of his choice is not absolute. The "essential aim" of the Sixth Amendment "is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Wheat*, 46 U.S. at 159. Thus, even if a defendant waives the right to conflict-free representation, the presumption in favor of defendant's counsel of choice "may be overcome not only by a demonstration of actual conflict but also by a showing of a serious potential for conflict." Wheat, 486 U.S. at 163–64.

9. As the D.C. Circuit explained in *United States v. Lopesierra–Gutierrez*, 708 F.3d 193, 199–200 (D.C. Cir. 2013), "a defendant's counsel-of-choice right may sometimes be trumped by a conflict of interest." This is because "where a defendant's chosen counsel suffers from a conflict of interest, . . . the court's own institutional interests" are implicated. *Id.* Guaranteeing conflict-free counsel protects not just defendants' rights, but also the "'[f]ederal courts['] ... independent interest in ensuring that criminal trials are conducted within the ethical standards of

the [legal] profession and that legal proceedings appear fair to all who observe them.'" *Id.* (alterations in original) (quoting *Wheat*, 486 U.S. at 161).

10. Since the Court has an independent interest in investigating potential conflicts, *see Wheat*, 486 U.S. at 161, the Court retains "substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses." *Id.* at 163. Accordingly, "[i]f in the context of a particular case the district court believes a conflict is intolerable, it may decline to accept a defendant's waiver." *Lopesierra–Gutierrez*, 708 F.3d at 202. "In making this determination, a court balances the defendant's right to choose his representative against both the defendant's countervailing right to conflict-free representation and the court's independent interest in the integrity of criminal proceedings." *Id.* at 200 (emphasis in original). The key inquiry in this analysis is the "nature and extent of the conflict." *Id.*

DISCUSSION

11. The Government respectfully requests that the Court inquire concerning the following issues that may give rise to potential conflicts of interest with regard to Latham's current representation of the defendant:

I. Latham's Prior Representations in the Special Counsel's Investigation

A. Latham's Prior Representation of Law Firm-1 and Campaign Lawyer-1 in This Investigation

12. From approximately July 2020 through approximately July 2021, Latham represented three separate clients – the defendant, Law Firm-1, and Campaign Lawyer-1 – in

connection with the Special Counsel's investigation.[1] As part of its representations, Latham communicated and met with the Special Counsel's Office and other DOJ officials on behalf of each of these clients. As noted above, the Indictment alleges that Tech Executive-1 conferred and consulted with both the defendant and Campaign Lawyer-1 on multiple occasions in connection with the Russian Bank-1 allegations. As a result, the Government expects that testimony at trial will address factual issues concerning, among other things, (i) the extent to which the defendant did or did not inform Campaign Lawyer-1 and Law Firm-1 that he was billing work on the Russian Bank-1 allegations to the Clinton Campaign, (ii) the extent to which the defendant did or did not inform or receive instructions from Campaign Lawyer-1 and Law Firm-1 regarding his billing of the Clinton Campaign and his meeting with the FBI General Counsel, and (iii) the defendant's potential motives to mislead the FBI concerning whether he was working with or on behalf of the Clinton Campaign, Campaign Lawyer-1, and Tech Executive-1. In each of these areas, the defendant's interests may diverge from those of Campaign Lawyer-1 and Law Firm-1. In addition, to the extent that the defendant's factual accounts might differ from those of Campaign Lawyer-1 and Law Firm-1 on these issues, Latham may already have gained privileged insights to any such differences from their prior, confidential attorney-client communications. *Cf. United States v. Gotti*, 9 F. Supp. 2d 320, 323–25 (S.D.N.Y. 1998) ("attorney-client relationship with the witness or co-defendant gave rise to continuing obligations of loyalty and confidentiality that may be breached when the confidences are required to be exploited in, for example, cross examining [a] former

[1] One of the Latham attorneys who represented the defendant during this time period is now serving at the U.S. Department of Justice. It is the understanding of the Special Counsel's Office that this attorney expeditiously and appropriately recused himself from any involvement in the Special Counsel's investigation and these proceedings.

client"); *cf. also United States v. Weaver*, 265 F.3d 1]074, 1075–77 (D.C. Cir. 2001) (holding that counsel's representation of a client and a potential witness against the client created a conflict of interest).

13. Moreover, it is possible that the defendant, having recently resigned from his partnership at Law Firm-1, is currently or will become in an adversarial posture with his former employer. Latham – through its prior representation of Law Firm-1 – likely possesses confidential knowledge about Law Firm-1's role in, and views concerning, the defendant's past activities. Accordingly, the Government believes that potential conflicts of interest may exist or arise from Latham's prior representations of Campaign Lawyer-1 and Law Firm-1 in this investigation.

B. Law Firm-1's Representation of the Clinton Campaign and Another Political Organization

14. Potential conflicts of interest might also arise from the fact that during the time period when Latham represented all three of the aforementioned clients, one of those clients, Law Firm-1, was representing both the Clinton Campaign and a related political organization ("Political Organization-1") in the Special Counsel's investigation. Law Firm-1's representations of those clients began in approximately May 2021 and ended in approximately July 2021. The Government believes that Law Firm-1's prior representations of these entities may give rise to potential conflicts of interest because it is possible that Law Firm-1 shared confidential facts and/or communications concerning its representation of those clients with its then-counsel, Latham. In addition, to the extent the Government offers documents and other evidence at trial that it obtained from the Clinton Campaign and/or Political Organization-1, Latham's duties to its former client (Law Firm-1) might cause its interests to diverge from those of the defendant in connection with such evidence and/or the cross examination of witnesses. Accordingly, the Government respectfully requests that the

Court inquire into any potential conflicts, including an examination of whether Law Firm-1's own representations of the Clinton Campaign and Political Organization-1 may contribute to or amplify such conflicts. *Gotti*, 9 F Supp. 2d at 323-25.

