

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

CORTNEY MERRITTS,
Defendant.

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No. 1:25-CR-76-JMC

DEFENDANT'S RESPONSE IN OPPOSITION TO
GOVERNMENT'S OMNIBUS MOTION IN LIMINE

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Yet against this backdrop, the Government is now asking this Court to conclude the investigation into Congresswoman Bush was “unrelated” and, in doing so, to hide from the jury that Congresswoman Bush was—in fact—a Congresswoman and involved “in politics”; to foreclose constitutionally-mandated lines of cross examination of certain witnesses about their political biases including those investigating this case; and even to prevent Merritts from testifying about his family and background if he chooses to exercise his right to testify in his own defense. Furthermore, Congresswoman Bush is a likely witness at this trial. While there are bits and pieces of the Government’s omnibus motion in limine that the defense does not object to, this Court should largely deny it.

I. Background

On March 20, 2025, Merritts was charged in an indictment with two counts of wire fraud, in violation of 18 U.S.C. § 1343.¹ (Doc. 1). The indictment also contains a forfeiture allegation. Merritts has pled not guilty to each count and has denied the forfeiture allegation.

In its motion, the Government is attempting to re-write history and to fashion the chain of events as follows: there was an investigation into Congresswoman Bush and then there was an “unrelated” investigation into Merritts. But based on the discovery, that is categorically inaccurate. Indeed, the Government is attempting to prosecute Merritts for internet activity that is allegedly tied to Congresswoman Bush’s residence based on documents obtained from an internet service provider as a result of a subpoena in the *single* investigation that led to the charges in this case.

What really happened is that federal investigators launched an investigation into a sitting congresswoman who, at the time, was an outspoken critic of both the current (and then former)

¹ The defense maintains its position set out in its pending motions to dismiss the indictment. However, this response is being filed due to this Court’s deadline.

presidential administration *and* of the then-in-office democratic administration. That investigation was necessarily made public by the issuance of a federal grand jury subpoena to the U.S. House of Representatives—requiring public disclosure by the House clerk to the entire legislative body, which happened on C-SPAN. The initial focus of the federal criminal investigation was on the objectively false allegation that some crime was committed arising out of security services provided by, *inter alia*, Merritts to the congressional campaign. But that investigation fell flat because neither Congresswoman Bush nor Merritts committed a crime. So instead of simply walking away from the case as reasonable law enforcement officers would do, the FBI and other agencies continued their investigation—now focusing on loans totaling approximately \$22,000 allegedly tied to Merritts.

Through its motion in limine, the Government is seeking to prevent the defense from exposing the bias inherent and evident in the law enforcement investigation of this case and even from giving the jury necessary background about Merritts through his own testimony or other admissible evidence. Indeed, the Government is even going so far as to seek to hide from the jury necessary background of a material fact witness—Congresswoman Bush—all of which is critical to their consideration of credibility.

II. “Jury Nullification”

Merritts does not intend to argue or introduce evidence for the purpose of encouraging “jury nullification.” But the Government’s motion goes much further. Although framed as a request to preclude “jury nullification,” it seeks to bar evidence critical to defending this case which alleges only specific intent crimes. For example, the Government asks this Court to exclude evidence of Merritts’ “participation in the community.” (*See* Doc. 24 at 3). But this would include Merritts’ exemplary military experience and service to this country and a full understanding of his community-related activities during the time period relevant to an assessment of whether he committed wire fraud with criminal intent. Furthermore, the Government seeks to bar evidence of Merritts’ “marriage

or family status.” (*See id.* at 4). But he should be permitted to provide relevant background to the jury about his life experience, and it should not be hidden that he is currently married to former Congresswoman Bush, who is a possible (and likely) witness in this case, or that he was dating Congresswoman Bush during some of the events at issue in this case. These broad requests—unsupported by any relevant legal authority in the context of this specific intent criminal prosecution—would also improperly restrict Merritts’ right to both present a complete defense, *see Crane v. Kentucky*, 476 U.S. 683, 687 (1986) (criminal defendants have a fundamental constitutional right to a fair opportunity to present a defense), and to testify if he elects to do so.

