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**OFFICIAL PERJURER: JEFFREY L. FORTENBERRY**

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{LAST UPDATE: 11/9/2021}

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**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 1 Information

**DATE:** 10/19/2021

**PAGES:** 12

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

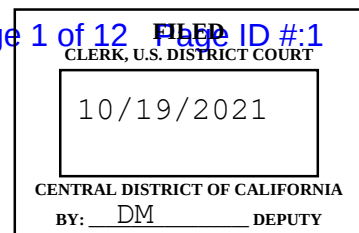
**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_IN\_20211019\_080010.pdf

**DOC NO:** 1





UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2021 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY FORTENBERRY,

Defendant.

CR 2:21-cr-00491-SB

I N D I C T M E N T

[18 U.S.C. § 1001(a)(1):  
Falsifying and Concealing Material  
Facts; 18 U.S.C. § 1001(a)(2):  
Making False Statements]

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At times relevant to this Indictment:

A. THE FEDERAL ELECTION CAMPAIGN ACT INVESTIGATION

1. The Federal Bureau of Investigation ("FBI") and Internal Revenue Service ("IRS") in Los Angeles and the United States Attorney's Office for the Central District of California ("USAO") were conducting a federal criminal investigation into illegal political campaign contributions made by Gilbert Chagoury, a foreign national, using other individuals as conduits, to defendant JEFFREY FORTENBERRY's 2016 congressional campaign (the "Federal Investigation") and those of other federal candidates in the United

1 States. The Federal Investigation also sought to uncover whether and  
2 when any politicians were aware they had received illegal foreign  
3 national or conduit contributions and whether any person sought to  
4 impermissibly influence the recipient politician in exchange for the  
5 contributions.

6 B. RELEVANT PERSONS AND ENTITIES

7 2. Defendant JEFFREY FORTENBERRY was the United States  
8 Representative for Nebraska's 1st congressional district, having  
9 first been elected as a U.S. Representative in 2004.

10 3. Gilbert Chagoury was a Nigerian-born, billionaire  
11 businessperson of Lebanese descent. As a foreign national, Chagoury  
12 was prohibited from making donations and contributions directly or  
13 indirectly in support of any candidate for federal elected office in  
14 the United States.

15 4. Toufic Baaklini was a United States-based businessman who  
16 served as a consultant for Chagoury and assisted Chagoury with  
17 financial dealings in the United States.

18 5. Individual H resided in Los Angeles. On February 20, 2016,  
19 Individual H hosted a political fundraiser for defendant FORTENBERRY  
20 in Los Angeles (the "2016 Fundraiser").

21 C. BACKGROUND ON FEDERAL ELECTION LAW

22 6. Under federal law, each federal campaign had to report to  
23 the Federal Election Commission ("FEC") the name and address of any  
24 individual providing a contribution of more than \$50. The reports  
25 were supposed to provide transparency to the identity of donors to  
26 federal candidates for office and the amount of those donations.

27 7. To ensure that the donations were transparent and fell  
28 within the campaign contribution limits, individuals were not allowed

1 to make contributions to federal candidates for political office in  
2 the names of other people, and federal candidates were not allowed to  
3 knowingly accept such contributions.

4 8. Foreign nationals were not allowed to make contributions to  
5 federal candidates for political office, and federal candidates were  
6 not allowed to knowingly accept such contributions.

7 9. Defendant FORTENBERRY was familiar with the legal  
8 prohibitions against foreign and conduit contributions.

9 10. Defendant FORTENBERRY knew Chagoury was a foreign national.

10 D. FOREIGN AND CONDUIT POLITICAL CONTRIBUTIONS FROM CHAGOURY TO  
11 DEFENDANT FORTENBERRY

12 11. In January 2016, Chagoury arranged for \$30,000 of his money  
13 to be contributed through other individuals to the re-election  
14 campaign of defendant FORTENBERRY. Baaklini provided \$30,000 in cash  
15 he received from Chagoury to Individual H at a restaurant in Los  
16 Angeles, California in January 2016. Individual H was to identify  
17 multiple individuals who would contribute the funds to defendant  
18 FORTENBERRY's campaign. After receiving the cash from Baaklini,  
19 Individual H hosted the 2016 Fundraiser, which defendant FORTENBERRY  
20 attended. At the 2016 Fundraiser, Individual H and individuals  
21 Individual H recruited and reimbursed, using Chagoury's cash that  
22 Individual H received from Baaklini, made campaign contributions  
23 totaling \$30,200 to defendant FORTENBERRY's campaign fund.

24 E. THE INVESTIGATION OF FOREIGN AND CONDUIT CONTRIBUTIONS RECEIVED  
25 BY DEFENDANT FORTENBERRY FROM CHAGOURY

26 12. As part of the Federal Investigation, the FBI, IRS, and  
27 USAO sought to determine, among other things: (a) whether defendant  
28 FORTENBERRY's congressional campaign received illegal conduit

1 contributions at the 2016 Fundraiser; (b) if and when defendant  
2 FORTENBERRY knew about any conduit contributions to his campaign at  
3 the 2016 Fundraiser; (c) whether defendant FORTENBERRY'S  
4 congressional campaign had received illegal contributions indirectly  
5 from Chagoury, a foreign national, at the 2016 Fundraiser; (d) if and  
6 when defendant FORTENBERRY knew about any illegal foreign  
7 contributions from his congressional campaign received indirectly  
8 from Chagoury at the 2016 Fundraiser; and (e) if and when defendant  
9 FORTENBERRY had any direct or indirect communication with Chagoury or  
10 Baaklini about the contributions his campaign was to and did receive  
11 at the 2016 Fundraiser.

12 13. In September 2016, Individual H began cooperating with law  
13 enforcement. Individual H informed the FBI of the conduit  
14 contributions Individual H and others made to defendant FORTENBERRY's  
15 campaign at the 2016 Fundraiser.

16 14. On or about March 19, 2018, and again on or about April 9,  
17 2018, defendant FORTENBERRY contacted Individual H to inquire about  
18 hosting another fundraiser in 2018 in Los Angeles. On or about June  
19 4, 2018, Individual H called defendant FORTENBERRY to discuss  
20 defendant FORTENBERRY's requests for an additional fundraiser (the  
21 "2018 Call"). In the 2018 Call, Individual H told defendant  
22 FORTENBERRY, on multiple occasions, that prior to the 2016  
23 Fundraiser, Baaklini provided Individual H with "\$30,000 cash" to  
24 give to defendant FORTENBERRY's campaign.

25 15. In the 2018 Call, Individual H also told defendant  
26 FORTENBERRY that:

1           a.     Individual H distributed the \$30,000 cash to other  
2 individuals to contribute to defendant FORTENBERRY's campaign at the  
3 2016 Fundraiser; and

4           b.     The \$30,000 cash Baaklini gave to Individual H  
5 "probably did come from Gilbert Chagoury because he was so grateful  
6 for your support [for] the cause."

7           16.    Despite being told by Individual H about the illegal  
8 donations, defendant FORTENBERRY did not file an amended report with  
9 the FEC regarding the 2016 Fundraiser. Defendant FORTENBERRY also  
10 did not return or otherwise try to disgorge the contributions from  
11 the 2016 Fundraiser after learning on the 2018 Call with Individual H  
12 that they were illegal contributions. Rather, it was not until after  
13 the FBI and USAO interviewed him in July 2019 that defendant  
14 FORTENBERRY disgorged the contributions.

15           17.    These Introductory Allegations are incorporated into each  
16 count of this Indictment.

COUNT ONE

[18 U.S.C. § 1001(a)(1)]

A. SCHEME TO FALSIFY AND CONCEAL MATERIAL FACTS

18. From on or about June 4, 2018, to in or about July 18, 2019, affecting the Federal Investigation in the Central District of California, and within the jurisdiction of the executive branch of the government of the United States, namely, the FBI, IRS, and USAO, defendant JEFFREY FORTENBERRY knowingly and willfully falsified, concealed, and covered up by trick, scheme, and device material facts, namely that:

a. Defendant FORTENBERRY's congressional campaign had received illicit contributions at the 2016 Fundraiser;

b. Defendant FORTENBERRY had become aware that his campaign received illicit contributions at the 2016 Fundraiser;

c. Baaklini had provided \$30,000 cash to Individual H for Individual H and Individual H's associates to contribute to defendant FORTENBERRY's congressional campaign at the 2016 Fundraiser;

d. Defendant FORTENBERRY had become aware that Baaklini had provided \$30,000 cash to Individual H for Individual H and Individual H's associates to contribute to defendant FORTENBERRY's congressional campaign; and

e. Chagoury was the source of the \$30,000 that Baaklini provided to Individual H for Individual H and Individual H's associates to contribute to defendant FORTENBERRY's congressional campaign at the 2016 Fundraiser.

B. OPERATION OF THE SCHEME

19. Defendant FORTENBERRY carried out the trick, scheme, and device, in substance, in the following manner:

1           a.     During an interview on March 23, 2019, by the FBI and  
2 IRS at his residence in Lincoln, Nebraska regarding the Federal  
3 Investigation, defendant FORTENBERRY made the following false and  
4 misleading statements after being advised it was a crime to lie to  
5 the federal government:

6               i.     To conceal the illicit conduit contributions and  
7 his knowledge of them, defendant FORTENBERRY falsely stated that he  
8 was not aware of Baaklini ever making any illegal contributions,  
9 directing anyone to conduct illegal contributions, or providing money  
10 to anyone else to conduct conduit contributions to a political  
11 campaign.

12              ii.    To conceal the illicit conduit contributions and  
13 his knowledge of them, defendant FORTENBERRY falsely stated that the  
14 individuals who contributed to the 2016 Fundraiser were all publicly  
15 disclosed and that every campaign contribution that his campaign had  
16 received was publicly disclosed.

17              iii.   To conceal the illicit foreign contributions from  
18 Chagoury and his suspicions of them, defendant FORTENBERRY  
19 misleadingly stated that he was unaware of any contributions made by  
20 foreign nationals to his campaign.

21           b.     During an interview on July 18, 2019, by the FBI and  
22 the USAO and with his counsel present, at his counsel's office in  
23 Washington, D.C., regarding the Federal Investigation (the "July 2019  
24 Interview"), defendant FORTENBERRY made the following false and  
25 misleading statements after being advised it was a crime to lie to  
26 the federal government:

27               i.     To cover up that Baaklini had provided \$30,000  
28 cash to Individual H to contribute to defendant FORTENBERRY's

1 congressional campaign at the 2016 Fundraiser and defendant  
2 FORTENBERRY's knowledge of Baaklini's act, defendant FORTENBERRY  
3 falsely stated that he had not been told by Individual H during the  
4 2018 Call that Baaklini had given Individual H \$30,000 cash to help  
5 fund the 2016 Fundraiser.

6           ii. To cover up the illicit foreign and conduit  
7 contributions made to defendant FORTENBERRY's congressional campaign  
8 at the 2016 Fundraiser, his knowledge of the illicit conduit  
9 contributions, and the illicit foreign contributions, defendant  
10 FORTENBERRY falsely stated that he was not aware of any illicit  
11 donation made during the 2016 Fundraiser.

12           iii. To cover up the illicit foreign and conduit  
13 contributions made to defendant FORTENBERRY's congressional campaign  
14 at the 2016 Fundraiser, his knowledge of the illicit conduit  
15 contributions, and his suspicion of the illicit foreign  
16 contributions, defendant FORTENBERRY misleadingly stated he ended the  
17 2018 Call with Individual H after Individual H made a "concerning  
18 comment" during the call. In fact, as defendant FORTENBERRY then  
19 knew, after Individual H told him repeatedly and explicitly about  
20 illegal conduit contributions and referenced an illegal foreign  
21 national contribution, defendant FORTENBERRY continued to ask  
22 Individual H to host another fundraiser for defendant FORTENBERRY's  
23 campaign.

24           iv. To conceal his knowledge of the illicit conduit  
25 contributions to his congressional campaign at the 2016 Fundraiser  
26 and that Baaklini provided \$30,000 to Individual H for Individual H  
27 and Individual H's associates to contribute at the 2016 Fundraiser,  
28 defendant FORTENBERRY misleadingly stated that he would have been

1 "horrified" if he had learned from Individual H during the 2018 Call  
2 that Baaklini had provided Individual H money to contribute to the  
3 2016 Fundraiser. In fact, as defendant FORTENBERRY then knew, rather  
4 than acting horrified after Individual H told him repeatedly and  
5 explicitly about illegal conduit contributions and Baaklini providing  
6 \$30,000 to Individual H and Individual H's associates to contribute  
7 at the 2016 Fundraiser, defendant FORTENBERRY continued to ask  
8 Individual H to host another fundraiser for defendant FORTENBERRY's  
9 campaign.

10 c. To conceal the illegal conduit contributions, his  
11 knowledge of them, the illegal foreign contributions by Chagoury, and  
12 his suspicions of them, at no time did defendant FORTENBERRY cause  
13 his campaign to file amended FEC reports with accurate information  
14 about the 2016 Fundraiser, including the true contributors and the  
15 amounts of their contributions.

## COUNT TWO

[18 U.S.C. § 1001(a)(2)]

20. On or about March 23, 2019, in an interview affecting the Federal Investigation in the Central District of California, and in a matter within the jurisdiction of the executive branch of the government of the United States, namely, the FBI, IRS, and USAO, defendant JEFFREY FORTENBERRY knowingly and willfully made materially false statements and representations to the FBI and IRS knowing that these statements and representations were untrue:

a. Defendant FORTENBERRY falsely stated that he was not aware of Baaklini making any illegal contributions, directing anyone to conduct illegal contributions, or providing money to anyone else to conduct conduit campaign contributions. In fact, as defendant FORTENBERRY then knew, as of no later than the June 2018 call with Individual H, he was aware that Baaklini provided money to Individual H in order to make illegal conduit contributions at the 2016 Fundraiser.

b. Defendant FORTENBERRY falsely stated that the individuals who contributed to the 2016 Fundraiser were all publicly disclosed. In fact, as defendant FORTENBERRY then knew, his campaign had never disclosed the names of individuals who were the true sources of the conduit contributions at the 2016 Fundraiser.

c. Defendant FORTENBERRY falsely stated that every campaign contribution that he had received was publicly disclosed. In fact, as defendant FORTENBERRY then knew, his campaign had never disclosed the names of individuals who were the true sources of the conduit contributions at the 2016 Fundraiser.

## COUNT THREE

[18 U.S.C. § 1001(a)(2)]

21. On or about July 18, 2019, in an interview affecting the Federal Investigation in the Central District of California, and in a matter within the jurisdiction of the executive branch of the government of the United States, namely, the FBI, IRS-CI, and USAO, defendant JEFFREY FORTENBERRY knowingly and willfully made the following materially false statements and representations to the FBI and USAO knowing that these statements and representations were untrue:

a. Defendant FORTENBERRY falsely stated that he had not been told by Individual H during the 2018 Call that Baaklini had given Individual H \$30,000 cash to help fund the 2016 Fundraiser. In fact, as defendant FORTENBERRY then knew, during the 2018 Call, Individual H repeatedly told defendant FORTENBERRY that Baaklini had given \$30,000 in cash to Individual H in order for Individual H to make contributions to defendant FORTENBERRY's 2016 congressional campaign.

b. Defendant FORTENBERRY falsely stated that he was not aware of any illicit donation made during the 2016 Fundraiser. In fact, as defendant FORTENBERRY then knew, during the 2018 Call,

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1 Individual H repeatedly told defendant FORTENBERRY that Individual H  
2 had arranged for and made conduit contributions to defendant  
3 FORTENBERRY's 2016 congressional campaign.  
4  
5

6 A TRUE BILL  
7

8 /S/

9 Foreperson

10 TRACY L. WILKISON  
11 Acting United States Attorney

12 

13 SCOTT M. GARRINGER  
14 Assistant United States Attorney  
15 Chief, Criminal Division

16 MACK E. JENKINS  
17 Assistant United States Attorney  
18 Chief, Public Corruption and  
19 Civil Rights Section

20 SUSAN S. HAR  
21 Assistant United States Attorney  
22 Public Corruption and Civil  
23 Rights Section  
24  
25  
26  
27  
28

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 2 Cover Sheet

**DATE:** 10/19/2021

**PAGES:** 2

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_CS\_20211019\_080032.pdf

**DOC NO:** 2



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIAFILED  
CLERK, U.S. DISTRICT COURT

10/19/2021

CENTRAL DISTRICT OF CALIFORNIA  
BY: DM DEPUTY

## CASE SUMMARY

Case Number 2:21-cr-00491-SBDefendant Number 1U.S.A. v. Jeffrey FortenberryYear of Birth 1960☒ Indictment☐ InformationInvestigative agency (FBI, DEA, etc.) FBI**NOTE: All items MUST be completed. If you do not know the answer or a question is not applicable to your case, enter "N/A."****OFFENSE/VENUE**

a. Offense charged as a:

☐ Class A Misdemeanor ☐ Minor Offense ☐ Petty Offense☐ Class B Misdemeanor ☐ Class C Misdemeanor ☒ Felonyb. Date of Offense March 23, 2019 to July 18, 2019

c. County in which first offense occurred

Los Angelesd. The crimes charged are alleged to have been committed in  
(CHECK **ALL** THAT APPLY):☒ Los Angeles☐ Ventura☐ Orange☐ Santa Barbara☐ Riverside☐ San Luis Obispo☐ San Bernardino☐ Other \_\_\_\_\_Citation of Offense 18 USC 1001e. Division in which the MAJORITY of events, acts, or omissions  
giving rise to the crime or crimes charged occurred:☒ Western (Los Angeles, San Luis Obispo, Santa Barbara, Ventura)☐ Eastern (Riverside and San Bernardino) ☐ Southern (Orange)**RELATED CASE**Has an indictment or information involving this defendant and  
the same transaction or series of transactions been previously  
filed and dismissed before trial?☒ No☐ Yes

If "Yes," Case Number: \_\_\_\_\_

Pursuant to General Order 21-01, criminal cases may be related  
if a previously filed indictment or information and the present  
case:a. arise out of the same conspiracy, common scheme,  
transaction, series of transactions or events; orb. involve one or more defendants in common, and would  
entail substantial duplication of labor in pretrial, trial or  
sentencing proceedings if heard by different judges.Related case(s), if any (**MUST MATCH NOTICE OF RELATED  
CASE**): \_\_\_\_\_**PREVIOUSLY FILED COMPLAINT/CVB CITATION**A complaint/CVB citation was previously filed on: N/A

Case Number: \_\_\_\_\_

Assigned Judge: \_\_\_\_\_

Charging: \_\_\_\_\_

The complaint/CVB citation:

☐ is still pending☐ was dismissed on: \_\_\_\_\_**PREVIOUS COUNSEL**Was defendant previously represented? ☐ No ☐ Yes

IF YES, provide Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**COMPLEX CASE**

Are there 8 or more defendants in the Indictment/Information?

☐ Yes\*☒ NoWill more than 12 days be required to present government's  
evidence in the case-in-chief?☐ Yes\*☒ No\*AN ORIGINAL AND 1 COPY (UNLESS ELECTRONICALLY FILED)  
OF THE NOTICE OF COMPLEX CASE MUST BE FILED AT THE  
TIME THE INDICTMENT IS FILED IF EITHER "YES" BOX IS  
CHECKED.**SUPERSEDING INDICTMENT/INFORMATION****IS THIS A NEW DEFENDANT?** ☐ Yes ☐ NoThis is the N/A superseding charge (i.e., 1st, 2nd).

The superseding case was previously filed on: \_\_\_\_\_

Case Number \_\_\_\_\_

The superseded case:

☐ is still pending before Judge/Magistrate Judge☐ was previously dismissed on \_\_\_\_\_

Are there 8 or more defendants in the superseding case?

☐ Yes\*☐ NoWill more than 12 days be required to present government's  
evidence in the case-in-chief?☐ Yes\*☐ NoWas a Notice of Complex Case filed on the Indictment or  
Information?☐ Yes☐ No\*AN ORIGINAL AND 1 COPY OF THE NOTICE OF COMPLEX CASE  
MUST BE FILED AT THE TIME THE SUPERSEDING INDICTMENT IS  
FILED IF EITHER "YES" BOX IS CHECKED.

CASE SUMMARY

INTERPRETER

Is an interpreter required? ☐ YES ☒ NO

IF YES, list language and/or dialect:

OTHER

☒ Male ☐ Female

☒ U.S. Citizen ☐ Alien

Alias Name(s)

This defendant is charged in:

☒ All counts

☐ Only counts:

☐ This defendant is designated as "High Risk" per  
18 USC § 3146(a)(2) by the U.S. Attorney.

☐ This defendant is designated as "Special Case" per  
18 USC § 3166(b)(7).

Is defendant a juvenile? ☐ Yes ☒ No

IF YES, should matter be sealed? ☐ Yes ☒ No

The area(s) of substantive law that will be involved in this case  
include(s):

☐ financial institution fraud ☒ public corruption

☒ government fraud ☐ tax offenses

☐ environmental issues ☐ mail/wire fraud

☐ narcotics offenses ☐ immigration offenses

☐ violent crimes/firearms ☐ corporate fraud

☐ Other

EXCLUDABLE TIME

Determinations as to excludable time prior to filing indictment/information. EXPLAIN:

Date 10/15/2021

CUSTODY STATUS

Defendant is **not in custody**:

a. Date and time of arrest on complaint:

b. Posted bond at complaint level on:

in the amount of \$

c. PSA supervision? ☐ Yes ☐ No

d. Is on bail or release from another district:

Defendant is **in custody**:

a. Place of incarceration: ☐ State ☐ Federal

b. Name of Institution:

c. If Federal, U.S. Marshals Service Registration Number:

d. ☐ Solely on this charge. Date and time of arrest:

e. On another conviction: ☐ Yes ☐ No

IF YES: ☐ State ☐ Federal ☐ Writ of Issue

f. Awaiting trial on other charges: ☐ Yes ☐ No

IF YES: ☐ State ☐ Federal AND

Name of Court:

Date transferred to federal custody:

This person/proceeding is transferred from another district  
pursuant to F.R.Cr.P. 20 21 40

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 3 Arraignment

**DATE:** 10/20/2021

**PAGES:** 1

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_ARN\_20211020\_080024.pdf

**DOC NO:** 6



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CRIMINAL MINUTES - ARRAIGNMENT**

Case Number: 2:21-CR-00491

Recorder: CS 10/20/2021

Date: 10/20/2021

Present: The Honorable Rozella A. Oliver, U.S. Magistrate Judge

Court Clerk: Donnamarie Luengo

Assistant U.S. Attorney: Mack Jenkins and Susan Har

| United States of America v.                   | Attorney Present for Defendant(s) | Language | Interpreter |
|-----------------------------------------------|-----------------------------------|----------|-------------|
| JEFFREY FORTENBERRY<br>BOND-PRESENT BY<br>VTC | JOHN LEWIS LITTRELL<br>RETAINED   |          |             |

**PROCEEDINGS: ARRAIGNMENT OF DEFENDANT(S) AND ASSIGNMENT OF CASE .**

Defendant is arraigned and the Court does not question defendant as to true name.

Defendant is given a copy of the Indictment and acknowledges having been read or having received a copy of the Indictment and waives the reading thereof.

Defendant pleads not guilty to all counts in the Indictment.

This case is assigned to the calendar of District Judge Stanley Blumenfeld Jr..

It is ordered that the following date(s) and time(s) are set:

Jury Trial 12/14/2021 at 8:30 AM

Defendant and counsel are ordered to appear before said judge at the time and date indicated.

Counsel are referred to the assigned judge's trial/discovery order located on the court's website, Judges' Procedures and Schedules.

First Appearance/Appointment of Counsel: 00 : 00

PIA: 00 : 02

Initials of Deputy Clerk: DL by TRB

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 4 Notice of Hearing (#1)

**DATE:** 10/20/2021

**PAGES:** 6

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_M\_20211020\_080039.pdf

**DOC NO:** 9



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY FORTENBERRY

Defendant.

Western DivisionCase Number: 2:21-CR-00491-SBInitial App. Date: 10/20/2021Initial App. Time: 1:00 PMIndictmentSummonsDate Filed: 10/19/2021Violation: 18:1001CourtSmart/ Reporter: CS 10/20/2021PROCEEDINGS HELD BEFORE UNITED STATES  
MAGISTRATE JUDGE: Rozella A. OliverCALENDAR/PROCEEDINGS SHEET  
LOCAL/OUT-OF-DISTRICT CASEPRESENT: Luengo, Donnamarie*Deputy Clerk*SUSAN HAR  
MAC JENKINS  
*Assistant U.S. Attorney*

None

*Interpreter/Language*☐ INITIAL APPEARANCE NOT HELD - CONTINUED☒ Court issues Order under Fed. R. Crim. P. 5(f) concerning prosecutor's disclosure obligations; see General Order 21-02 (written order).☒ Defendant informed of charge and right to: remain silent; appointment of counsel, if indigent; right to bail; bail review and☐ preliminary hearing OR ☐ removal hearing / Rule 20.☐ Defendant states true name ☐ is as charged ☐ is☐ Court ORDERS the caption of the Indictment/Information be changed to reflect defendant's different true name. Counsel are directed to file all future documents reflecting the true name as stated on the record.☐ Defendant advised of consequences of false statement in financial affidavit. ☐ Financial Affidavit ordered **SEALED**.☒ Attorney: John Littrell, Retained ☐ Appointed ☐ Prev. Appointed ☐ Poss. Contribution (see separate order)☐ Special appearance by: \_\_\_\_\_☐ Government's request for detention is: ☐ GRANTED ☐ DENIED ☐ WITHDRAWN ☐ CONTINUED☐ Contested detention hearing is held. ☐ Defendant is ordered: ☐ Permanently Detained ☐ Temporarily Detained (see separate order).☒ BAIL FIXED AT \$ 50,000.00 (SEE ATTACHED COPY OF CR-1 BOND FORM FOR CONDITIONS)☐ Government moves to UNSEAL Complaint/Indictment/Information/Entire Case: ☐ GRANTED ☐ DENIED☐ Preliminary Hearing waived. ☐ Class B Misdemeanor ☐ Defendant is advised of maximum penalties☐ This case is assigned to Magistrate Judge \_\_\_\_\_. Counsel are directed to contact the clerk for the setting of all further proceedings.☐ PO/PSA WARRANT ☐ Counsel are directed to contact the clerk for District Judge \_\_\_\_\_

\_\_\_\_\_ for the setting of further proceedings.

☐ Preliminary Hearing set for \_\_\_\_\_ at 4:30 PM \_\_\_\_\_☐ PIA set for: \_\_\_\_\_ at 11:00 AM in LA; at 10:00 AM in Riverside; at 10:00 AM in Santa Ana☐ Government's motion to dismiss case/defendant \_\_\_\_\_ only: ☐ GRANTED ☐ DENIED☐ Defendant's motion to dismiss for lack of probable cause: ☐ GRANTED ☐ DENIED☐ Defendant executed Waiver of Rights. ☐ Process received.☐ Court ORDERS defendant Held to Answer to \_\_\_\_\_ District of \_\_\_\_\_☐ Bond to transfer, if bail is posted. Defendant to report on or before \_\_\_\_\_☐ Warrant of removal and final commitment to issue. Date issued: \_\_\_\_\_ By CRD: \_\_\_\_\_☐ Warrant of removal and final commitment are ordered stayed until \_\_\_\_\_☐ Case continued to (Date) \_\_\_\_\_ (Time) \_\_\_\_\_ AM / PM

Type of Hearing: \_\_\_\_\_ Before Judge \_\_\_\_\_ /Duty Magistrate Judge.

Proceedings will be held in the ☐ Duty Courtroom ☐ Judge's Courtroom☐ Defendant committed to the custody of the U.S. Marshal ☐ Summons: Defendant ordered to report to USM for processing.☐ Abstract of Court Proceeding (CR-53) issued. Copy forwarded to USM.☐ Abstract of Order to Return Defendant to Court on Next Court Day (M-20) issued. Original forwarded to USM.☐ RELEASE ORDER NO: \_\_\_\_\_☒ Other: PIA HELD. SEE SEPARATE MINUTES☐ PSA ☐ USPO ☐ FINANCIAL☐ CR-10 ☐ CR-29☐ READY

Deputy Clerk Initials

: 33



Case Name: United States of America v. JEFFREY FORTENBERRY

Case No. 2:21-CR-00491-SB

☒ Defendant ☐ Material Witness

- ☒ Avoid all contact, directly or indirectly (including by any electronic means), with any person who is a known victim or witness in the subject investigation or prosecution, ☒ including but not limited to NAMES IN "OTHER CONDITIONS" \_\_\_\_\_; ☒ except in the presence of counsel \_\_\_\_\_.
- ☐ Avoid all contact, directly or indirectly (including by any electronic means), with any known codefendants except in the presence of counsel. Notwithstanding this provision, you may contact the following codefendants without your counsel present: \_\_\_\_\_
- ☐ Do not possess any firearms, ammunition, destructive devices, or other dangerous weapons. ☐ In order to determine compliance, you agree to submit to a search of your person and/or property by Supervising Agency in conjunction with the U.S. Marshal.
- ☐ Do not use or possess any identification, mail matter, access device, or any identification-related material other than in your own legal or true name without prior permission from Supervising Agency. ☐ In order to determine compliance, you agree to submit to a search of your person and/or property by Supervising Agency in conjunction with the U.S. Marshal.
- ☐ Do not engage in telemarketing.
- ☐ Do not sell, transfer, or give away any asset valued at \$ \_\_\_\_\_ or more without notifying and obtaining permission from the Court, except \_\_\_\_\_.
- ☐ Do not engage in tax preparation for others.
- ☐ Do not use alcohol.
- ☐ Participate in the electronic remote alcohol monitoring program as directed by Supervising Agency and abide by all the rules and requirements of the program. You must pay all or part of the costs for treatment based upon your ability to pay as determined by Supervising Agency.
- ☐ Do not use or possess illegal drugs or state-authorized marijuana. ☐ In order to determine compliance, you agree to submit to a search of your person and/or property by Supervising Agency in conjunction with the U.S. Marshal.
- ☐ Do not use for purposes of intoxication any controlled substance analogue as defined by federal law or street, synthetic, or designer psychoactive substance capable of impairing mental or physical functioning more than minimally, except as prescribed by a medical doctor.
- ☐ Submit to: ☐ drug and/or ☐ alcohol testing. If directed to do so, participate in outpatient treatment approved by Supervising Agency. You must pay all or part of the costs for testing and treatment based upon your ability to pay as determined by Supervising Agency.
- ☐ Participate in residential ☐ drug and/or ☐ alcohol treatment as directed by Supervising Agency. You must pay all or part of the costs of treatment based upon your ability to pay as determined by Supervising Agency. ☐ Release to PSA only ☐ Release to USPO only
- ☐ Submit to a mental health evaluation. If directed to do so, participate in mental health counseling and/or treatment approved by Supervising Agency. You must pay all or part of the costs based upon your ability to pay as determined by Supervising Agency.
- ☐ Participate in the Location Monitoring Program marked below and abide by all of the requirements of the program and any indicated restrictions, under the direction of the Supervising Agency. You must pay all or part of the costs of the program based upon your ability to pay as determined by the Supervising Agency. You are financially responsible for any lost or damaged equipment.

**Location Monitoring Technology**☐ Location Monitoring technology at the discretion of the Supervising Agency

or

Defendant's Initials: For JLF Date: 10/21/21

Case Name: United States of America v. **JEFFREY FORTENBERRY**

Case No. 2:21-CR-00491-SB

☒ Defendant ☐ Material Witness☐ Location Monitoring **with** a bracelet☐ at the discretion of the Supervising Agency **or**☐ Radio Frequency (RF) **or**☐ Global Positioning System (GPS)☐ Release to the Supervising Agency only **or** ☐ Placement of bracelet within 24 hours of release**or**☐ Location Monitoring **without** a bracelet☐ at the discretion of the Supervising Agency **or**☐ Virtual/Biometric **or**☐ Voice Recognition**Restrictions**☐ Location Monitoring only - no residential restrictions☐ Curfew - You are restricted to your residence every day:☐ from \_\_\_\_\_ to \_\_\_\_\_☐ as directed by Supervising Agency☐ Home Detention - You are restricted to your residence at all times except for employment, education, religious services, medical needs or treatment, attorney visits, court appearances and obligations, essential needs, and \_\_\_\_\_, all of which must be preapproved by the Supervising Agency☐ Home Incarceration - You are restricted to your residence at all times except for medical needs or treatment, attorney visits, court appearances and obligations, and \_\_\_\_\_, all of which must be preapproved by the Supervising Agency☐ You are placed in the third-party custody (*Form CR-31*) of \_\_\_\_\_☐ Clear outstanding ☐ warrants or ☐ DMV and traffic violations and provide proof to Supervising Agency within \_\_\_\_\_ days of release from custody.☐ Do not possess or have access to, in the home, the workplace, or any other location, any device that offers internet access except as approved by Supervising Agency. ☐ In order to determine compliance, you agree to submit to a search of your person and/or property by Supervising Agency in conjunction with the U.S. Marshal.☐ Do not associate or have verbal, written, telephonic, electronic, or any other communication with any person who is less than the age of 18 except in the presence of a parent or legal guardian of the minor.☐ Do not loiter or be found within 100 feet of any schoolyard, park, playground, arcade, or other place primarily used by children under the age of 18.☐ Do not be employed by, affiliated with, own, control, or otherwise participate directly or indirectly in the operation of any daycare facility, school, or other organization dealing with the care, custody, or control of children under the age of 18.Defendant's Initials: **For JLF** Date: **10/21/21**

Case Name: United States of America v. JEFFREY FORTENBERRYCase No. 2:21-CR-00491-SB☒ Defendant ☐ Material Witness

☐ Do not view or possess child pornography or child erotica. ☐ In order to determine compliance, you agree to submit to a search of your person and/or property, including computer hardware and software, by Supervising Agency in conjunction with the U.S. Marshal.