II. Latham's Other Representations in Related Matters

15. In addition to the above representations, Latham also has represented the defendant, Law Firm-1, and Campaign Lawyer-1 in other matters that predated the existence of the Special Counsel's investigation but which are likely relevant to these proceedings. In particular, the Government is aware of the following:

A. Latham's Representation of the Defendant in his December 2017 Congressional Testimony

16. Latham served as counsel to the defendant and Law Firm-1 in connection with the defendant's December 2017 testimony before the House Permanent Subcommittee on Intelligence. That testimony addressed the Russian Bank-1 allegations and other matters. At numerous times during the defendant's testimony, attorneys from Latham interjected to clarify and/or address issues relating to attorney-client privilege and other topics.[2] In his testimony, the defendant acknowledged bringing the Russian Bank-1 allegations to the FBI General Counsel and to Agency-2 on behalf of a specific client, namely, Tech Executive-1 (whom the defendant did not identify by name). The Government expects to offer this testimony at trial to prove that the defendant knowingly and intentionally lied when he stated to the FBI General Counsel in September 2016 that he was *not* acting on behalf of "any client." The Government also may seek to establish that the defendant's Congressional testimony itself was knowingly and intentionally misleading insofar as it failed to

[2] Both of the Latham attorneys who were present for the defendant's testimony (one of whom is the Department of Justice employee referenced above) have since left the firm.

disclose that the defendant billed work on the Russian Bank-1 allegations to the Clinton Campaign. Because Latham attorneys played a role in, and were witnesses to, this testimony and related conversations, it is possible that their past advice might give rise to a potential conflict of interest. For example, it is possible that motion practice surrounding the admissibility of this testimony may require consideration of issues such as the appropriate boundaries of the attorney-client privilege, the potential waiver of such privilege by the defendant or Tech Executive-1 and the Clinton Campaign, and/or the potential applicability of an advice of counsel defense. Because Latham attorneys witnessed the defendant's testimony and advised both the defendant and his employer in connection therewith, it is possible that conflicts of interest would arise in connection with these matters. *Gotti*, 9 F. Supp. 2d at 324 ("An attorney may be disqualified if he has first-hand knowledge of events that may be part of the government's proof at trial.")

B. Latham's Advice to Law Firm-1 in Connection with Public Statements in 2018

17. In 2018, Latham also advised Law Firm-1 concerning the drafting and issuance of statements to the media that Law Firm-1 made concerning the defendant's October 2016 meeting with the FBI General Counsel. Those statements – which the defendant appears to have reviewed or assisted in drafting – were at least partially inaccurate and/or misleading. The Government therefore may seek to offer these statements at trial pursuant to Rule 404(b) or other provisions of law. The two statements are, in pertinent part, as follows:

- On or about October 12, 2018, Law Firm-1 issued a statement to multiple media outlets in which the firm stated, in part: "When Sussmann met with [the FBI General Counsel] on behalf of a client, it was not connected to the firm's representation of the Hillary Clinton Campaign, the DNC or any Political Law Group client."

- On or about October 18, 2018, the then-Managing Partner of Law Firm-1 wrote a letter to the editor of a major newspaper in which he asserted, in part, "Mr. Sussmann's meeting with the FBI General Counsel James Baker was on behalf of a client with no connections to either the Clinton campaign, the DNC or any other Political Law Group client."

Privilege logs and redacted emails obtained from Law Firm-1 in this investigation reflect that in the days before the issuance of these statements, Latham attorneys sent, received, and/or were copied on correspondence relating to the drafting and dissemination of the statements. (Much of the substance of those emails was redacted and withheld from the Special Counsel's Office pursuant to Law Firm-1's assertion of attorney-client privilege and attorney work product protections). Because the defendant was aware of and/or reviewed these media statements, the Government may seek to offer them as evidence pursuant to Rule 404(b) or other provisions of law to establish that the defendant sought to conceal the Clinton Campaign's ties to the Russian Bank-1 allegations from the FBI and others.[3] Latham's advice concerning these statements therefore may become at issue in motions *in limine*, trial testimony, or other aspects of these proceedings. Accordingly, Latham may encounter potential conflicts of interest in advising the defendant concerning past events in which Latham played a significant role.

[3] According to counsel for Law Firm-1, the attorneys at Law Firm-1 and Latham who participated in drafting and/or reviewing these statements were unaware at the time that the defendant had billed work on the Russian Bank-1 allegations to the Clinton Campaign.

III. Defense Counsel's Prior Interactions with Witnesses or Potential Witnesses

18. Based on its review of documents in its investigation and other information, the Special Counsel's Office also has learned that one of the members of the defendant's current defense team ("Defense Team Member-1") previously worked as Special Counsel to the then-FBI Director from 2013 to 2014. In connection with that work, Defense Team Member-1 developed professional and/or personal relationships with several individuals who later were involved with and/or knowledgeable of the FBI's investigation of the Russian Bank-1 allegations. For example, Defense Team Member-1 appears to have developed a professional relationship with the former FBI General Counsel to whom the defendant made his alleged false statement and who will likely be a central witness at trial.[4] While it is unlikely that these past interactions and activities will give rise to an actual conflict of interest, the Government respectfully requests in an abundance of caution that the Court inquire with the defense concerning whether Defense Team Member-1's relationships with persons and entities who might be witnesses in this case could give rise to a potential conflict or appearance issue and, if so, whether the defendant waives any such conflict. *See Lyle v. Artuz*, No 03-CV-5155 (CBA), 2006 WL 1517750 at *20 (E.D.N.Y. May 31, 2006)

[4] Following his employment at the FBI, Defense Team Member-1 worked from 2014 to early 2017 as an attorney in the EOP which, as noted above, was involved in certain factual issues that the Government expects will be relevant at trial and any sentencing proceedings. Latham has represented to the Government that while employed at the EOP, Defense Team Member-1 had no role in the aforementioned events or arrangements involving Tech Executive-1, Internet Company-1, and/or allegations involving the purported use of Russian-made phones. The Government similarly has not seen evidence to suggest that Defense Team Member-1 had any role in, or direct knowledge of, the Russian Bank-1 allegations or the FBI's ensuing investigation.

(examining whether defense counsel's relationship with a trial witness gave rise to a conflict of interest).