If Merritts elects to testify as the constitution permits him to do, he is entitled to provide background information about himself, including his education, work history, and circumstances leading up to, during, and following the alleged specific intent crimes. After all, *his credibility* will be at stake for the jury’s consideration, and it is elementary in a specific intent case that circumstantial evidence of a defendant’s *mens rea* or lack thereof is fair game. This Court has broad discretion to admit appropriate background testimony, including a defendant’s employment history and life circumstances. *See United States v. Brown*, 503 F. Supp. 2d 239, 242 n.4 (D.D.C. 2007) (“Certainly, the trial court is entitled to wide discretion concerning the admissibility of background evidence.”) (citing *United States v. Blackwell*, 853 F.2d 86, 88 (2d Cir. 1988)).

Such testimony is routinely permitted to give jurors a complete and accurate understanding of a witness’s perspective, credibility, and life context. *See, e.g., United States v. Grant*, 775 F.2d 508, 513 (3d Cir. 1985) (“During the course of a trial, it is customary for the defendant to introduce evidence concerning his background, such as information about his education and employment. Such evidence is routinely admitted without objection...”); *United States v. Kosinski*, No. 3:16-CR-00148 (VLB), 2017 WL 4953902, at *6 (D. Conn. Oct. 31, 2017) (admitting limited testimony from defendant about, *inter alia*, his family background and employment to “tell ‘the jury something about

the defendant as a person, and his experience in life”); *United States v. Deel*, No. 1:09CR00022, 2010 WL 519836, at *1 (W.D. Va. Feb. 11, 2010) (“I will allow a defendant who testifies to give a brief and straight-forward recitation of his life history, including employment and family details, simply as background evidence for the jury’s benefit to judge his credibility.”); *United States v. Lucas*, 395 F. Supp. 3d 241, 256 (W.D.N.Y. 2019) (appropriate for jury to hear general background information concerning a significant witness).

Furthermore, the Government seeks to exclude—in this PPP loan fraud case—that Merritts was a “hard-working person.” (*See* Doc. 24 at 4). But this entire case arises out of the false allegation that Merritts was not entitled to certain loan proceeds related to his moving company, which was both real and aptly named “Vetted.” Indeed, the very name of the company is a relevant play on words: it was owned by a military veteran, and customers are frequently concerned their movers are not vetted. The two cases on which the Government relies are inapposite. *Santa-Camacho* was a case where the defendant was charged and convicted of illegally bringing two Dominican citizens into the United States. The First Circuit simply concluded evidence that the defendant was a “kind or a good family man” was not a trait “‘pertinent’ to the crime charged.” *United States v. Santana-Camacho*, 931 F.2d 966, 968 (1st Cir. 1991). But the fact that Merritts was a “hard-working person” is particularly “pertinent” to the wire fraud allegations arising out of PPP and EIDL loans related to his moving company in this case. And excluding evidence of his employment-related activities would literally bar him from putting on a defense. *See Olden v. Kentucky*, 488 U.S. 227, 232 (1988) (exclusion of evidence undermining prosecution’s theory violates a defendant’s right to present a complete defense). The second case—equally irrelevant—is an unpublished Third Circuit case where a defendant charged only with illegal reentry was prevented from putting on evidence of his “life in the United States” *prior to the illegal reentry charged* was not relevant given the unique facts and circumstances of that case and the single-count indictment that did not charge a specific intent crime.

United States v. Perez, 459 F. App'x 191, 197 (3d Cir. 2012) (unpublished).

The Government mischaracterizes this testimony as “jury nullification” but it is patently not that. It is circumstantial evidence critical to a jury’s assessment of, *inter alia*, a defendant’s *mens rea* or lack thereof in a specific intent crime such as wire fraud; a defendant’s credibility if he elects to testify in his own defense; and truthful testimony about events that have actually occurred in a defendant’s life that are otherwise relevant to what transpired. Indeed, it is the Government that has put Merritts’ state of mind at issue—and he is entitled to litigate it.

III. Character Evidence

The Government’s motion—again improperly referencing “jury nullification”—amounts to no more than a boilerplate request that the defense comply with the relevant Federal Rules of Evidence governing character evidence. Without addressing any particular concern specific to this case, the Government broadly asserts that Federal Rule of Evidence 404(a)(2) for some reason does not apply in this case. (*See* Doc. 24 at 5).