☒ Other conditions:

Gilbert Chagoury, Toufic Baaklini, Individual H, Jessica Furst Johnson, Alexandra Kendrick

Luke Wenz, Drew Bowling. Defendant Fortenberry may have contact with Reynold "Reyn" Archer, but only on matters unrelated to the indictment.

### GENERAL CONDITIONS OF RELEASE

I will appear in person in accordance with any and all directions and orders relating to my appearance in the above entitled matter as may be given or issued by the Court or any judicial officer thereof, in that Court or before any Magistrate Judge thereof, or in any other United States District Court to which I may be removed or to which the case may be transferred.

I will abide by any judgment entered in this matter by surrendering myself to serve any sentence imposed and will obey any order or direction in connection with such judgment as the Court may prescribe.

I will immediately inform my counsel of any change in my contact information, including my residence address and telephone number, so that I may be reached at all times.

I will not commit a federal, state, or local crime during the period of release.

I will not intimidate any witness, juror, or officer of the court or obstruct the criminal investigation in this case. Additionally, I will not tamper with, harass, or retaliate against any alleged witness, victim, or informant in this case. I understand that if I do so, I may be subject to further prosecution under the applicable statutes.

I will cooperate in the collection of a DNA sample under 42 U.S.C. § 14135a.

Defendant's Initials: For JLF Date: 10/21/21

Case Name: United States of America v. JEFFREY FORTENBERRYCase No. 2:21-CR-00491-SB☒ Defendant ☐ Material Witness**ACKNOWLEDGMENT OF DEFENDANT/MATERIAL WITNESS**

As a condition of my release on this bond, pursuant to Title 18 of the United States Code, I have read or have had interpreted to me and understand the general conditions of release, the preconditions, and the additional conditions of release and agree to comply with all conditions of release imposed on me and to be bound by the provisions of Local Criminal Rule 46-6.

Furthermore, it is agreed and understood that this is a continuing bond (including any proceeding on appeal or review) which will continue in full force and effect until such time as duly exonerated.

I understand that violation of any of the general and/or additional conditions of release of this bond may result in a revocation of release, an order of detention, and a new prosecution for an additional offense which could result in a term of imprisonment and/or fine.

I further understand that if I fail to obey and perform any of the general and/or additional conditions of release of this bond, this bond may be forfeited to the United States of America. If said **forfeiture is not set aside, judgment may be summarily entered in this Court against me and each surety, jointly and severally, for the bond amount, together with interest and costs. Execution of the judgment may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and other laws of the United States, and any cash or real or personal property or the collateral previously posted in connection with this bond may be forfeited.**

10/21/21

Date

J with authorization of Rep. Jeffrey Fortenberry  
Signature of Defendant / Material Witness(949) 369-3700

Telephone Number

Encinitas, CA 92024

City and State (DO NOT INCLUDE ZIP CODE)

☐ Check if interpreter is used: I have interpreted into the \_\_\_\_\_ language this entire form and have been told by the defendant that he or she understands all of it.

\_\_\_\_\_  
Interpreter's Signature\_\_\_\_\_  
DateApproved: Rozella A. OeiUnited States ~~District Judge~~ / Magistrate Judge10/21/2021

Date

If cash deposited: Receipt # \_\_\_\_\_ for \$ \_\_\_\_\_

(This bond may require surety agreements and affidavits pursuant to Local Criminal Rule 46.)

Defendant's Initials: For JLF Date: 10/21/21

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 5 Advisement of Rights

**DATE:** 10/20/2021

**PAGES:** 2

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

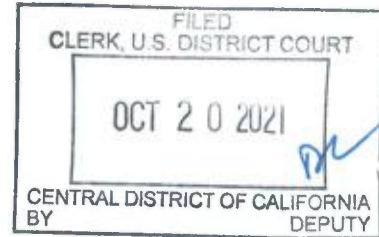
**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_NGEN\_20211020\_080040.pdf

**DOC NO:** 10



John L. Littrell (S.B.N. 221601)  
 BIENERT KATZMAN LITRELL WILLIAMS LLP  
 903 Calle Amanecer, Suite 350  
 San Clemente, CA 92673



**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

United States of America,

Plaintiff,

v.

JEFF FORTENBERRY

Defendant.

CASE NUMBER:

21-CR-00491-SB

**ADVISEMENT OF  
 DEFENDANT'S STATUTORY &  
 CONSTITUTIONAL RIGHTS**

You are in the United States District Court for the Central District of California because you have been charged with a crime against the United States or a violation of probation, supervised release, or pretrial release. The Court informs you that you have the following constitutional and statutory rights in connection with these proceedings:

You have the right to remain silent. Anything you say, sign, or write can be used against you in this or in any other case.

If you have not already received a copy of the charges, you will receive a copy today.

You have the right to hire and be represented by a lawyer of your choosing at each and every stage of these proceedings. If you cannot afford to hire a lawyer, you can apply to the Court to have a lawyer appointed to represent you for free from the office of the Federal Public Defender or the Indigent Defense Panel. The application for free counsel includes a financial affidavit, which you must sign under penalty of perjury. If you say something on the form that is not true or leave out material information, you could be charged with another crime, such as perjury or making a false statement.

If you are not a United States citizen, you may request that the prosecution notify your consular office that you have been arrested. Even without such a request, the law may require the prosecution to do so.

**IF YOU ARE MAKING YOUR INITIAL APPEARANCE BEFORE THE COURT**

You have a right to a bail hearing in which the Magistrate Judge will determine whether you will be released from custody before trial. If you disagree with the Magistrate Judge's decision, you can appeal that decision to another Judge of this Court. You or the prosecutor can request that the bail hearing be continued to another day.

If you have been charged by complaint, you are entitled to a preliminary hearing within 14 days if the Magistrate Judge orders that you be detained pending trial, or 21 days if the Magistrate Judge orders that you be released pending trial. In a preliminary hearing, the prosecution will attempt to show that there is probable cause to believe that you committed the crime charged in the complaint. You will not be entitled to a preliminary hearing, however, if the prosecution obtains an indictment in your case before the time set for the preliminary hearing. (Most often, the prosecutors in the Central District of California present their cases to the grand jury before the time set for the preliminary hearing and, therefore, no preliminary hearing is held.)

**IF YOU ARE CHARGED WITH A VIOLATION OF  
 YOUR CONDITIONS OF SUPERVISED RELEASE OR PROBATION**

If you are charged with a violation of the terms and conditions of your supervised release or probation and the Magistrate Judge detains you, you have the right to a preliminary hearing before a Magistrate Judge.

**IF YOU ARE CHARGED IN ANOTHER DISTRICT**

If you have been arrested on a charge from another district, you are entitled to wait until the prosecution produces a copy of the warrant authorizing your arrest. You are also entitled to an identity hearing in which the prosecution would have the burden of proving there is probable cause to believe that you are the person named in the charges. If you are charged in a complaint from another district, you may request to have a preliminary hearing held in the charging district. If you are charged with a violation of a term of supervised release or probation imposed in another district, you have a right to a preliminary hearing, which may, depending on where the alleged violation occurred, be held either here or in the charging district.

If you want to plead guilty in the Central District of California, you may request to have your case transferred to this district. To proceed in this district, the United States Attorneys for this district and the charging district must agree to the transfer.

**IF YOU ARE APPEARING FOR ARRAIGNMENT**

If you have been charged by indictment or information, you will be arraigned and may be asked to enter a not guilty plea today. After your arraignment, your case will be assigned to a District Judge of this Court for all further proceedings, unless a Judge has already been assigned.

You are entitled to a speedy and public trial by jury. The right to a jury trial can be waived.

You are entitled to see and hear the evidence and cross-examine the witnesses against you. You are entitled to the processes of the Court to subpoena witnesses on your behalf without cost to you if you are indigent. You do not have to prove your innocence. The prosecution has the burden to prove your guilt beyond a reasonable doubt.

**ACKNOWLEDGMENT OF DEFENDANT:**

I have read the above Advisement of Rights and understand it. I do not require a translation of this statement nor do I require an interpreter for court proceedings.

Dated: 10/20/21

[or]

  
Signature of Defendant

I have personally heard a translation in the \_\_\_\_\_ language read to me and understand the above Advisement of Rights.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Defendant

**STATEMENT OF THE INTERPRETER:**

I have translated this Advisement of Rights to the Defendant in the \_\_\_\_\_ language.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Interpreter

\_\_\_\_\_  
Print Name of Interpreter

**STATEMENT OF COUNSEL:**

I am satisfied that the defendant has read this Advisement of Rights or has heard the interpretation thereof and that he/she understands it.

Dated: October 19, 2021

/s/ John L. Littrell

\_\_\_\_\_  
Signature of Attorney

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 6 Criminal Standing Order

**DATE:** 10/25/2021

**PAGES:** 12

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_OGEN\_20211025\_080031.pdf

**DOC NO:** 8



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

USA

Plaintiff(s),

v.

JEFFREY FORTENBERRY

Defendant(s).

Case No. 2:21-cr-00491-SB

**CRIMINAL STANDING ORDER**

Indictment: 10/19/21

Pretrial Conference: December 7, 2021 at 8:00 a.m.

Trial: 12/14/21 at 8:00 a.m.

Last Day: 12/29/21

This case has been assigned to the calendar of Judge Stanley Blumenfeld, Jr. The Court periodically amends its Criminal Standing Order (CSO). Counsel should obtain the latest version of the CSO on the website (click hyperlink and scroll to Orders at the bottom of the page). The version date appears in the electronic file name and below the header above caption title.

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- A. BAIL REVIEW**
- B. DISCOVERY**
- C. FILING REQUIREMENTS**
- D. EX PARTE APPLICATIONS**
- E. MOTIONS**
- F. PRETRIAL CONFERENCE**
- G. TRIAL**
- H. SENTENCING**

1     **A.    BAIL REVIEW**

2           Any bail-review request based on changed circumstances or information not  
3     previously presented to the Magistrate Judge shall first be addressed to the  
4     Magistrate Judge and shall be served on opposing counsel and Pretrial Services.

5  
6     **B.    DISCOVERY**

7           **1.    Obligations.** Under federal law, including Fed. R. Crim. P. 5(f),  
8     *Brady v. Maryland*, 373 U.S. 83 (1963), and all applicable decisions interpreting  
9     *Brady*, the government has a continuing obligation to produce all information or  
10    evidence known to the government that is relevant to the guilt or punishment of a  
11    defendant, including, but not limited to, exculpatory evidence. Accordingly, the  
12    Court Orders the government to produce to each defendant in a timely manner all  
13    information or evidence known to the government that is either: (1) relevant to the  
14    defendant's guilt or punishment; or (2) favorable to the defendant on the issue of  
15    guilt or punishment. This Order is entered under Rule 5(f) and does not relieve any  
16    party in this matter of any other discovery obligation. The consequences for  
17    violating either this Order or the government's obligations under *Brady* include but  
18    are not limited to: contempt, sanction, referral to a disciplinary authority, adverse  
19    jury instruction, exclusion of evidence, and dismissal of charges.

20          **2.    Disputes.** Counsel shall meet with opposing counsel to resolve  
21    discovery disputes prior to filing a motion for discovery. All discovery motions  
22    shall state with particularity what is requested, the basis for the request, whether  
23    discovery has been requested, and opposing counsel's response to such request.  
24    Motions made without prior consultation with opposing counsel may not be heard.

25  
26    **C.    FILING REQUIREMENTS**

27          Counsel must follow the Central District's Local Rules and General Orders  
28    for electronic filing, unless superseded by this Order.

1       **1. Caption of Pleadings.** The title of every pleading shall contain:  
 2       (a) *the name of the first-listed defendant* and the name(s) and number(s) of the  
 3       defendant(s) to whom the pleading applies (in indictment order); (b) *the*  
 4       *defendant's registration number* when applicable to the relief requested (e.g.,  
 5       medical or transfer request); and (c) *the milestone dates* (see caption above) for –  
 6       Indictment, Pretrial Conference, Trial, and Last Day (of the speedy trial period).

7       **2. Docketing.** Docket an item only as to the applicable defendant(s),  
 8       using a clear entry so specifying, unless the item applies to all defendants.

9       **3. Format of Pleadings.** Typeface and spacing shall comply with Local  
 10       Rule 11-3.1.1, except the parties must use only *14-point Times New Roman font*  
 11       (for text and footnotes).

12       **4. Attachments.** Each declaration, exhibit, or other attachment  
 13       accompany a document must be filed as a separately docketed attachment to the  
 14       main docket entry with a clear description (e.g., Dkt. 29-1, Smith Decl.; Dkt. 29-2,  
 15       Ex. 1: License Agreement).

16       **5. Proposed Orders.** Proposed orders shall state the relief sought, the  
 17       defendant(s) affected, and, when relevant, the supporting rationale and authority–  
 18       and must be submitted in a form that would originate from the Court. Do **not**  
 19       include: (i) any attorney information on the caption page; (ii) any information in  
 20       the footer (except pagination); or (iii) any watermark or firm designation anywhere.

21       **6. Chambers Copies.** Provide paper and electronic copies in Word  
 22       format sent to Chambers email of: (i) all motion and related papers; (ii) proposed  
 23       orders; (iii) plea agreement(s); (iv) sentencing papers; and (v) all trial documents.

24

## 25       **D. EX PARTE APPLICATIONS**

26       **1. Declaration.** Ex parte applications should be filed only when  
 27       necessary after the parties meet and confer and shall include a declaration  
 28       specifying the meeting results and opposing counsel's position.

1           **2. Trial Continuance.** Any request for a trial continuance shall  
 2 schedule the trial on a Monday at least 10 calendar days before the last day of the  
 3 speedy trial period and specify the “Last Day” of that period under the caption title.

4           **3. Supervision-Related Relief.** Whenever supervision-related relief is  
 5 requested (e.g., a travel/transfer request), the applicant must obtain and submit a  
 6 separate writing from Probation & Pretrial Services stating their position and any  
 7 proposed conditions. A travel application for a defendant who has been appointed  
 8 counsel also must state the source of payment for all travel expenses.

## 9 10 **E. MOTIONS**

11           **1. Hearings.** Hearings on criminal motions are on Tuesdays at 8:00 a.m.  
 12 Include a time estimate below the hearing date on the face page of the motion for  
 13 any hearing expected to last 30+ minutes. Meet and confer before filing a motion  
 14 and describe the resolution efforts in the notice of motion. Notify the Court of any  
 15 resolution occurring after filing a motion no later than 7 days before the hearing.

16           **2. Length and Format.** The maximum memorandum length is *25 pages*  
 17 for supporting or opposing papers and *15 pages* for reply papers—using 14-point  
 18 Times New Roman font only.

19           **3. Pretrial Motions.** For all pretrial motions, file: (a) the motion *three*  
 20 weeks prior to the hearing; (b) the opposition/non-opposition *two* weeks prior to  
 21 the hearing; and (c) the reply *one* week prior to the hearing.

22           **4. Motions in Limine (MILs).** MILs are heard at the Pretrial  
 23 Conference (PTC) and require the filing of a Joint MIL (JMIL) and declaration of  
 24 the meet and confer. Failure to cooperate and comply with the procedures below  
 25 may result in sanctions.

26           a. **Meet and Confer.** Before filing a MIL, the moving party shall  
 27 send a letter identifying the evidence to be excluded, the specific terms of the order  
 28 sought, and the rationale and supporting authority. Counsel shall meet within five

1 calendar days of the letter. If unable to resolve the issue(s), counsel shall file a  
 2 JMIL consisting of: (a) the moving party's one-sentence statement in bold of the  
 3 evidence to be excluded and the anticipated prejudice; and (b) each party's  
 4 contentions set forth below a separate underlined heading for each (identifying the  
 5 moving party, the opposing party, and the moving party in reply).

6 b. Briefing Schedule. (i) The moving party's portion of the JMIL  
 7 is due *15 days* prior to the PTC; (ii) the opposing party's portion of the JMIL is due  
 8 *10 days* prior to the PTC; and (iii) the moving party replies and files and serves the  
 9 entire JMIL *5 days* prior to the PTC.

10 c. Page Limits. *Five pages* for the moving portion; *five pages* for  
 11 the opposing portion; and *three pages* for the reply portion.

## 12 13 **F. PRETRIAL CONFERENCE (PTC)**

14 The parties are to appear for the PTC on Tuesday at 8:00 a.m. the week prior  
 15 to the trial date.

16 1. PTC Filings. At least *five days before* the PTC (i.e., the prior  
 17 Thursday), the parties must submit the documents described below in (a) electronic  
 18 form in Word format sent to Chambers email and (b) joint binders.

19 2. Joint Binders. The binders must have a cover sheet and spine labels  
 20 with the case name, party, and volume number, a table of contents, and tab dividers  
 21 on the right separating the contents. A binder with more than 200 pages must be  
 22 placed in a Slant D-Ring binder. The joint binders shall include:

23 a. Indictment/Information. The government shall provide a  
 24 copy of the operative charging document.

25 b. Trial Memo. The government shall provide: (a) a fact  
 26 summary; (b) a statement of the elements of each charge and enhancement;  
 27 (c) a time estimate of the government's case; and (d) the applicable legal and  
 28 evidentiary issues. The government shall specify, after a meet and confer,

whether the parties agree or disagree on matters (a) – (d).

c. Joint Case Statement. The parties shall file a short joint statement of the case that will be read to the jury panel.

d. Witness List. The government shall identify all potential witnesses, using full names—including middle names and dates of birth for common names—listed in alphabetical order by surname. Use bold font to identify the witnesses the government likely will call. The witness list should include all potential witnesses, as it will be read to the jury panel. If the defense objects to identifying a potential witness (not already on the list), the objection must be raised (ex parte if necessary) at the PTC.

e. Exhibit List. The government shall provide a copy of the exhibit list (numbered “1, 2, 3 . . .,” not “1.1, 1.2, 1.3 . . .”). The list should include defense exhibits to the extent the defense does not object to disclosure.

f. Jury Instructions. Comply with the rules below.

(1) *Ninth Circuit Instructions*. Use the current edition of the Manual of Model Criminal Jury Instructions for the Ninth Circuit for all available instructions and otherwise the instructions from the current edition of O’Malley, Grenig & Lee, Federal Jury Practice and Instructions. Submit alternatives to instructions in these two sets *only if* counsel has a reasoned argument that those instructions are incomplete or inaccurate. Each requested instruction shall be numbered and set forth in full on a separate page, citing the authority or source of the requested instruction.

(2) *Joint Instructions*. Meet and confer to provide joint instructions. For any disputed instruction, the opponent shall state on a separate page following the disputed instruction: (a) the basis for the objection; (b) authority supporting the objection; and (c) an alternative instruction (if applicable). On the following page, the proponent shall briefly respond to the objection with supporting authority.

(3) *No Blanks/Brackets.* Do not leave blanks or inapplicable bracketed text in any instruction. It is counsel's duty to conform the instructions to the case (*e.g.*, inserting names of defendant(s) or witness(es) to whom the instruction applies and selecting the appropriate bracketed text).

(4) *Index.* An index shall accompany the jury instructions with: (i) the number of the instruction; (ii) a brief title of the instruction; (iii) the source of the instruction; and (iv) the page number of the instruction. Example:

| <u>Number</u> | <u>Title</u>        | <u>Source</u>  | <u>Page #</u> |
|---------------|---------------------|----------------|---------------|
| #1            | Conspiracy-Elements | 9th Cir. 8.5.1 | 1             |

(5) *"Clean" Electronic Copy.* Counsel shall submit to the Chambers email a "clean" set of all instructions in Word format that will be given to the jury, containing only the text of each instruction, set forth in full on each page, with the caption "Instruction No. \_\_" (eliminating titles, authority . . .).

- g. Verdict Form. Submit a proposed joint verdict form.
- h. Voir Dire. Submit any proposed questions for the jury panel.
- i. Motions in Limine. Submit any MILs (*see* Section E(4) *supra*).

## **G. TRIAL**

**1. Trial Schedule.** The schedule for the first day of trial is 8:30 a.m. to 4:30 p.m. with an hour lunch break. After the first day of trial, trial days are Monday through Thursday from 8:30 a.m. to approximately 2:00 p.m. with two twenty-minute breaks. The schedule is subject to change.

**2. Trial Documents.** On the first day of trial, counsel shall present the CRD with the documents below.

a. Exhibit List. Three copies of the government's exhibit list in the form specified in Local Rule 16-6.1 (Civil). A copy of the exhibit list with all admitted exhibits will be given to the jury during deliberations. All counsel shall

1 review and approve the list with the CRD before it is given to the jury.

2 b. Witness List. Three copies of the government's witness list in  
3 the form specified in Local Rule 16-5 (Civil).

4 c. Exhibits. *Government exhibits* with completed official exhibit  
5 tags (see website for official tags) bearing the same number shown on the exhibit  
6 list. An enlargement of an existing exhibit shall use the original exhibit number  
7 followed by an "A." Include two exhibit binders—a court and witness binder that  
8 contains all exhibits tabbed with the exhibit number. *Defense exhibits* (unless  
9 counsel objects at the PTC) with completed official exhibit tags, using exhibit  
10 numbers that do not duplicate government exhibit numbers, placed in three tabbed  
11 binders (two for the Court and one for witnesses) if there are more than 20 exhibits.  
12 *Custodial exhibits* (e.g., firearms or narcotics) must remain in law enforcement  
13 custody, produced when needed and otherwise secured—and the U.S. Marshals  
14 Service shall be advised well in advance if weapons or contraband are to be  
15 brought into the courthouse. *Exhibit Numbers*. Each party shall be assigned a 100-  
16 block of numbers, starting with the government and following with each defendant  
17 in indictment order (e.g., Government, 100- Defendant 1, 200-299; Defendant  
18 2, 300-399, etc.). If a party has more than 100 exhibits, the parties are to meet and  
19 propose a numbering scheme, using a block system, in the PTC filings.

20 d. Defense Lists. Defense counsel shall submit the defense  
21 witness and exhibit lists at the start of the defense case (if not previously done) in  
22 (i) electronic form by email of Word document(s) to Chambers address and (ii)  
23 hard-copy form to the CRD and the court reporter.

24 **3. Trial Procedures**. All counsel, parties, witnesses, court staff, and  
25 members of the public must adhere to the trial procedures described below.

26 a. Food, Beverage, Cell Phone. No food or beverage other than  
27 water is permitted in the courtroom. No cell phone is permitted in the courtroom  
28 unless it is turned off; and it may be confiscated if it interrupts the proceedings.

1           b. Timeliness. The parties and their counsel are ordered to be on  
2 time. The Court requires strict compliance with this order.

3           c. Communication. All remarks at trial shall be addressed to the  
4 Court. Counsel shall not directly address the CRD, the court reporter, or opposing  
5 counsel without court permission; and all requests to read back questions/answers  
6 or to place an exhibit before a witness shall be addressed to the Court. Counsel  
7 shall avoid having a conversation with anyone inside or outside the courtroom that  
8 may be overheard by a juror or prospective juror and shall admonish their clients  
9 and witnesses to comply with this order.

10          d. Movement. Counsel shall *rise* when addressing the Court and  
11 when the jury enters or leaves the courtroom. Counsel shall *remain at the lectern*  
12 when questioning a witness or giving an opening statement or closing argument.  
13 Counsel shall not approach the witness or enter the well without court permission  
14 and shall return to the lectern when the permitted purpose has been accomplished.  
15 Counsel shall *not leave counsel table* to confer with investigators, witnesses, or  
16 others while court is in session without court permission.

17          e. Objections. No “speaking objections” are allowed. Rise and  
18 state only the legal grounds of the objection (e.g., “Objection, hearsay”). If the  
19 Court invites counsel to clarify the grounds for objection, do not abuse the  
20 invitation by arguing the objection before the jury.

21          f. Sidebars. Sidebar conferences are generally not permitted at the  
22 request of counsel for evidentiary objections. The Court does not make jurors wait  
23 to address issues that could have been anticipated. Counsel should anticipate  
24 significant issues and schedule a hearing when the jury is not waiting—e.g., before  
25 the jurors arrive or after they leave for the day—and may submit short briefs.

26          g. Exhibits. No exhibit shall be placed before a witness unless a  
27 copy has been provided to the Court and opposing counsel. Nor shall any exhibit  
28 be displayed to the jury unless previously admitted or agreed upon by all counsel.

1 Once approved, an exhibit may be published by electronic projection, not by  
2 handing it to the jurors. Each counsel should maintain an exhibit list that notes  
3 when an exhibit has been admitted into evidence and shall return any exhibit to the  
4 CRD before leaving the courtroom at the end of the session.

5 h. Stipulations. Counsel should not offer a stipulation without  
6 having reached agreement with opposing counsel about its precise terms and  
7 without it having been fully explained to the defendant(s). Any stipulation of fact  
8 requires the defendant's personal agreement and shall be submitted to the Court in  
9 writing for approval.

10 i. Witnesses. Counsel shall also comply with the rules below.

11 (1) *Available Witnesses*. Counsel shall have witnesses  
12 available throughout the court day or risk being deemed to have rested.

13 (2) *Recess*. After a recess or adjournment, counsel shall  
14 ensure that his or her witness returns to the stand before trial resumes.

15 (3) *One Lawyer*. For each witness, a party may only have  
16 one lawyer who examines, and handles objections for, the witness.

17 (4) *Full Names*. During trial, counsel shall not refer to any  
18 witness over 18 years of age—including a client—by first name.

19 (5) *Experts*. The parties should cooperate in responding to  
20 reasonable, legitimate, and nonstrategic requests to call an expert out of sequence.  
21 Any accommodation dispute should be raised at the PTC (if possible).

22 (6) *Special Needs*. Counsel must notify the CRD in advance  
23 if a witness requires an interpreter or an accommodation under the Americans with  
24 Disabilities Act (or for any other reason).

25 (7) *Professionalism*. Counsel shall not show agreement or  
26 disagreement with witness testimony by comment, facial expression, or otherwise  
27 and shall admonish clients, family, and friends to comply with this order.

28 ///

1           j. Courtroom Technology. Any party intending to use courtroom  
2 technology during trial must review the information on Courtroom Technology on  
3 the Court website and must become familiar with all necessary equipment before  
4 trial. The Court will not delay the trial for technology issues that could have been  
5 avoided through reasonable planning; and the parties, in any event, should have a  
6 back-up plan. Any party intending to use equipment not regularly in the courtroom  
7 must notify the CRD at least one week before trial and obtain approval.

8           k. Court Reporting Services. Any party requesting special court  
9 reporter services shall notify the reporter as least two weeks before the service date.  
10 Please review the Court's website on Court Reporting Services for relevant  
11 information. The parties shall cooperate with the court reporter in providing  
12 spellings as necessary.

#### 13 **H. SENTENCING**

14       1. Original Sentencing. Once set, the sentencing hearing shall not be  
15 continued absent a detailed, substantial showing of good cause. No later than 14  
16 days before the hearing, each party shall submit either a sentencing memorandum  
17 or a written notice of intent not to file one. The Court generally does not consider  
18 sentencing videos, but if one is presented, counsel must justify its submission, limit  
19 the video to less than 10 minutes, and provide a transcript. The Court does not  
20 permit sentencing documents to be filed under seal except as strictly necessary and  
21 justified. When necessary, a sentencing document may be filed under seal along  
22 with a redacted version that deletes the confidential information and that justifies  
23 each deletion (e.g., "medical information").

24 ///

25 ///

26 ///

27 ///

28 ///

1           **2. Supervision Violation.** Any material submitted for a hearing on an  
2       alleged or adjudicated violation of supervision shall be filed, when possible, seven  
3       days before the hearing and otherwise no later than two court days (absent a  
4       showing of good cause set forth in a supporting declaration).

5  
6  
7       Dated: October 25, 2021



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Stanley Blumenfeld, Jr.  
United States District Court Judge

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 7 Motion for Protective Order (#1)

**DATE:** 10/27/2021

**PAGES:** 15

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211027\_080034.pdf

**DOC NO:** 12



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10 Attorneys for Plaintiff  
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JEFFREY FORTENBERRY,

18 Defendant.

Case No. 2:21-cr-00491-SB

STIPULATION AND JOINT REQUEST  
FOR A PROTECTIVE ORDER  
REGARDING DISCOVERY  
CONTAINING SENSITIVE AND  
PERSONAL IDENTIFYING  
INFORMATION AND COOPERATING  
WITNESS INFORMATION

PROPOSED ORDER FILED  
SEPARATELY

Indictment: 10/19/2021  
Pretrial Conference: 12/7/2021 at 8:00  
a.m.  
Trial: 12/14/2021 at 8:00 a.m.  
Last Day: 12/29/2021

25 Plaintiff, United States of America, by and through its counsel of record, the  
26 Acting United States Attorney for the Central District of California and Assistant  
27 United States Attorneys Mack E. Jenkins and Susan S. Har, and defendant JEFFREY  
28 FORTENBERRY (“defendant”), by and through his counsel of record, John Littrell

(collectively the “parties”), for the reasons set forth below, request that the Court enter the proposed protective order (the “Protective Order”) governing the use and dissemination of (1) sensitive information and personal identifying information (“PII”) of real persons pursuant to Federal Rule of Criminal Procedure Rule 16(d)(1), and (2) information related to confidential informant(s) and/or cooperating witness(es) who may testify at trial.

### Introduction and Grounds for Protective Order

1. Defendant is charged in this matter with violations of 18 U.S.C. § 1001(a)(1) (Scheme to Falsify and Conceal Material Facts), and 18 U.S.C. § 1001(a)(2) (Making False Statements). Defendant is released on bond pending trial.

2. A protective order is necessary because the government intends to produce to the defense materials regarding confidential informants or cooperating witnesses who participated in the government’s investigation and who may testify at trial. Because these materials could be used to identify the confidential informants or cooperating witnesses, the government believes that the unauthorized dissemination or distribution of the materials may compromise the ability of such persons to participate effectively in future investigations in an undercover capacity and/or may expose him/her to potential safety risks.

3. A protective order is also necessary because the discovery includes evidence related to sensitive and ongoing investigations, including those related to public officials. Accordingly, great care must be taken to ensure such discovery is used only for permissible purposes necessary to fairly litigate this case. The government also intends to produce to the defense materials containing third parties’ PII. The government believes that disclosure of this information without limitation risks the privacy and security of the information’s legitimate owners. Because the government has an ongoing obligation to protect third parties’ PII, the government cannot produce to defendant an unredacted set of discovery containing this information without the Court entering the Protective Order. Moreover, PII makes up a significant part of the

discovery in this case and such information itself, in many instances, has evidentiary value. If the government were to attempt to redact all this information in strict compliance with Federal Rule of Criminal Procedure 49.1, the Central District of California's Local Rules regarding redaction, and the Privacy Policy of the United States Judicial Conference, the defense would receive a set of discovery that would be highly confusing and difficult to understand, and it would be challenging for defense counsel to adequately evaluate the case, provide advice to defendant, or prepare for trial.

4. The purpose of the Protective Order is to (a) allow the government to comply with its discovery obligations while protecting this sensitive information from unauthorized dissemination, and (b) provide the defense with sufficient information to adequately represent defendant.

#### Definitions

5. The parties agree to the following definitions:

a. "Cooperator Materials" includes any information relating to a confidential informant's or cooperating witness's prior history of cooperation with law enforcement, prior criminal history, statements, or any other information that could be used to identify a confidential informant or cooperating witness, such as a name, image, address, date of birth, or unique personal identification number, such as a Social Security number, driver's license number, account number, or telephone number.

b. "Sensitive Materials" includes any information that can be used to identify a person, including a name, address, date of birth, Social Security number, driver's license number, telephone number, account number, email address, or personal identification number, and other information that is sensitive in nature, such that if it were disclosed in the public domain it could unnecessarily cause personal, business, or legal harm.

c. "Defense Team" includes (1) defendant's counsel of record ("defense counsel"); (2) other attorneys with an attorney-client relationship with

1 defendant who may be consulted regarding case strategy in this case; (3) defense  
2 investigators who are assisting defense counsel with this case; (4) retained experts or  
3 potential experts; and (5) paralegals, legal assistants, and other support staff to defense  
4 counsel who are providing assistance on this case. The Defense Team does not include  
5 defendant, defendant's family members, or any other associates of defendant.