CONCLUSION

For the foregoing reasons, the Court should inquire regarding the potential conflicts of interest set forth above.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Criminal Case No. 21-582 (CRC)**
	:	
MICHAEL A. SUSSMANN,	:	
	:	
Defendant.	:	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR A BILL OF PARTICULARS

The United States of America, by and through its attorney, Special Counsel John H. Durham, respectfully submits this opposition to the defendant's Motion for a Bill of Particulars (Document 17, hereinafter "Mot."). For reasons stated below, the government submits that the motion should be denied. The grand jury's detailed, 27-page speaking indictment more than adequately informs the defendant of the charges against him and provides him with sufficient information and facts to prepare his defense at trial. Moreover, all or nearly all of the information that the defendant seeks either has already been, or soon will be, made available to him through the government's discovery. Accordingly, the defendant's motion seeking an order for a bill of particulars fails as a matter of well-settled law.

FACTUAL BACKGROUND

The defendant is charged in a one-count indictment with making a materially false statement to an FBI official, in violation of Title 18, United States Code, Section 1001.

A. The Defendant's False Statement

As set forth in the government's detailed Indictment, on Sept. 19, 2016 – less than two

months before the 2016 U.S. Presidential election – the defendant, a lawyer at a large international law firm ("Law Firm-1"), met with the FBI General Counsel at FBI Headquarters in Washington, D.C. The defendant had requested the meeting to provide the General Counsel with purported data and "white papers" that allegedly demonstrated a covert communications channel between the Trump Organization and a Russia-based bank ("Russian Bank-1"). In the course of the meeting, the defendant lied, falsely stating to the General Counsel that he was not providing the allegations to the FBI on behalf of any client. This false representation led the General Counsel to understand that the defendant was providing the information as a good citizen, rather than a paid advocate or political operative. In fact, the defendant had assembled and conveyed the allegations to the FBI on behalf of at least two specific clients, including a technology executive ("Tech Executive-1") at a U.S.-based Internet company ("Internet Company-1") and the Hillary Rodham Clinton Presidential Campaign (the "Clinton Campaign").

Soon after his meeting with the defendant, the FBI General Counsel spoke with the FBI's Assistant Director of the Counterintelligence Division (the "FBI Assistant Director"). During their conversation, the General Counsel conveyed the substance of his meeting with the defendant. The FBI Assistant Director took contemporaneous notes of this conversation, which reflect that the defendant told the FBI General Counsel that he was "not doing this for any client."

The defendant's billing records – many of which are cited and quoted throughout the Indictment – reflect that the defendant repeatedly billed the Clinton Campaign for his work on the Russian Bank-1 allegations, including before, during, and after his meeting with the FBI General Counsel.

The Indictment also describes how, beginning in approximately July 2016, the defendant

had worked with Tech Executive-1, other cyber researchers, and a U.S.-based investigative firm to assemble the purported data and white papers that the defendant ultimately provided to the FBI and the media. In connection with these efforts, Tech Executive-1 exploited his access to non-public data at multiple internet companies and enlisted the assistance of researchers at a U.S.-based university who were receiving and analyzing large amounts of Internet data in connection with a pending federal government cybersecurity research contract. Tech Executive-1 – who would later claim to have been offered the top government cybersecurity job in the event Hillary Clinton were to win the election– tasked these researchers to mine Internet data to establish "an inference" and "narrative" tying then-candidate Trump to Russia. In directing these researchers to exploit their access in this manner, Tech Executive-1 indicated that he was seeking to please certain "VIPs," referring to individuals at the defendant's law firm and the Clinton Campaign.

In the course of these efforts, Tech Executive-1 also exploited his own company's access to the sensitive internet data of a high-ranking executive branch office of the U.S. government, both before and after the Presidential election.

The Indictment further details that in February 2017, the defendant provided an updated set of allegations – including the Russian Bank-1 data and other information – to a second agency of the U.S. government ("Agency-2"). In a meeting with multiple Agency-2 employees on February 9, 2017, the defendant made a substantially similar false statement as he had made to the FBI General Counsel. In particular, the defendant asserted that he was not representing a particular client. In truth and in fact, the defendant was representing Tech Executive-1 during the February 9 meeting with Agency-2 – a fact he subsequently acknowledged under oath in his December 2017 testimony before Congress (although he did not identify the client by name).

As alleged in the Indictment, the defendant's false statement to the FBI misled government personnel and deprived them of information that might have permitted the government more fully to assess and uncover the origins of the relevant data and analysis, including the identities and motivations of the defendant's clients.

B. The Government's Discovery

On October 7, the government made its first production of discovery to the defense. The production included more than 6,000 documents, comprising approximately 81,000 pages. In particular, the production included (i) a copy of the aforementioned notes taken by the FBI Assistant Director, including additional notes not quoted in the Indictment, and (ii) documents received in response to grand jury subpoenas issued to fifteen separate individuals, entities, and organizations – including among others, political organizations, a university, university researchers, an investigative firm, and numerous companies.

On or about September 23, September 28, October 1, October 7, October 13, October 14, and October 20, 2016, the government also conducted telephone calls with the defense to discuss discovery issues, answer counsel's questions, address technical issues, and preview its forthcoming discovery productions.

On October 20, 2021, the government accommodated a recent request by the defense to review in-person the original notes cited in the Indictment and provided counsel access to those notes in government office space. Upon the approval of defense counsel's security clearances, the government will also accommodate, to the extent possible, a related request by the defense to review additional and currently-classified notes contained in the same notebook.

The government is working expeditiously to declassify large volumes of materials to provide to the defense. Within the next approximately two weeks, the government expects to make a further production of materials that is currently being declassified, which will include, among other things:

(i) more than 30 declassified reports of interviews conducted in the course of this aspect of the Special Counsel's investigation, including interviews of the FBI General Counsel and the FBI Assistant Director referenced above;

(ii) emails and other documents shown to witnesses during the above-referenced interviews;

(iii) investigators' notes taken during the above-referenced interviews;

(iv) transcripts of grand jury testimony for multiple witnesses;

(v) the majority of the FBI's electronic "case file" pertaining to its investigation of the Russian Bank-1 allegations, with relatively minor redactions to protect especially sensitive classified information which may be the subject of a motion pursuant to the Classified Information Procedures Act; and

(vi) emails, memoranda, reports, and other records obtained from Agency-2, including write-ups of the defendant's February 9, 2016 meeting with Agency-2 personnel and his prior meeting with a former Agency-2 employee.