And the Government again cites three entirely inapposite cases purportedly in support of its position. The first, *Carpenter*, is a January 6 case involving “the insurrection at the United States Capitol” where the district court excluded “specific prior acts of peacefulness or nonviolence from [the defendant’s] time as an NYPD officer.” *See United States v. Carpenter*, No. CR 21-305 (JEB), 2023 WL 1860978, at *1 (D.D.C. Feb. 9, 2023). That evidentiary ruling on an entirely different kind of case charging an entirely different kind of crime bears no similarity to the trial of this case—and the Government does not attempt to tie the two together, leaving the defense and this Court to guess as to any relevant connection. The second is another January 6 “insurrection” case excluding similar evidence of law enforcement accolades. *United States v. Chwiesiuk*, No. CR 21-0536 (CKK), 2023 WL 3002493, at *6 (D.D.C. Apr. 19, 2023). And the third case the Government cites is a case involving allegations of obstruction of justice and second-degree murder perpetrated by police

officers. *See United States v. Sutton*, 636 F. Supp. 3d 179, 209 (D.D.C. 2022). But a close read of *Sutton* weighs against the Government’s motion in this case. There, the district court correctly determined that evidence of a defendant’s truthfulness is “pertinent” to an obstruction of justice charge—referencing the probative value of such evidence where an issue before the jury is whether a defendant acted “with a prohibited state of mind.” *Id.* at 208 (internal citations to Fifth Circuit authority omitted). In that circumstance, “[w]hen character is an essential element of a charge, claim, or defense,” the pertinent character or trait may be proved by relevant specific instances of the person’s conduct.” *See id.* at 209. Thus, the district court in *Sutton* determined evidence about commendations and awards constituted “admissible character evidence” and *permitted* the introduction of such evidence. *Id.*

Based on this legal authority—two January 6 cases and an obstruction of justice / murder case where the district court ruled against the Government—the prosecution seeks to exclude wholesale categories of character evidence. But this Court should deny the Government’s motion and simply ensure the parties comply with the relevant Federal Rules of Evidence governing the introduction of character evidence.

VI. Statements About Punishment or Collateral Consequences

Again, focusing on its misplaced concerns about “jury nullification,” the Government seeks to exclude any reference to punishment or the consequences of such punishment on Merritts or his family.

To be clear, Merritts does not intend to introduce affirmative evidence or argument of the penalties or consequences of the wire fraud crimes charged in this case, including any potential term of incarceration, fines, or other punishments he might face if convicted. But yet again, the Government attempts to shoehorn even more into what seems like an otherwise innocuous request. For example, the Government seeks to prevent defense counsel from arguing to the jury that its

decision “will have consequences”—even “serious consequences”—for the defendant. (*See* Doc. 24 at 6). But that goes one step too far and is entirely unsupported by the law cited by the Government. As with any federal criminal trial, the defense should be permitted to reinforce the gravity and importance of its decision because a conviction alone, even without *any further penalty*, is a “consequence” and a “serious consequence” for this defendant with no criminal history and an otherwise spotless record of hard work, honorable service to his country, and integrity. Additionally, if the defendant elects to testify and his credibility is attacked with a suggestion that he has a motive to lie, the defense should be permitted to address the issue of potential consequences in the event of a conviction outright if the Government has indeed opened the door to such questions.

V. The Government’s “Unrelated” Investigation of Former Congresswoman Bush

As set out in detail *supra*, this portion of the Government’s omnibus motion in limine is outright disingenuous and should be denied. As the discovery reveals, the Government conducted a single investigation that initially focused on Congresswoman Bush and security services provided by Merritts. But that investigation revealed no crime and the investigators then went on to try to justify the absurd abuse of resources expended on that investigation targeting a sitting member of Congress by charging Merritts with wire fraud. But the evidence the Government seeks to introduce at trial was obtained during that one investigation and even involves internet protocol (IP) address records tied to Congresswoman Bush’s residence in St. Louis, Missouri.