6 Terms of the Protective Order

7 6. The parties jointly request the Court enter the Protective Order, which will  
8 permit the government to produce Cooperator Materials and Sensitive Materials in a  
9 manner that preserves the privacy and security of third parties. The parties agree that  
10 the following conditions in the Protective Order will serve these interests:

11 a. The government is authorized to provide defense counsel with  
12 Cooperator Materials and Sensitive Materials marked with the following legend (or  
13 substantially similar legend) for Cooperator Materials and Sensitive Materials,  
14 respectively: "SUBJECT TO PROTECTIVE ORDER – Cooperator Material" and  
15 "SUBJECT TO PROTECTIVE ORDER – Sensitive Material." The government may  
16 put that legend on the digital medium (such as DVD or hard drive) or simply label a  
17 digital folder on the digital medium to cover the content of that digital folder. The  
18 government may also redact any PII contained in the production of Cooperator  
19 Materials or Sensitive Materials.

20 b. If defendant objects to a designation that material contains  
21 Cooperator Materials or Sensitive Materials, the parties shall meet and confer. If the  
22 parties cannot reach an agreement regarding defendant's objection, defendant may  
23 apply to the Court to have the designation removed.

24 c. Defendant and the Defense Team agree to use the Cooperator  
25 Materials and Sensitive Materials solely to prepare for any pretrial motions, plea  
26 negotiations, trial, and sentencing hearing in this case, as well as any appellate and post-  
27 conviction proceedings related to this case.

1           d.     The Defense Team shall not permit anyone other than the Defense  
2 Team to have possession of Cooperator Materials, including defendant, while outside  
3 the presence of the Defense Team. Defendant may see and review Cooperator  
4 Materials only in the presence of the Defense Team, and the Defense Team shall ensure  
5 that defendant is never left alone with any Cooperator Materials. At the conclusion of  
6 any meeting with defendant at which defendant is permitted to view Cooperator  
7 Materials, defendant must return any Cooperator Materials to the Defense Team, who  
8 shall take all such materials with counsel. Defendant may not take any Cooperator  
9 Materials out of the room in which defendant is meeting with the Defense Team. At no  
10 time, under no circumstance, will any Cooperator Materials be left in the possession,  
11 custody, or control of defendant, regardless of defendant's custody status.

12           e.     Defendant may see and review Cooperator Materials as permitted by  
13 this Protective Order, but defendant may not copy, keep, maintain, or otherwise possess  
14 any Cooperator Material in this case at any time. Defendant also may not write down  
15 or memorialize any data or information contained in the Cooperator Materials.

16           f.     The Defense Team may review Cooperator Materials and Sensitive  
17 Materials with a witness or potential witness in this case, including defendant. A  
18 member of the Defense Team must be present if Cooperator Materials and Sensitive  
19 Materials is being shown to a witness or potential witness. Before being shown any  
20 portion of Cooperator Materials and Sensitive Materials, however, any witness or  
21 potential witness must be informed of, and agree to be bound by, the requirements of  
22 the Protective Order. No member of the Defense Team shall permit a witness or  
23 potential witness to retain Cooperator Materials and Sensitive Materials or any notes  
24 generated from Cooperator Materials and Sensitive Materials.

25           g.     The Defense Team shall maintain Cooperator Materials and  
26 Sensitive Materials safely and securely, and shall exercise reasonable care in ensuring  
27 the confidentiality of those materials by (1) not permitting anyone other than members  
28 of the Defense Team, defendant, witnesses, and potential witnesses, as restricted above,

1 to see Cooperator Materials and Sensitive Materials; (2) not divulging to anyone other  
2 than members of the Defense Team, defendant, witnesses, and potential witnesses, the  
3 contents of Cooperator Materials and Sensitive Materials; and (3) not permitting  
4 Cooperator Materials and Sensitive Materials to be outside the Defense Team's offices,  
5 homes, vehicles, or personal presence. Cooperator Materials and Sensitive Materials  
6 shall not be left unattended in any vehicle.

7 h. To the extent that defendant, the Defense Team, witnesses, or  
8 potential witnesses create notes that contain, in whole or in part, Cooperator Materials  
9 and Sensitive Materials, or to the extent that copies are made for authorized use by  
10 members of the Defense Team, such notes, copies, or reproductions become Cooperator  
11 Materials and Sensitive Materials subject to the Protective Order and must be handled  
12 in accordance with the terms of the Protective Order.

13 i. The Defense Team shall use Cooperator Materials and Sensitive  
14 Materials only for the litigation of this matter and for no other purpose. Litigation of  
15 this matter includes any appeal filed by defendant and any motion filed by defendant  
16 pursuant to 28 U.S.C. § 2255.

17 j. In the event that a party needs to file Cooperator Materials and  
18 Sensitive Materials with the Court or divulge the contents of Cooperator Materials and  
19 Sensitive Materials in court filings, defendant shall either (1) make the filing under seal  
20 and note it is pursuant to the Protective Order or (2) before filing, provide advance  
21 written notice to the government of defendant's intent to publicly file Cooperator  
22 Materials or Sensitive Materials to afford the government an opportunity to object or  
23 otherwise respond to such intention. The parties shall attempt to reach an agreement  
24 and make all reasonable attempts to limit the divulging of Cooperator Materials or  
25 Sensitive Materials by redaction. If the parties cannot reach an agreement regarding the  
26 proposed filing, the government may apply to the Court to have the filing redacted or  
27 sealed before it is filed.  
28

1           k.       The parties agree that any Cooperator Materials and Sensitive  
2 Materials inadvertently produced in the course of discovery prior to entry of the  
3 Protective Order shall be subject to the terms of the Protective Order. If Cooperator  
4 Materials or Sensitive Materials was inadvertently produced prior to entry of the  
5 Protective Order without being marked "SUBJECT TO PROTECTIVE ORDER," the  
6 government shall reproduce the material with the correct designation and notify defense  
7 counsel of the error. The Defense Team shall take immediate steps to destroy the  
8 unmarked material, including any copies.

9           l.       Upon the final disposition of this case, Cooperator Materials and  
10 Sensitive Materials shall not be used by the Defense Team, in any way, in any other  
11 matter, absent a court order. All materials designated subject to the Protective Order  
12 maintained in the Defense Team's files shall remain subject to the Protective Order  
13 unless and until such order is modified by the Court. Upon request by the government,  
14 within 30 days of the conclusion of appellate and post-conviction proceedings, defense  
15 counsel shall return all Cooperator Materials and Sensitive Materials to the government  
16 or certify that such materials are being kept pursuant to the California Business and  
17 Professions Code and the California Rules of Professional Conduct.

18           m.     In the event that there is a substitution of counsel prior to when such  
19 documents must be returned, new defense counsel must be informed of, and agree in  
20 writing to be bound by, the requirements of the Protective Order before the undersigned  
21 defense counsel transfers any Cooperator Materials and Sensitive Materials to the new  
22 defense counsel. New defense counsel's written agreement to be bound by the terms of  
23 the Protective Order must be returned to the Assistant U.S. Attorney assigned to the  
24 case. New defense counsel then will become the Defense Team's custodian of  
25 materials designated subject to the Protective Order and shall then become responsible,  
26 upon the conclusion of appellate and post-conviction proceedings, for returning to the  
27 government, certifying the destruction of, or retaining pursuant to the California  
28

1 Business and Professions Code and the California Rules of Professional Conduct all  
2 Cooperator Materials and Sensitive Materials.

3 n. Defense counsel agrees to advise defendant and all members of the  
4 Defense Team of their obligations under the Protective Order and ensure their  
5 agreement to follow the Protective Order, prior to providing defendant and members of  
6 the Defense Team with access to any materials subject to the Protective Order.

7 o. Defense Counsel has conferred with defendant regarding this  
8 stipulation and the proposed order thereon, and defendant agrees to the terms of the  
9 proposed order.

10 7. Accordingly, the parties have agreed to request that the Court enter a  
11 protective order in the form submitted herewith.

12 IT IS SO STIPULATED.

13 DATED: October 27, 2021

14 TRACY L. WILKISON  
Acting United States Attorney

15 SCOTT M. GARRINGER  
16 Assistant United States Attorney  
17 Chief, Criminal Division

18  
19 /s/ Susan Har  
20 MACK E. JENKINS  
21 SUSAN S. HAR  
Assistant United States Attorneys

22 Attorneys for Plaintiff  
23 UNITED STATES OF AMERICA

24  
25 DATED: October 27, 2021

26 /s/ per email authorization  
JOHN LITTRELL  
27 Attorney for Defendant  
JEFRREY FORTENBERRY  
28

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JEFFREY FORTENBERRY,  
  
Defendant.

Case No. 2:21-cr-00491-SB

[PROPOSED] PROTECTIVE ORDER  
REGARDING DISCOVERY  
CONTAINING SENSITIVE AND  
PERSONAL IDENTIFYING  
INFORMATION AND CONFIDENTIAL  
INFORMANT INFORMATION

Indictment: 10/19/2021  
Pretrial Conference: 12/7/2021 at 8:00  
a.m.  
Trial: 12/14/2021 at 8:00 a.m.  
Last Day: 12/29/2021

The Court has read and considered the parties' Stipulation for a Protective Order Regarding Discovery Containing Sensitive and Personal Identifying Information and Cooperating Witness Information, filed by the government and defendant JEFFREY FORTENBERRY ("defendant") in this matter on October 27, 2021, which this Court incorporates by reference into this order, and FOR GOOD CAUSE SHOWN the Court hereby FINDS AND ORDERS as follows:

1. The government's discovery in this case relates to defendant's alleged crimes, that is, violations of 18 U.S.C. § 1001(a)(1) (Scheme to Falsify and Conceal Material Facts), and 18 U.S.C. § 1001(a)(2) (Making False Statements).

2. A protective order for the discovery is necessary so that the government can produce to the defense materials regarding confidential informants or cooperating witnesses who participated in the government's investigation and who may testify at trial. Because these materials could be used to identify the confidential informants or cooperating witnesses, the Court finds that the unauthorized dissemination or distribution of the materials may compromise the ability of such persons to participate

1 effectively in future investigations in an undercover capacity and/or may expose  
2 him/her to potential safety risks.

3       3. A protective order for the discovery is also necessary so that the  
4 government can produce to the defense materials related to sensitive and ongoing  
5 investigations, including those related to public officials, and/or materials containing  
6 third parties' PII. The Court finds that disclosure of this information without limitation  
7 risks the privacy and security of the information's legitimate owners. Because the  
8 government has an ongoing obligation to protect third parties' PII, the government  
9 cannot produce to defendant an unredacted set of discovery containing this information  
10 without this Court entering the Protective Order. Moreover, PII makes up a significant  
11 part of the discovery in this case and such information itself, in many instances, has  
12 evidentiary value. If the government were to attempt to redact all this information in  
13 strict compliance with Federal Rule of Criminal Procedure 49.1, the Central District of  
14 California's Local Rules regarding redaction, and the Privacy Policy of the United  
15 States Judicial Conference, the defense would receive a set of discovery that would be  
16 highly confusing and difficult to understand, and it would be challenging for defense  
17 counsel to adequately evaluate the case, provide advice to defendant, or prepare for  
18 trial.

19       4. The purpose of this Protective Order is therefore to (a) allow the  
20 government to comply with its discovery obligations while protecting this sensitive  
21 information from unauthorized dissemination, and (b) provide the defense with  
22 sufficient information to adequately represent defendant.

23       5. Accordingly, the discovery that the government will provide to defense  
24 counsel in the above-captioned case will be subject to this Protective Order, as follows:

25       a. As used herein, "Cooperator Materials" includes any information  
26 relating to a confidential informant's or cooperating witness's prior history of  
27 cooperation with law enforcement, prior criminal history, statements, or any other  
28 information that could be used to identify a confidential informant or cooperating

1 witness, such as a name, image, address, date of birth, or unique personal identification  
2 number, such as a Social Security number, driver's license number, account number, or  
3 telephone number.

4           b. As used herein, "Sensitive Materials" includes any information that  
5 can be used to identify a person, including a name, address, date of birth, Social  
6 Security number, driver's license number, telephone number, account number, email  
7 address, or personal identification number, and other information that is sensitive in  
8 nature, such that if it were disclosed in the public domain it could unnecessarily cause  
9 personal, business, or legal harm.

10           c. "Defense Team" includes (1) defendant's counsel of record  
11 ("defense counsel"); (2) other attorneys with an attorney-client relationship with  
12 defendant who may be consulted regarding case strategy in this case; (3) defense  
13 investigators who are assisting defense counsel with this case; (4) retained experts or  
14 potential experts; and (5) paralegals, legal assistants, and other support staff to defense  
15 counsel who are providing assistance on this case. The Defense Team does not include  
16 defendant, defendant's family members, or any other associates of defendant.

17           d. The government is authorized to provide defense counsel with  
18 Cooperator Materials and Sensitive Materials marked with the following legend (or  
19 substantially similar legend) for Cooperator Materials and Sensitive Materials,  
20 respectively: "SUBJECT TO PROTECTIVE ORDER – Cooperator Material" and  
21 "SUBJECT TO PROTECTIVE ORDER – Sensitive Material." The government may  
22 put that legend on the digital medium (such as DVD or hard drive) or simply label a  
23 digital folder on the digital medium to cover the content of that digital folder. The  
24 government may also redact any PII contained in the production of Cooperator  
25 Materials or Sensitive Materials.

26           e. If defendant objects to a designation that material contains  
27 Cooperator Materials or Sensitive Materials, the parties shall meet and confer. If the  
28

1 parties cannot reach an agreement regarding defendant's objection, defendant may  
2 apply to this Court to have the designation removed.

3 f. Defendant and the Defense Team shall use the Cooperator Materials  
4 and Sensitive Materials solely to prepare for any pretrial motions, plea negotiations,  
5 trial, and sentencing hearing in this case, as well as any appellate and post-conviction  
6 proceedings.

7 g. The Defense Team shall not permit anyone other than the Defense  
8 Team to have possession of Cooperator Materials, including defendant, while outside  
9 the presence of the Defense Team. Defendant may see and review Cooperator  
10 Materials only in the presence of the Defense Team, and the Defense Team shall ensure  
11 that defendant is never left alone with any Cooperator Materials. At the conclusion of  
12 any meeting with defendant at which defendant is permitted to view Cooperator  
13 Materials, defendant must return any Cooperator Materials to the Defense Team, who  
14 shall take all such materials with counsel. Defendant may not take any Cooperator  
15 Materials out of the room in which defendant is meeting with the Defense Team. At no  
16 time, under no circumstance, will any Cooperator Materials be left in the possession,  
17 custody, or control of defendant, regardless of defendant's custody status.

18 h. Defendant may see and review Cooperator Materials as permitted by  
19 this Protective Order, but defendant may not copy, keep, maintain, or otherwise possess  
20 any Confidential Information in this case at any time. Defendant also may not write  
21 down or memorialize any data or information contained in the Cooperator Materials.

22 i. The Defense Team may review Cooperator Materials and Sensitive  
23 Materials with a witness or potential witness in this case, including defendant. A  
24 member of the Defense Team must be present if Cooperator Materials and Sensitive  
25 Materials is being shown to a witness or potential witness. Before being shown any  
26 portion of Cooperator Materials and Sensitive Materials, however, any witness or  
27 potential witness must be informed of, and agree to be bound by, the requirements of  
28 the Protective Order. No member of the Defense Team shall permit a witness or

1 potential witness to retain Cooperator Materials and Sensitive Materials or any notes  
2 generated from Cooperator Materials and Sensitive Materials.

3 j. The Defense Team shall maintain Cooperator Materials and  
4 Sensitive Materials safely and securely, and shall exercise reasonable care in ensuring  
5 the confidentiality of those materials by (1) not permitting anyone other than members  
6 of the Defense Team, defendant, witnesses, and potential witnesses, as restricted above,  
7 to see Cooperator Materials and Sensitive Materials; (2) not divulging to anyone other  
8 than members of the Defense Team, defendant, witnesses, and potential witnesses, the  
9 contents of Cooperator Materials and Sensitive Materials; and (3) not permitting  
10 Cooperator Materials and Sensitive Materials to be outside the Defense Team's offices,  
11 homes, vehicles, or personal presence. Cooperator Materials and Sensitive Materials  
12 shall not be left unattended in any vehicle.

13 k. To the extent that defendant, the Defense Team, witnesses, or  
14 potential witnesses create notes that contain, in whole or in part, Cooperator Materials  
15 and Sensitive Materials, or to the extent that copies are made for authorized use by  
16 members of the Defense Team, such notes, copies, or reproductions become Cooperator  
17 Materials and Sensitive Materials subject to the Protective Order and must be handled  
18 in accordance with the terms of the Protective Order.

19 l. The Defense Team shall use Cooperator Materials and Sensitive  
20 Materials only for the litigation of this matter and for no other purpose. Litigation of  
21 this matter includes any appeal filed by defendant and any motion filed by defendant  
22 pursuant to 28 U.S.C. § 2255.

23 m. In the event that a party needs to file Cooperator Materials and  
24 Sensitive Materials with the Court or divulge the contents of Cooperator Materials and  
25 Sensitive Materials in court filings, defendant shall either (1) make the filing under seal  
26 and note it is pursuant to the Protective Order or (2) before filing, provide advance  
27 written notice to the government of defendant's intent to publicly file Cooperator  
28 Materials or Sensitive Materials to afford the government an opportunity to object or

1 otherwise respond to such intention. The parties shall attempt to reach an agreement  
2 and make all reasonable attempts to limit the divulging of Cooperator Materials or  
3 Sensitive Materials by redaction. If the parties cannot reach an agreement regarding the  
4 proposed filing, the government may apply to the Court to have the filing redacted or  
5 sealed before it is filed.

6 n. Any Cooperator Materials and Sensitive Materials inadvertently  
7 produced in the course of discovery prior to entry of the Protective Order shall be  
8 subject to the terms of the Protective Order. If Cooperator Materials or Sensitive  
9 Materials was inadvertently produced prior to entry of the Protective Order without  
10 being marked "SUBJECT TO PROTECTIVE ORDER," the government shall  
11 reproduce the material with the correct designation and notify defense counsel of the  
12 error. The Defense Team shall take immediate steps to destroy the unmarked material,  
13 including any copies.

14 o. Cooperator Materials and Sensitive Materials shall not be used by  
15 any member of the Defense Team, in any way, in any other matter, absent an order by  
16 this Court. All materials designated subject to the Protective Order maintained in the  
17 Defense Team's files shall remain subject to the Protective Order unless and until such  
18 order is modified by this Court. Upon request by the government, within 30 days of the  
19 conclusion of appellate and post-conviction proceedings, defense counsel shall return  
20 all Cooperator Materials and Sensitive Materials to the government or certify that such  
21 materials are being kept pursuant to the California Business and Professions Code and  
22 the California Rules of Professional Conduct.

23 p. In the event that there is a substitution of counsel prior to when such  
24 documents must be returned, new defense counsel must be informed of, and agree in  
25 writing to be bound by, the requirements of the Protective Order before defense counsel  
26 transfers any Cooperator Materials and Sensitive Materials to the new defense counsel.  
27 New defense counsel's written agreement to be bound by the terms of the Protective  
28 Order must be returned to the Assistant U.S. Attorney assigned to the case. New

1 defense counsel then will become the Defense Team's custodian of materials  
2 designated subject to the Protective Order and shall then become responsible, upon the  
3 conclusion of appellate and post-conviction proceedings, for returning to the  
4 government, certifying the destruction of, or retaining pursuant to the California  
5 Business and Professions Code and the California Rules of Professional Conduct all  
6 Cooperator Materials and Sensitive Materials.

7 q. Defense counsel shall advise defendant and all members of the  
8 Defense Team of their obligations under the Protective Order and ensure their  
9 agreement to follow the Protective Order, prior to providing defendant and members of  
10 the Defense Team with access to any materials subject to the Protective Order.

11 IT IS SO ORDERED.

12  
13 \_\_\_\_\_  
14 DATE

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14 HON. STANLEY BLUMENFELD JR.  
15 UNITED STATES DISTRICT JUDGE  
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**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 8 Order Granting Protective Order

**DATE:** 10/28/2021

**PAGES:** 7

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_OGEN\_20211028\_080001.pdf

**DOC NO:** 13



October 28, 2021

CENTRAL DISTRICT OF CALIFORNIA  
BY: VPC DEPUTY

#58

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JEFFREY FORTENBERRY,  
  
Defendant.

Case No. 2:21-cr-00491-SB

PROTECTIVE ORDER REGARDING  
DISCOVERY CONTAINING SENSITIVE  
AND PERSONAL IDENTIFYING  
INFORMATION AND CONFIDENTIAL  
INFORMANT INFORMATION

Indictment: 10/19/2021

Pretrial Conference: 12/7/2021 at 8:00  
a.m.

Trial: 12/14/2021 at 8:00 a.m.

Last Day: 12/29/2021

The Court has read and considered the parties' Stipulation for a Protective Order Regarding Discovery Containing Sensitive and Personal Identifying Information and Cooperating Witness Information, filed by the government and defendant JEFFREY FORTENBERRY ("defendant") in this matter on October 27, 2021, which this Court incorporates by reference into this order, and FOR GOOD CAUSE SHOWN the Court hereby FINDS AND ORDERS as follows:

1. The government's discovery in this case relates to defendant's alleged crimes, that is, violations of 18 U.S.C. § 1001(a)(1) (Scheme to Falsify and Conceal Material Facts), and 18 U.S.C. § 1001(a)(2) (Making False Statements).

2. A protective order for the discovery is necessary so that the government can produce to the defense materials regarding confidential informants or cooperating witnesses who participated in the government's investigation and who may testify at trial. Because these materials could be used to identify the confidential informants or cooperating witnesses, the Court finds that the unauthorized dissemination or distribution of the materials may compromise the ability of such persons to participate

1 effectively in future investigations in an undercover capacity and/or may expose  
2 him/her to potential safety risks.

3       3. A protective order for the discovery is also necessary so that the  
4 government can produce to the defense materials related to sensitive and ongoing  
5 investigations, including those related to public officials, and/or materials containing  
6 third parties' PII. The Court finds that disclosure of this information without limitation  
7 risks the privacy and security of the information's legitimate owners. Because the  
8 government has an ongoing obligation to protect third parties' PII, the government  
9 cannot produce to defendant an unredacted set of discovery containing this information  
10 without this Court entering the Protective Order. Moreover, PII makes up a significant  
11 part of the discovery in this case and such information itself, in many instances, has  
12 evidentiary value. If the government were to attempt to redact all this information in  
13 strict compliance with Federal Rule of Criminal Procedure 49.1, the Central District of  
14 California's Local Rules regarding redaction, and the Privacy Policy of the United  
15 States Judicial Conference, the defense would receive a set of discovery that would be  
16 highly confusing and difficult to understand, and it would be challenging for defense  
17 counsel to adequately evaluate the case, provide advice to defendant, or prepare for  
18 trial.

19       4. The purpose of this Protective Order is therefore to (a) allow the  
20 government to comply with its discovery obligations while protecting this sensitive  
21 information from unauthorized dissemination, and (b) provide the defense with  
22 sufficient information to adequately represent defendant.

23       5. Accordingly, the discovery that the government will provide to defense  
24 counsel in the above-captioned case will be subject to this Protective Order, as follows:

25       a. As used herein, "Cooperator Materials" includes any information  
26 relating to a confidential informant's or cooperating witness's prior history of  
27 cooperation with law enforcement, prior criminal history, statements, or any other  
28 information that could be used to identify a confidential informant or cooperating

1 witness, such as a name, image, address, date of birth, or unique personal identification  
2 number, such as a Social Security number, driver's license number, account number, or  
3 telephone number.

4 b. As used herein, "Sensitive Materials" includes any information that  
5 can be used to identify a person, including a name, address, date of birth, Social  
6 Security number, driver's license number, telephone number, account number, email  
7 address, or personal identification number, and other information that is sensitive in  
8 nature, such that if it were disclosed in the public domain it could unnecessarily cause  
9 personal, business, or legal harm.

10 c. "Defense Team" includes (1) defendant's counsel of record  
11 ("defense counsel"); (2) other attorneys with an attorney-client relationship with  
12 defendant who may be consulted regarding case strategy in this case; (3) defense  
13 investigators who are assisting defense counsel with this case; (4) retained experts or  
14 potential experts; and (5) paralegals, legal assistants, and other support staff to defense  
15 counsel who are providing assistance on this case. The Defense Team does not include  
16 defendant, defendant's family members, or any other associates of defendant.

17 d. The government is authorized to provide defense counsel with  
18 Cooperator Materials and Sensitive Materials marked with the following legend (or  
19 substantially similar legend) for Cooperator Materials and Sensitive Materials,  
20 respectively: "SUBJECT TO PROTECTIVE ORDER – Cooperator Material" and  
21 "SUBJECT TO PROTECTIVE ORDER – Sensitive Material." The government may  
22 put that legend on the digital medium (such as DVD or hard drive) or simply label a  
23 digital folder on the digital medium to cover the content of that digital folder. The  
24 government may also redact any PII contained in the production of Cooperator  
25 Materials or Sensitive Materials.

26 e. If defendant objects to a designation that material contains  
27 Cooperator Materials or Sensitive Materials, the parties shall meet and confer. If the  
28

1 parties cannot reach an agreement regarding defendant's objection, defendant may  
2 apply to this Court to have the designation removed.

3 f. Defendant and the Defense Team shall use the Cooperator Materials  
4 and Sensitive Materials solely to prepare for any pretrial motions, plea negotiations,  
5 trial, and sentencing hearing in this case, as well as any appellate and post-conviction  
6 proceedings.

7 g. The Defense Team shall not permit anyone other than the Defense  
8 Team to have possession of Cooperator Materials, including defendant, while outside  
9 the presence of the Defense Team. Defendant may see and review Cooperator  
10 Materials only in the presence of the Defense Team, and the Defense Team shall ensure  
11 that defendant is never left alone with any Cooperator Materials. At the conclusion of  
12 any meeting with defendant at which defendant is permitted to view Cooperator  
13 Materials, defendant must return any Cooperator Materials to the Defense Team, who  
14 shall take all such materials with counsel. Defendant may not take any Cooperator  
15 Materials out of the room in which defendant is meeting with the Defense Team. At no  
16 time, under no circumstance, will any Cooperator Materials be left in the possession,  
17 custody, or control of defendant, regardless of defendant's custody status.

18 h. Defendant may see and review Cooperator Materials as permitted by  
19 this Protective Order, but defendant may not copy, keep, maintain, or otherwise possess  
20 any Confidential Information in this case at any time. Defendant also may not write  
21 down or memorialize any data or information contained in the Cooperator Materials.

22 i. The Defense Team may review Cooperator Materials and Sensitive  
23 Materials with a witness or potential witness in this case, including defendant. A  
24 member of the Defense Team must be present if Cooperator Materials and Sensitive  
25 Materials is being shown to a witness or potential witness. Before being shown any  
26 portion of Cooperator Materials and Sensitive Materials, however, any witness or  
27 potential witness must be informed of, and agree to be bound by, the requirements of  
28 the Protective Order. No member of the Defense Team shall permit a witness or

1 potential witness to retain Cooperator Materials and Sensitive Materials or any notes  
2 generated from Cooperator Materials and Sensitive Materials.

3 j. The Defense Team shall maintain Cooperator Materials and  
4 Sensitive Materials safely and securely, and shall exercise reasonable care in ensuring  
5 the confidentiality of those materials by (1) not permitting anyone other than members  
6 of the Defense Team, defendant, witnesses, and potential witnesses, as restricted above,  
7 to see Cooperator Materials and Sensitive Materials; (2) not divulging to anyone other  
8 than members of the Defense Team, defendant, witnesses, and potential witnesses, the  
9 contents of Cooperator Materials and Sensitive Materials; and (3) not permitting  
10 Cooperator Materials and Sensitive Materials to be outside the Defense Team's offices,  
11 homes, vehicles, or personal presence. Cooperator Materials and Sensitive Materials  
12 shall not be left unattended in any vehicle.

13 k. To the extent that defendant, the Defense Team, witnesses, or  
14 potential witnesses create notes that contain, in whole or in part, Cooperator Materials  
15 and Sensitive Materials, or to the extent that copies are made for authorized use by  
16 members of the Defense Team, such notes, copies, or reproductions become Cooperator  
17 Materials and Sensitive Materials subject to the Protective Order and must be handled  
18 in accordance with the terms of the Protective Order.

19 l. The Defense Team shall use Cooperator Materials and Sensitive  
20 Materials only for the litigation of this matter and for no other purpose. Litigation of  
21 this matter includes any appeal filed by defendant and any motion filed by defendant  
22 pursuant to 28 U.S.C. § 2255.

23 m. In the event that a party needs to file Cooperator Materials and  
24 Sensitive Materials with the Court or divulge the contents of Cooperator Materials and  
25 Sensitive Materials in court filings, defendant shall either (1) make the filing under seal  
26 and note it is pursuant to the Protective Order or (2) before filing, provide advance  
27 written notice to the government of defendant's intent to publicly file Cooperator  
28 Materials or Sensitive Materials to afford the government an opportunity to object or

1 otherwise respond to such intention. The parties shall attempt to reach an agreement  
2 and make all reasonable attempts to limit the divulging of Cooperator Materials or  
3 Sensitive Materials by redaction. If the parties cannot reach an agreement regarding the  
4 proposed filing, the government may apply to the Court to have the filing redacted or  
5 sealed before it is filed.

6 n. Any Cooperator Materials and Sensitive Materials inadvertently  
7 produced in the course of discovery prior to entry of the Protective Order shall be  
8 subject to the terms of the Protective Order. If Cooperator Materials or Sensitive  
9 Materials was inadvertently produced prior to entry of the Protective Order without  
10 being marked "SUBJECT TO PROTECTIVE ORDER," the government shall  
11 reproduce the material with the correct designation and notify defense counsel of the  
12 error. The Defense Team shall take immediate steps to destroy the unmarked material,  
13 including any copies.

14 o. Cooperator Materials and Sensitive Materials shall not be used by  
15 any member of the Defense Team, in any way, in any other matter, absent an order by  
16 this Court. All materials designated subject to the Protective Order maintained in the  
17 Defense Team's files shall remain subject to the Protective Order unless and until such  
18 order is modified by this Court. Upon request by the government, within 30 days of the  
19 conclusion of appellate and post-conviction proceedings, defense counsel shall return  
20 all Cooperator Materials and Sensitive Materials to the government or certify that such  
21 materials are being kept pursuant to the California Business and Professions Code and  
22 the California Rules of Professional Conduct.

23 p. In the event that there is a substitution of counsel prior to when such  
24 documents must be returned, new defense counsel must be informed of, and agree in  
25 writing to be bound by, the requirements of the Protective Order before defense counsel  
26 transfers any Cooperator Materials and Sensitive Materials to the new defense counsel.  
27 New defense counsel's written agreement to be bound by the terms of the Protective  
28 Order must be returned to the Assistant U.S. Attorney assigned to the case. New

1 defense counsel then will become the Defense Team's custodian of materials  
2 designated subject to the Protective Order and shall then become responsible, upon the  
3 conclusion of appellate and post-conviction proceedings, for returning to the  
4 government, certifying the destruction of, or retaining pursuant to the California  
5 Business and Professions Code and the California Rules of Professional Conduct all  
6 Cooperator Materials and Sensitive Materials.

7 q. Defense counsel shall advise defendant and all members of the  
8 Defense Team of their obligations under the Protective Order and ensure their  
9 agreement to follow the Protective Order, prior to providing defendant and members of  
10 the Defense Team with access to any materials subject to the Protective Order.

11 IT IS SO ORDERED.

12 Dated: October 28, 2021

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15 Stanley Blumenfeld, Jr.  
16 United States District Judge  
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**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 9 Motion to Dismiss (Venue)

**DATE:** 11/2/2021

**PAGES:** 19

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211102\_090058.pdf

**DOC NO:** 14



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11 *Attorneys for Defendant*  
12 *Hon. Jeffrey Lane Fortenberry*

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 JEFFREY FORTENBERRY,

19 Defendant.

Case No. 2:21-cr-491-SB  
Hon. Stanley Blumenfeld, Jr.

**HON. JEFFREY LANE  
FORTENBERRY'S MOTION TO  
DISMISS FOR LACK OF VENUE**

Hearing Date: November 23, 2021  
Hearing Time: 8:00 a.m.  
Estimated Time: 1 hour

Indictment: Oct. 19, 2021  
Pretrial Conference: Dec. 7, 2021  
Trial: Dec. 14, 2021  
Last Day: Dec. 29, 2021

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on November 23, 2021, at 8:00 a.m., or as soon  
3 thereafter as this matter may be heard in the courtroom of the Honorable Stanley  
4 Blumenfeld, Jr., United States District Court Judge, located at 350 West 1st Street, Los  
5 Angeles, California 90012, Courtroom 6C, by and through his attorneys of record, the  
6 Honorable Jeffrey Lane Fortenberry will move, and hereby does move, to dismiss the  
7 indictment because it fails to allege facts establishing that venue properly lies in this judicial  
8 district.

9 This motion is based on this Notice, the Memorandum of Points and Authorities  
10 currently filed herewith, the files and records in this case, and any evidence and argument  
11 that may be presented at the hearing on this matter.