In providing the above materials, the government is substantially exceeding its obligations under the Jencks Act and Rule 16, and is seeking to take an expansive approach to its *Brady* obligations. The government is also engaged in ongoing conversations with the defense regarding outstanding discovery, further defense requests, and declassification issues. After producing the above-

described materials, the government expects to produce additional materials in subsequent productions, which will include additional interview memoranda, emails, and other records. The government will continue to meet and confer regularly with the defense on discovery matters.

ARGUMENT

The defendant's core contention – that a bill of particulars is appropriate because the Indictment lacks sufficient "detail and clarity" for the defendant to prepare his defense – is without merit. The defendant asserts that particulars are warranted because the Indictment (1) does not allege the precise false statement that the defendant made; (2) makes "confusing and stray" allegations which were not charged; (3) fails to provide particulars regarding how the false statement is material; (4) does not allege the precise false statement made to other government agents; and (5) does not identify by name the representatives and agents of the Clinton Campaign. *See* Mot. at 2-5. But what the defendant's Motion really seeks is "detail and clarity" concerning how the government intends to argue its proof to the jury – information to which he is not entitled at this stage of the proceedings. Accordingly, the defendant's Motion can most accurately be described as an attempt to gain insight into the government's trial strategy. The outcome sought by the defendant's Motion is inconsistent with well-settled law, and ignores the extensive disclosures already contained in the Indictment and those made (and soon to be made) in discovery. For these reasons, the Motion should be denied.

A. Applicable Law

A request for a bill of particulars under Rule 7(f) of the Federal Rules of Criminal Procedure is appropriate only where necessary to inform a defendant of the charges against him with sufficient precision to enable him to prepare his defense, to avoid unfair surprise and preclude double

jeopardy. *See Wong Tai v. United States*, 273 U.S. 77, 82 (1927). Indeed, "an indictment need only include 'a plain, concise, and definitive written statement of the essential facts constituting the offense charged[.]'" *United States v. Concord Mgmt. & Consulting LLC*, 385 F. Supp. 3d 69, 73 (D.D.C. 2019) (*quoting* Fed. R. Crim P. 7(f)). The question, therefore, is not whether the information would be helpful to the defendant, but rather, whether the information is necessary. *See United States v. Sanford Ltd.*, 841 F. Supp. 2d 309, 316 (D.D.C. 2012) (*quoting* Charles Alan Wright & Andrew Leipold, *Federal Practice and Procedure*: Criminal § 130 (4th ed. 2008)). If a defendant seeks information to which he is entitled at an early stage of the case, and that information is provided in the indictment or through some other means, such as discovery, a bill of particulars is not warranted. *United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987).

"A bill of particulars properly includes clarification of the indictment, not the government's proof of its case." *United States v. Lorenzana-Cordon*, 130 F. Supp. 3d 172, 174 (D.D.C. 2015). (internal quotation marks and citation omitted). In deciding whether to order a bill of particulars, "the court must balance the defendant's need to know evidentiary-type facts in order to adequately prepare a defense with the government's need to avoid prematurely disclosing evidentiary matters to the extent that it will be unduly confined in presenting its evidence at trial." *Sanford Ltd.*, 841 F. Supp. at 316 (internal quotation marks and citation omitted). But "if the indictment is sufficiently specific, or if the requested information is available in some other form, then a bill of particulars is not required." *Lorenzana-Cordon*, 130 F. Supp. 3d at 174. (*quoting Butler*, 822 F.2d at 1193). Importantly, "a bill of particulars is not a discovery tool or a device for allowing the defense to preview the government's evidence." *United States v. Brodie*, 326 F. Supp. 2d 83, 91 (D.D.C. 2004). Nor is a bill of particulars appropriate if "by reasonable investigation in the light of

information contained in the indictment, or otherwise furnished by the prosecution, the defendant could avoid prejudicial [ ] surprise[ ]." *Concord Mgmt.*, 385 F. Supp. at 74 (*quoting United States v. U.S. Gypsum Co.*, 37 F. Supp. 398, 404 (D.D.C. 1941) (internal quotation marks omitted)).

Again, courts, in deciding whether to order a bill of particulars, "must balance the defendant's need to know evidentiary-type facts in order to adequately prepare a defense with the government's need to avoid prematurely disclosing evidentiary matters to the extent that it will be unduly confined in presenting its evidence a trial." *Sanford Ltd.*, 841 F. Supp. 2d at 316. To that end, "[t]he determination of whether a bill of particulars is necessary 'rests with the sound discretion of the trial court' and will not be disturbed absent an abuse of discretion." *United States v. Mejia*, 448 F.3d 436, 445 (D.C. Cir. 2006) (*quoting Butler*, 822 F.2d at 1194).

B. The Defendant's Motion

1. The Defendant Already Has Sufficient Notice of the Pending Charge

The defendant first argues that a bill of particulars is necessary because the Indictment does not identify the "exact words" of the defendant's false statement nor does it provide the "specific context" by which the false statement was made. Mot. at 7. The defendant advances this argument despite a 27-page speaking Indictment which more than adequately informs the defendant of the charges against him. The Indictment outlines not only the defendant's lie to the FBI General Counsel on September 19, 2016, in which he falsely stated that he was not providing the allegations to the FBI on behalf of any client, but also details the actions the defendant took with others to assemble the purported data and white papers. Because the Motion seeks improperly to preview and limit the government's trial evidence and theory of guilt, the defendant is not entitled to a bill of particulars, and his Motion should be denied.

As an initial matter, the Indictment sets forth in great particularity both the elements of the crime charged and the facts that the government intends to prove at trial. The Indictment's specificity, coupled with the substantial discovery that has been (and will be) provided, is more than sufficient to place the defendant in a position to understand the charge against him and to prepare a defense. *See United States v. Cisneros*, 26 F. Supp. 2d 24, 55-56 (D.D.C. 1998) (denying bill of particulars seeking identification of alleged false statements because "[r]ead as a whole, the Indictment clearly provides enough information to allow [the defendant] to understand the charges against him and prepare to defend himself against those charges").