Citing no legal authority at all in support of its efforts to exclude this evidence, the Government curiously asks rhetorical questions that are no more than strawman arguments and then the Government answers its own rhetorical questions in its motion. (*See* Doc. 24 at 8). For instance, the Government asks, “How would introducing evidence of the unrelated investigation show whether Defendant submitted fraudulent loan applications?” (*Id.*). And then the Government summarily answers: “It would not.” (*Id.*). But the Government’s flawed premise is that this was an “unrelated

investigation” (it was not) and the defense in any event has the right to confront adverse witnesses and to present a complete defense—including by attacking the investigation that led to the pending charges in the first place.

At the outset, it is black letter law that Merritts has the right to present a complete defense. The Due Process Clause requires that “criminal defendants be afforded a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485 (1984). “The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.” *Washington v. Texas*, 388 U.S. 14, 19 (1967). This means that Merritts has a constitutional right to present evidence that contradicts the evidence in the Government’s case. *See Crane*, 476 U.S. at 690-91 (“the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense” and “that opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence...when such evidence is central to the defendant's claim of innocence. In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and survive the crucible of meaningful adversarial testing”) (internal citations omitted).

But even more, Merritts has a Sixth Amendment right to confront adverse witnesses—and to expose bias. Cross examination regarding the earlier aspects of this investigation is proper impeachment, as it is probative of bias, motive, and prejudice. *See Davis v. Alaska*, 415 U.S. 308, 315–16 (1974) (exposure of a witness’s bias, motive, or prejudice is a constitutionally protected form of cross examination). This includes the right to cross-examine government witnesses about their

own biases and credibility. *See United States v. Abel*, 469 U.S. 45, 52 (1984) (“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony”); *Villaroman v. United States*, 184 F.2d 261, 262 (D.C. Cir. 1950) (“Bias of a witness is always relevant” and “may be shown by contradiction of his testimony or other independent evidence”).

In a similar vein, the defense has the right to attack the sloppiness of the Government’s investigation—including its failure to even attempt to interview critical material witnesses and to identify an alleged alternative perpetrator. The defense should be permitted to enable the jury to appreciate that this was not the result of a lack of resources; rather, the Government spent an enormous amount of resources investigating Merritts but fell flat on its face when it comes to the investigation of the only charged conduct. For instance, Merritts intends to establish reasonable doubt as to whether it was in fact Merritts who submitted certain of the documents the Government contends are fraudulent. Thus, this Court should see the Government’s motion for what it is: an attempt to prevent Merritts from highlighting the existence of reasonable doubt by establishing a failure to effectively investigate the crimes charged. This matters because “[f]undamental standards of relevancy, subject to the discretion of the court to exclude cumulative evidence and to insure orderly presentation of a case, require the admission of testimony which tends to prove that a person other than the defendant committed the crime that is charged.” *United States v. Armstrong*, 621 F.2d 951, 953 (9th Cir. 1980) (citing *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). To be clear, Merritts does not have to establish that someone else committed the crimes charged to be permitted to argue the investigation and evidence fails to prove, beyond a reasonable doubt, his guilt. But what the Government seeks to exclude here is evidence that someone other than Merritts “had the opportunity, ability and motive to commit the crime.” *United States v. Crosby*, 75 F.3d 1343, 1347 (9th Cir. 1996).

In *Crosby*, the defendant argued “the police investigation was sloppy and that a more thorough investigation would have exonerated him.” *Id.* The defense highlighted failures at the scene of the crime, a lack of physical evidence, a failure to pursue certain leads with respect to forensic testing, and similar shortcomings of the police investigation. *Id.* On appeal, the Ninth Circuit explained that the district court failed to permit the defendant to “fully argue his sloppy investigation theory” because, while “he could point out what the police hadn’t done, he could suggest no exculpatory evidence the police might have found had they conducted a more thorough investigation.” *Id.* at 1347-48. This would have enabled the defense counsel to “plausibly argue[] that a more thorough investigation would have produced evidence incriminating [another individual].” *Id.* That court reversed the conviction, explaining that district courts “should afford the accused every opportunity to create that doubt.” *Id.* at 1349 (internal quotations omitted). But, in its motion, the Government is now trying to prevent the defense from even acknowledging the existence of the totality of the investigation by compartmentalizing it only to what the prosecution charged and to the evidence and witnesses the prosecution singlehandedly concludes are relevant.