12  
13 Date: November 2, 2021

BIENERT KATZMAN LITTRELL  
WILLIAMS LLP

14  
15  
16 By:  \_\_\_\_\_

John L. Littrell

Ryan V. Fraser

*Attorneys for Hon. Jeffrey Lane Fortenberry*

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## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION**

“Questions of venue in criminal cases . . . are not merely matters of formal legal procedure.” *United States v. Johnson*, 323 U.S. 273, 276 (1944). Determining whether venue is proper in a judicial district involves “matters that touch closely the fair administration of criminal justice and public confidence in it.” *Id.*

Restricting the venue of criminal trials by reference to where the alleged offense was committed mattered enough to the Founding Fathers that they complained specifically of facing distant criminal trials in the Declaration of Independence,<sup>1</sup> and addressed the issue of venue for criminal cases in two separate parts of the Constitution: Article III and the Sixth Amendment. *See United States v. Auernheimer*, 748 F.3d 525, 532 (3d Cir. 2014).

The Framers of the Constitution viewed venue as an important safeguard against the hardship associated with being forced to travel far from home to face criminal charges. *See United States v. Cores*, 356 U.S. 405, 407 (1958) (“The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place.”); *Hyde v. Shine*, 199 U.S. 62, 78 (1905) (“To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship, to which he ought not to be subjected if the case can be tried in a court of his own jurisdiction.”). Perhaps even more importantly, they were concerned about the composition of the jury and its impact on the fairness of the trial. Thus, the Sixth Amendment expressly requires not only that the defendant be tried by an “impartial jury,” but also that the jury comprise only residents of “the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI (“In all criminal prosecutions, the

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<sup>1</sup> *See* Declaration of Independence para. 21 (U.S. 1776) (accusing the King of Great Britain of “transporting us beyond Seas to be tried for pretended offences.”).

1 accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State  
2 and district wherein the crime shall have been committed.”).

3 These important constitutional safeguards were intended to prevent precisely the kind  
4 of opportunistic venue shopping the government has engaged in here.

5 Congressman Fortenberry lives in Lincoln, Nebraska, a small city in Eastern  
6 Nebraska approximately 1500 miles from this Court. He splits his time between his home  
7 district and Washington, D.C. He has no meaningful connection to California.

8 This case concerns two alleged false statements. One was uttered in Nebraska; the  
9 other, in Washington, D.C. Neither statement was made in California.

10 The government’s attempt to drag Congressman Fortenberry across the country to  
11 face a jury of Californians for these alleged offenses represents a gross abuse of power by  
12 the Department of Justice. It was precisely this type of abuse that led the framers to insist  
13 on the right to a jury in “the State and district wherein the crime shall have been committed.”  
14 *See Paul Mogin, Fundamental Since Our Country’s Founding: United States v.*  
15 *Auernheimer and the Sixth Amendment Right to Be Tried in the District in Which the*  
16 *Alleged Crime Was Committed*, 6 U. Denv. Crim. L. Rev. 37, 40 (2016).

17 Congressman Fortenberry has not committed any crime, and he should not be  
18 prosecuted in any judicial district. But if the government thinks otherwise, it must, at  
19 minimum, honor his fundamental right to an “impartial jury of the State and district wherein  
20 the crime shall have been committed.” U.S. Const. amend. VI. This Court should dismiss  
21 the indictment for failure to allege facts supporting venue in this district.

## 22 **II. STATEMENT OF FACTS**

23 Congressman Jeffrey Fortenberry has lived in Lincoln, Nebraska, since 1995.  
24 In 2004, he was elected to Congress as a Representative for Nebraska’s First District. He  
25 has been reelected by Nebraskans nine times, most recently in 2020. As a member of the  
26 House of Representatives, Congressman Fortenberry splits his time between his home  
27 district in Nebraska and Washington, D.C. He has an office in Lincoln, Nebraska, and an  
28 office in Washington, D.C. He does not have an office or residence in California.

1 According to the Indictment, in 2016, Gilbert Chagoury, a “Nigerian-born, billionaire  
 2 business[]person of Lebanese descent” arranged for \$30,000 of “his money” to be  
 3 contributed to Congressman Fortenberry’s 2016 reelection campaign, through other  
 4 individuals. Dkt. No. 1 at ¶¶ 3, 11. In furtherance of this alleged plot, Chagoury is said to  
 5 have given the money to Toufic Baaklini, who in turn gave it to “Individual H” at a  
 6 restaurant in Los Angeles in January 2016. *Id.* at ¶ 11. As alleged in the Indictment,  
 7 “Individual H” then recruited other individuals to make donations to Congressman  
 8 Fortenberry’s 2016 reelection campaign at the fundraiser and reimbursed them in cash. *Id.*

9 The government does not allege that Congressman Fortenberry knew about  
 10 Chagoury’s scheme to funnel foreign donations to his campaign in 2016. He didn’t. But  
 11 this case is not about the 2016 fundraiser. It is about alleged false statements by  
 12 Congressman Fortenberry three years later in Nebraska and Washington, D.C.

13 The indictment does not allege that Congressman Fortenberry committed any act in  
 14 this district, nor that he intended his statements to reach this district. Instead, the Indictment  
 15 alleges only that his statements in Nebraska and Washington, D.C., “affect[ed] the Federal  
 16 Investigation in the Central District of California.” *Id.* at ¶¶ 18, 20, 21.

### 17 **III. ARGUMENT**

18 “The trial of all Crimes . . . shall be held in the State where the said Crimes shall have  
 19 been committed.” U.S. Const. art. III, § 2, cl. 3. Further, “[i]n all criminal prosecutions,  
 20 the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the  
 21 State and district wherein the crime shall have been committed.” U.S. Const. amend. VI.  
 22 These constitutional requirements are reinforced by Rule 18 of the Federal Rules of  
 23 Criminal Procedure, which provides that “prosecution shall be had in a district in which the  
 24 offense was committed.”

25 “The government bears the burden of establishing venue by a preponderance of the  
 26 evidence.” *United States v. Pace*, 314 F.3d 344, 349 (9th Cir. 2002). It must meet this  
 27 burden for each count of a multi-count indictment. *Id.* A “continuing offense” may be  
 28 “prosecuted in any district in which [the] offense was begun, continued, or completed,” 18

1 U.S.C. § 3237(a), but crimes that “began, continued, and were completed” within one  
2 district may only be prosecuted there. *United States v. Cabrales*, 524 U.S. 1 (1998).

3 Where, as here, an indictment fails to allege facts establishing venue for an offense,  
4 the Court should dismiss it on a pretrial motion. *See* Fed. R. Crim. P. 12(b)(3)(i)

5 Congress can enact specific venue provisions for criminal statutes. *See United States*  
6 *v. Salinas*, 373 F.3d 161, 164-66 (1st Cir. 2004) (“If the statute under which the defendant  
7 is charged contains a specific venue provision, that provision must be honored (assuming,  
8 of course, that it satisfies the constitutional minima.”). However, Congress did not do so  
9 in the case of 18 U.S.C. § 1001. In the absence of a specific venue provision, the Court  
10 must determine the *locus delicti* of the offense. This requires that the Court “initially  
11 identify the conduct constituting the offense (the nature of the crime) and then discern the  
12 location of the commission of the criminal acts.” *United States v. Rodriguez-Moreno*, 526  
13 U.S. 275, 279 (1999) (citing *Cabrales*, 524 U.S. 1, 6–7 (1998)); *see also United States v.*  
14 *Anderson*, 328 U.S. 699, 703 (1946) (“*locus delicti* must be determined from the nature of  
15 the crime alleged and the location of the act or acts constituting it”).

16 In *Cabrales*, the Supreme Court held that venue was not proper in Missouri for a  
17 money laundering offense committed in Florida, even though the money that was being  
18 laundered was the proceeds of a drug deal in Missouri. The Court reasoned that the money  
19 laundering statutes involved—18 U.S.C. §§ 1956 and 1957—were “defined in statutory  
20 proscriptions . . . that interdict only the financial transactions (acts located in Florida), not  
21 the anterior criminal conduct that yielded the funds allegedly laundered.” *Id.* at 7. The  
22 Court pointed out that counts under review did not charge the defendant with a conspiracy  
23 with the Missouri defendants, nor as an aider and abettor to them. *Id.* Although the  
24 government was required ‘to prove that the defendant *knew* she was dealing with funds  
25 derived from a “specified unlawful activity,” the Court held that the location where that  
26 prior unlawful activity occurred was ““of no moment.”’ *Id.* at 8 (citation omitted).

27 The next year, the Supreme Court held that venue was proper in the District of New  
28 Jersey for a charge of using or carrying a firearm during and in relation to a crime of

1 violence under 18 U.S.C. § 924(c), even though the firearm was not used or carried in New  
 2 Jersey. *United States v. Rodriguez-Moreno* 526 U.S. 275 (1999). In that case, the crime of  
 3 violence—kidnaping—was committed in multiple districts, including New Jersey. The  
 4 Court reasoned that §924(c) required “two distinct conduct elements . . . the ‘using and  
 5 carrying’ of a gun and the commission of a kidnaping.” Because a crime of violence was a  
 6 “necessarily conduct element” of the offense, the offense could be prosecuted in any of the  
 7 districts where the kidnaping occurred. The Court distinguished *Cabralles* on the ground  
 8 that whereas the defendant’s violent acts were “essential conduct elements” of § 924(c), the  
 9 existence of criminally generated proceeds was merely a “circumstance element” of money  
 10 laundering under §§ 1956 and 1957. *Rodriguez-Moreno*, 526 U.S. at 280, n. 4.

11 The Supreme Court thus drew a critical distinction between “**essential conduct**  
 12 **elements**,” on the one hand, and mere “**circumstance elements**,” on the other. This makes  
 13 sense considering both the text of the Constitution and the principles behind it. After all,  
 14 all the various constitutional and statutory rules relating to criminal venue refer specifically  
 15 to the place where the crime was “committed.” *See* U.S. Const. art. III, § 2, cl. 3; U.S.  
 16 Const. amend. VI; Fed. R. Crim. P. 18.

## 17 **A. The Essential Conduct of 18 U.S.C. § 1001 Is Making a False Statement**

### 18 **1. Counts Two and Three (18 U.S.C. § 1001(a)(2))**

19 Counts Two and Three of the Indictment allege that Congressman Fortenberry  
 20 uttered false statements to the FBI, the IRS, and the United States Attorney’s Office in  
 21 violation of 18 U.S.C. § 1001(a)(2). Dkt. No. 1 at 10-12. The first alleged false statement  
 22 occurred “[d]uring an interview on March 23, 2019, by the FBI and IRS at his residence in  
 23 Lincoln, Nebraska.” Dkt. No. 1 at ¶ 20 (Count Two). The second alleged false statement  
 24 occurred “[d]uring an interview on July 18, 2019, by the FBI and the USAO and with his  
 25 counsel present, at his counsel’s office in Washington, D.C.” *Id.* at ¶ 21 (Count Three).

### 26 **2. Count One (18 U.S.C. § 1001(a)(1))**

27 Count One of the Indictment alleges that “[f]rom on or about June 4, 2018, to in or  
 28 about July 18, 2019,” and “affecting the Federal Investigation in the Central District of

California,” Congressman Fortenberry “knowingly and willfully falsified, concealed, and covered up by trick, scheme, and device material facts . . . .” Dkt. No. 1 at ¶ 18.

The conduct alleged to have been committed by Congressman Fortenberry in support of this “scheme” consists primarily of the same alleged false statements that the government alleged in support of Counts Two and Three. Dkt. No. 1 at ¶¶ 19a (Nebraska statement); ¶19b (Washington, D.C. statement).<sup>2</sup> The Indictment also alleges that Congressman Fortenberry failed to file amended FEC reports with accurate information about the 2016 fundraiser, *see id.* at ¶ 19c, but the government does not allege that this omission occurred in California. Instead, the Indictment alleges only that the omission “affect[ed] the Federal Investigation in the Central District of California.” *Id.* at ¶ 18.

### 3. Ninth Circuit Model Jury Instructions for 18 U.S.C. § 1001

According to the Ninth Circuit Manual of Model Criminal Jury Instructions, the elements of a false statements charge under § 1001 are as follows:

First, the defendant made a false statement;

Second, the statement was made in a matter within the jurisdiction of the [specify government agency or department];

Third, the defendant acted willfully, that is, the defendant acted deliberately and with knowledge both that the statement was untrue and that his or her conduct was unlawful, and;

Fourth, the statement was material to the activities or decisions of the [specify government agency or department]; that is, it had a natural tendency to influence, or was capable of influencing, the agency’s decisions or activities.

Ninth Circuit Model Criminal Jury Instruction No. 8.73.

Only the first element of the instruction—requiring the false statement itself—describes the “essential conduct element” of the offense. The remaining elements describe “circumstance elements.” *See Rodriguez-Moreno*, 526 U.S. at 280, n. 4.

Even though materiality is an element of the offense, it is not an “**essential conduct element**.” *See id.* This is because whether a statement is material to the activities or

<sup>2</sup> Congressman Fortenberry will move separately to dismiss Count One on the ground that it is multiplicitous to Counts Two and Three. *See Fed. R. Crim. P.* 12.

1 decisions of a government agency depends entirely upon circumstances wholly independent  
 2 of the defendant's conduct. Thus, the "materiality" element of a § 1001 prosecution is  
 3 conceptually similar to the "specific unlawful activity" element of a money laundering  
 4 prosecution. *See Cabrales*, 524 U.S. at 7. Even though the government must prove it, that  
 5 proof does not necessarily require any evidence of the defendant's conduct.

### 6 **B. Applying the "Essential Conduct Elements" Test**

7 Neither the Supreme Court nor the Ninth Circuit has applied *Cabrales* and  
 8 *Rodriguez-Moreno* to a false statements case under 18 U.S.C. § 1001. However, the Tenth  
 9 and Eleventh Circuits have, and both held that venue is proper only in the district where  
 10 statements were made. *United States v. Smith*, 641 F.3d 1200, 1207–09 (10th Cir. 2011);  
 11 *United States v. John*, 477 F. App'x 570, 572 (11th Cir. 2012) (unpub.).<sup>3</sup>

12 In *Smith*, the executive director of a non-profit business in Oklahoma was suspected  
 13 of embezzling from the company's retirement plan. While the investigation was ongoing,  
 14 the defendant resigned and moved to Minnesota. As part of the investigation, an FBI agent  
 15 flew from Oklahoma to Minnesota to interview the defendant, and the defendant made  
 16 statements regarding the Oklahoma investigation. Concluding that those statements were  
 17 false, the government charged the defendant with a violation of § 1001 in Oklahoma. Over  
 18 the defendant's objection, the jury was instructed as follows: "If you find, by a  
 19 preponderance of the evidence, that it is more probable than not, that the substance of that  
 20 [false] statement relayed facts, events, or circumstances which occurred in or related to the  
 21 alleged wrongdoing occurring in this district, you must find venue is proper in this district  
 22 and render a verdict of guilty." *Id.* at 1204. The Tenth Circuit reversed the conviction,  
 23 finding that the "*locus delicti*" of a false statement offense is "where the defendant makes  
 24 the false statement." *Id.* at 1207. The Court explained that "the only connection between  
 25 Oklahoma and Mr. Smith's statements is that the subject-matter of the allegedly false  
 26 statements relayed events that occurred in Oklahoma, and at the time there was an

27 \_\_\_\_\_  
 28 <sup>3</sup> Unpublished opinions of the Eleventh Circuit are "not considered binding  
 precedent, but they may be cited as persuasive authority." Eleventh Cir. R. 36-2.

1 investigation in Oklahoma.” *Id.* at 1208.

2 The government argued that because § 1001(a)(2) is a “continuing offense,” venue  
3 was governed by 18 U.S.C. § 3237(a). *Id.* But the Tenth Circuit rejected that argument,  
4 reasoning that, although some § 1001 statements are continuing offenses, Mr. Smith’s was  
5 not. *Id.* at 1208–09 (citing *Cabralles*, 524 U.S. at 8). As the court explained: “In this case,  
6 the alleged crime occurred during an interview conducted in Mr. Smith’s home in  
7 Minnesota. The false statements began, continued, and ended during the interview.” *Id.*

8 The Eleventh Circuit reached the same conclusion in *John*. In that case, the defendant  
9 made statements to an FBI agent in the Southern District of Florida related to a pending  
10 investigation in the Northern District of Florida. *John*, 477 F. App’x at 571. The court  
11 adopted the reasoning of *Smith* and held that venue was lacking in the Northern District.  
12 The court clarified that even though materiality was an element of a § 1001 charge, it could  
13 not, on its own, support a finding of venue because it was not a conduct element. “Even if  
14 we assume—without deciding—that John’s statement was material to a government  
15 investigation in the Northern District of Florida,” the Court reasoned, “John’s *own offense*  
16 *conduct* began, continued, and was completed in the Southern District of Florida. Thus,  
17 venue was proper only in the Southern District of Florida . . . .” *Id.* at 572 (emphasis added).

18 Likewise, here, the sole facts alleged in support of the offenses charged in this  
19 Indictment are alleged statements uttered by Congressman Fortenberry in Nebraska and  
20 Washington, D.C. Those statements were not “continuing offenses.” Like the statement  
21 made by the defendant in *Smith*, they “began, continued, and ended during the interview.”  
22 *Smith*, 641 F.3d at 1208–09. The fact that the government alleges that there was a pending  
23 investigation in California cannot alone provide venue here, even if the government were  
24 able prove that the alleged false statements were “material” to that investigation.

25 Even if Count One is characterized as a “continuing offense” that began “on or about  
26 June 4, 2018” and continued to “in or about July 18, 2019,” the same analysis applies  
27 because no part of the offense occurred in California. *See* Dkt. No. 1 at ¶ 18.

### 1 C. The “Felt In” Test

2 For the government to establish venue, it must persuade this Court to find venue  
3 based on something other than Congressman Fortenberry’s conduct. For this, the  
4 government relies on the so-called “felt in” or “effects” test.

5 In *United States v. Oceanpro Industries, Ltd.*, 674 F.3d 323, 329 (4th Cir. 2012), the  
6 defendant was interviewed in Washington D.C. regarding conduct—trafficking in illegally  
7 caught striped bass—that occurred in Maryland. The government contended that the  
8 defendant’s statements were false and prosecuted him in Maryland. The Fourth Circuit  
9 acknowledged *Cabralles*’ holding that the *locus delicti* of the offense must be determined  
10 by examining the “essential conduct elements” of the offense. *Id.* at 328. But it held that  
11 venue could also be based on something *other than the conduct of the defendant*: where the  
12 “effects” of the defendant’s conduct were “felt.” *Id.* (citing *United States v. Bowens*, 224  
13 F.3d 302, 314 (4th Cir.2000) (emphasis in original)).

14 The Court reasoned that that Congress “defined the effects in § 1001 to include the  
15 element of materiality.” *Id.* Because “proving materiality necessarily requires evidence of  
16 the existence of the federal investigation in Maryland and the potential effects of [the  
17 defendant’s] statement on that investigation . . . the District of Maryland had a substantial  
18 connection to [the defendant’s conduct] . . . .” *Id.*<sup>4</sup> The Second Circuit reached a similar  
19 conclusion in *United States v. Coplan* 703 F.3d 46, 79 (2d Cir. 2012) (“Proving the  
20 materiality of Vaughn’s false statements in Tennessee necessarily requires evidence that  
21 those statements were conveyed to or had an effect on the IRS investigators working in the  
22 Southern District of New York”); *see also United States v. Ringer*, 300 F.3d 788, 791–92

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23  
24 <sup>4</sup> The defendants in *Oceanpro* apparently conceded the core legal issue, assuming it  
25 had been decided adversely to them in *United States v. Bowens*, 224 F.3d 302 (4th Cir.  
26 2000); *id.* at 329 (citing *Bowens*, 224 F.3d at 314) (holding that venue was proper where  
27 “the effects of the defendant’s conduct are felt . . . when Congress has defined the essential  
28 conduct elements in terms of those effects.”). But *Bowens* was not a false statements case,  
and the language in *Bowens* relating to the “effects” test was *dicta*. In fact, the convictions  
challenged in *Bowen* were reversed because the court found that the sole “essential conduct  
element” of the offense (harboring a fugitive) occurred in a different district. *Id.* at 309.

(7th Cir. 2002); *United States v. Salinas*, 373 F.3d 161, 167 (1st Cir. 2004).<sup>5</sup>

The “felt in” test obliterates the critical distinction between “essential conduct elements” and “circumstance elements.” *See Rodriguez-Moreno*, 526 U.S. at 280, n. 4. Contrary to Supreme Court precedent, the “felt in” test purports to permit a finding of venue for an offense base on factors ***wholly distinct from the defendant’s conduct***. This is a dramatic deviation from the clear principles set forth in Article III, the Sixth Amendment, and Fed. R. Crim. P. 18, which constrain venue for an offense to the place where the offense was “committed.” Neither *Cabralles* nor *Rodriguez-Moreno* contemplated such an obvious distortion of the venue doctrine. Indeed, the Supreme Court explicitly declined to endorse the so-called “effects” test in *Rodriguez-Moreno*, characterizing it as distinct from the question of *locus delicti*. *See Rodriguez-Moreno*, 526 U.S. at 279 n.2.

The flaw in *Oceanpro*’s reasoning starts with the premise that Congress “defined the effects in § 1001 to include the element of materiality.” *Oceanpro*, 674 F.3d at 328. But defining the “effects” of a § 1001 offense to “include the element of materiality” does not make materiality an essential *conduct* element of the offense; nor does it indicate that Congress intended to allow § 1001 venue to be based on materiality alone.

If Congress wanted to provide for venue in a § 1001 case in a district other than the one where the defendant committed the offense conduct, it knew how to do so. *See, e.g.*, 8 U.S.C. § 1329 (providing venue for charges of improper entry by an alien and reentry of a removed alien “at any place in the United States at which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended”). Congress has at times explicitly provided for venue where the “effects” of an offense are “felt.” *See, e.g.*, 18 U.S.C. § 1512(i) (providing venue for witness tampering

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<sup>5</sup> The First Circuit appeared to embrace the “felt in” test in *United States v. Salinas*, 373 F.3d 161, 167 (1st Cir. 2004) (“When materiality is a critical component of the statutory definition, it makes perfect sense to consider the crime as continuing into the district in which the effects of the false statement are felt.”). But that language is *dicta* because *Salinas* did not involve a false statements prosecution under 18 U.S.C. § 1001.

1 prosecution “in the district in which the official proceeding (whether or not pending or about  
 2 to be instituted) was intended to be affected or in the district in which the conduct  
 3 constituting the alleged offense occurred.”); 18 U.S.C. § 228(e) (providing venue for failure  
 4 to pay legal child support obligations prosecution in various places, including the “district  
 5 in which the child who is the subject of the support obligation involved resided . . .”).

6 Section § 1001 has no special venue provision. Therefore, the *locus delicti* test  
 7 controls. Here, the *locus delicti* is in Lincoln, Nebraska and Washington, D.C.

8 If the so-called “felt in” test were applied as the government suggests, it would permit  
 9 prosecutors to manufacture venue for a false statements case in *any district they choose*,  
 10 regardless of whether the defendant had any contact with that district or intended his  
 11 statements to be conveyed there. After all, the government determines the site of an  
 12 “investigation,” not the defendant. The Federal Bureau of Investigation—the federal  
 13 agency within whose jurisdiction the government contends Congressman Fortenberry’s  
 14 statements were made—operates in nearly every judicial district in the United States.<sup>6</sup> An  
 15 investigation could originate from one or more, or even all districts in the United States,  
 16 depending on the whim of the prosecutor and the FBI, creating endless potential for forum  
 17 shopping. *See Salinas*, 373 F.3d at 169–70 (“Over time, one of the primary concerns  
 18 motivating the limitation of venue has been the danger of allowing the government to  
 19 choose its forum free from any external constraints.”). The venue rules that were so  
 20 carefully articulated by the framers of the Constitution cannot be satisfied so easily and  
 21 arbitrarily. *See Travis*, 364 U.S. at 634 (“[V]enue provisions in Acts of Congress should  
 22 not be so freely construed as to give the Government the choice of a tribunal favorable to  
 23 it.”) (citation and quotation omitted). The “felt in” test is also so vague as to be impossible  
 24 to apply, particularly in a § 1001 prosecution. Where, after all, is the “effect” of a false  
 25 statement “felt?” And who decides where the “effect” of the statement is “felt?” How does  
 26 this standard apply in cases where the government takes the position that it need not prove

27 \_\_\_\_\_  
 28 <sup>6</sup> See <https://www.fbi.gov/contact-us/field-offices>. The United States Attorneys likewise  
 operate in every judicial district in the United States. See <https://www.justice.gov/usao>.

1 that the statement influenced it at all? *See United States v. Serv. Deli Inc.*, 151 F.3d 938,  
 2 941 (9th Cir. 1998) (“The false statement need not have actually influenced the agency, and  
 3 the agency need not rely on the information in fact for it to be material.”).

4 As the Supreme Court stated in *Johnson*, “[i]f an enactment of Congress equally  
 5 permits the underlying spirit of the constitutional concern for trial in the vicinage to be  
 6 respected rather than to be disrespected, construction should go in the direction of  
 7 constitutional policy even though not commanded by it.” *Johnson*, 323 U.S. at 276. The  
 8 “felt in” test squarely conflicts with the plain language of Article III and the Sixth  
 9 Amendment, as well as Rule 18. It also squarely conflicts with *Cabrales* and *Rodriguez-*  
 10 *Moreno*. It is not the law in this Circuit, and it shouldn’t be.

#### 11 **D. Ninth Circuit Precedent**

12 The Ninth Circuit has held that “[c]rimes consisting of a single noncontinuing act are  
 13 ‘committed’ in the district where the act is performed.” *United States v. Corona*, 34 F.3d  
 14 876, 879 (9th Cir. 1994). There is no Ninth Circuit decision applying the “felt in” test to a  
 15 § 1001 prosecution. Nor is there an appellate case holding that venue for a §1001 case can  
 16 be established based solely on the “materiality” element.

17 The closest case is *United States v. Angotti*, 105 F.3d 539 (9th Cir. 1997). In *Angotti*,  
 18 the defendant was charged in the Central District of California with making false statements  
 19 for the purpose of influencing the actions of bank officials in violation of 18 U.S.C. § 1014.  
 20 *Id.* at 542. The statements were made in the Northern District of California, but they were  
 21 received by bank officials in the Central District. *Id.* at 542. The Ninth Circuit concluded  
 22 that “venue was therefore proper in the Central District, where the communication reached  
 23 the audience *whom it was intended to influence . . .*” *Id.* (emphasis added) (citation  
 24 omitted). The Court also relied on “established caselaw relying on banking law and practice  
 25 to determine the place of criminal conduct involving financial transactions.” *Id.* at 544.<sup>7</sup>

26  
 27  
 28 <sup>7</sup> Judge Norris wrote a strong dissent, stating that “this holding has no support in the Sixth Amendment, in case law or in logic.” *Id.* at 546 (Norris, J., dissenting).

1 *Angotti* is distinguishable from this case for several reasons.

2 First, because *Angotti* preceded the Supreme Court’s decisions in *Cabralles* and  
 3 *Rodriguez-Moreno*, it made no effort to distinguish between “essential conduct elements”  
 4 and “circumstance elements” of the offense, as required by those cases. *See Rodriguez-*  
 5 *Moreno*, 526 U.S. at 280, n. 4. Therefore, *Angotti* was effectively overruled. *See Garcia*  
 6 *v. Benov*, 715 F. Supp. 2d 974, 996 (C.D. Cal. 2009) (“When circuit authority is overruled  
 7 by the Supreme Court, a district court or a circuit court panel is no longer bound by that  
 8 authority, and need not wait until the authority is also expressly overruled by an *en banc*  
 9 panel.”); *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003).

10 Second, *Angotti* has no bearing on the question whether the venue can be based solely  
 11 on the materiality element of § 1001, because *Angotti* addressed a § 1014 charge, which  
 12 has no materiality element. *See United States v. Wells*, 519 U.S. 482, 484–99 (1997).

13 Finally, *Angotti* relied on the continuing offense doctrine, and the fact that the  
 14 defendant’s statement was “intended to influence” a bank official in the Central District of  
 15 California. *Angotti*, 105 F.3d at 542. But the continuing offense doctrine does not create  
 16 venue in this case because none of the conduct alleged in the indictment began, continued,  
 17 or was completed in the Central District. The Indictment does not allege that Congressman  
 18 Fortenberry intended his statements to be conveyed to anyone other than the persons to  
 19 whom they were made. *See Smith*, 641 F.3d at 1207. Nor does it allege that Congressman  
 20 Fortenberry *intended* his statements to influence any government agency.

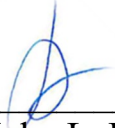
#### 21 **IV. CONCLUSION**

22 “[T]he location of the act or acts constituting” the crime charged is what determines  
 23 *locus delicti*.” *United States v. Cabralles*, 524 U.S. 1, 6–7 (1998) (quoting *United States v.*  
 24 *Anderson*, 328 U.S. 699, 703 (1946)). In this case, the “act or acts constituting” the offense  
 25 clearly occurred outside of this district. Under a straightforward reading of Article III, the  
 26 Sixth Amendment, Fed. R. Crim. P. 18, and Supreme Court precedent, the government has  
 27 failed to allege facts establishing venue in the Central District of California.

28 The Indictment should be dismissed.

1 Date: November 2, 2021

BIENERT KATZMAN LITTRELL  
WILLIAMS LLP

2  
3  
4 By:  \_\_\_\_\_

John L. Littrell

Ryan V. Fraser

*Attorneys for Hon. Jeffrey Lane Fortenberry*

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 10 Motion to Dismiss (Materiality)

**DATE:** 11/9/2021

**PAGES:** 9

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211109\_090000.pdf

**DOC NO:** 17



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12 *Hon. Jeffrey Lane Fortenberry*

13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16

17 UNITED STATES OF AMERICA,

18 *Plaintiff,*

19 v.

20 JEFFREY FORTENBERRY,

21 *Defendant.*

Case No. 2:21-cr-00491-SB  
Hon. Stanley Blumenfeld, Jr.

**HON. JEFFREY LANE  
FORTENBERRY'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS THE INDICTMENT FOR  
FAILURE TO ALLEGE  
MATERIALITY**

Hearing Date: December 7, 2021  
Hearing Time: 8:00 a.m.  
Time Estimate: 20 minutes

Indictment: October 19, 2021  
Pretrial Conference: December 7, 2021  
Trial: December 14, 2021  
Last Day: December 29, 2021

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** at the above time and date, in the courtroom of  
3 the Honorable Stanley Blumenfeld, Jr., United States District Court Judge, located at 350  
4 West 1st Street, Los Angeles, California, 90012, Courtroom 6C, by and through his  
5 attorneys of record, the Honorable Jeffrey Lane Fortenberry will move, and hereby does  
6 move, to dismiss the indictment because it fails to allege that his statements or omissions  
7 were material. This motion is based on this Notice, the Memorandum of Points and  
8 Authorities concurrently filed herewith, the files and records in this case, and any evidence  
9 and argument that may be presented at the hearing on this matter.

10 Counsel for the parties met and conferred by telephone on November 8, 2021,  
11 regarding the contentions presented in this motion but were unable to resolve their  
12 differences.

13  
14 Date: November 9, 2021

BIENERT KATZMAN  
LITTRELL WILLIAMS LLP

15  
16  
17 By:  \_\_\_\_\_  
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19 Ryan V. Fraser  
20 *Attorneys for Hon. Jeffrey Lane Fortenberry*  
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28

## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION**

The government’s investigation revealed that Congressman Fortenberry was unaware of any illegal foreign or conduit contributions to his 2016 campaign. With no basis to charge the Congressman with a crime, the government instead concocted one.

This was a setup. The government proceeded in three steps.

First, in 2018 it directed an informant to *tell* Congressman Fortenberry that he had received an illegal conduit contribution in 2016 and that the money was “*probably*” from Gilbert Chagoury, a foreign national. Dkt. No. 1 at ¶ 15(b) (emphasis added).

Second, nearly a year later, the government sent an FBI agent to Congressman Fortenberry’s home to ask him if what the informant said in 2018—uncorroborated by anything else—was actually true, which Congressman Fortenberry allegedly denied.

Third, months after that, Assistant United States Attorney Mack Jenkins asked Congressman Fortenberry if anyone had *told him* what the informant said during the 2018 call. When Congressman Fortenberry could not recall the precise details of the informant’s call, the government charged him with the crime of making false statements.

This prosecution is the actualization of Justice Ruth Bader Ginsburg’s grave concern regarding prosecutorial overreach in Section 1001 cases: that “an overzealous prosecutor or investigator—aware that a person has committed some suspicious acts, but unable to make a criminal case—will create a crime by surprising the suspect, asking about those acts, and receiving a false denial.” *Brogan v. United States*, 522 U.S. 398, 416 (1998) (Ginsburg, J., concurring). Because Congressman Fortenberry’s statements to investigators were not material, the Indictment should be dismissed.