Indeed, one need only look to Paragraph 46 of the Indictment which, standing alone, provides sufficient information to apprise the defendant of the nature of the charge, prepare his defense, and avoid unfair surprise:

> On or about September 19, 2016, within the District of Columbia, MICHAEL A. SUSSMANN, the defendant, did willfully and knowingly make a materially false, fictitious, and fraudulent statement or representation in a matter before the jurisdiction of the executive branch of the Government of the United States, to wit, **on or about September 19, 2016, the defendant stated to the General Counsel of the FBI that he was not acting on behalf of any client in conveying particular allegations concerning a Presidential candidate, when in truth, and in fact, and as the defendant well knew, he was acting on behalf of specific clients, namely, Tech Executive-1 and the Clinton Campaign**.

Ind. ¶ 46 (emphasis added). "All that is required by [Rule 7 of the Federal Rules of Criminal Procedure] is that the indictment state the elements of the offense and fairly inform the defendant of the charges against him." *United States v. Weinberger*, 92-CR-235, 1992 WL 294877 at *4 (D.D.C. Sept. 29, 1992). Such is the case here. The Indictment notifies the defendant with sufficient specificity of all of the elements essential to constitute the offense for which he is charged.

The law enunciates no further requirement. The defendant's invitation to the Court to require more should be denied.

To be sure, the defendant's specific contention that the government is required to provide the "exact words" of the defendant's false statement is not supported by the law. Indeed, the defendant cites no cases that support this proposition. Instead, the defendant's Motion argues, in essence, that the Indictment is insufficient because there is no recording or verbatim transcript of the defendant's false statement on September 19, 2016 to the FBI General Counsel. But multiple courts in this Circuit and elsewhere have rejected this argument. *See United States v. Poindexter*, 951 F.2d 369, 408 (D.C. Cir. 1991) (denying motion to dismiss a § 1001 charge where no verbatim transcript existed because the lack of an exact statement is an "issue[] of the sufficiency of the evidence in a particular case, not [a] reason[] for carving a categorical exception from the statute"); *see also Cisneros*, 26 F. Supp. 2d at *43 (holding that the lack of a verbatim transcript of the defendant's actual statements "is an issue of the sufficiency and weight of the evidence, which are questions for the jury.")

Even still, the few cases that the defendant relies on to support his argument are easily distinguishable. For instance, in *United States v. Trie*, 21 F. Supp. 2d 7 (D.D.C. 1998), the defendant was charged with, among other things, aiding and abetting false statements to the Federal Election Commission ("FEC") by causing the Democratic National Committee ("DNC") to submit false reports to the FEC. The indictment provided no specificity as to what statements in the relevant reports were false. *Id.* at 13. There, the court held that the defendant was entitled to a bill of particulars clarifying the indictment, including information as "to exactly what the false

statements are, what about them is false, who made them, and how [the defendant cause them to be made]". *Id.* at 22-23.

The Indictment here bears little, if any, resemblance to the one at issue in *Trie*. Indeed, other courts have noted that *Trie* is an outlier and a "unique case because of the convoluted theory on which the defendant was indicted and the way in which the indictment was drafted." *United States v. Anderson*, 441 F. Supp. 2d 15, 19 (D.D.C. 2006); *see also Trie*, 21 F. Supp. 2d at 21 ("portions of the indictment are difficult to follow" and the false statement counts are "particularly enigmatic.") Far from making the vague and generalized allegations of the sort at issue in *Trie*, the Indictment here alleges with specificity what the false statement is (that the defendant was not acting on behalf of any client); what about that statement is false (that the defendant had assembled and conveyed the allegations to the FBI on behalf of at least two clients, Tech Executive-1 and the Clinton Campaign); who made them (the defendant); and how the defendant caused the statement to be made (through statements he made orally in a meeting with the FBI General Counsel at FBI Headquarters in Washington, D.C on September 19, 2016). *See, e.g.,* Ind. ¶¶ 4, 26-29. Accordingly, the court should deny the defendant's Motion because the Indictment provides more than sufficient information to the defendant of the charges against him and allows him to prepare his defense.

2. The Indictment Properly Alleges the Statutory Violation and No Particulars are Necessary

The defendant next contends that the Indictment "lacks clarity about the reason the alleged statement is false." Mot. at 10. Specifically, the defendant asserts that the Indictment contains "stray allegations" which suggest that the government is also alleging that the defendant made a material omission, in violation of 18 U.S.C. § 1001(a)(1). *Id.* As noted above in greater detail, the Indictment properly contains all elements of the offense charged here, an affirmative

misrepresentation, in violation of 18 U.S.C. § 1001(a)(2), and the Indictment requires no additional particulars. Of course, the reference in Paragraph 30 of the Indictment that the defendant "concealed and failed to disclose" his work for Tech Executive-1 and the Clinton Campaign is directly relevant to, and a natural consequence of, the defendant's affirmative false statement to the FBI General Counsel that he was not acting on behalf of a client. This affirmative misstatement that he was not acting on behalf of any client is exactly what gives rise to the concealment of his work on behalf of Tech Executive-1 and the Clinton Campaign. That the government did not separately charge an omission or concealment theory of guilt in a separate count, or allege a violation of an additional statutory provision, is of no consequence to the charge at hand. Thus, the Indictment properly alleges the offense charged and no greater particularity is required.