Finally, the Government curiously cites Federal Rule of Evidence 403 for the premise that, if Merritts is permitted to introduce evidence casting doubt on the charges, “the government would be required to introduce its own evidence and testimony to the contrary.” (*See* Doc. 24 at 8). But that is exactly what the Constitution requires, not grounds to exclude exculpatory evidence. *See Crane*, 476 U.S. at 690-91.

VI. Evidence Regarding the Government’s Charging Decisions, Alleged Political Motivation, or Alleged Selective Prosecution

Merritts has no intention to raise the Government’s charging decisions before the jury. But once again, the Government goes one step too far.

When it comes to cross examination of adverse witnesses, Merritts has an absolute

constitutional right to expose bias, political motivation, and prejudice of any witness. *See Davis*, 415 U.S. at 315–16 (exposure of a witness’s bias, motive, or prejudice is a constitutionally protected form of cross examination); *Abel*, 469 U.S. at 52 (“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony”); *Villaroman*, 184 F.2d at 262 (“Bias of a witness is always relevant” and “may be shown by contradiction of his testimony or other independent evidence”). This includes witnesses who investigated this case.

And the Government also seeks an order prohibiting the defense “from identifying” Cori Bush “as Congresswoman Bush or making any reference to her profession or involvement in politics, including during opening statements or closing arguments.” (*See* Doc. 24 at 10). Not surprisingly, the Government cites no legal authority whatsoever for this premise—because there is none. But there is an even greater fatal flaw with the Government’s request: Congresswoman Bush is a possible (and likely) witness. “Background evidence may provide necessary context to a witness’s substantive testimony” and it is not an abuse of discretion to permit such testimony at trial. *Tardif v. City of New York*, 991 F.3d 394, 409 (2d Cir. 2021). And when it comes to a witness’s employment history, a defendant has the right for a jury to evaluate that when considering that witness’s credibility. “Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them.” *Alford v. United States*, 282 U.S. 687, 692 (1931). Indeed, “when the credibility of a witness is in issue, the very starting point in ‘exposing falsehood and bringing out the truth’ through cross-examination must necessarily be to ask the witness who he is and where he lives... To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself.” *Smith v. State of Illinois*, 390 U.S. 129, 131 (1968). Supreme Court precedent “make it clear that a defendant is presumptively entitled” to question a witness as to her “employment.” *United*

States v. Navarro, 737 F.2d 625, 633 (7th Cir. 1984) (referencing *Alford* and *Smith*). Thus, when the jury evaluates Bush’s credibility, they should be entitled to consider her employment history as a former member of Congress. That the Government would argue there is “no legitimate purpose” in “[r]eferencing Congresswoman Bush’s identity and political involvement” is stunning. (See Doc. 24 at 10). To the extent the Government has any such concerns, that can be appropriately addressed through jury instructions and voir dire—not from hiding facts from the jury. But, in any event, the Government should not be permitted to conceal from the jury Merritts’ employment history (which includes providing security services to Congresswoman Bush) and Congresswoman Bush’s employment history when she likely testifies as a witness at trial.

At its core, the Government’s motion seeks to deny Merritts his constitutional right to a fair trial, to put on a complete defense, to attack the credibility of material witnesses including law enforcement investigators, and to testify in his own defense if he elects to do so. But what is really clear is that the Government is afraid of its own shadow: the prosecution fears that the jury will acquit Merritts if it knows the truth about its investigation and if it is entitled to the facts necessary to weigh the credibility of possible material witnesses, including the defendant himself. Through that lens, this Court should see the motion for what it is: an attempt to deny Merritts a fair trial. The Government brought this case and should have to prove it—fairly, the same as with any other case, and subject to the constitutional mandates that apply to every criminal defendant.

VII. Conclusion

For the foregoing reasons, and for any other reasons this Court may determine at the pretrial conference, Merritts respectfully requests that this Court deny the Government’s omnibus motion in limine.

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Respectfully submitted,

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Certificate of Service

I hereby certify that the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the Office of the United States Attorney and all other counsel in this case.

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