### **II. RELEVANT FACTS**

In 2016, the government was investigating political campaign contributions made by Gilbert Chagoury, a foreign national, using other individuals as conduits, to Congressman Fortenberry’s 2016 congressional campaign. The government was allegedly concerned with whether Congressman Fortenberry was aware of the illegal

foreign contributions, and whether any person sought to impermissibly influence him in exchange for them. Dkt. No. 1 at ¶ 1. The government does not allege that Congressman Fortenberry *knew* about the illegal contributions when they were made in 2016, and it did not charge the Congressman with any substantive offense related to those contributions.<sup>1</sup>

On June 4, 2018, the government directed its informant, “Individual H,” who had hosted a fundraiser for Congressman Fortenberry in 2016, to place a surreptitiously recorded phone call. During the 2018 call, which lasted about ten minutes, and spanned multiple topics unrelated to the 2016 fundraiser, the informant told Congressman Fortenberry something that he did not know before: that his campaign had received an illegal contribution from a foreign national in 2016.

Specifically, the government alleges that during the 2018 call, “Individual H” told Congressman Fortenberry that “prior to the 2016 Fundraiser, [Toufic] Baaklini provided Individual H with ‘\$30,000 cash’ to give to defendant FORTENBERRY’s campaign.” Dkt. No. 1 at ¶ 14. During the same call, “Individual H,” also allegedly told Congressman Fortenberry that he had “distributed the \$30,000 cash to other individuals to contribute to defendant FORTENBERRY’s campaign at the 2016 Fundraiser,” and that the money “*probably* did come from Gilbert Chagoury because he was so grateful for your support [for] the cause.” *Id.* at ¶ 15a (emphasis added).

On March 23, 2019—nearly ten months later—the government sent agents to Congressman Fortenberry’s home to interrogate him. *See Id.* at ¶19a. Congressman Fortenberry invited the agents into his home and tried to help them. He was not asked about the 2018 call from Individual H. But according to the government, Congressman Fortenberry’s responses were false, because Congressman Fortenberry stated that he was not aware of Baaklini making illegal contributions or directing others to do so, *id.* at ¶19a(i), and he stated that “the individuals who contributed to the 2016 Fundraiser

<sup>1</sup> The \$30,200 in alleged illegal conduit contributions represents approximately 3.7% of the total money Congressman Fortenberry raised for his 2016 campaign. *See* Federal Election Commission 2016 Financial Summary for Honorable Jeffrey L. Fortenberry, available at <https://www.fec.gov/data/candidate/H4NE01064/?cycle=2016>.

were all publicly disclosed.” *Id.* at ¶20b. He also stated that “every campaign that he had received was publicly disclosed.” *Id.* at ¶ 20c.

On July 18, 2019—more than one year later—Congressman Fortenberry was questioned again, this time by Assistant United States Attorney Mack Jenkins himself. *Id.* at ¶19b. Again, Congressman Fortenberry cooperated with the government and tried to help. This time, Congressman Fortenberry was asked about the 2018 call from Individual H. *See id.* at ¶ 19b(i). According to the government, Congressman Fortenberry made false statements when he denied that he had been “told by Individual H during the 2018 call that Baaklini had given Individual H \$30,000 cash to help fund the 2016 Fundraiser,” *id.* at ¶ 21(a), and stated that he was “not aware of any illicit donation made during the 2016 Fundraiser.” *Id.* at ¶ 21(b). The Congressman also allegedly said that he ended the 2018 call with Individual H after Individual H made a concerning comment, and that he would have been “horrificed” if he learned illegal campaign contributions were made. *Id.* at ¶ 19(b)(i)-(iv); *id.* at ¶ 21.

Notably, the government does not accuse Congressman Fortenberry of lying about the real facts surrounding his 2016 fundraiser. This case is entirely about Congressman Fortenberry’s failure to accurately repeat back to the government the content of the ten-minute phone call that the government’s informant placed to him.

### III. ARGUMENT

The government’s theory makes several unsupportable assumptions. First, the government baselessly assumes that Congressman Fortenberry perfectly recalled the informant’s 2018 statements when he was questioned about them nearly a year later. Second, the government baselessly assumes that Congressman Fortenberry accepted and believed the informant’s assertions as true. And third, the government baselessly posits that Congressman Fortenberry’s 2019 statements about a 2016 event the government had ***finished investigating*** could influence any required determination yet to be made by the government. *See United States v. Weinstock*, 213 F.2d 699, 701 (D.C. Cir. 1956) (explaining that a materially false statement must have the capacity to influence a

determination required to be made). Because Congressman Fortenberry's 2019 statements and alleged omissions were not material, the Indictment should be dismissed.

### **A. Materiality is an Essential Element of the Offense**

Congressman Fortenberry has been charged with one count of falsifying and concealing material facts, 18 U.S.C. § 1001(a)(1), and two counts of making a false statement, 18 U.S.C. § 1001(a)(2). These crimes require a statement or omission to be not simply false, but “materially” false with respect to a matter under investigation. Materiality requires more than mere “relevance” or relatedness to the matter being investigated by the government. To be material, a statement or omission must be “reasonably likely to influence the tribunal in making a determination *required to be made*.” *Weinstock*, 213 F.2d at 701 (emphasis added). In other words, it must “ha[ve] a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed.” *Kungys v. United States*, 485 U.S. 759, 770 (1988); *United States v. Beltran*, 136 F. App'x 59, 61 (9th Cir. 2005).

The materiality requirement ensures that misstatements to investigators are criminalized only when linked to the particular “subject of [their] investigation.” *United States v. Kim*, 808 F. Supp. 2d 44, 59 (D.D.C. 2011); *cf. Kungys*, 485 U.S. at 774 (false date and birthplace statements in immigration application were not “material” as they were not “relevant to his qualifications [for citizenship]”). The requirement prevents law enforcement from fishing for falsehoods merely to manufacture jurisdiction over any statement—true or false—uttered by a subject. Because materiality is an essential element of all three counts in the indictment, it must be adequately pled as to each one.

### **1. Count One – Concealment of Material Facts**

Count One alleges that Congressman Fortenberry “falsified, concealed, and covered up . . . material facts.” Dkt. No. 1 at ¶ 18. The specific facts the government accuses Congressman Fortenberry of concealing were (a) that Congressman Fortenberry's campaign had “received illicit contributions at the 2016 fundraiser”; (b) that Congressman Fortenberry had “become aware” of that fact; (c) that Toufic Baaklini

1 had provided \$30,000 cash to Individual H for Individual H and his associates to  
2 contribute to Congressman Fortenberry's campaign at the 2016 fundraiser; (d) that  
3 Congressman Fortenberry had "become aware" of that fact; and (e) that Gilbert Chagoury  
4 was the source of the money. Dkt. No. 1 at ¶ 18(a-e).

5 Even if one assumes that Congressman Fortenberry was aware of those facts, and  
6 even if one assumes that he willfully concealed those facts from the government, that  
7 concealment was not material to the investigation because all five of those facts were  
8 either already known by, or affirmatively manufactured by, the government.

9 As to alleged omissions (a), (c), and (e), those facts were already known to the  
10 government as of September 2016, when the government recruited Individual H as an  
11 informant. See Dkt. No. 1 at ¶ 13. As the government admits in the indictment,  
12 "Individual H informed the FBI of the conduit contributions Individual H and others  
13 made to defendant FORTENBERRY's campaign at the 2016 Fundraiser." *Id.*  
14 Therefore, by September 2016, the investigation's goal was met: the government  
15 ascertained that Chagoury had illicitly donated to Congressman Fortenberry's 2016  
16 congressional campaign using other individuals as conduits. *Id.* at ¶ 13. The government  
17 also knew that Congressman Fortenberry was unaware of the illicit contributions, and  
18 therefore, no one could have attempted to impermissibly influence him because of them.

19 As to alleged omissions (b) and (d), which accuse the Congressman of concealing  
20 his knowledge of the facts alleged in (a) and (c), the conclusion is even stronger because  
21 the government ***manufactured those facts***. After all, the government does not contend  
22 that Congressman Fortenberry knew of the illicit donations to his campaign in 2016 when  
23 they were made. It alleges only that he had "become aware" of those illicit contributions  
24 no later than the 2018 call placed to him by a government informant. See *Id.* at ¶ 20(a).

25 If the government is correct, and Congressman Fortenberry had "become aware"  
26 of those illicit contributions based on the 2018 call from Individual H, then the  
27 government cannot claim that his failure to disclose was material, because the  
28 government engineered the 2018 call in the first place and recorded it.

## 2. Count Two – Affirmative False Statements

Count Two alleges that Congressman Fortenberry falsely stated (a) that he was not aware of Baaklini making any illegal contributions, directing anyone to conduct illegal contributions, or providing money to anyone else to conduct conduit campaign contributions; (b) that the individuals who contributed to the 2016 Fundraiser were all publicly disclosed; and (c) that every campaign contribution that he had received was publicly disclosed. *Id.* at ¶ 20(a-c).

As to (b) and (c), Congressman Fortenberry’s statements were literally true, as the government knows. Each of the individual contributors to the 2016 Fundraiser were disclosed to the FEC.<sup>2</sup> The government contends that those statements were false only because it assumes that Congressman Fortenberry heard, understood, and believed what Individual H told him during the 2018 call, and that he should have accepted as true that Chagoury and Baaklini were the actual sources of the 2016 donations. But even if the government were right, it would not make Congressman Fortenberry’s statements material. FEC records are available to the government just as they are available to the public. Thus, whether a contribution was disclosed to the FEC is not debatable.

As to (a), Congressman Fortenberry’s statement that he was not aware of Baaklini’s scheme to funnel illegal contributions to his campaign was not material to the government’s investigation because the government already knew about Baaklini’s scheme based on information it received from Individual H in 2016. *See Id.* at ¶ 13. In fact, the government’s only basis to allege that *Congressman Fortenberry* knew of those facts was the call that that Individual made to him in 2018 at the government’s direction. *See Id.* at ¶ 20(a) (alleging that Congressman Fortenberry knew of the illegal contributions “as of no later than the June 2018 call with Individual H . . .”). Even assuming the government was correct, and Congressman Fortenberry heard, understood, and believed what Individual H told him during the ten-minute call from 2018, those facts were already known to the government because *it staged the call* and recorded it.

<sup>2</sup> See <https://www.fec.gov/data/candidate/H4NE01064/?cycle=2016>

1 Congressman Fortenberry's characterization of the call—to the extent it differed from the  
2 actual recording—told the government nothing it did not already know.

### 3 3. Count Three – Affirmative False Statements

4 Count Three alleges that Congressman Fortenberry falsely stated that (a) he “had  
5 not been told” by Individual H during the 2018 Call that Baaklini had given Individual H  
6 \$30,000 cash to help fund the 2016 Fundraiser; and (b) he “was not aware” of any illicit  
7 donation made during the 2016 Fundraiser. Dkt. No. 1 at ¶ 21(a-b).

8 As to (a), Congressman Fortenberry's statements could not have been material  
9 because the government had a recording and transcript of the 2018 Call. Because the  
10 government already had objective, verifiable proof of what Individual H said to  
11 Congressman Fortenberry in 2018, Congressman Fortenberry's statement about that call  
12 added nothing to what the government already knew. As to (b), the only basis for the  
13 government's claim that Congressman Fortenberry was “aware” of illicit donations to his  
14 2016 was the 2018 call that the government staged. *Id.* at ¶ 20(a). And unlike  
15 Congressman Fortenberry, who did not know that he was being recorded, the government  
16 had a complete recording and transcript of the call. *See Weinstock*, 213 F.2d at 701.

## 17 IV. CONCLUSION

18 When an investigation yields no evidence that a person is culpable of the crime  
19 under investigation, bringing freestanding false statements charges against that person  
20 “escalate[s] completely innocent conduct into a felony.” *See Brogan*, 522 U.S. at 412  
21 (Ginsburg, J., concurring). The government should not be permitted to weaponize  
22 Section 1001 in this way. This Court should dismiss the Indictment.

23  
24 Dated: November 9, 2021

BIENERT KATZMAN  
LITRELL WILLIAMS LLP

26 By:   
27 John L. Littrell  
28 Ryan V. Fraser  
*Attorneys for Hon. Jeffrey Lane Fortenberry*

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 11 Response to Motion to Dismiss (Venue)

**DATE:** 11/9/2021

**PAGES:** 45

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GRSP\_20211109\_090033.pdf

**DOC NO:** 18



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12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JEFFREY FORTENBERRY,

18 Defendant.

Case No. 2:21-cr-00491-SB

GOVERNMENT'S OPPOSITION TO  
MOTION TO DISMISS FOR LACK OF  
VENUE; EXHIBITS A-C

Hearing Date: 11/23/2021

Hearing Time: 8:00 a.m.

[Defendant's Estimated Length: 1 hour]

Indictment: 10/19/2021

Pretrial Conference: 12/7/2021 at 8:00 a.m.

Trial: 12/14/2021 at 8:00 a.m.

Last Day: 12/29/2021

23 Plaintiff, United States of America, by and through its counsel of record, the  
24 Acting United States Attorney for the Central District of California and Assistant United  
25 States Attorneys Mack E. Jenkins and Susan S. Har, hereby files its opposition to  
26 defendant JEFFREY FORTENBERRY's ("defendant") motion to dismiss for lack of  
27 venue.  
28

1        This opposition is based upon the attached memorandum of points and authorities,  
2 the supporting exhibits, the files and records in this case, and such further evidence and  
3 argument as the Court may permit.

4        Dated: November 9, 2021

Respectfully submitted,

5        TRACY L. WILKISON  
6        Acting United States Attorney

7        SCOTT M. GARRINGER  
8        Assistant United States Attorney  
9        Chief, Criminal Division

10        /s/  
11        \_\_\_\_\_  
12        SUSAN S. HAR  
13        MACK E. JENKINS  
14        Assistant United States Attorneys

15        Attorneys for Plaintiff  
16        UNITED STATES OF AMERICA  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendant, the Honorable JEFFREY FORTENBERRY (“defendant”), a U.S. Congressman sworn to serve his country and constituents, repeatedly lied in recorded statements to Los Angeles federal investigators conducting a criminal inquiry into illegal foreign and conduit contributions after the evidence led them literally to defendant’s doorstep. Defendant was a subject of the investigation because he received illegal foreign contributions from Nigerian billionaire Gilbert Chagoury, as part of Chagoury’s scheme to influence U.S. politicians. It is undisputed that defendant’s campaign received the illicit money. It is undisputed that defendant’s statements to investigators regarding this topic were false. It cannot be credibly disputed that such statements were material—indeed, they went to the heart of the investigation and were intended by defendant to minimize his knowledge of any wrongdoing and his campaign’s acceptance of illegal foreign funds. When confronted, defendant, realizing the peril of his situation but failing to realize the strength of the government’s evidence, elected to eschew his oath and instead began his ill-fated campaign of concealment and lies.

Since 2015, the FBI, IRS, and the United States Attorney’s Office (“USAO”) in the Central District of California (“CDCA”) have been investigating individuals operating within CDCA (the “CDCA Subjects”) to route illegal foreign and conduit campaign contributions to various federal politicians, including to defendant (the “CDCA Investigation”). Defendant, an influential politician<sup>1</sup>, (1) received illegal foreign and conduit contributions from the CDCA Subjects during a fundraiser in CDCA; (2) pushed to arrange for another fundraiser in CDCA with the CDCA Subjects, even after discussing the illegal source of the funds from the prior CDCA fundraiser with one of the CDCA Subjects; and (3) repeatedly and materially lied to and misled CDCA

---

<sup>1</sup> As a longtime Congressman, defendant serves on powerful committees that, among other things, appropriate all the expenditures made by the government and fund diplomatic operations and security assistance to foreign governments.

1 agents and prosecutors about the true source of the contributions from his CDCA  
2 fundraiser and the involvement of the CDCA Subjects: a central focus of the CDCA  
3 Investigation.<sup>2</sup>

4 Notwithstanding defendant's multiple lies to CDCA agents and prosecutors and  
5 acts to obstruct the ongoing CDCA Investigation, defendant now complains that it would  
6 be a "gross abuse of power" to require him to stand trial in the very district with which  
7 he interfered. Neither the case law nor common sense support his breathless hyperbole.  
8 Venue lies where the essential conduct constituting the offense took place. Scheming to  
9 conceal or falsify material facts and making materially false statements are the essential  
10 conduct elements of the charged section 1001 offenses. And because materiality is  
11 defined in terms of its effects on "the decision of the decisionmaking body to which [the  
12 statement] was addressed," venue is proper where the effects of the defendant's material  
13 lies were felt. United States v. Peterson, 538 F.3d 1064, 1072 (9th Cir. 2008) (citation  
14 omitted). Here, venue is proper in the Central District of California because that is  
15 where defendant directed his criminal scheme and false statements—towards CDCA  
16 investigators and the CDCA Investigation—and where the effects and harm of  
17 defendant's obstructive conduct could be and were felt. And, as will be proven at trial,  
18 venue here is additionally proper because defendant's criminal conduct continued into  
19 this district, where his false statements were received, reviewed, discussed, and acted  
20 upon by the affected investigative agencies.

21 Defendant's motion to dismiss should be rejected for what it actually is: a thinly  
22 veiled attempt to forum shop away from the very district into which he so willingly  
23 reached to obstruct an ongoing criminal investigation in the hopes of obtaining a friendly  
24  
25  
26

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27 <sup>2</sup> Defendant is charged with a scheme to falsify and conceal materials, in violation  
28 of 18 U.S.C. § 1001(a)(1) (Count One), and making false statements, in violation of 18  
U.S.C. § 1001(a)(2) (Counts Two and Three). (Dkt. No. 1 ("Indictment").)

1 jury pool where he serves as an elected politician.<sup>3</sup> Defendant's reliance on an incorrect  
2 understanding and application of venue law is fatal to his motion.

## 3 II. STATEMENT OF FACTS

4 This case arises out of a significant federal criminal investigation in the CDCA  
5 that resulted in several subjects admitting their criminal conduct and entering into  
6 resolutions with the government.<sup>4</sup>

7 Because defendant's criminal acts were directed at, sought to obstruct, and  
8 actually affected the CDCA Investigation in this district, the pertinent facts concerning  
9 that investigation are set forth here. A Rule 12(b)(3)(A)(i) pretrial motion challenging  
10 venue must be denied if the indictment, taken as true, alleges sufficient facts on its face  
11 to sustain venue. United States v. Ghanem, 993 F.3d 1113, 1120 (9th Cir. 2021). As  
12 explained below, the facts alleged in the indictment sufficiently plead venue, and this  
13 Court should deny defendant's motion based on those allegations alone. At trial, venue  
14 is a question of fact that must be proven by a preponderance of the evidence. United  
15 States v. Lukashov, 694 F.3d 1107, 1120 (9th Cir. 2012). Accordingly, the government  
16 proffers some of the facts that it expects to prove at trial, including facts that would  
17 support a jury finding of venue.

18  
19  
20 <sup>3</sup> Defendant's attempt to recast his plight as a victim of "opportunistic venue  
21 shopping" by the government (Mot. at 2) is more hyperbole better befitting a political  
22 stump speech than is reflective of the facts of his case. The facts unequivocally  
23 establish that the CDCA investigators faithfully followed all of the evidence of (now  
24 proven) crimes committed in this district wherever that evidence led. Defendant's self-  
25 inflicted consequence of being "drag[ged] across the country to face a jury of  
26 Californians" (*id.*) materialized because he chose to repeatedly lie in voluntary  
27 interviews to CDCA investigators investigating him.

28 <sup>4</sup> See, e.g., United States v. Toufic Baaklini, Case No. 2:21-CR-00160-DMG,  
Deferred Prosecution Agreement (C.D. Cal. Mar. 31, 2021); United States v. Joseph  
29 Arsan, Case No. 2:21-CR-00159-PSG, Deferred Prosecution Agreement (C.D. Cal. Mar.  
30 31, 2021); see also [https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged)  
31 [and-two-associates-resolve-federal-probe-alleged](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged) (links to full agreements for Gilbert  
32 Chagoury and Ray LaHood).

33 Filed concurrently with this opposition are Exhibits A-C. Exhibit A is the Factual  
34 Basis for Chagoury's Deferred Prosecution Agreement; Exhibit B is the Factual Basis  
35 for Baaklini's Deferred Prosecution Agreement; and Exhibit C is the Factual Basis for  
36 Ray LaHood's Non-Prosecution Agreement.

1           **A. Overview of CDCA Investigation into Illegal Campaign Contributions**  
 2           **and Foreign Influence by Subjects Residing and/or Operating in the**  
 3           **Central District of California**

4           The CDCA Investigation has focused on illegal foreign and conduit contributions  
 5 and foreign influence schemes orchestrated by several subjects residing and/or operating  
 6 within CDCA. (Indictment ¶ 1.) As is relevant to this opposition, the CDCA Subjects  
 7 are:

- 8           • **Gilbert Chagoury**, a Nigerian-born, billionaire businessperson of Lebanese  
 9 descent. (Indictment ¶ 3.) Up until approximately 2015, Chagoury  
 10 maintained a residence in Los Angeles County. As a foreign national,  
 11 Chagoury was prohibited from making donations and contributions directly  
 12 or indirectly in support of any candidate for federal elected office in the  
 13 United States. (*Id.*) Defendant knew of Chagoury, knew he was a foreign  
 14 national, socially met Chagoury in person at least twice, and would pass on  
 15 his regards to Chagoury via Baaklini. (*See id.* ¶ 10.)
- 16           • **Toufic Baaklini**, a United States-based businessman who served as a proxy  
 17 for Chagoury and assisted him with financial and political dealings in the  
 18 United States. (Indictment ¶ 4.) Defendant had a personal and professional  
 19 relationship with Baaklini. (*See* Ex. B.)
- 20           • **Individual H**, a resident of Los Angeles with ties to Chagoury and  
 21 Baaklini. (Indictment ¶ 5.) Defendant's campaign was introduced to  
 22 Individual H through Baaklini.

23           This investigation began in 2015 when Los Angeles FBI learned of suspicious  
 24 wire transfers from Chagoury to Individual H, who then routed similar amounts of  
 25 money close in time to the campaign of a U.S. Representative in California. (*See* Ex. A.  
 26 at 2-3.)

27           Through the course of the CDCA Investigation, CDCA agents and prosecutors  
 28 learned that the CDCA Subjects had conspired to funnel Chagoury's money to the  
 campaigns of political candidates whom Chagoury favored because they shared a  
 common political and/or religious cause. (Ex. A. at 2.) The CDCA Investigation  
 revealed that from 2012 to 2016, Chagoury provided approximately \$180,000 in illegal  
 political contributions to four different United States political candidates—including  
 defendant—with the assistance of Baaklini, Individual H, and others. (*See* Exs. A, B.)

1 The CDCA Investigation also revealed that Chagoury, with the assistance of Baaklini,  
2 routed an additional \$50,000 to then-United States Secretary of Transportation Ray  
3 LaHood, in the form of a purported “loan” that was never disclosed as required on  
4 LaHood’s government ethics forms and was not paid back until after LaHood resolved  
5 his case with the CDCA. (See Ex. C.)

6 As part of the investigation, CDCA agents and prosecutors sought to learn  
7 whether and when any of the recipient politicians were aware of the illicit contributions  
8 to their campaigns; whether any person sought to impermissibly influence the recipient  
9 politician in exchange for the contribution; and whether any recipient politician took any  
10 official acts in connection with the illicit contributions. (Indictment ¶ 1.)

11 **B. 2016: CDCA Subjects Funnel Illegal Campaign Contributions to**  
12 **Defendant at a Fundraiser in Los Angeles**

13 In 2016, Chagoury arranged to funnel \$30,000 of his money to defendant’s  
14 campaign. (Indictment ¶ 11; Ex. A at 4-5.) To conceal the fact that he was the source of  
15 this contribution, Chagoury arranged for the funds to be delivered to Baaklini, who then  
16 provided that money in cash to Individual H to fund defendant’s campaign. (Id.; see also  
17 Ex. B at 2-3.) In January 2016, Baaklini provided Chagoury’s \$30,000 in cash to  
18 Individual H at a restaurant in Los Angeles and further instructed Individual H to host a  
19 fundraiser for defendant during which other individuals (conduits recruited by Individual  
20 H) would contribute Chagoury’s money to defendant’s campaign. (Indictment ¶ 11; Ex.  
21 A at 4-5; Ex. B at 2-3.)

22 As instructed by Baaklini, Individual H hosted a fundraiser for defendant on  
23 February 20, 2016. (Indictment ¶ 11.) Defendant attended the fundraiser, which took  
24 place in Los Angeles. (Id.) The fundraiser raised a total of \$33,400, which defendant  
25 later stated was a significant haul for an out-of-state representative. Of that amount,  
26 \$30,200 was contributed by six conduits who had been recruited by Individual H and  
27 reimbursed with Chagoury’s money. (See id.; Ex. A at 4-5; Ex. B at 2-3.)  
28

1       Following the fundraiser and after being confronted by the FBI, Individual H  
2 began cooperating in the CDCA Investigation. (Indictment ¶ 13.) The scope of the  
3 CDCA Investigation included determining (among other things) if and when defendant  
4 knew about the illegal funds he received in Los Angeles and whether defendant had any  
5 communications with Chagoury or Baaklini about the funds he received in Los Angeles.  
6 (Id. ¶ 12.)

7       **C. 2018: Defendant Pushes a CDCA Subject to Host Another Fundraiser**  
8       **in Los Angeles for Him**

9       Defendant was up for re-election in November 2018. In the spring of 2018,  
10 defendant reached out to Individual H. (Indictment ¶ 14.) On a recorded call on April 9,  
11 2018, after inquiring about how the “community in L.A.” was doing, defendant asked  
12 Individual H to host another fundraiser in Los Angeles for him. (See id.) Individual H  
13 agreed to speak to one of their mutual acquaintances about it.

14       Following up on defendant’s request for another Los Angeles fundraiser to  
15 support his reelection, Individual H called defendant on June 4, 2018. (Indictment ¶ 14.)  
16 Unbeknownst to defendant at the time, the call was surreptitiously recorded at the  
17 direction of the FBI. During that call, Individual H expressly and repeatedly discussed  
18 with defendant that, during the last fundraiser, \$30,000 in cash had been provided by  
19 Baaklini (originating from Chagoury) and provided to defendant through conduit donors  
20 whom Individual H reimbursed using Chagoury/Baaklini’s cash. (Id. ¶¶ 14-15.)

21       As the jury will hear from the recording of that call, defendant did not express  
22 surprise or concern or seek clarification about Individual H’s admissions that illegal  
23 foreign cash had been funneled to his campaign. Instead, defendant simply continued to  
24 push for the second fundraiser, explaining that he hoped to “have some continuation of  
25 the fine generosity” that he had received from the first (illicitly funded) fundraiser and  
26 offering to speak with his friend Baaklini—a key facilitator of the illegal contributions to  
27 defendant’s campaign—to see if he could again “help” with the fundraiser. (See  
28 Indictment ¶ 19(b)(iii).) The call concluded with defendant noting that he had told

1 Baaklini to deliver his regards to Chagoury, who defendant correctly understood was  
2 “still in Paris.”

3 After the call with Individual H, in which the host of the fundraiser confirmed the  
4 illegal source of the \$30,000 defendant had accepted into his campaign, defendant did  
5 not amend any of his disclosures regarding the contributions to account for the true  
6 donors or disgorge the funds as required by the Federal Election Commission.  
7 (Indictment ¶ 16.)

8 **D. March 2019: Defendant Lies to and Misleads CDCA Agents about the**  
9 **Contributions He Received from the CDCA Subjects**

10 Given defendant’s receipt of illegal campaign contributions, defendant’s response  
11 to the June 4 call with Individual H, and defendant’s failure to take any corrective steps  
12 following the June 4 call, there were common sense and compelling investigative needs  
13 for CDCA agents to travel to Nebraska to see if defendant would interview with the  
14 agents as part of the CDCA Investigation. (See Indictment ¶ 20.) The interview, which  
15 took place on March 23, 2019, was surreptitiously recorded. And as the jury will hear  
16 from that recording, after the agents established they were from California and advised  
17 defendant that the interview was voluntary<sup>5</sup> and that it was a crime to lie to federal  
18 agents, defendant proceeded to mislead the CDCA agents and make repeated false  
19 statements about matters material to the CDCA Investigation during the approximately  
20 20-minute interview.<sup>6</sup>

21 The CDCA agents’ questions focused on the CDCA Subjects and the 2016  
22 fundraiser in Los Angeles. Defendant repeatedly denied knowing about any illegal  
23 conduit contributions to his campaign, including after being specifically asked about  
24 Individual H and Baaklini. (Indictment ¶ 19(a)(i), ¶ 20.) He denied receiving money  
25 from Chagoury. (Id. ¶ 19(a)(iii).) Defendant also falsely stated that “the only people

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26 <sup>5</sup> The jury will also hear that defendant asked for and received the presence of  
27 local Nebraska police to serve as his escort during his voluntary interview with CDCA  
investigators.

28 <sup>6</sup> Contrary to defendant’s suggestion, this is not a case in which defendant merely  
“uttered” a single false statement or two. (See Mot. at 5.)

1 [he] received money for are on the financial disclosure.” (*Id.* ¶ 19(a)(ii), ¶ 20(b)-(c).) At  
 2 the conclusion of the interview, defendant asked the CDCA agents how to get in touch if  
 3 he recalled additional information, and the CDCA agents provided defendant with a  
 4 California phone number.

5 **E. July 2019: Defendant Requests Another Interview with CDCA Agents**  
 6 **and Prosecutors and Doubles Down on His Lies to Them about Matters**  
 7 **Material to the CDCA Investigation**

8 Following the March 23 interview, defendant (through counsel) proactively  
 9 reached back into this district and requested another interview with CDCA agents and  
 10 prosecutors. At the defense’s request, the interview took place in Washington, D.C. on  
 11 July 18, 2019, at the offices of defendant’s then counsel. Defendant was again advised  
 12 that the interview was voluntary and that it was a crime to lie to the federal government.

13 During the approximately two-hour, consensually recorded interview, defendant,  
 14 despite inviting CDCA agents and prosecutors across the country on a promise of  
 15 additional information, instead further misled the CDCA agents and prosecutors and  
 16 obstructed the CDCA Investigation. Defendant stated that he had a call with Individual  
 17 H about the 2016 fundraiser,<sup>7</sup> but misleadingly claimed that Individual H had made only  
 18 a vague comment referencing Chagoury that caused him some undecipherable  
 19 “concern.” (Indictment ¶ 19(b)(iii).) Defendant expressly denied that Individual H told  
 20 him that Baaklini had given Individual H \$30,000 cash for the 2016 fundraiser. (*Id.*  
 21 ¶ 21(a).) Defendant also falsely stated that he was not aware of any illicit donations  
 22 made during the 2016 fundraiser. (*Id.* ¶ 21(b).) Defendant went so far as to proclaim  
 23 that if he had heard that Baaklini had given Individual H \$30,000 cash to help fund the  
 24 fundraiser (a direct quote from Individual H during defendant’s call), that would have  
 25 been “horrifying.” (*Id.* ¶ 19(b)(iv).) Defendant also misleadingly stated that he had  
 26 ended the call after Individual H made the “concerning” comment when, in fact,  
 27

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28 <sup>7</sup> At the time of the interview, defendant was still unaware that the FBI had  
 recorded the call or that Individual H was cooperating with the government.

1 defendant persisted in his goal of obtaining another Los Angeles fundraiser hosted by  
2 Individual H and facilitated by Baaklini. (*Id.* ¶ 19(b)(iii).)

3 Defendant’s scheme to falsify and conceal facts, as well as his false statements,  
4 were capable of impacting and, in fact, impacted the CDCA Investigation and the  
5 decisions of the CDCA agents and prosecutors. (Indictment ¶¶ 18, 20, 21.) As a direct  
6 result of defendant’s criminal acts, CDCA agents and prosecutors conducted additional  
7 interviews of multiple witnesses, including Baaklini and Chagoury, to discuss defendant  
8 and determine possible motives for his lies; obtained and reviewed additional  
9 communications amongst witnesses and phone-related data; and re-analyzed previously  
10 obtained evidence.

### 11 **III. SECTION 1001 VENUE LAW**

12 “[V]enue law grows out of important concerns that a criminal jury trial be held  
13 near the place where the crime was committed and where prosecution can conveniently  
14 proceed.” *United States v. Angotti*, 105 F.3d 539, 541 (9th Cir. 1997), abrogated on  
15 other grounds by *United States v. Cabrales*, 524 U.S. 1 (1998). When there is no express  
16 venue provision in a criminal statute, as is the case with 18 U.S.C. § 1001 and thus all  
17 counts charged here, venue is determined by the “locus delicti”; that is, “the nature of the  
18 crime alleged and the location of the act or acts constituting it.” *Cabrales*, 524 U.S. at 6–  
19 7 (citation omitted). Under this two-part inquiry, courts must first identify the conduct  
20 that constitutes the offense (the nature of the crime) and then discern the location of the  
21 commission of the criminal acts. *United States v. Pace*, 314 F.3d 344, 349 (9th Cir.  
22 2002). In evaluating the first prong—the “nature of the crime”—courts look to the  
23 “essential conduct elements” of the offense. *See United States v. Rodriguez-Moreno*,  
24 526 U.S. 275, 280 (1999).