3. No Particulars Regarding Materiality are Required

The defendant also seeks a bill of particulars to provide greater detail about why the defendant's lie to the FBI General Counsel that he was not providing the allegations to the FBI on behalf of any client is material. Mot. at 12-16. More specifically, the defendant seeks particulars regarding, among other things, a request to "identify the 'other reasons' [the defendant's] false statement was material," why "political nature" of the defendant's work here would be material and why "passing along information as a paid advocate" is material to the FBI. Simply put, this request seeks to improperly preview and limit the government's trial evidence and should be denied. Because the defendant is not entitled to the government's trial strategy and has been afforded adequate details about the charges in the Indictment, the defendant's request is improper. *United States v. Han*, 280 F. Supp. 3d 144, 149 (D.D.C. 2017) ("A bill of particulars is meant to allow [the defendant] to properly prepare for trial, not provide a method to force the prosecution to connect

every dot in its case"). Indeed, the defendant cites to no authority to support his request, and the arguments advanced in his Motion are more appropriately made in a closing argument before the jury once the government has presented its case, rather than at the commencement of proceedings when discovery is not yet complete. *See, e.g.*, Mot. at 16 (arguing that "[t]he notion that the FBI would have been more skeptical of the information had it known of Tech Executive-1's involvement [in the allegations] is, in a word, preposterous.")[1]

4. The Allegations of False and Misleading Statements to Agency -2 Personnel Do Not Warrant Further Particulars

The defendant further contends that it is entitled to a bill of particulars regarding the defendant's false statement to repeated false statement to employees of Agency-2, which was a substantially similar false statement as he had made to the FBI General Counsel. As with the Indictment's allegations concerning the defendant's statements to the FBI, the Motion likewise asserts that the Indictment does not identify the "exact words" of the defendant's false statement to Agency -2 employees or provide the "specific context" in which the false statement was made. Mot. at 16-17. The defendant also requests that the government "identify by name Employee-1 and Employee-2" of Agency-2. Mot. at 17. The defendant is entitled to none of this information.

[1] The defendant's Motion also appears to miss the mark regarding the relevant test of materiality. "For the purposes of § 1001, the relevant question is not whether, in fact, the relevant body relied upon the false information in making its determination. The test is merely whether the information had the capacity to influence the relevant decisionmaker. Courts have repeatedly held that proof of 'actual reliance' is not necessary." *Cisneros*, 26 F. Supp. 2d at 40. And the Supreme Court has held that materiality is an element of § 1001 which must be determined by the jury. *See United States v. Gaudin*, 515 U.S. 506 (1995). At its core, the defendant's request that the government provide additional particulars regarding materiality is not an attempt to seek clarity, but rather an attempt at this early stage to obtain a summary of the government's specific proof at trial and subsequently cabin its evidence at trial.

To begin with, the Indictment does not charge the defendant's statements to Agency-2 as false statements in violation of Section 1001, but instead provides them as facts relevant to, and context for, the charged false statement. Thus, the defendant is seeking greater detail about information that is more appropriately disclosed in discovery for the charged offense or as other act evidence under Federal Rule of Evidence 404(b), which requires the government to only "provide reasonable notice of the general nature of any such evidence" that it intends to offer at trial. Fed. R. Evid. 404(b). In addition, the defendant's request for particulars here fails for the same reasons as outlined above – that is, the Indictment "[r]ead as a whole . . . clearly provides enough information to allow [the defendant] to understand the charges against him and prepare to defend himself against those charges." *Cisneros*, 26 F. Supp. 2d at 55-56. Thus, the defendant is not entitled to the particulars that he seeks here.

Moreover, the defendant's request for the identities of the Agency-2 employees is premature. As defense counsel is aware from multiple conversations regarding the government's discovery obligations, the government is working expeditiously to declassify and produce large volumes of materials to provide to the defense. The government anticipates producing information in discovery that will provide the defendant with the identities of these two individuals.

5. The Relevant Identities of the "Representatives and Agents of the Clinton Campaign" in the Indictment are Known to the Defense

Next, the defendant contends that the reference in Paragraph 6 of the Indictment to "representatives and agents of the Clinton Campaign" demands a bill of particulars. Mot. at 18. The defendant's argument is without merit. Paragraph 6 is a portion of the "Introduction and Overview" section of the Indictment that summarizes facts later alleged with specificity. And the later parts of the Indictment provide details underlying the more generalized allegation in Paragraph

6. For example, Paragraph 25(e) of the Indictment states that Campaign Lawyer-1 had exchanged emails about the Russian Bank-1 allegations with the Clinton Campaign's campaign manager, communications director, and foreign policy advisor which the defendant had provided to a newspaper. Ind. ¶ 25(e). Indeed, the government also provided the true identities of each of those referenced individuals to defense counsel in a discovery letter dated October 20, 2021. Likewise, Paragraphs 20(d) and 20(g) allege that the defendant, one of his law partners, and Tech Executive-1 each communicated via email with an investigative firm that was at the time acting as an agent of the Clinton Campaign. The government similarly has provided the identity of that investigative firm to the defense in its October 20 discovery letter, even though counsel was undoubtedly already aware of that firm's identity. Moreover, it was a production of information *by the defendant's counsel* (*i.e.,* a privilege log) that first alerted the government to these cited emails. Accordingly, the defendant is neither entitled to, nor needs any greater detail, regarding the identities of the individuals identified in Paragraph 25(e) at this stage, and any further information in that regard will be disclosed in due course in discovery prior to trial. At bottom, the defendant's demand here is not an appropriate use of a motion for a bill of particulars and should be denied.

6. The Requested Information is Available in Other Forms

Finally, all of the defendant's above-referenced arguments fail for the additional reason that all, or nearly all, of the information he seeks is or soon will be available to him in discovery materials provided by the government. It is well-settled that when a defendant seeks information "[that] is available in some other form, then a bill of particulars is not required." *Butler*, 822 F.2d at 1193 (citations omitted). As noted above, the government has produced, and will continue producing, voluminous discovery materials that will reveal, among other things, statements that key witnesses

made in interviews with the FBI and in testimony before the grand jury. These statements and testimony will include numerous key witnesses' recollections of the events referenced in the Indictment, including their views regarding the relevance and materiality of the false statements at issue. The government has also produced and will continue to produce emails, reports, and other records concerning the events and false statements at issue. Accordingly, the Indictment and discovery, taken together, provide the defendant with more than sufficient particularity to understand the charges at issue and prepare his defense at trial. *See Mejia*, 448 F.3d at 445-46 (bill of particulars unwarranted where defendant sought information about cooperating witness that was contained in law enforcement reports).