25 Under section 1001(a), “whoever, in any matter within the jurisdiction of the  
26 executive, legislative, or judicial branch of the Government of the United States,  
27 knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or  
28 device a material fact [or] (2) makes any materially false, fictitious, or fraudulent

statement or representation” violates the statute. The jurisdictional language, which is phrased separately from the prohibited conduct, is a predicate circumstance of the conduct, rather than an essential conduct element. United States v. Oceanpro Indus., Ltd., 674 F.3d 323, 329 (4th Cir. 2012). Similarly, the mens rea requirement is a circumstance element that does not contribute to determining the locus delicti of the crime. Id. (citation omitted).

Thus, the essential conduct element of a section 1001 violation is the making of materially false statements, or the concealing of material facts. The majority of circuits have reached this same conclusion. In addition to holding that materiality is an essential conduct element of the offense, the majority of circuits have also held that venue lies where the impact of that materiality is felt. See United States v. Salinas, 373 F.3d 161, 167 (1st Cir. 2004) (“Section 1001 explicitly criminalizes only those false statements that are material. When materiality is a critical component of the statutory definition, it makes perfect sense to consider the crime as continuing into the district in which the effects of the false statement are felt. After all, since materiality is an element of the offense, a defendant cannot be convicted under section 1001 unless and until such a connection can be shown.” (citation omitted))<sup>8</sup>; United States v. Coplan, 703 F.3d 46, 78-80 (2d Cir. 2012) (venue is proper in the Southern District of New York where false statements made to IRS investigators in Tennessee were conveyed to or had effect on IRS investigators working in SDNY; “[T]he essential conduct prohibited by § 1001(a)(2) is the making of a materially false, fictitious, or fraudulent statement. . . . Proving the materiality of [defendant’s] false statements in Tennessee necessarily requires evidence that those statements were conveyed to or had an effect on the IRS investigators working in the Southern District of New York.” ); United States v. Candella, 487 F.2d 1223, 1227-28 (2d Cir.1973) (same); Oceanpro Indus., Ltd., 674 F.3d at 329 (“[E]ssential

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<sup>8</sup> Defendant protests that Salinas is dicta, but dicta “may be followed if sufficiently persuasive,” even if it is not controlling. Kirtsaeng v. John Wiley & Sons, Inc., 568 U.S. 519, 548 (2013).

conduct prohibited by the statute is ‘making any materially false statement’” and because “the essential conduct constituting the offense inherently references the effects of that conduct, venue is proper in the district where those prescribed [sic] effects would be felt.” (citation omitted)); United States v. Ringer, 300 F.3d 788, 792 (7th Cir. 2002) (fact that defendant’s false statements in Kentucky were reasonably likely to affect an investigation in Indiana established venue in Indiana for charged section 1001 violation).

District courts in the Ninth and Third Circuits have also reached the same conclusion. See United States v. Zweig, No. 16-CR-00208-WHO-1, 2017 WL 3895708, at \*5 (N.D. Cal. Sept. 5, 2017) (“Because materiality is an element of the offense under Section 1001, and a defendant cannot be convicted under Section 1001 without a showing of such materiality, venue may lie where the effect of the statement is felt and it is therefore rendered material.”); United States v. Brennan, 452 F. Supp. 3d 225, 236-237 (E.D. Pa. 2020) (concluding that “§ 1001’s ‘essential conduct’ is making a ‘materially false statement,’ rather than merely making any false statement,” and that “Congress defined § 1001’s essential conduct element in terms of its effect, making the effects-based venue analysis available”).

#### IV. ARGUMENT

The Indictment alleges that defendant schemed to falsify and conceal material facts and materially lied to CDCA agents and prosecutors about matters affecting the CDCA Investigation. (Indictment ¶¶ 18, 20, 21.) Those alleged acts are the essential conduct criminalized by sections 1001(a)(1) and (a)(2). Because defendant’s materially false statements and scheme were designed to affect and did affect the CDCA Investigation in this district, the locus delicti of defendant’s crimes is this district.

##### A. Making a Materially False Statement Is Essential Conduct Under Section 1001

Section 1001(a)(2) prohibits “mak[ing] any materially false, fictitious, or fraudulent statement or representation.” Likewise, anyone who “falsifies, conceals, or covers up by trick, scheme, or device a material fact” violates section 1001(a)(1). A

1 conviction under either subsection of section 1001 requires the government to prove that  
2 defendant's actions and statements were both false (or constituted concealment) and  
3 material. United States v. Gaudin, 28 F.3d 943, 951 (9th Cir. 1994). Materiality is part  
4 of the nature, or essence, of the crime. Accordingly, as held by the majority of circuits,  
5 the making of any materially false statements (or covering up material facts) is the  
6 essential conduct element for purposes of venue analysis. (See Opp'n at 10-11  
7 (collecting cases).)

8 Without citing any authority, defendant makes the conclusory assertion that the  
9 materiality requirement for a section 1001 charge is "wholly independent of the  
10 defendant's conduct" and therefore not an essential conduct element. (See Mot. at 6-7.)  
11 This argument fails legally and does not pass a commonsense test. Materiality, like  
12 falsity, bears on defendant's conduct—he is the one who must make a materially false  
13 statement. See 18 U.S.C. §§ 1001(a)(1), (a)(2). It is the reason why a defendant who  
14 chooses to lie about what he had for breakfast (not material) does not commit a federal  
15 crime but the defendant who lies about his knowledge regarding subjects who made  
16 illegal foreign and conduit contributions to his campaign (material) does. See Brennan,  
17 452 F. Supp. 3d at 235 (explaining that materiality is an essential conduct element  
18 because "[n]ot all lies are illegal under § 1001—only material lies. Congress drew a line  
19 between proscribed and permissible conduct, and it used the word 'materially' to draw  
20 that line."). The materiality element defines the defendant's conduct, not happenstance  
21 or circumstance.

22 In defendant's quest to limit venue strictly to where the false statement was  
23 "made" or "uttered," defendant looks only to the verbs of the statute and ignores the  
24 words "material" and "materially." In doing so, defendant impermissibly relies on the  
25 restrictive "verb test," against which the Supreme Court has warned. While the "verb  
26 test" can be used "as an interpretative tool, it cannot be applied rigidly, to the exclusion  
27 of other relevant statutory language. The test unduly limits the inquiry into the nature of  
28 the offense and thereby creates a danger that certain conduct prohibited by statute will be

missed.” Rodriguez-Moreno, 526 U.S. at 280 (emphasis added); see also Pace, 314 F.3d at 349 n.2 (same). As a result of defendant’s rigid approach, he characterizes the element conduct offense as making a false statement, as opposed to a materially false statement, thereby missing other relevant statutory language that describes the very conduct prohibited by the statute. This was precisely what the Supreme Court instructed courts not to do.

Even the two minority circuit cases that defendant cites do not compel a contrary conclusion. In United States v. Smith, 641 F.3d 1200 (10th Cir. 2011), the Tenth Circuit held that venue was not proper in Oklahoma (the site of an ongoing investigation) because the defendant made his false statements in Minnesota. Id. at 1208. The court superficially acknowledged the Supreme Court’s admonition against exclusive reliance on the “verb test,” but then incorrectly relied solely on the “verb test” to conclude venue was proper only in the district “where the defendant makes the false statement.” Id. at 1207-08. The Tenth Circuit failed to specifically analyze the materiality element or explain why it excised the word “materially” from a statute that punishes individuals who “makes any materially false . . . statement.” 18 U.S.C. § 1001(a)(2). The unpublished Eleventh Circuit decision in United States v. John, 477 F. App’x 570 (11th Cir. 2012), is even less persuasive. There, the court merely parroted Smith’s flawed reliance on the “verb test” and similarly ignored the materiality requirement of section 1001.<sup>9</sup> See id. at 572.

The essential conduct prohibited by the statute is making a materially false statement. That conclusion—as shared by the majority of circuits—comports with Supreme Court precedent, adheres to the text of the statute without excluding other

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<sup>9</sup> What actually seemed to trouble the Eleventh Circuit was finding venue in the Northern District of Florida when the defendant “had never been in the Northern District of Florida, placed a call to anyone in the Northern District of Florida, or mailed or sent anything to the Northern District of Florida before she was indicted.” Id. at 571. In that regard, even if John had any weight, it is distinguishable from the present case where defendant had a “community” in CDCA, traveled to CDCA, received illicit campaign funds in CDCA, reached into CDCA to contact Individual H about arranging another fundraiser here, and reached back into CDCA to arrange for his second interview with CDCA investigators.

relevant language, and is consistent with Ninth Circuit law and common sense that the conduct prohibited by section 1001 is the making of a materially false statement and not just making any false statement.

**B. Venue Is Proper in the District Affected by Defendant’s Material Lies and Obstructive Acts**

Congress may, consistent with the venue clauses of Article III and the Sixth Amendment, define the essential conduct elements of a criminal offense in terms of their effects, thus providing venue where those proscribed effects are felt. United States v. Bowens, 224 F.3d 302, 312 (4th Cir. 2000). This approach is consistent with the Supreme Court’s observation that Congress may “provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates.” United States v. Johnson, 323 U.S. 273, 275 (1944) (emphasis added); see also Lukashov, 694 F.3d at 1121 (same).

That is precisely what Congress did with section 1001. Materiality within the meaning of that statute asks whether the statement “has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed.” Peterson, 538 F.3d at 1072 (quoting Kungys v. United States, 485 U.S. 759, 770 (1988)). By inserting the word “materially” into the conduct-focused language of section 1001, Congress “inherently reference[d] the effects of that conduct,” Oceanpro Indus., Ltd., 674 F.3d at 329, and prescribed that a defendant be held to account in the very district affected or influenced by the “force propelled” from defendant’s lies, Johnson, 323 U.S. at 275.

Venue is therefore proper where the effect of defendant’s false statements is capable of being, or is, felt and rendered material. The majority of circuits are uniform in this conclusion—and for good reason. (See Opp’n at 10-11 (collecting cases).) A defendant who directs his false statements to a decisionmaking body in this district to influence its decisions in this district should be held to account in the very district he sought to influence. The decisionmaker is essentially the victim of the criminal act

1 seeking to illegally impair its decisionmaking.<sup>10</sup> By way of analogy, if a defendant  
 2 shoots a gun from one district and hits a victim in a second district, there would be no  
 3 dispute that venue was proper in the victim's district. Venue in the district affected by  
 4 the false statement makes sense, particularly since proving materiality in a section 1001  
 5 case "necessarily requires evidence of the existence of the federal investigation in [the  
 6 venued district] and the potential effects of [defendant's] statement on that  
 7 investigation." Oceanpro Indus., Ltd., 674 F.3d at 329; see also Ringer, 300 F.3d at 792  
 8 ("Proving that the investigation was reasonably likely to be affected by [defendant's]  
 9 statements was the keystone to materiality in this case.").

10 Defendant catastrophizes that by permitting venue in the very districts that  
 11 defendants seek to influence by their deceptive and false statements, prosecutors could  
 12 manufacture venue "in any district they choose." This argument is baseless. As the  
 13 Indictment alleges (and as the discovery provided to the defense establishes), the CDCA  
 14 Investigation long predated defendant's false statements. It is because of the well-  
 15 established interests and topics of that robust and ongoing investigation (namely, into  
 16 illegal foreign and conduit contributions, foreign influence, and bribery schemes) that  
 17 defendant's voluntary statements to the investigators were material. In other words,  
 18 venue for a potential false statements prosecution was firmly established within this  
 19 district by virtue of the long-standing criminal investigation here, which was operating  
 20 well before defendant sought to obstruct it, and was where the CDCA agents and  
 21 prosecutors took subsequent investigative steps as a direct result of defendant's  
 22 obstructive acts.<sup>11</sup>

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24 <sup>10</sup> Whether the defendant actually achieves his illicit goal is of no moment. United  
 25 States v. Serv. Deli Inc., 151 F.3d 938, 941 (9th Cir. 1998) ("The false statement need  
 26 not have actually influenced the agency, and the agency need not rely on the information  
 27 in fact for it to be material.").

28 <sup>11</sup> Defendant's parade of horrors is equally flawed. Defendant asks where the  
 effect of a false statement is felt. (Mot. at 11.) The effect of defendant's false  
 statements to CDCA agents and prosecutors about CDCA Subjects who were at the  
 center of their CDCA Investigation were felt in the Central District of California.  
 Defendant asks who decides where the effect of a statement is felt. (*Id.*) Defendant is  
 (footnote cont'd on next page)

1 In sum, this Court should follow the persuasive authorities of the First, Second,  
 2 Fourth, and Seventh Circuits and join the other district court in this circuit to address this  
 3 issue and find that (1) the essential conduct element of a section 1001 violation is the  
 4 making of a materially false statement, and (2) venue lies where the impact of that  
 5 materiality is felt.

6 **C. The Indictment Establishes Proper Venue Based on Defendant's**  
 7 **Material Lies Affecting This District**

8 The allegations in the Indictment, standing alone and taken as true, are more than  
 9 sufficient to plead venue. See Ghanem, 993 F.3d at 1120 (“An indictment does not have  
 10 an apparent venue defect if ‘it allege[s] facts which, if proven, would have sustained  
 11 venue’ in the district of trial.” (citation omitted)).

12 First, the Indictment alleges that defendant engaged in the essential conduct that  
 13 constitutes the charged crimes. Count One alleges that defendant “falsified, concealed,  
 14 and covered up by trick, scheme, and device material facts.” (Indictment ¶ 18 (emphasis  
 15 added).) Counts Two and Three allege that defendant “made materially false statements  
 16 and representations” to the CDCA agents and prosecutors. (Id. ¶¶ 20-21 (emphasis  
 17 added).) Second, the indictment alleges that defendant’s essential conduct—that is,  
 18 falsifying/concealing/covering up material facts and making materially false  
 19 statements—“affect[ed] the Federal Investigation in the Central District of California.”  
 20 (Id. ¶¶ 18-21) (emphasis added). Nothing more is needed. See Ghanem, 993 F.3d at  
 21 1120.

22 But, as outlined above, the Indictment does provide more. It lays out in great  
 23 detail the genesis and nature of the CDCA Investigation; the precise issues and subjects

24 the one who decided to create those effects when he voluntarily made material false  
 25 statements to CDCA agents and prosecutors in an effort to obstruct their ongoing  
 26 investigation. Defendant asks how this standard applies when the government “takes the  
 27 position that it need not prove that the statement influenced it at all.” (Id. at 11-12.) The  
 28 answer is that binding Supreme Court and Ninth Circuit precedent defining materiality  
 applies, and that the government must prove that defendant’s false statements had the  
 natural tendency or ability to influence a federal decisionmaking body within the venue  
 district. Here, defendant’s false statements both had the natural tendency to influence  
 the CDCA decisionmaking bodies and had the actual effect of influencing those bodies  
 pertaining to their decisions and activities in the Central District of California.

1 that the CDCA Investigation was investigating; the chronology and development of the  
 2 CDCA Investigation as it related to this defendant; and the specific false statements and  
 3 scheme that defendant directed towards the CDCA Investigation concerning the very  
 4 same matters that were at the heart of the investigation. Indeed, the Indictment makes  
 5 abundantly clear the reasons why defendant's lies and misstatements were material to,  
 6 and affected, the ongoing criminal investigation that was well-rooted in this district and  
 7 concerned illegal campaign contribution activity taking place within CDCA and  
 8 involving the CDCA Subjects. Specifically, the Indictment alleges the following:

- 9 • CDCA investigators were conducting a federal criminal investigation into  
 10 illegal political campaign contributions, in violation of federal election  
 11 laws, including those made to defendant. (Indictment ¶¶ 1, 6-8.)
- 12 • The subjects of the CDCA Investigation, including a foreign national, were  
 13 illegally operating in the CDCA. (Id. ¶¶ 3-5, 6-8, 11.)
- 14 • The investigation sought to uncover whether and when any politicians  
 15 including defendant, were aware they had received illegal contributions  
 16 and/or whether any politicians, including defendant, had any conversations  
 17 about taking certain actions in exchange for the illegal contributions. (Id.  
 18 ¶¶ 1, 12.)
- 19 • The CDCA Investigation learned that in January 2016, Chagoury used  
 20 Baaklini, who used Individual H, to route \$30,000 to defendant through  
 21 conduits during a fundraiser in Los Angeles. (Id. ¶¶ 3, 11.) These acts  
 22 violated the same federal election laws that were the subject of the CDCA  
 23 Investigation. (Id. ¶¶ 6-8.)
- 24 • Between March and June 2018, defendant reached out to Individual H, a  
 25 resident of Los Angeles, to inquire about hosting another fundraiser in Los  
 26 Angeles. (Id. ¶¶ 5, 14.) During a call on June 4, 2018, Individual H  
 27 expressly told defendant that the \$30,000 from the prior fundraiser was  
 28 donated through conduits and probably did come from Chagoury (and thus  
 that a crime was committed benefitting his campaign). (Id. ¶ 15.)  
 Defendant continued to ask for another Los Angeles fundraiser and,  
 following the call, did not amend his filings with the Federal Election  
 Commission or disgorge the funds. (Id. ¶¶ 16, 19(b)(iii).)
- As part of defendant's scheme to falsify and conceal material facts, he,  
 among other things, falsely stated that he was unaware of any contributions  
 made by foreign national to his campaign; that he ended the call with

Individual H after he made a “concerning comment”; and that he would have been horrified if he had learned that Baaklini had provided Individual H with the funds contributed to the CDCA fundraiser. (*Id.* ¶¶ 14-15, 19.)

- On March 23, 2019, defendant made materially false statements in an interview “affecting the Federal Investigation in the Central District of California.” (*Id.* ¶ 20.) Those materially false statements included that defendant was not aware Baaklini had made or directed any illegal contributions to defendant and that all individuals who donated to defendant were publicly disclosed. (*Id.*)
- On July 18, 2019, defendant made materially false statements in an interview “affecting the Federal Investigation in the Central District of California.” (*Id.* ¶ 21.) Those materially false statements included that Individual H had not told him that the \$30,000 came from Baaklini and that he was not aware of any illicit donations made to him during the CDCA fundraiser. (*Id.*)

These allegations, taken as true, amply demonstrate that venue is proper in this district because defendant’s false statements were material to the CDCA Investigation.

**D. Venue Is Also Proper in This District Because Defendant’s False Statements Continued Into This District**

For the reasons set forth above, the Court need not go further than the Indictment to find that venue is properly pled and to deny defendant’s motion. At trial however, the government will prove an additional ground establishing venue in this district: venue is proper here because defendant’s materially false statements and obstructive acts continued into this district.

Crimes that are not unitary but instead span space and time, may be considered continuing offenses under 18 U.S.C. § 3237(a). *United States v. Corona*, 34 F.3d 876, 879 (9th Cir. 1994). Section 3237(a), in turn, dictates that “[a]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.” Violations of 18 U.S.C. § 1001 may constitute a continuing offense. *See Pace*, 314 F.3d at 352 (“[M]aking’ a false statement to a federal agency is a continuing offense and may be prosecuted in a district not only where the

1 false statement is initially provided but where it is ultimately received.” (citation  
2 omitted)); see also Salinas, 373 F.3d at 166-67 (noting that “courts consistently treat  
3 section 1001 crimes as continuing offenses”). A continuing offense “does not terminate  
4 merely because all of the elements are met.” Lukashov, 694 F.3d at 1121 (citation  
5 omitted).

6 When a defendant’s materially false statements and deceptive acts, in violation of  
7 section 1001, are received by “the decisionmaking body to which it was addressed,”  
8 Peterson, 538 F.3d at 1072, in the district where that body operates, the section 1001  
9 offense continues into that district. The Second Circuit decision in United States v.  
10 Coplan is instructive on this point. There, the defendant was charged with making false  
11 statements to the IRS during a deposition in Tennessee concerning issues pertinent to an  
12 ongoing IRS investigation in the Southern District of New York. 703 F.3d at 57, 80.  
13 Although the defendant made the false statements in Nashville, “it [did] not follow that  
14 the crime then terminated, and that what transpired in Manhattan was irrelevant for  
15 venue purposes.” Id. at 79 (quoting Candella, 487 F.2d at 1228). The Second Circuit  
16 reasoned that the defendant’s false statements to IRS officials in the Nashville deposition  
17 “continued into the Southern District of New York, where his deposition transcript was  
18 reviewed and discussed by IRS officials in connection with the ongoing [investigation].”  
19 Id. at 80. And because the defendant’s statements “continued to be false and continued  
20 to be in the jurisdiction of the United States when they finally reached Manhattan,”  
21 venue was proper in the Southern District of New York. Id.<sup>12</sup>

22 The Ninth Circuit is in accord with the Second Circuit’s analysis. In Angotti, the  
23 Ninth Circuit held that venue was proper in this district where defendant’s false  
24 statements, in violation of 18 U.S.C. § 1014 (fraudulent loan application), were made in  
25 the Northern District and then transmitted here. 105 F.3d at 542-44. Citing Candella,  
26 the Ninth Circuit held that “the act of making a communication continues until the  
27

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28 <sup>12</sup> It is of no consequence whether the statements involved written or oral false  
statements, both of which are prohibited under 18 U.S.C. § 1001. Id. at 78 n.32.

1 communication is received by the person or persons whom it is intended to affect or  
 2 influence.” Id. (emphasis added). In 2002, after the Supreme Court decisions in  
 3 Rodriguez-Moreno and Cabrales, the Ninth Circuit affirmed its reasoning in Agnotti. In  
 4 United States v. Pace, the Ninth Circuit held that venue was proper in the District of  
 5 Arizona, which received defendant’s false tax return, even though defendant had the  
 6 return prepared and signed in Ohio and New York. 314 F.3d at 352. Relying on  
 7 Angotti, the Ninth Circuit explained:

8 False statements may be “made” where they are ultimately  
 9 received. . . . Thus, the crime of “making” a false tax return  
 10 commences when one furnishes information essential to the  
 11 return, and is not completed until the information is received  
 12 by the party to whom it is addressed. This conclusion is  
 13 consistent with Angotti, in which we held that “making” a false  
 14 statement to a federal agency is a continuing offense and may  
 15 be prosecuted in a district not only where the false statement is  
 16 initially provided but where it is ultimately received. In so  
 17 holding, we explained: “[t]he statements continued to be false  
 18 ... not only when initially presented but also upon arrival[at the  
 19 place] where the decision was reached....”

20 ...

21 For such continuing offenses, venue is proper in any district in  
 22 which the continuing conduct has occurred.

23 Id. at 352 (citations omitted) (emphasis added).

24 Even the sole published circuit case on which defendant relies supports the  
 25 government’s position. The Tenth Circuit in United States v. Smith, which incorrectly  
 26 relied on the verb test, recognized the applicability of the continuing offense doctrine for  
 27 section 1001 offenses. 641 F.3d at 1208 (“[G]iving a false statement may be a  
 28 continuing offense, where the statement is ‘made’ in more than one district.” (citation  
 omitted)). In concluding that there was no venue in Oklahoma, the Tenth Circuit  
 emphasized that the agent who interviewed the defendant in Minnesota did not record  
the statement or take notes during the interview (both occurred in defendant’s case), and  
 thus did not bring the memorialized statements back to Oklahoma, where the

1 investigation was pending. Id. at 1208–09 (“The false statements began, continued, and  
2 ended during the interview. The interview was not recorded, transcribed, or otherwise  
3 preserved for use in Oklahoma.”). It was under these narrow circumstances that the  
4 Tenth Circuit reasoned the defendant’s statements were “made” exclusively in  
5 Minnesota. Id. at 1209.

6 At trial, the government expects to present evidence that defendant’s violations of  
7 section 1001 were continuing offenses that carried into this district. Defendant’s  
8 audience and intended recipient of his false statements were the CDCA agents and  
9 prosecutors, whom he knew full well were operating and investigating matters within  
10 this district. Cf. Angotti, 105 F.3d at 543 (explaining that, for venue in false statements  
11 prosecutions, it is irrelevant whether the defendant “subjectively knew the identity of  
12 location of that official; that official is nonetheless the person to whom [the defendant’s]  
13 statements were directed”). Defendant’s false statements were “recorded, transcribed,  
14 and preserved for use” in the Central District of California where they were utilized to  
15 make investigative and charging decisions. See Smith, 641 F.3d at 1208–09. It was in  
16 this district that CDCA agents and prosecutors reviewed and discussed defendant’s false  
17 statements and made decisions about the next steps in the CDCA Investigation, based on  
18 defendant’s criminal conduct. And although the government need not prove that  
19 defendant’s actions actually affected the decisionmaking body, his actions had real  
20 effect. See Deli Inc., 151 F.3d at 941. As a result of defendant’s scheme and false  
21 statements, CDCA agents and prosecutors, among other things, conducted additional  
22 interviews of multiple witnesses; obtained and reviewed additional communications and  
23 phone-related data; and re-analyzed previously obtained evidence.

24 Because defendant’s criminal offenses were directed towards this district,  
25 continued into this district, and directly impacted the investigation within this district,  
26 venue is proper here. Under these circumstances, including those that will be proven at  
27 trial, defendant should be held to “face a jury of Californians.”  
28

1 **V. CONCLUSION**

2 The clear case law set forth by the majority of the circuits and the reasoning  
3 explained therein, the specific allegations of this Indictment, and common sense  
4 demonstrate that venue is proper here. For the foregoing reasons, the government  
5 respectfully requests that this Court deny defendant's motion to dismiss.  
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## **Exhibit A**

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12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

No.

15 Plaintiff,

DEFERRED PROSECUTION  
16 AGREEMENT

17 v.

18 GILBERT CHAGOURY,

19 Defendant.

20  
21 I. INTRODUCTION

22 1. This Deferred Prosecution Agreement (the "DPA") is entered  
23 into between the United States Attorney's Office for the Central  
24 District of California ("USAO") and defendant Gilbert Chagoury  
25 ("defendant Chagoury"). This DPA is entered into only on behalf of  
26 the USAO and cannot bind any other federal, state, local or foreign  
27 prosecuting, enforcement, administrative, or regulatory authorities.  
28 The USAO has also disclosed in writing to defendant Chagoury's

Beginning in or around June 2012 and continuing through in or around March 2016, GILBERT CHAGOURY ("CHAGOURY"), with the assistance of Toufic Baaklini, Joseph Arsan, Individual H, and others, provided approximately \$180,000 to individuals in the United States that was used to make donations to candidates in United States elections. CHAGOURY knew these funds were used to make contributions to these candidates and, as a result, he violated United States laws by (i) causing federal election campaign contributions exceeding \$25,000 to be made in a single year as a foreign national, in violation of 52 U.S.C. §§ 30109(d) (1) (A), 30121(a) (1) (A); and (iii) causing federal election campaign contributions to be made in the name of another (conduit contributions), in violation of 52 U.S.C. §§ 30109(d) (1) (A), 30122.

At all times relevant to this factual statement, CHAGOURY was a "foreign national" within the meaning of 52 U.S.C. § 30121(b) and was therefore prohibited from making donations and contributions directly or indirectly in support of any candidate for elective office in the United States.

In the summer of 2012, CHAGOURY agreed to use \$100,000 of his money to contribute through other individuals to a fundraising committee of a then-Presidential candidate (the "Candidate A Fund"). CHAGOURY discussed and agreed with Individual H that Individual H would arrange to have a total of

\$100,000 contributed to the Campaign A Fund and that CHAGOURY would reimburse the \$100,000 contributed to the Campaign A Fund. Individual H made a \$45,000 contribution to the Campaign A Fund on September 4, 2012, and a \$5,000 contribution to the Campaign A Fund on September 6, 2012. CHAGOURY reimbursed Individual H \$50,000 in October 2012. Individual H also recruited Individual I to make a contribution to the Campaign A Fund. Individual I arranged for a \$50,000 contribution to be made to the Campaign A Fund on September 4, 2012, and CHAGOURY reimbursed Individual I in or around September 2012.

In August 2014, CHAGOURY met with Individual H and CHAGOURY expressed to Individual H his interest in contributing to U.S. politicians who share a common cause with CHAGOURY. Individual H suggested that CHAGOURY contribute to U.S. politicians from less-populous states because the contribution would be more noticeable to the politician and thereby would promote increased donor access to the politician. CHAGOURY then directed Individual H to contribute \$20,000 to such a politician and agreed to reimburse the \$20,000 in political contributions. Individual H arranged for multiple individuals to contribute to the re-election campaign of a then-U.S. Representative ("Candidate B") in and around August 2014. On or around September 25, 2014, CHAGOURY, with the assistance of Arsan, directed that a wire transfer in the amount of \$20,000 be made

to Individual H and falsely indicated on the wire information form that the funds were for an "engagement gift," when CHAGOURY knew that the funds were sent to reimburse Individual H for Individual H and others making political contributions to Candidate B.

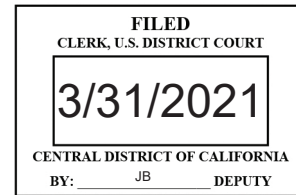
In September 2014, CHAGOURY agreed with Individual H to have Individual H contribute \$30,000 to the fundraising committee for a then-U.S. Representative (the "Candidate C Fund") and CHAGOURY agreed to reimburse Individual H the \$30,000 in political contributions to the Candidate C Fund. CHAGOURY met with Individual H at a conference in Washington, D.C. in September 2014, and suggested to Individual H that Individual H (i) host a political fundraiser for Candidate C; and (ii) to contribute \$30,000 to the Candidate C Fund, which CHAGOURY stated he would reimburse to Individual H. On September 28, 2014, Individual H contributed \$30,000 to the Candidate C Fund. On October 21, 2014, CHAGOURY, with the assistance with Arsan, wired \$30,000 to Individual H and falsely indicated on the wire information form that the funds were for a "wedding gift," when CHAGOURY knew that the funds were sent to reimburse Individual H for making a political contribution to the Candidate C Fund.

In January 2016, CHAGOURY agreed with Individual H to have Individual H arrange for \$30,000 of CHAGOURY's money contributed through other individuals to the re-election campaign of a U.S.

Representative ("Candidate D"). CHAGOURY arranged for \$30,000 to be delivered to Baaklini, which Baaklini understood would be used to fund conduit campaign donations. Baaklini then provided the \$30,000 in cash to Individual H in order to contribute the money to Candidate D's campaign. Baaklini provided the \$30,000 in cash from CHAGOURY to Individual H at a restaurant in Los Angeles, California in January 2016. After receiving the money from CHAGOURY, Individual H, as well as other individuals Individual H recruited, made campaign contributions to Candidate D's campaign fund in February 2016 exceeding \$30,000.

During the course of events described above, CHAGOURY knew that it was illegal both for him to contribute to candidates for elective office in the U.S. and to make contributions in the name of other individuals.

## **Exhibit B**



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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOUFIC JOSEPH BAAKLINI,

Defendant.

No. 2:21-cr-00160 -DMG

DEFERRED PROSECUTION  
AGREEMENT

**I. INTRODUCTION**

1. This Deferred Prosecution Agreement (the "DPA") is entered into between the United States Attorney's Office for the Central District of California ("USAO") and defendant Toufic Joseph Baaklini ("defendant Baaklini"). This DPA is entered into only on behalf of the USAO and cannot bind any other federal, state, local or foreign prosecuting, enforcement, administrative, or regulatory authorities.

Statement of Facts

Between in or around January 2016 and February 2016, TOUFIC BAAKLINI ("BAAKLINI") conspired with Gilbert Chagoury ("Chagoury"), a second individual ("Individual G"), a third individual ("Individual H"), and others to violate United States laws by (i) making federal election campaign contributions exceeding \$25,000 in a single year as a foreign national, in violation of 52 U.S.C. §§ 30109(d)(1)(A), 30121(a)(1)(A); and (ii) making federal election campaign contributions in the name of another (conduit contributions), in violation of 52 U.S.C. §§ 30109(d)(1)(A), 30122.

At all times relevant to this factual statement, BAAKLINI knew that Chagoury, a Nigerian-born, billionaire businessperson of Lebanese descent, was a "foreign national" within the meaning of 52 U.S.C. § 30121(b) and was therefore prohibited from making donations and contributions directly or indirectly in support of any candidate for elective office in the United States.

In January 2016, Chagoury arranged for \$30,000 of his money to be contributed through other individuals to the re-election campaign of a U.S. Representative ("Federal Candidate D"). Chagoury arranged for Individual G to provide \$50,000 in cash to BAAKLINI, which BAAKLINI understood a portion of which would be used to fund conduit campaign donations to U.S. candidates for elective office. BAAKLINI then provided \$30,000 in cash to Individual H in order to contribute the money to Federal

Statement of Facts

Candidate D's campaign. BAAKLINI provided the \$30,000 in cash from CHAGOURY to Individual H at a restaurant in Los Angeles, California in January 2016 and expected Individual H to identify multiple individuals who could contribute the funds to the campaign of Federal Candidate D. After receiving the cash from BAAKLINI, Individual H hosted a fundraiser for Federal Candidate D. During the fundraiser, Individual H, as well as other individuals Individual H recruited and reimbursed using Chagoury's cash, made campaign contributions to Federal Candidate D's campaign fund in February 2016 totaling \$30,200.

During the course of events described above, BAAKLINI knew that it was illegal both for Chagoury to contribute to candidates for elective office in the U.S. and to make contributions in the name of other individuals.

In approximately late February 2016, BAAKLINI saw Federal Candidate D in Washington, D.C. Federal Candidate D approached BAAKLINI and asked BAAKLINI something to the effect of, "Do you think anything was wrong with the [Individual H-hosted] fundraiser?" BAAKLINI replied by falsely stating "no" and then asked "why?". Federal Candidate D further explained the source of his concern was, something to the effect of, "because it all came from the same family."

Following this exchange in late February 2016, BAAKLINI has not communicated in any form with Federal Candidate D or anyone

Statement of Facts

acting on Federal Candidate D's behalf regarding any aspect of the February 2016 Individual H-hosted fundraiser for Federal Candidate D.

## **Exhibit C**

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Attorneys for  
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT  
12  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 NON-PROSECUTION  
AGREEMENT OF RAY LAHOOD  
15  
16

17 I. INTRODUCTION

18 1. This Non-Prosecution Agreement (the "NPA") is entered into  
19 between the United States Attorney's Office for the Central District  
20 of California ("USAO") and Ray LaHood ("LaHood"). This NPA is  
21 limited to the USAO and cannot bind any other federal, state, local  
22 or foreign prosecuting, enforcement, administrative, or regulatory  
23 authorities.

24 2. This NPA is entered into to resolve the USAO's criminal  
25 investigation of LaHood's role and conduct relating to a \$50,000  
26 financial transaction between LaHood and Toufic Baaklini in or  
27 around June 2012, which includes, but is not limited to, LaHood's  
28 failure to include this information in his Office of Government

EXHIBIT A: STATEMENT OF FACTS

LaHood states and agrees that the following facts are true and correct and could be proven beyond a reasonable doubt:

1. From on or about January 23, 2009, until on or about July 1, 2013, LaHood served as the United States Secretary of Transportation.

2. In July 2009, LaHood served as a keynote speaker at the Annual Maronite Convention in Los Angeles, California (the "Convention").

3. Individual A, a priest, was also in attendance at the Convention. During the Convention, Individual A invited LaHood to a private gathering at the California home of Gilbert Chagoury ("Chagoury"), a wealthy international businessman. Chagoury is a foreign national and not a citizen of the United States. At the gathering, LaHood met Chagoury and also met Toufic Baaklini ("Baaklini"), who served as one of Chagoury's representatives in the United States.

4. In 2011 and 2012, LaHood was suffering significant financial difficulties in part due to problems from home remediation and sought funds to conduct home repairs. LaHood met with Individual A in May 2012 to request that Individual A refer LaHood to an individual who would provide LaHood with a \$50,000 loan to help LaHood cover his home repair costs. At their meeting, Individual A suggested to LaHood that Individual A would call Chagoury to ask him to provide a loan to LaHood.

5. Approximately two days after their meeting, Individual A called LaHood by telephone and told him that he had secured a source of funds for LaHood. Individual A told LaHood that upon Individual

1 A's request, Baaklini would facilitate the loan to LaHood of  
2 \$50,000. Individual A instructed LaHood to call Baaklini to discuss  
3 the terms of the loan. Baaklini told LaHood that because of  
4 Individual A's request, he was prepared to provide LaHood with a  
5 loan for \$50,000 and that he had consulted a lawyer who advised that  
6 a loan to a public official like Mr. LaHood could be permissible.

7 6. On June 1, 2012, Baaklini and LaHood met in Washington,  
8 D.C. and Baaklini provided LaHood with a personal check for \$50,000  
9 (the "\$50,000 Check"). In the Memo portion of the check, Baaklini  
10 wrote "Loan."

11 7. Although it was not expressly discussed with Baaklini,  
12 based on the circumstances of LaHood seeking these funds, LaHood  
13 understood that Chagoury provided Baaklini with the funds for the  
14 \$50,000 Check for LaHood.

15 8. LaHood negotiated the \$50,000 Check and used the funds for  
16 home repairs.

17 9. During his tenure as the United States Secretary of  
18 Transportation, Mr. LaHood was obligated on an annual basis to  
19 submit an Executive Branch Personnel Public Financial Disclosure  
20 Report (OGE Form 278) to the United States Office of Government  
21 Ethics (OGE). According to the OGE, the OGE Form 278 was designed  
22 to ensure transparency for Executive Branch Personnel.  
23 Specifically, the OGE website notes that:

24 Transparency is a critical part of government ethics, and  
25 Congress has determined that the citizens should know  
26 their leaders' financial interests. To facilitate such  
27 transparency, Congress enacted the financial disclosure  
28 provisions of the Ethics in Government Act. The Act  
imposes detailed requirements for public financial  
disclosure by senior United States Government officials.

1        10. Among other financial disclosures, Form 278 requires the  
2 filer to disclose any liabilities over \$10,000 owed to any one  
3 creditor at any time during the reporting period. Form 278 further  
4 requires the filer to certify by signature that "the statements I  
5 have made on this form and all attached schedules are true, complete  
6 and correct to the best of my knowledge."

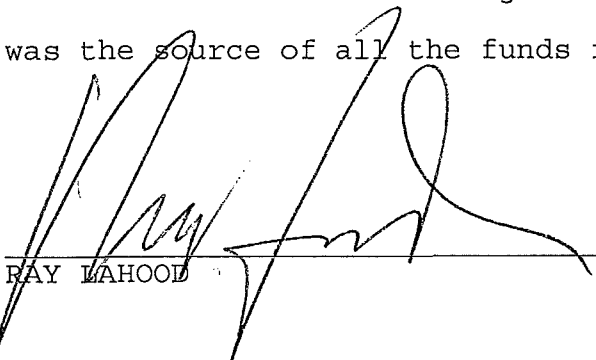
7        11. LaHood knew that he was required to disclose the \$50,000  
8 Check on his annual Form 278.

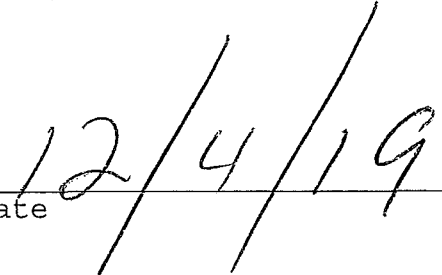
9        12. On May 15, 2013, Mr. LaHood submitted his Form 278 for the  
10 calendar year 2012 (the "2012 Form 278"). LaHood reported various  
11 liabilities owed on his 2012 Form 278. However, LaHood willfully  
12 did not disclose the \$50,000 Check on the 2012 Form 278. Further  
13 LaHood falsely certified that the information contained on the 2012  
14 Form 278 was complete and correct; LaHood knew this certification to  
15 be false because he willfully failed to disclose the \$50,000 Check.

16        13. Following the completion of his tenure as United States  
17 Secretary of Transportation in July 2013, Mr. LaHood was required to  
18 submit a final Form 278 for the period of 2013 during which he  
19 served as a member of the Executive Branch. Accordingly, on July  
20 29, 2013, Mr. LaHood submitted a Form 278 for the reporting period  
21 from January 1, 2013, through his termination date of July 1, 2013  
22 (the "2013 Form 278"). LaHood reported various liabilities owed on  
23 his 2013 Form 278. However, LaHood willfully again did not disclose  
24 the \$50,000 Check on the 2013 Form 278. Further, LaHood falsely  
25 certified that the information contained on the 2013 Form 278 was  
26 complete and correct; Mr. LaHood knew this certification to be false  
27 because he willfully failed to disclose the \$50,000 Check.

1           14. LaHood failed to disclose the \$50,000 Check in his 2012  
2 Form 278 and his 2013 Form 278 because he had reason to believe that  
3 Chagoury was the ultimate source of the \$50,000 Check and because he  
4 did not want publicly to be associated with this Chagoury who, in  
5 2009, was reported to have been on the U.S. "No Fly List."

6           15. In June 2017, FBI Special Agents interviewed LaHood.  
7 LaHood initially denied receiving a loan from Baaklini. After he  
8 was shown a copy of the \$50,000 Check, LaHood acknowledged receiving  
9 the \$50,000 Check from Baaklini. LaHood stated that he received the  
10 money from Baaklini as a loan but could not recall any terms of the  
11 loan. LaHood acknowledged that he had not repaid Baaklini any  
12 amount of the money and Baaklini had not asked to be repaid in the  
13 five years since Baaklini provided the \$50,000 Check. In addition,  
14 LaHood did not inform the agents that he understood that Chagoury  
15 was the source of all the funds for the \$50,000 Check.

16  
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18   
19 RAY LAHOOD

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28  
Date 

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 12 Motion to Dismiss (Multiplicitous)

**DATE:** 11/9/2021

**PAGES:** 10

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211109\_090049.pdf

**DOC NO:** 19



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12 *Hon. Jeffrey Lane Fortenberry*

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,  
16 *Plaintiff,*  
17 v.  
18 JEFFREY FORTENBERRY,  
19 *Defendant.*

Case No. 2:21-cr-00941-SB  
Hon. Stanley Blumenfeld, Jr.

**HON. JEFFREY LANE  
FORTENBERRY'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
COUNT ONE OF THE INDICTMENT  
AS MULTIPLICITOUS OR TO  
COMPEL THE GOVERNMENT TO  
ELECT AMONG MULTIPLICITOUS  
COUNTS**

Hearing Date: December 7, 2021  
Hearing Time: 8:00 a.m.  
Time Estimate: 20 minutes

Indictment: Oct. 19, 2021  
Pretrial Conference: Dec. 7, 2021  
Trial: Dec. 14, 2021  
Last Day: Dec. 29, 2021

**TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** at the above date and time, or as soon thereafter as this matter may be heard in the courtroom of the Honorable Stanley Blumenfeld, Jr., United States District Court Judge, located at 350 West 1st Street, Los Angeles, California 90012, Courtroom 6C, by and through his attorneys of record, the Honorable Jeffrey Lane Fortenberry will move, and hereby does move, to dismiss Count One the Indictment because it is multiplicitous, or in the alternative, to compel the government to elect to proceed on Count One or Counts Two and Three. This motion is based on this Notice, the Memorandum of Points and Authorities concurrently filed herewith, the files and records in this case, and any evidence and argument that may be presented at the hearing on this matter.

On November 8, 2021, defense counsel met and conferred with government counsel by phone concerning the multiplicity of Count One, but the opposing sides were unable to resolve their differences on this issue.

Dated: November 9, 2021

BIENERT KATZMAN  
LITTRELL WILLIAMS LLP

By: \_\_\_\_\_

John L. Littrell

Ryan V. Fraser

*Attorneys for Hon. Jeffrey Lane Fortenberry*

## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION AND STATEMENT OF FACTS**

This indictment reflects the government’s attempt to manufacture multiple false-statement charges based on Congressman Fortenberry’s failure to recall a ten-minute phone call he received from a government informant in 2018.

In 2016, the government was investigating political campaign contributions made by Gilbert Chagoury, a foreign national, using other individuals as conduits, to Congressman Fortenberry’s 2016 congressional campaign. The government was allegedly concerned with whether Congressman Fortenberry was aware of the illegal foreign contributions, and whether any person sought to impermissibly influence him in exchange for them. Dkt. No. 1 at ¶ 1. The government does not allege that Congressman Fortenberry *knew* about the illegal contributions when they were made in 2016, and it did not charge the Congressman with any substantive offense related to those contributions.<sup>1</sup>

On June 4, 2018, the government directed its informant, “Individual H,” who had hosted a fundraiser for Congressman Fortenberry in 2016, to place a surreptitiously recorded phone call. During the 2018 call, which lasted about ten minutes, and spanned multiple topics unrelated to the 2016 fundraiser, the informant told Congressman Fortenberry something that he did not know before: that his campaign had received an illegal contribution from a foreign national in 2016.

Specifically, the government alleges that during the 2018 call, “Individual H” told Congressman Fortenberry that “prior to the 2016 Fundraiser, [Toufic] Baaklini provided Individual H with ‘\$30,000 cash’ to give to defendant FORTENBERRY’s campaign.” Dkt. No. 1 at ¶ 14. During the same call, “Individual H,” also allegedly told Congressman Fortenberry that he had “distributed the \$30,000 cash to other individuals to contribute to

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<sup>1</sup> The \$30,200 in alleged illegal conduit contributions represents approximately 3.7% of the total money Congressman Fortenberry raised for his 2016 campaign. *See* Federal Election Commission 2016 Financial Summary for Honorable Jeffrey L. Fortenberry, available at <https://www.fec.gov/data/candidate/H4NE01064/?cycle=2016>.

1 defendant FORTENBERRY’s campaign at the 2016 Fundraiser,” and that the money  
2 “***probably*** did come from Gilbert Chagoury because he was so grateful for your support  
3 [for] the cause.” *Id.* at ¶ 15(a) (emphasis added).

4 On March 23, 2019—nearly ten months later—the government sent agents to  
5 Congressman Fortenberry’s home to interrogate him. *See Id.* at ¶ 19(a). Congressman  
6 Fortenberry invited the agents into his home and tried to help them. He was not asked about  
7 the 2018 call from Individual H. But according to the government, Congressman  
8 Fortenberry’s responses were false, because Congressman Fortenberry stated that he was  
9 not aware of Baaklini making illegal contributions or directing others to do so, *id.* at ¶  
10 19(a)(i), and he stated that “the individuals who contributed to the 2016 Fundraiser were all  
11 publicly disclosed.” *Id.* at ¶ 20(b). He also stated that “every campaign that he had received  
12 was publicly disclosed.” *Id.* at ¶ 20(c).

13 On July 18, 2019—more than one year later—Congressman Fortenberry was  
14 questioned again, this time by Assistant United States Attorney Mack Jenkins himself. *Id.*  
15 at ¶19(b). Again, Congressman Fortenberry cooperated with the government and tried to  
16 help. This time, Congressman Fortenberry was asked about the 2018 call from Individual  
17 H. *See id.* at ¶ 19(b)(i). According to the government, Congressman Fortenberry made  
18 false statements when he denied that he had been “told by Individual H during the 2018 call  
19 that Baaklini had given Individual H \$30,000 cash to help fund the 2016 Fundraiser,” *id.* at  
20 ¶ 21(a), and stated that he was “not aware of any illicit donation made during the 2016  
21 Fundraiser.” *Id.* at ¶ 21(b). The Congressman also allegedly said that he ended the 2018  
22 call with Individual H after Individual H made a concerning comment, and that he would  
23 have been “horrificed” if he learned illegal campaign contributions were made. *Id.* at ¶  
24 19(b)(i)-(iv); *id.* at ¶ 21.

25 Notably, the government does not accuse Congressman Fortenberry of lying about  
26 the real facts surrounding his 2016 fundraiser. This case is entirely about Congressman  
27 Fortenberry’s failure to accurately repeat back to the government the content of the ten-  
28 minute phone call that the government’s informant placed to him.

1 The government charged Mr. Fortenberry with two felony counts of making false  
 2 statements, one based on the Nebraska statement (Count Two), and one based on the  
 3 Washington, D.C., statement (Count Three). Both alleged false statements assume that  
 4 Congressman Fortenberry heard, understood, and remembered the information he allegedly  
 5 received from Individual H during the 2018 phone call. Both alleged false statements also  
 6 rely on the assumption that he *believed* Individual H.

7 Not content with two felony charges, the government added a third for engaging in a  
 8 “scheme” to conceal the same facts the Congressman supposedly learned during the 2018  
 9 phone call (Count One). The basis alleged for Count One is the same two alleged false  
 10 statements that form the basis for Counts Two and Three. Like Counts Two and Three,  
 11 Count One also assumes that Congressman Fortenberry heard, understood, and remembered  
 12 the information he allegedly received from Individual H during the 2018 phone call, and  
 13 believed him.

14 Congress did not intend to give the executive branch the power to gain a tactical  
 15 advantage over a defendant by charging multiple felony counts based on the same allegedly  
 16 false statement. At most, the government has alleged facts to support two counts, based on  
 17 two statements separated by a span of three months. Count One is based on precisely the  
 18 same facts as Counts Two and Three. It should be dismissed.

## 19 **II. ARGUMENT**

20 Multiplicity occurs when a single offense is charged in two or more counts, thereby  
 21 producing two penalties for one crime in violation of the Constitution’s Double Jeopardy  
 22 Clause. *United States v. Stewart*, 420 F.3d 1007, 1012 (9th Cir. 2005). “Congress  
 23 ordinarily does not intend to punish the same offense under two different statutes.” *Ball v.*  
 24 *United States*, 470 U.S. 856, 861 (1985). A court may not impose multiple punishments  
 25 based on counts that charge the same conduct. *Id.* “Whether one or multiple offenses are  
 26 charged can . . . raise difficult and subtle questions.” Wright & Miller, 1A Fed. Prac. &  
 27 Proc. Crim. 5th § 143 (footnote omitted).

[T]he ultimate question of whether defendant is being twice charged with the same offense is one of legislative intent, to be ascertained from all the usual tools of statutory construction. Because a determination that separate offenses are involved makes possible multiple punishment for the same conduct, doubts should be resolved against turning a single transaction into multiple crimes unless Congress has indicated clearly that it contemplates separate crimes.

*Id.* (footnotes omitted).

This sort of defect in an indictment must be attacked before trial, Fed. R. Crim. P. 12(b)(3)(B)(ii), and there is good reason to cure it before trial, because, apart from the multiple-punishment threat, “a multiplicitous indictment [also] may improperly prejudice a jury by suggesting that a defendant has committed several crimes—not one.” *United States v. Langford*, 946 F.2d 798, 802 (11th Cir. 1991).

**A. Count One Is Multiplicitous to Counts Two and Three Because § 1001(a)(2) Is a Lesser Included Offense to 1001(a)(1)**

Where one act allegedly violates multiple statutes, the court must apply the test articulated in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). Under *Blockburger*, counts of an indictment are multiplicitous unless each violation “requires proof of an additional fact which the other does not.” *United States v. McKittrick*, 142 F.3d 1170, 1176 (9th Cir. 1998) (quoting *Blockburger*, 284 U.S. at 304). Counts are also multiplicitous where the conduct charged in one count is a lesser included offense to another count. *Rutledge v. United States*, 517 U.S. 292, 297 (1996); *United States v. Davenport*, 519 F.3d 940, 945 (9th Cir. 2008).

“The test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then each act is punishable separately . . . If the latter, there can be but one penalty.” *Blockburger*, 284 U.S. at 302 (quoting Wharton’s Criminal Law, 11th ed., § 34). Put another way, “[w]hen the impulse is single . . . one indictment lies, no matter how long the action may continue.” *Id.*

Here, Counts Two and Three are lesser included offenses of Count One. The elements of false statement under § 1001 are: (1) the defendant made a false statement; (2)

the statement was made in a matter within the jurisdiction of a particular government agency or department; (3) the defendant acted willfully; and (4) the statement was material to the activities or decisions of a specific government agency or department. Ninth Circuit Model Criminal Jury Instruction No. 8.73.<sup>2</sup>

Subsection (a)(1) of 18 U.S.C. § 1001 may require proof of facts that subsection (a)(2) does not. For example, to sustain a conviction under § 1001(a)(1), the government must prove a trick, scheme, or device to conceal, and a corresponding duty to disclose the fact concealed. *See United States v. White Eagle*, 721 F.3d 1108, 1116–17 (9th Cir. 2013); *United States v. Varbel*, 780 F.2d 758, 762 (9th Cir. 1986). But the inverse is not true; §1001(a)(2) does not require proof of any fact not also required under § 1001(a)(1). The Ninth Circuit reached that conclusion in *United States v. UCO Oil Co.*, 546 F.2d 833, 838 (9th Cir. 1976). There, the Court explained:

Congress, in enumerating several different types of fraudulent conduct in Section 1001, did not create separate and distinct offenses. We are satisfied that had the government used any particular false report as the basis for two counts, one charging a false statement and the other a concealment by trick, scheme or device, the indictment would be vulnerable to attack for multiplicity.

*Id.*

Although Congress has amended § 1001 since *UCO Oil*, those changes call for no different conclusion today. As of *UCO Oil*, § 1001 provided:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

<sup>2</sup> Congressman Fortenberry does not concede that Ninth Circuit Model Criminal Jury Instruction 8.73 accurately represents the law regarding 18 U.S.C. § 1001; he reserves the right to submit alternative jury instructions at trial.

(Version effective until Oct. 11, 1996.) Subsequent amendments to the statute broke out the scheme, false-statement, and false-writing clauses into separate subparagraphs ((a)(1), (a)(2), and (a)(3)). But the substance of the statute is the same. The House Report on the 1996 amendments to § 1001, which created subsections (a)(1) through (a)(3), states that “[o]ther than establishing materiality as an element of all three offenses, the Committee does not view the offenses defined in paragraphs (1), (2) and (3) as changing already existing case law as it relates to the elements of the offenses.” H.R. Rep. 104-680, at 8 (1996), as provided by Westlaw online as a representation of 1996 U.S.C.C.A.N. 3935, 3942. The use of the word “offenses” in the plural should not be taken literally. There remains only one offense; subparagraphs (a)(1) through (3) merely set forth different *means* of violating § 1001. *See United States v. Stewart*, 433 F.3d 273, 319 (2d Cir. 2006); *cited approvingly in White Eagle*, 721 F.3d at 1117. Therefore, *UCO Oil*’s holding remains valid. Charging the same false statement as a basis for a violation of § 1001(a)(2) and concealment under § 1001(a)(1) is multiplicitous. *See UCO Oil*, 546 F.2d at 838.

**B. Count One Is Multiplicitous to Counts Two and Three Because All Three Counts Rely on Identical Factual Allegations.**

Even if strict application of the *Blockburger* elements test resulted in a finding that § 1001(a)(2) is not a lesser included offense of § 1001(a)(1), the Court could find that Congress did not intend that thematically and functionally identical statements to the government be punished multiple times. “[U]ltimately, the *Blockburger* test is simply a tool to apply if a court cannot discern Congressional intent.” *United States v. King*, 713 F.Supp.2d 1207, 1214 (D. Haw. 2010). In addition to considering the elements of charges in the abstract, courts also review the indictment’s case-specific factual allegations. *Cf. Whalen v. United States*, 445 U.S. 684, 693–94 (1980); *United States v. Valenzuela*, No. SACR 05-107 JVS, 2006 WL 8435121, at \*4 (C.D. Cal. Dec. 20, 2006) (citing *Whalen*, 445 U.S. at 694, to explain that “[t]he analysis may not stop” at applying the *Blockburger* test to the abstract elements of the charges). In *Whalen*, the defendant received consecutive sentences for rape and felony murder; the rape was the felony underlying the felony-murder

conviction. *Id.* at 685–86. Acknowledging that, in general, felony murder could be committed without rape, the *Whalen* Court reasoned that because, under the facts of the case before it, the rape was a lesser included offense to the murder charge—“proof of rape [was] a necessary element of proof of the felony murder”—the Double Jeopardy Clause barred consecutive punishment. *Id.* at 694.

Following that approach in this case yields the same answer as *Blockburger*. The government alleges the same statements made in Congressman Fortenberry’s two meetings with the government (Counts Two and Three) as the conduct underlying the “trick, scheme, or device” alleged in Count One. Thus, Counts Two and Three do not require “proof of an additional fact” not required by Count One.

**C. The Court Should Either Dismiss Count One or Compel the Government to Elect Between Count One or Counts Two and Three**

While the Double Jeopardy Clause does not necessarily preclude *charging* multiplicitous counts, provided that only one punishment is imposed, *Ball*, 470 U.S. at 860, courts have discretion to cure the problem before trial by striking multiplicitous allegations or forcing the government to elect among them. *See United States v. Aguilar*, 756 F.2d 1418, 1423 (9th Cir. 1985). One of the reasons the Court should do so here is that telling the jury that Congressman Fortenberry is accused of three separate crimes based on only two events may convey a false sense to jurors of the number of crimes alleged to be at issue. *See United States v. Johnson*, 130 F.3d 1420, 1426 (10th Cir. 1997). Having multiple identical allegations prejudices Congressman Fortenberry because it increases the likelihood that the jury will assume that he must be guilty of at least some of the charges, encouraging a flawed compromise verdict. *See United States v. Clarridge*, 811 F. Supp. 697, 702 (D.D.C. 1992).

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should dismiss Count One of the indictment or  
3 compel the government to elect between Count One and Counts Two and Three.  
4

5 Dated: November 9, 2021

BIENERT KATZMAN  
LITTRELL WILLIAMS LLP

7  
8 By: 

John L. Littrell

Ryan V. Fraser

*Attorneys for Hon. Jeffrey Lane Fortenberry*

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 13 Motion to Dismiss (State Offense)

**DATE:** 11/9/2021

**PAGES:** 7

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211109\_090057.pdf

**DOC NO:** 20



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12 *Hon. Jeffrey Lane Fortenberry*

13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16

17 UNITED STATES OF AMERICA,  
18 *Plaintiff,*

19 v.

20 JEFFREY FORTENBERRY,  
21 *Defendant.*

Case No. 2:21-cr-00491-SB  
Hon. Stanley Blumenfeld, Jr.

**HON. JEFFREY LANE  
FORTENBERRY'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
COUNT ONE OF THE INDICTMENT  
FOR FAILURE TO STATE AN  
OFFENSE**

Hearing Date: December 7, 2021  
Hearing Time: 8:00 a.m.  
Time Estimate: 10 minutes

Indictment: October 19, 2021  
Pretrial Conference: December 7, 2021  
Trial: December 14, 2021  
Last Day: December 29, 2021

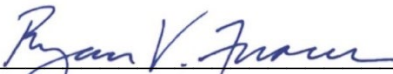
**TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF  
RECORD:**

**PLEASE TAKE NOTICE THAT** at the above date and time, in the courtroom of the Honorable Stanley Blumenfeld, Jr., United States District Court Judge, located at 350 West 1st Street, Los Angeles, California 90012, Courtroom 6C, by and through his attorneys of record, the Honorable Jeffrey Lane Fortenberry will move, and hereby does move, to dismiss Count One of the indictment for failing to state an offense, in that Count One fails to allege a duty to disclose, as required for liability under 18 U.S.C. § 1001(a)(1). This motion is based on this Notice, the Memorandum of Points and Authorities concurrently filed herewith, the files and records in this case, and any evidence and argument that may be presented at the hearing on this matter.

On November 8, 2021, defense counsel met and conferred with government counsel by phone concerning this issue, but the opposing sides were unable to resolve their differences.

Date: November 9, 2021

BIENERT KATZMAN  
LITTRELL WILLIAMS LLP

By:   
Ryan V. Fraser  
John L. Littrell  
*Attorneys for Hon. Jeffrey Lane Fortenberry*

## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION**

All three counts of the indictment against nine-term United States Representative Jeffrey Fortenberry dubiously assume he had a duty to accept as fact the assertions that the government conveyed to him in equivocal phrasing through its informant during a 2018 phone call. *See* Indictment, Dkt. No. 1, at ¶ 14 (describing “the ‘2018 Call’”).

This creates special problems for Count One, which charges Congressman Fortenberry with violating 18 U.S.C. § 1001(a)(1) by employing a “trick, scheme, or device” to falsify, conceal, or cover up a material fact.<sup>1</sup> Dkt. No. 1 at 6.

Section 1001(a)(1) requires that the defendant had a duty to disclose the material facts alleged to have been concealed. *See United States v. White Eagle*, 721 F.3d 1108, 1116 (9th Cir. 2013). And the indictment in this case fails to allege that Congressman Fortenberry had a duty to disclose the facts allegedly concealed as the basis for Count One.

Count One therefore fails to state a § 1001(a)(1) offense, which means it must be dismissed. *See* Fed. R. Crim. P. 12(b)(3)(B)(v) (“failure to state an offense” as indictment defect subject to attack by pretrial motion); *United States v. Omer*, 395 F.3d 1087, 1089 (9th Cir. 2005) (“failure to recite an essential element of the charged offense . . . is a fatal flaw requiring dismissal of the indictment”).

### **II. RELEVANT FACTS**

In 2016, the government was investigating contributions made by Gilbert Chagoury, a foreign national, using other individuals as conduits, to Congressman Fortenberry’s 2016 congressional campaign, among other political campaigns. The government was allegedly concerned with whether Congressman Fortenberry was aware of the illegal foreign contributions, and whether any person sought to impermissibly influence him in exchange for them. Dkt. No. 1 at ¶ 1. The government does not allege

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<sup>1</sup> Except as otherwise specified, all references to statutes by their section number refer to title 18 of the United States Code.

1 that Congressman Fortenberry *knew* about the illegal contributions at the time they were  
 2 made in 2016, and it did not charge the Congressman with any substantive offense  
 3 related to those contributions.<sup>2</sup>

4 Nearly two years later, in June 2018, the government directed its informant to call  
 5 Congressman Fortenberry and *tell him* about the illicit campaign contributions. The  
 6 informant did as instructed. During an approximately ten-minute phone call covering  
 7 multiple subjects, the informant told Congressman Fortenberry that Toufic Baaklini  
 8 provided the informant with \$30,000 cash, “*probably*” from Gilbert Chagoury, to give  
 9 to Congressman Fortenberry’s campaign. *See id.* at ¶¶ 14, 15 (emphasis added).

10 In March 2019, government agents interrogated Congressman Fortenberry in his  
 11 home. He said that he was unaware of illegal campaign contributions, and that every  
 12 contribution was publicly disclosed. *Id.* at ¶ 19(a)(i)-(iii); *id.* at ¶ 20 (Count Two).

13 In July 2019, Assistant United States Attorney Mack Jenkins questioned  
 14 Congressman Fortenberry himself. The Congressman said that he was unaware of any  
 15 illicit donations in 2016, that he had not been told of illegal contributions by the  
 16 informant, that he ended a 2018 call with the informant after the informant made a  
 17 concerning comment, and that he would have been “horrificed” if he learned illegal  
 18 campaign contributions were made. *Id.* at ¶ 19(b)(i)-(iv); *id.* at ¶ 21 (Count Three).

19 The government’s theory of the case is that Congressman Fortenberry committed  
 20 two crimes. In Counts Two and Three, the government alleges that he made affirmative  
 21 false statements to the government in violation of § 1001(a)(2). *See* Dkt. No. 1 at ¶¶ 20–  
 22 21. For those offenses, the government must prove that Congressman Fortenberry’s  
 23 statements were false. *See* § 1001(a)(2). This motion concerns only Count One, in  
 24 which the government alleges that Congressman Fortenberry engaged in a scheme to

25  
 26 <sup>2</sup> The \$30,200 in alleged illegal conduit contributions represents approximately  
 27 3.7% of the total money Congressman Fortenberry raised for his 2016 campaign. *See*  
 28 Federal Election Commission 2016 Financial Summary for Honorable Jeffrey L.  
 Fortenberry, *available at* <https://www.fec.gov/data/candidate/H4NE01064/?cycle=2016>  
 (last visited Nov. 9, 2021).

1 falsify and conceal material facts in violation of § 1001(a)(1). *Id.* at ¶¶ 18–19. To be  
2 guilty of *concealing* a material fact, Congressman Fortenberry must have had a duty to  
3 report that fact. *White Eagle*, 721 F.3d at 1116. This was an additional element that the  
4 government was required to allege in the indictment. *See United States v. Du Bo*, 186  
5 F.3d 1177, 1179 (9th Cir. 1999) (confirming that “[i]mplied, necessary elements, not  
6 present in the statutory language, must be included in an indictment,” and holding that  
7 review for compliance with that rule is not amenable to harmlessness analysis).

8 Parroting the language of the statute, Count One alleges that Congressman  
9 Fortenberry “falsified, concealed, and covered up” five material facts: that  
10 (a) Congressman Fortenberry’s campaign had “received illicit contributions at the 2016  
11 fundraiser; (b) Congressman Fortenberry had “become aware” of that fact; (c) Toufic  
12 Baaklini had provided \$30,000 cash to Individual H for Individual H and Individual H’s  
13 associates to contribute to Congressman Fortenberry’s campaign at the 2016 fundraiser;  
14 (d) Congressman Fortenberry had “become aware” of that fact; and (e) Gilbert Chagoury  
15 was the source of the money. Dkt. No. 1 at ¶ 18(a)-(e). But, critically, the indictment  
16 does not allege that Congressman Fortenberry had any duty to volunteer any of those  
17 facts to the government.

18 To be sure, the indictment does allege that “each federal campaign had to report  
19 to the Federal Election Commission the name and address of any individual providing a  
20 contribution of more than \$50.” Dkt. No. 1 at ¶ 6. But this bare statement is not  
21 sufficient to allege that Congressman Fortenberry had an *individual duty* to disclose any  
22 of the five material facts the government contends he allegedly concealed. Further, the  
23 government alleges that Congressman Fortenberry’s failure to “cause his campaign to  
24 file amended FEC reports” was an effort to conceal the foreign contributions and “his  
25 suspicions of them.” *Id.* at ¶ 19(c). But without a *corresponding individual duty to*  
26 *disclose* those alleged contributions and his alleged suspicions of them, this allegation  
27 cannot support a conviction for concealment under § 1001(a)(1).