CONCLUSION

For the foregoing reasons, the Court should deny the defendant's Motion for a Bill of Particulars.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *v.* **MICHAEL A. SUSSMANN,** *Defendant.*	Case No. 1:21-cr-00582

DEFENDANT MICHAEL A. SUSSMANN'S RESPONSE TO THE SPECIAL COUNSEL'S MOTION TO INQUIRE INTO POTENTIAL CONFLICTS OF INTEREST AND CROSS-MOTION TO STRIKE

1. Defendant Michael A. Sussmann ("Mr. Sussmann" or "Defendant"), by and through his undersigned counsel, submits this response to the Special Counsel's Motion to Inquire into Potential Conflicts of Interest (the "Motion"). *See* Dkt. No. 35. Counsel for Mr. Sussmann previously advised the Special Counsel that Mr. Sussmann has been fully apprised of the issues that the Special Counsel sought to raise; he understood his right to consult independent counsel; and he intended to waive any potential conflicts of interest. To the extent that the Special Counsel intended to bring potential conflicts of interest to the Court's attention and request that Mr. Sussmann waive those issues on the record, Mr. Sussmann does not oppose the Motion.

2. Unfortunately, the Special Counsel has done more than simply file a document identifying potential conflicts of interest. Rather, the Special Counsel has again made a filing in this case that unnecessarily includes prejudicial—and false—allegations that are irrelevant to his Motion and to the charged offense, and are plainly intended to politicize this case, inflame media coverage, and taint the jury pool.

3. In his Motion, the Special Counsel included approximately three pages of purported "Factual Background." *See* Dkt. No. 35 at 2–5. Approximately half of this Factual Background

provocatively—and misleadingly[1]—describes *for the first time* Domain Name System ("DNS") traffic potentially associated with former President Donald Trump, including data at the Executive Office of the President ("EOP"), that was allegedly presented to Agency-2 in February 2017. *See id.* at 3–4. These allegations were not included in the Indictment; these allegations post-date the single false statement that was charged in the Indictment; and these allegations were not necessary to identify any of the potential conflicts of interest with which the Motion is putatively concerned. Why then include them? The question answers itself.

4. Sadly, the Special Counsel seems to be succeeding in his effort to instigate unfair and prejudicial media coverage of Mr. Sussmann's case. Indeed, since the Motion was filed, numerous outlets published stories suggesting that the Special Counsel's latest filing revealed a vast conspiracy involving Mr. Sussmann and the Clinton Campaign. *See, e.g.*, Brooke Singman, *Clinton campaign paid to 'infiltrate' Trump Tower, White House servers to link Trump to Russia: Durham*, FOX NEWS (Feb. 13, 2022), https://www.foxnews.com/politics/clinton-campaign-paid-infiltrate-trump-tower-white-house-servers; Jesse O'Neill, *Clinton campaign paid tech workers to dig up Trump-Russia connections: Report*, N.Y. POST (Feb. 13, 2022, 1:11 AM), https://nypost.com/2022/02/13/hillary-clinton-campaign-paid-tech-workers-to-dig-up-donald-

[1] For example, although the Special Counsel implies that in Mr. Sussmann's February 9, 2017 meeting he provided Agency-2 with EOP data from after Mr. Trump took office, the Special Counsel is well aware that the data provided to Agency-2 pertained only to the period of time before Mr. Trump took office, when Barack Obama was President. Further—and contrary to the Special Counsel's alleged theory that Mr. Sussmann was acting in concert with the Clinton Campaign—the Motion conveniently overlooks the fact that Mr. Sussmann's meeting with Agency-2 happened well after the 2016 presidential election, at a time when the Clinton Campaign had effectively ceased to exist. Unsurprisingly, the Motion also omits any mention of the fact that Mr. Sussmann never billed the Clinton Campaign for the work associated with the February 9, 2017 meeting, nor could he have (because there was no Clinton Campaign). *See* Dkt. No. 35 at 3-4. And the Special Counsel persists in alleging that Mr. Sussmann billed the Clinton Campaign for his meeting with the FBI in September 2016, when that is false as well.

12 and under

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Advait Badkar

Albert Bourla

Alex Jones

Americas front line doctors

Andrew j Defilippis

Anthony Fauci

Arrest

Ashley Biden

Ashli babit

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Barack obama

Bill Clinton

Bill Gates

Bo

Bradley cooper

trump-russia-connections/; Jerry Dunleavy, *Durham says Democrat-allied tech executive spied on Trump's White House office*, WASHINGTON EXAMINER (Feb. 12, 2022, 7:42 PM), https://www.washingtonexaminer.com/news/justice/durham-says-democrat-allied-tech-executive-spied-on-trumps-white-house-office; Joel B. Pollack, *John Durham Filing Suggests Clinton Operatives Spied on Trump in 2016 and in White House*, BREITBART (Feb. 12, 2022), https://www.breitbart.com/politics/2022/02/12/john-durham-filing-suggests-clinton-operatives-spied-on-trump-in-2016-and-in-white-house/.

C.I.A

CBER

California State Police

Canada

5. Worse still, Mr. Trump seized upon the Special Counsel's filing, stating that it "provides indisputable evidence that my campaign and presidency were spied on by operatives paid by the Hillary Clinton Campaign in an effort to develop a completely fabricated connection to Russia." He went on to call this a scandal "far greater in scope and magnitude than Watergate," said that "[i]n a stronger period of time in our country, this crime would have been punishable by death," and demanded "reparations." @realLizUSA, TWITTER (Feb. 12, 2022, 6:47 PM), https://twitter.com/realLizUSA/status/1492646490346598404. Shortly thereafter, other political leaders endorsed Mr. Trump's position. *See, e.g.*, Andrea Blanco & James Gordon, *GOP Rep. Jim Jordan says Trump is 'right on target' to suggest EXECUTIONS for Hillary's campaign aides after Special Counsel found they paid a tech firm to hack into his WH and Trump Tower servers*, DAILY MAIL (Feb. 13, 2022, 5:27 PM), https://www.dailymail.co.uk/news/article-10508653/GOP-Rep-Jim-Jordan-says-Trump-right-target-suggest-executions-Clintons-aides.html.

Capitol

Capitol Attack

Cognitive Warfare

Congress

Connecticut

Corruption

Covid-19 pcr test

6. And this is not the first time in this case that the Special Counsel has sought to include allegations about uncharged conduct in public filings and done so using inflammatory and prejudicial rhetoric. Take, for example, the very Indictment that the Special Counsel filed in this single-count, false statement case. The Indictment is 27 pages long and reads as though there was

DEAD

DVE

Darrell E. Brooks Jr

Department of Defense

Domestic Violent Extremest

Don lemmon

Durham

Erykah Badu

FBI

a vast conspiracy, involving the Clinton Campaign and Mr. Sussmann, to defraud the FBI into

Fauci

investigating Donald Trump as part of an "October surprise." But the Indictment does not charge anyone other than Mr. Sussmann; the Indictment does not charge a conspiracy; and the Indictment

Francis Collins

does not even charge a fraud.

Fraud

7. To make this case a partisan affair and to inflame media coverage, the Special Counsel chose to include allegations that Mr. Sussmann was part of a wide-ranging scheme involving a number of uncharged parties including the Clinton Campaign, Law Firm-1, Campaign

Fusion Center

Lawyer-1, a U.S. Investigative Firm, Tech-Executive-1, and a number of computer data

GBN Global Business Network

researchers who all worked together to unfairly influence the 2016 election. In so doing, the Special Counsel featured grossly misleading excerpts of emails among Tech-Executive-1 and other

Gavin Newsom

researchers, omitting statements that showed the researchers agreed with the findings and

Government

otherwise operated in good faith. *See, e.g.*, Dkt. No. 1 ¶¶ 23, 24. Tellingly, however, the Special Counsel has never alleged in the Indictment or subsequently that the data provided by the

Graphene Hydroxide

researchers was manipulated or fabricated, or that Mr. Sussmann had any reason to believe that the allegations he presented to the FBI's General Counsel were untrue or misleading in any way.

Graphene oxide

8. More recently, in his 19-page "Discovery Update" filed on January 25, 2022, the Special Counsel again went out of his way to include uncharged and inflammatory allegations. In

HEK296

his filing, which sought an extension of time to produce certain discovery, the Special Counsel

HHS

stretched to include the gratuitous claim that his Office had an "active, ongoing criminal investigation of the defendant's conduct and other matters." Dkt. No. 33 ¶ 1. However, the Special

HIPAA

Counsel has been investigating for years, and some of the Special Counsel's "ongoing" investigation seems to be work that should have been completed *before* indicting Mr. Sussmann.

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For example, the Special Counsel has alleged that Mr. Sussmann met with the FBI on behalf of

Hilary Clinton

Hillary Clinton

Informed consent

Insider trading

Ivermectin

J&J

James C. Smith

Jan 6th

Jan. 6

Jay-Z

Jill Biden

John Sullivan

John f. Kennedy Middle School

John h Durham

Johnathan e. algor

Johnson & Johnson

Justin Trudeau

Kaiser Permanente

Kamala Harris

Kenosha

Kyle Rittenhouse

L.A.P.D

Lawmakers

Life Log

Local Police Department

the Clinton Campaign, but it was not until November 2021—two months after Mr. Sussmann was indicted—that the Special Counsel bothered to interview any individual who worked full-time for that Campaign to determine if that allegation was true. It is not.

9. Given the Special Counsel's pattern of including unnecessary prejudicial material in public filings, there can be no doubt that the superfluous "Factual Background" in the Special Counsel's motion is intended to further politicize this case, inflame media coverage, and taint the jury pool. *See United States v. Duran*, 884 F. Supp. 526, 527 (D.D.C. 1995) ("Because no right ranks higher than the right of the accused to a fair trial, in cases that arouse intense public interest . . . adverse publicity can endanger the ability of the defendant to receive a fair trial.") (internal quotation marks and citations omitted); *Patton v. Yount*, 467 U.S. 1025, 1031 (1984) ("Adverse pretrial publicity can create . . . a presumption of prejudice in a community").

10. As a result, Mr. Sussmann hereby requests that the Court strike the Factual Background portion of the Special Counsel's motion pursuant to the Court's inherent power to "fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991); *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). In addition, Mr. Sussmann reserves all rights to submit appropriate motions and seek appropriate relief concerning this conduct should the Indictment not be dismissed and should the case proceed to trial, including by seeking extensive *voir dire* about potential jurors' exposure to prejudicial media resulting from the Special Counsel's irresponsible actions.

CONCLUSION

For the reasons set forth above, Mr. Sussmann respectfully requests that the Court (i) allow him to proceed with his current counsel of choice, Latham & Watkins LLP, following his waiver of any potential conflicts of interest, and (ii) strike the Factual Background portion of the Motion.

Major General Kevin J Sullivan

Dated: February 14, 2022

Marc Siegel, MD

Mark Zuckerberg

Medical Mal practice

Meredith McMorrow, MD

Meta

Micheal Leroy Byrd

Micheal T. Keily

Moderna

N.I.H

NSA

Nancy Pelosi

Natalie Hardwick Rao

National file

Nato

New Jersey

New York

Notofman

Nuremberg code

Respectfully submitted,

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Ny

Obama Birthday Party

Pedophilia

Peg 2000

Peter Daszak

Pfizer

Polyethylene Glycol 2000

Project Veritas

Ralph Baric

Reuters

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Ron Johnson

SM-102

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Senator

Stacy abrams

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Stephen Hahn

Steven Anderson

Sundar Pichai

Susan Wojcicki

The House select committee

The Monitor Group

TheMadARAB

Tom MacDonald

UNC

United Kingdom

United States of America

VAERS

Vanessa Gelman

Vimeo

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Washington Post

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joe biden

john durham

john legend

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just a thought

lies

lockdown 2.0

mRNA

mark fuckerburg

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michael a. sussmann.

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sexual abuse

sexual predator

soldiers

song

spy

state department

steve anderson

steven spielberg

stocks

texas health department

the rockefeller foundation

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