1 **III. ARGUMENT**

2 The Fifth Amendment requires that an indictment plead each element of each  
3 charge. *See Hamling v. United States*, 418 U.S. 87, 117 (1974); *Russell v. United States*,  
4 369 U.S. 749, 771 (1962). Duty to disclose is an element of the § 1001(a)(1)  
5 concealment offense charged in Count One. *See White Eagle*, 721 F.3d at 1116.

6 In *White Eagle*, the defendant’s § 1001(a)(1) conviction was reversed because,  
7 even though she had made an incomplete and misleading report to a government  
8 investigator when omitting her awareness of a fraud scheme, no “specific question[],”  
9 regulation, or law imposed on her a specific duty to report the material facts concealed.  
10 *Id.* at 1117. This was so despite 5 C.F.R. § 2635.101(b)(11), which obligated the  
11 defendant as a public employee to “disclose waste, fraud, abuse, and corruption to  
12 appropriate authorities.” *Id.* at 1116. The regulation did not give rise to the required  
13 duty to disclose the facts concealed because it did “not provide specifics on what kind  
14 of information should be reported or to whom,” and because “it [did not] discuss  
15 criminal liability for failure to abide by its provisions.” *Id.* at 1118.

16 Here, while paragraph 6 of the indictment alleges that federal election law  
17 requires that a campaign report to the FEC by name and address “any individual  
18 providing a contribution of more than \$50,” the indictment fails to allege that the 2018  
19 Call, or any other particular event, triggered a duty belonging to  
20 Congressman Fortenberry to make or amend an FEC report. Nor does the indictment  
21 identify any “specific questions” asked of Congressman Fortenberry to trigger a duty to  
22 report. The indictment wholly fails to allege, even in conclusory terms, a duty to  
23 disclose those facts.

24 ///

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27 ///

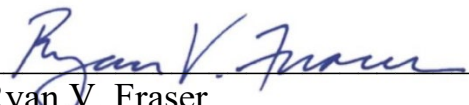
28 ///

1 **IV. CONCLUSION**

2 Because an individual duty to disclose is an element of the § 1001(a)(1)  
3 concealment offense, *e.g.*, *White Eagle*, 721 F.3d at 1116, the grand jury failed to find  
4 probable cause of each necessary element of Count One. Count One must be dismissed.  
5 *See Omer*, 395 F.3d at 1089 (“failure to recite an essential element of the charged  
6 offense . . . is a fatal flaw requiring dismissal of the indictment”).

7  
8 Date: November 9, 2021

BIENERT KATZMAN  
LITTRELL WILLIAMS LLP

9  
10  
11 By:   
12 Ryan V. Fraser  
13 John L. Littrell  
14 *Attorneys for Hon. Jeffrey Lane Fortenberry*

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 14 Motion to Disqualify US Attorney

**DATE:** 11/9/2021

**PAGES:** 11

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_GMOT\_20211109\_090056.pdf

**DOC NO:** 21



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8 *Attorneys for Defendant*  
9 *Hon. Jeffrey Lane Fortenberry*

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
12

13 UNITED STATES OF AMERICA,  
14 *Plaintiff,*  
15 v.  
16 JEFFREY FORTENBERRY,  
17 *Defendant.*

Case No. 2:21-cr-00941-SB  
Hon. Stanley Blumenfeld, Jr.

**HON. JEFFREY LANE  
FORTENBERRY'S NOTICE OF  
MOTION AND MOTION TO  
DISQUALIFY AUSA MACK JENKINS**

Hearing Date: Dec. 7, 2021  
Hearing Time: 8:00 a.m.  
Time Estimate: 15 minutes

Indictment: Oct. 19, 2021  
Pretrial Conference: Dec. 7, 2021  
Trial: Dec. 14, 2021  
Last Day: Dec. 29, 2021

**TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** at the above date and time, in the courtroom of the Honorable Stanley Blumenfeld, Jr., United States District Court Judge, located at 350 West 1st Street, Los Angeles, California 90012, Courtroom 6C, by and through his attorneys of record, the Honorable Jeffrey Lane Fortenberry will move, and hereby does move, to disqualify Assistant United States Attorney (“AUSA”) Mack Jenkins from prosecuting this case. This motion is based on this Notice, the Memorandum of Points and Authorities concurrently filed herewith, the files and records in this case, and any evidence and argument that may be presented at the hearing on this matter.

Months before the indictment, defense counsel notified AUSA Jenkins of the defense’s position that, if the case were indicted, AUSA Jenkins would have to recuse himself or be disqualified from prosecuting the case on behalf of the government because of his unique personal knowledge of the facts of this case and the likelihood that he would be called as a witness. Counsel for the parties further discussed this issue on November 8, 2021, by phone, but were unable to resolve their differences.

Date: November 9, 2021

BIENERT KATZMAN  
LITRELL WILLIAMS LLP

By:   
\_\_\_\_\_  
Ryan V. Fraser  
John L. Littrell  
*Attorneys for Hon. Jeffrey Lane Fortenberry*

## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION**

Counts One and Three of the indictment rely heavily on Congressman Jeffrey Fortenberry's responses to questions asked by Assistant United States Attorney ("AUSA") Mack Jenkins as part of an investigation that AUSA Jenkins was directing. Because AUSA Jenkins is a material witness in this case, he cannot ethically or constitutionally serve as an advocate for the government. Even if AUSA Jenkins did not take the witness stand, his advocacy would be sure to result in impermissible vouching under *United States v. Edwards*, 154 F.3d 915 (9th Cir. 1998), among other authorities.

### **II. STATEMENT OF FACTS**

According to the indictment, in 2016, Gilbert Chagoury, a "Nigerian-born, billionaire businessperson of Lebanese descent" arranged for \$30,000 of "his money" to be contributed to Congressman Fortenberry's 2016 reelection campaign, through other individuals. Dkt. No. 1 at ¶¶ 3, 11. In furtherance of this plot, Chagoury gave money to Toufic Baaklini, a trusted friend of Congressman Fortenberry, and Baaklini gave "Individual H" \$30,000 cash at a restaurant in Los Angeles in January 2016. *Id.* at ¶ 11. Individual H then recruited individuals to make donations to Congressman Fortenberry's 2016 reelection campaign at the fundraiser and agreed to reimburse them with Chagoury's cash. *Id.* The government does not allege that Congressman Fortenberry knew Chagoury was behind illegal donations to his campaign in 2016. He didn't.

Chagoury's plan went beyond Congressman Fortenberry. Chagoury has admitted to attempting to funnel approximately \$180,000 to at least four political candidates in the United States with Baaklini's help. Chagoury Deferred Prosecution Agreement, *available at* <https://www.justice.gov/usao-cdca/press-release/file/1382076/download> (last visited Nov. 7, 2021). None of the other political candidates to whom Chagoury funneled money has been prosecuted. Presumably they did not know about Chagoury's plan, either.

But this case is not about the 2016 fundraiser. It is about alleged false statements made by Congressman Fortenberry three years later in Nebraska and Washington, D.C. The

1 first alleged false statement was made to FBI Special Agent Todd Carter “[d]uring an  
2 interview on March 23, 2019, by the FBI and IRS at [Fortenberry’s] residence in Lincoln,  
3 Nebraska.” *See* Dkt. No. 1 at ¶ 19(a) (Count One); ¶ 20 (Count Two). The second alleged  
4 false statement was made directly to AUSA Jenkins himself during an interview on July 18,  
5 2019, in Washington, D.C. *See id.* at ¶19(b) (Count One); ¶ 21 (Count Three).

6 The indictment alleges that these statements were “material” and “affect[ed]” a  
7 federal investigation. *Id.* at ¶¶ 18, 20, 21. AUSA Mack Jenkins himself was leading that  
8 investigation on behalf of the United States Attorney’s Office. Having directed the  
9 investigation into Chagoury and Baaklini for making illegal campaign contributions to  
10 Congressman Fortenberry, AUSA Jenkins agreed not to prosecute them in exchange for  
11 their cooperation and confessions. *See* U.S. Attorney’s Office, C.D. Cal., Press Release  
12 No. 21-057 of Mar. 31, 2021, Updated Apr. 1, 2021, “Lebanese-Nigerian Billionaire and  
13 Two Associates Resolve Federal Probe into Alleged Violations of Campaign Finance  
14 Laws” (“Gov. Press Release”) *available at* [https://www.justice.gov/usao-cdca/pr/lebanese-](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged)  
15 [nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged) (linking to deferred-  
16 prosecution agreements of Chagoury & Baaklini) (last visited Nov. 7, 2021). AUSA  
17 Jenkins’s team also recruited “Individual H” as an informant, and as a result of an  
18 undisclosed deal, the government didn’t prosecute “Individual H,” either.

19 With apparent approval from AUSA Jenkins, the FBI directed “Individual H” to  
20 place a secretly recorded call to Congressman Fortenberry on June 8, 2018. Using an  
21 informant to investigate a sitting member of Congress required AUSA Jenkins to seek  
22 approval high-up in the chain of command of the Department of Justice. *See* Justice  
23 Manual, Section 9-85.110; 9-7.302. Recording a call without Congressman Fortenberry’s  
24 consent required the written approval of the Deputy Assistant Attorney General. *Id.* In  
25 other words, AUSA Jenkins was responsible for explaining to the Deputy Assistant  
26 Attorney General why it was appropriate to surreptitiously record Congressman  
27 Fortenberry, even though there was no evidence that he had done anything wrong.

1 The result of this 2018 call was a recording that the government could try, and now  
2 is trying, to use as evidence that Congressman Fortenberry knew that the contributions he  
3 received in 2016 were from illegal foreign sources. Even though the government must  
4 concede that Congressman Fortenberry didn't know about the illegal foreign source of  
5 donations to his campaign in 2016, it now argues, based on this call, that he knew in 2018.

6 Armed with Individual H's secretly recorded call, FBI Special Agent Carter paid a  
7 surprise visit to Congressman Fortenberry's Lincoln, Nebraska, home on March 23, 2019,  
8 and obtained another secret recording of Congressman Fortenberry. AUSA Jenkins had to  
9 get written approval from the highest levels of the Department of Justice to record this  
10 conversation, as well. *See* Justice Manual, Section 9-85.110; 9-7.302.

11 Three months after the Nebraska interview by Special Agent Carter, on July 18, 2019,  
12 AUSA Jenkins traveled to Washington, D.C., to interview Congressman Fortenberry  
13 himself, and AUSA Jenkins led the questioning on behalf of the government during the  
14 interview. The statements charged as the basis for Count Three of the indictment were  
15 responses to questions AUSA Jenkins asked Congressman Fortenberry. *See* Indictment  
16 ¶ 21. Likewise, the Washington, D.C., statements charged as the basis for Count One were  
17 responses to questions AUSA Jenkins asked. *See id.* ¶ 19(b)(i–iv).

### 18 **III. ARGUMENT**

19 Under California Rule of Professional Conduct 3.7(a) (“Rule 3.7(a)”) and the case  
20 law below, because AUSA Jenkins is an essential percipient witness in this case, he must  
21 be disqualified from representing the government as an advocate here. AUSA Jenkins  
22 personally elicited the Washington, D.C., statements by Congressman Fortenberry that gave  
23 rise to Counts One and Three, and he oversaw the investigation to which he contends those  
24 statements were material. Even if AUSA Jenkins did not take the stand, he would commit  
25 impermissible vouching through his examination of other witnesses concerning the facts to  
26 which he himself was a percipient witness. Meanwhile, at this early stage of the litigation,  
27 the government's burden in replacing AUSA Jenkins as an advocate remains relatively low.  
28 For all these reasons, the Court should disqualify AUSA Jenkins from acting as counsel for

the United States in this matter at trial or any evidentiary hearing.

**A. A prosecutor cannot act as both advocate and witness in the same trial or evidentiary hearing if doing so would prejudice the defendant.**

Rule 3.7(a) generally prohibits any California lawyer from “act[ing] as an advocate in a trial in which the lawyer is likely to be a witness unless:”<sup>1</sup> their testimony relates to (1) an “uncontested issue” or (2) “the nature and value of legal services rendered”; or (3) the lawyer has informed written consent from the client, if applicable; or, if the lawyer represents the government, the lawyer has informed written consent “from the head [or designee of the head] of the office . . . by which the lawyer is employed.” But the informed-consent exception is unavailable if the advocate-witness poses a “risk of prejudice” to the adverse party or the integrity of the judicial process. *See Doe v. Yim*, 269 Cal. Rptr. 3d 613, 622–23 (Cal. Ct. App. 2020).

*Prosecutor* advocate-witnesses pose special due process and vouching problems beyond Rule 3.7(a), even if they do not literally testify from the witness stand. *See, e.g., Edwards*, 154 F.3d at 921 (validating the “concern that jurors will be unduly influenced by the prestige and prominence of the prosecutor’s office,” leading them to determine credibility by “improper factors” (quotation marks and citation omitted)); *United States v. Prantil*, 764 F.2d 548, 553–54 (9th Cir. 1985) (“enforcement of the[se] rule[s] is a matter of institutional concern implicating the basic foundations of our system of justice”); *People v. Donaldson*, 113 Cal. Rptr. 2d 548, 556–58 (Cal. Ct. App. 2001). When prosecutors act as advocates despite personal knowledge of important disputed facts—

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<sup>1</sup> Although Rule 3.7(a) explicitly mentions advocates “in a trial” only, it also applies at “a pretrial evidentiary hearing.” *Doe v. Yim*, 269 Cal. Rptr. 3d 613, 620 (Cal. Ct. App. 2020); *see also People ex rel. Younger v. Super. Ct.*, 150 Cal. Rptr. 156, 163 (Cal. Ct. App. 1978) (deeming it “improper” for a prosecutor to have testified at a pretrial hearing concerning photographic identification procedures “and then resumed his role as counsel for the People at that very hearing and argued the fairness of the identification procedures about which he testified”).

improper vouching may occur in at least two ways. The prosecutor may either place the prestige of the government behind the witness or indicate that information not presented to the jury supports the witness's testimony. When the credibility of witnesses is crucial, improper vouching is particularly likely to jeopardize the fundamental fairness of the trial.

*Edwards*, 154 F.3d at 921 (quotation marks, alteration, and citations omitted).

**B. Here, no exception to the advocate-witness rule applies, and testimony by AUSA Jenkins is genuinely needed.**

The issues on which AUSA Jenkins has relevant testimony are far from “uncontested,” as required by Rule 3.7(a)(1). In particular, materiality is a contested element on which AUSA Jenkins has important personal knowledge. AUSA Jenkins also has personal knowledge of the circumstances of Congressman Fortenberry’s Washington, D.C., statements, which are another subject of reasonably likely dispute at trial.

Congressman Fortenberry must be able to use AUSA Jenkins’s testimony to attack the indictment’s claims that Fortenberry’s statements “affect[ed]” the government’s investigation. Dkt. No. 1 at ¶¶ 18 (Count One), 20 (Count Two), 21 (Count Three). Indeed, “a factual inquiry” by the jury is “nearly always . . . necessary to determine what makes a difference to the decision-making body” for purposes of § 1001 materiality. *United States v. Gaudin*, 28 F.3d 943, 948 (9th Cir. 1994), *aff’d*, 515 U.S. 506 (1995). Questioning the leader of the decision-making process is a logical part of that inquiry. Here, AUSA Jenkins personally oversaw the decision-making body and investigation that Congressman Fortenberry’s statements allegedly affected. Congressman Fortenberry must therefore have the option to call AUSA Jenkins to testify regarding materiality, and he plans to do so. Electing to function as an advocate, after all, is not a tool available to a prosecutor to avoid being called to the witness stand by the defense. *See Edwards*, 154 F.3d at 923 (“It is irrelevant whether a prosecutor is a crucial witness in a matter that favors the defense or in a matter that favors the prosecution, and it is irrelevant which side raises the question as to which his testimony is important.”); *Prantl*, 764 F.2d at 554 (“[A] material witness will [not] be able to exempt himself from the rigors of the fact-finding process by electing to

1 proceed as an advocate.”).

2 Moreover, while disqualification can be appropriate even where a prosecutor is not  
 3 an essential witness, *see Prantil*, 764 F.2d at 551–52 (“the defendant’s obligation to resort  
 4 to alternative means of adducing factual testimony is not absolute”), AUSA Jenkins is an  
 5 essential witness. No other witness can substitute for his insights into materiality because  
 6 he negotiated and personally signed on behalf of the United States apparently *all* the  
 7 deferred-prosecution agreements that resulted from this investigation. *See* Gov. Press  
 8 Release available at [https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged)  
 9 [and-two-associates-resolve-federal-probe-alleged](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged) (linking to deferred-prosecution  
 10 agreements of Chagoury, Baaklini, Joseph Arsan, and Ray LaHood).

11 Beyond materiality, there is also the fact that AUSA Jenkins personally elicited  
 12 Congressman Fortenberry’s statements underlying Counts One and Three, and observed the  
 13 demeanor and nonverbal cues of other interrogators and Fortenberry himself during the  
 14 Washington, D.C., interview. AUSA Jenkins saw and heard not only what is on the audio  
 15 recording of the interview, but also its important off-the-record context.

16 For these reasons, the “uncontested issue” exception of Rule 3.7(a)(1) does not apply.  
 17 Obviously, the Rule 3.7(a)(2) exception does not apply, either, because the nature and value  
 18 of legal services rendered are not an issue.

19 And finally, Rule 3.7(a)(3)’s informed-consent exception is unavailable due to the  
 20 “risk of prejudice” to the integrity of the judicial process or Congressman Fortenberry as  
 21 the adverse party. *See Yim*, 269 Cal. Rptr. 3d at 622–23 (risk of prejudice to adversary  
 22 forecloses informed-consent exception). Again, as the Ninth Circuit explained in *Prantil*:

23 [w]hen . . . the proposed testimony is germane to [the] adversary’s case, the  
 24 balance of hardships is no longer in equilibrium. Instead of merely mitigating  
 25 the hardship to his client’s cause, the attorney may wish to deprive an  
 26 adversary of the benefits of his testimony by electing to appear as an advocate  
 27 and not as a witness. Under the veil of “ethics,” opposing counsel is deprived  
 of a material witness while the witness, although unsworn, is permitted to be  
 an advocate. This cannot be.

28 764 F.2d at 554. Because Congressman Fortenberry has a genuine need for AUSA

Jenkins's testimony, the Court should reject any attempt to invoke Rule 3.7(a)(3) to argue that AUSA Jenkins can prosecute this case because his supervisor approves it.

**C. The replacement burden on the government is minimal because the judicial proceedings have only just begun.**

Assuming, for the sake of argument, that the government's replacement burden could ever be a valid reason to relax the advocate-witness rule—and it should never be where, as here, the prosecutor's testimony is central to the defense—that burden is minimal at this stage of the litigation. Congressman Fortenberry is making this motion to disqualify AUSA Jenkins only twenty-one days after the Indictment was filed. If such minimal government inconvenience could prevent disqualification, it would virtually never be possible. Moreover, long before the government presented the case to the grand jury, defense counsel notified AUSA Jenkins of the defense's position that he would be subject to disqualification if he attempted to prosecute the case himself.

**D. Even if AUSA Jenkins did not literally take the witness stand to testify, his advocacy would result in impermissible prosecutorial vouching.**

Even where neither side attempts to call a percipient-witness prosecutor to the stand, his or her "continued representation of the government [can] constitute[] a form of improper vouching that affect[s] the fundamental fairness of [a] trial." *Edwards*, 154 F.3d at 917. This is because, when prosecutors represent the government as advocates, they have a "special obligation" to avoid suggesting they have personal knowledge of important disputed facts. *Id.* at 921. Thus, the prosecutor may not "impart to the jury" his beliefs about the credibility of a witness. *See id.* Impermissible vouching can also occur where the prosecutor "'place[s] the prestige of the government behind [a] witness,'" *id.* (quoting *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980)), or otherwise suggests, even through nonverbal conduct, that information outside the admitted evidence supports particular testimony. *Edwards*, 154 F.3d at 921 (quoting *Roberts*, 618 F.2d at 533). Prosecutors may not "tak[e] advantage of the natural tendency of jury members to believe in the honesty of lawyers in general, and government attorneys in particular, and to preclude

1 the blurring of the ‘fundamental distinctions’ between advocates and witnesses.” *Edwards*,  
2 154 F.3d at 922 (quoting *Prantil*, 764 F.2d at 554).

3 In *Edwards*, 154 F.3d at 920, a prosecutor discovered a critical piece of physical  
4 evidence—a bail receipt linking the defendant to a bag in which drugs were found—during  
5 a recess from trial proceedings. A law-enforcement officer witnessed the discovery, and  
6 the prosecutor called him to testify to the event to introduce the receipt into evidence and  
7 eliminate the possibility of the evidence having been planted there. *Id.* The Ninth Circuit  
8 ruled that merely “by putting witnesses on the stand and having them testify regarding the  
9 circumstances under which he found the evidence, the prosecutor implicitly and improperly  
10 vouched for the accuracy of their testimony.” *Id.* at 922.

11 Here, AUSA Jenkins cannot examine witnesses or deliver an opening statement,  
12 closing argument, or rebuttal without violating the same rules. Simply by eliciting or  
13 referring to testimony discussing the investigation that he personally oversaw, or the  
14 statements Congressman Fortenberry gave him, AUSA Jenkins would be implying a  
15 personal belief in the truth of the government’s position, since he was personally involved  
16 in developing the evidence at issue. *Edwards*, 154 F.3d at 921, forbids placing the “prestige  
17 of the government” behind these personal observations and impressions.

18 Finally, perhaps most importantly, while *Edwards* forbids prosecutors from  
19 imparting personal beliefs about the credibility of witnesses in general, *id.*, here, the  
20 prejudicial effect on the defense is even more severe because the prosecutor’s participation  
21 strongly implies beliefs about the credibility of the *defendant himself*. The government has  
22 already offered a preview of the flavor of its presentation, which serves to underscore the  
23 defense’s concerns regarding vouching. *See, e.g.*, Gov.’s Opp’n to Mot. to Dismiss for Lack  
24 of Venue, Dkt. No. 18, at p. 1 (CM/ECF p. 7 of 28) (“When confronted, defendant, realizing  
25 the peril of his situation but failing to realize the strength of the government’s evidence,  
26 elected to eschew his oath and instead began his ill-fated campaign of concealment and  
27 lies.”).

As *Edwards* explained, “all the prosecutor had to do in order to convey to the jury his belief—indeed his representation, based on personal knowledge—that” the bail receipt was legitimate evidence “was simply to continue to play the role of objective prosecutor. His continued participation in the trial was, in effect, an implicit guarantee to the jury” that the government’s account of the events was “credible, honest” and “to be believed.” *Id.* at 922. Here, merely by presenting evidence or argument related to the Washington, D.C., statements, AUSA Jenkins would be vouching personally for Count Three’s central allegation: that Congressman Fortenberry lied to AUSA Jenkins personally. It would be near-impossible for jurors to separate AUSA Jenkins’ advocacy on behalf of the government from the impression of AUSA Jenkins affirming to them, from his own personal belief and observations, that Congressman Fortenberry lied to him. *See Edwards*, 154 F.3d at 921 (where “credibility of witnesses is crucial, improper vouching is particularly likely to jeopardize the fundamental fairness of the trial.”).

#### IV. CONCLUSION

There is no way for advocacy by AUSA Jenkins to comport with the advocate-witness rule, prohibition against vouching, and *Edwards*. Disqualification is required.

Date: November 9, 2021

BIENERT KATZMAN  
LITRELL WILLIAMS LLP

By:   
Ryan V. Fraser  
John L. Littrell  
*Attorneys for Hon. Jeffrey Lane Fortenberry*

**OFFICIAL PERJURER: JEFFREY LANE FORTENBERRY**

**ITEM:** 15 Stipulation Regarding Continuance

**DATE:** 11/9/2021

**PAGES:** 6

**COURT:** US DISTRICT COURT, CALIFORNIA, CENTRAL DISTRICT

**CASE NO:** 2:21-cr-00491-SB

**CAPTION** *US v Fortenberry*

**FILENAME:** 21000491\_M\_20211109\_090049.pdf

**DOC NO:** 22



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12 UNITED STATES DISTRICT COURT

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14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JEFFREY FORTENBERRY,

18 Defendant.

Case No. 2:21-cr-00491-SB

STIPULATION REGARDING REQUEST  
FOR (1) CONTINUANCE OF TRIAL  
DATE AND (2) FINDINGS OF  
EXCLUDABLE TIME PERIODS  
PURSUANT TO SPEEDY TRIAL ACT

Current Schedule:

Indictment: 10/19/2021

Pretrial Conference: 12/7/2021 at 8 a.m.

Trial: 12/14/2021 at 8:30 a.m.

Last Day: 12/29/2021

Proposed Schedule:

Proposed Pretrial Conference: 2/8/2022 at  
8 a.m.

Trial: 2/15/2022 at 8:30 a.m.

Last Day: 3/2/2022

25 Plaintiff, United States of America, by and through its counsel of record, the  
26 Acting United States Attorney for the Central District of California and Assistant  
27 United States Attorneys Mack E. Jenkins and Susan S. Har, and defendant JEFFREY  
28

1 FORTENBERRY (“defendant”), by and through his counsel of record, John Littrell and  
2 Ryan Fraser, hereby stipulate as follows:

3 1. The Indictment in this case was filed on October 19, 2021. Defendant first  
4 appeared before a judicial officer of the court in which the charges in this case were  
5 pending on October 20, 2021. The Speedy Trial Act, 18 U.S.C. § 3161, originally  
6 required that the trial commence on or before December 29, 2021.

7 2. On October 20, 2021, the Court set a trial date of December 14, 2021 and a  
8 final pretrial conference date of December 7, 2021.

9 3. Defendant is released on bond pending trial. The parties estimate that the  
10 trial in this matter will last approximately 2-3 days.

11 4. By this stipulation, defendant moves to continue the trial date to February  
12 15, 2022 and the final pretrial conference date to February 8, 2022. This is the first  
13 request for a continuance.

14 5. Defendant has filed four pre-trial motions on November 9, 2021. (See Dkt.  
15 Nos. 17, 19, 20, 21.) The parties have met and conferred and request the following  
16 briefing and hearing schedule for defendant’s four pre-trial motions: (1) oppositions to  
17 be filed by November 23, 2021; (2) reply briefs to be filed by November 30, 2021; and  
18 (3) hearing on the motions to be held on December 7, 2021 at 8:00 a.m. The parties  
19 agree and request that defendant’s motion to dismiss for lack of venue (Dkt. No. 14),  
20 remain on calendar for a hearing on November 23, 2021 at 8:00 a.m.

21 6. Defendant requests the continuance based upon the following facts, which  
22 the parties believe demonstrate good cause to support the appropriate findings under the  
23 Speedy Trial Act:

24 a. Defendant is charged with a violation of 18 U.S.C. § 1001(a)(1):  
25 Falsifying and Concealing Material Facts, and violations of 18 U.S.C. § 1001(a)(2):  
26 Making False Statements. The government has produced discovery to the defense,  
27 including over 11,600 pages of written communications, reports, transcripts, articles,  
28 and other records and over 50 audio/visual recordings.

1           b. Counsel for defendant represents that additional time is necessary to  
2 review the voluminous discovery and evidence in this case and to conduct and complete  
3 an independent investigation of the case to prepare the defense, including by meeting  
4 with and preparing potential witnesses, including possible expert witnesses. Defense  
5 counsel further represents that he needs additional time to confer with defendant, to  
6 conduct and complete legal research, including for additional pre-trial motions and  
7 motions in limine, and to prepare for trial in the event that a pretrial resolution does not  
8 occur. Defense counsel represents that failure to grant the continuance would deny him  
9 reasonable time necessary for effective preparation, taking into account the exercise of  
10 due diligence.

11           c. On November 2, 2021, defendant filed a motion to dismiss for lack  
12 of venue. (Dkt. No. 14.) The motion remains pending before the court, and is  
13 scheduled to be heard on November 23, 2021 at 8:00 a.m.

14           d. Defendant believes that failure to grant the continuance will deny  
15 him continuity of counsel and adequate representation.

16           e. The government does not object to the continuance.

17           f. The requested continuance is not based on congestion of the Court's  
18 calendar, lack of diligent preparation on the part of the attorney for the government or  
19 the defense, or failure on the part of the attorney for the Government to obtain available  
20 witnesses.

21           7. For purposes of computing the date under the Speedy Trial Act by which  
22 defendant's trial must commence, the parties agree that the time period of December  
23 14, 2021 to February 15, 2022, inclusive, should be excluded pursuant to 18 U.S.C.  
24 §§ 3161(h)(7)(A), (h)(7)(B)(i) and (h)(7)(B)(iv) because the delay results from a  
25 continuance granted by the Court at defendant's request, without government objection,  
26 on the basis of the Court's finding that: (i) the ends of justice served by the continuance  
27 outweigh the best interest of the public and defendant in a speedy trial; (ii) failure to  
28 grant the continuance would be likely to make a continuation of the proceeding

impossible, or result in a miscarriage of justice; and (iii) failure to grant the continuance would unreasonably deny defendant continuity of counsel and would deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

8. Nothing in this stipulation shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods be excluded from the period within which trial must commence. Moreover, the same provisions and/or other provisions of the Speedy Trial Act may in the future authorize the exclusion of additional time periods from the period within which trial must commence.

IT IS SO STIPULATED.

DATED: November 9, 2021

TRACY L. WILKISON  
Acting United States Attorney

SCOTT M. GARRINGER  
Assistant United States Attorney  
Chief, Criminal Division

/s/ Susan Har  
MACK E. JENKINS  
SUSAN S. HAR  
Assistant United States Attorneys  
  
Attorneys for Plaintiff  
UNITED STATES OF AMERICA

DATED: November 9, 2021

/s/ per email authorization  
JOHN LITTRELL  
RYAN FRASER  
Attorneys for Defendant  
JEFFREY FORTENBERRY

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JEFFREY FORTENBERRY,  
  
Defendant.

Case No. 2:21-cr-00491-SB

[PROPOSED] ORDER CONTINUING  
TRIAL DATE AND FINDINGS  
REGARDING EXCLUDABLE TIME  
PERIODS PURSUANT TO SPEEDY  
TRIAL ACT

Proposed Schedule:  
Indictment: 10/19/2021  
Proposed Pretrial Conference: 2/8/2022 at  
8 a.m.  
Trial: 2/15/2022 at 8:30 a.m.  
Last Day: 3/2/2022

The Court has read and considered the Stipulation Regarding Request for (1) Continuance of Trial Date and (2) Findings of Excludable Time Periods Pursuant to Speedy Trial Act, filed by the parties in this matter on November 9, 2021. The Court hereby finds that the Stipulation, which this Court incorporates by reference into this Order, demonstrates facts that support a continuance of the trial date in this matter, and provides good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161.

The Court further finds that: (i) the ends of justice served by the continuance outweigh the best interest of the public and defendant in a speedy trial; (ii) failure to grant the continuance would be likely to make a continuation of the proceeding impossible, or result in a miscarriage of justice; and (iii) failure to grant the continuance would unreasonably deny defendant continuity of counsel and would deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

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1           THEREFORE, FOR GOOD CAUSE SHOWN:

2           1.     The trial in this matter is continued from December 14, 2021, to February  
3 15, 2022, at 8:30 a.m. The final pretrial conference hearing is continued to February 8,  
4 2022, at 8:00 a.m.

5           2.     The briefing schedule for the defendant's four pre-trial motions filed on  
6 November 9, 2021 (see Dkt. Nos. 17, 19, 20, 21) is as follows: (1) the last day to file  
7 oppositions is November 23, 2021; and (2) the last day to file any reply briefs is  
8 November 30, 2021. The hearing on these pre-trial motions will be December 7, 2021  
9 at 8:00 a.m. Defendant's motion to dismiss for lack of venue, which was filed on  
10 November 2, 2021 (Dkt. No. 14), will remain on calendar for a hearing on November  
11 23, 2021 at 8:00 a.m.

12           3.     The time period of December 14, 2021, to February 15, 2022, inclusive, is  
13 excluded in computing the time within which the trial must commence, pursuant to 18  
14 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (B)(iv). Under the Speedy Trial Act, the last  
15 day for trial to commence would be March 2, 2022.

16           4.     Nothing in this Order shall preclude a finding that other provisions of the  
17 Speedy Trial Act dictate that additional time periods are excluded from the period  
18 within which trial must commence. Moreover, the same provisions and/or other  
19 provisions of the Speedy Trial Act may in the future authorize the exclusion of  
20 additional time periods from the period within which trial must commence.

21           IT IS SO ORDERED.

22  
23  
24       \_\_\_\_\_  
DATE

\_\_\_\_\_  
HON. STANLEY BLUMENFELD, JR.  
UNITED STATES DISTRICT JUDGE

## APPENDIX



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