

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	x	
Plaintiff,	:	Case Number: 1:25-CR-76-JMC
vs.	:	
	:	
CORTNEY MERRITTS,	:	
Defendant.	:	
	x	

RESPONSE

Defendant CORTNEY MERRITTS, by and through undersigned counsel, hereby responds to the Court’ order requiring additional briefing on the topic of scope of potential cross-examination of governmental witnesses. *See* Doc. # 40 (Tr. 65:16-21). As detailed below, the Court should permit the cross-examination.

The Defendant offers the following cases that supports his position:

Davis v. Alaska, 415 U.S. 308, 316–17 (1974) – cross-examination is the primary tool for challenging a witness’s credibility and testing the accuracy of their testimony. It gives a criminal defendant an opportunity to bring out any potential bias, prejudice, or hidden motives the witness may have. *See id.* at 316 (“A more particular attack on the witness’ credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony.” (cleaned up)).

United States v. Abel, 469 U.S. 45, 52 (1984) – “Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness’

like, dislike, or fear of a party, or by the witness' self-interest. *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." (cleaned up, emphasis added).

United States v. Lankford, 955 F.2d 1545, 1548 (11th Cir. 1992) – "district court's discretion in limiting the scope of cross-examination is subject, however, to the requirements of the Sixth Amendment. The right of confrontation guaranteed by the Sixth Amendment includes the right of cross-examination. Cross-examination has traditionally been allowed for the purpose of impeaching or discrediting the witness. In particular, the exposure of a witness' motivation in testifying has been labelled by the Supreme Court as an important function of the Sixth Amendment right to cross-examination.... What counts is whether the witness may be shading his testimony in an effort to please the prosecution. A desire to cooperate may be formed beneath the conscious level, in a manner not apparent even to the witness, but such a subtle desire to assist the state nevertheless may cloud perception." (cleaned up).

Importantly, "where the witness sought to be cross-examined is the government's 'star' witness, providing an essential link in the prosecution's case, the importance of full cross-examination to disclose possible bias is necessarily increased." *Id.* "Therefore, while the discretion of the district court in ruling on the admissibility of evidence is entitled to a great deal of deference by this court, this discretion is somewhat narrower where the district court limits a defendant's right to cross-examine witnesses against him. *Unless the defendant has been permitted sufficient cross-examination to allow a jury to adequately assess the witness' credibility, the district court's limitation of cross-examination will be in error.*" *Id.* (cleaned up, emphasis added).

United States v. Anderson, 881 F.2d 1128, 1136 (D.C. Cir. 1989) – cross-examination is to expose “possible biases, prejudices, or ulterior motives of the witness as they may relate to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is ‘always relevant as discrediting the witness and affecting the weight of his testimony.’”

United States v. Gambler, 662 F.2d 834, 838 (D.C. Cir. 1981) – the court noted that courts should give great latitude to defense counsel when they are cross-examining Government witnesses, specifically in the area of bias and interest.

United States v. Spencer, 25 F.3d 1105, 1109 (D.C. Cir. 1994) – noting that a more targeted form of impeachment happens when a witness is challenged for potential bias. Even though the evidentiary rules do not explicitly reference bias, evidence showing a witness’s relationship with a party—and how that relationship might cause the witness to shade their testimony, intentionally or not—is almost always considered relevant.

United States v. Wilson, 605 F.3d 985, 1003 (D.C. Cir. 2010) – a trial court must ensure that the defendant has a genuine chance to uncover any possible bias the witness may have.

Synthesizing these cases, trial courts must (in order to ensure compliance with the Sixth Amendment’s Confrontation Clause) allow criminal defendants to prove the witnesses potential bias (whether conscious or not). That is particularly true when the witnesses is a government “star” witness. Indeed, the importance of fulsome cross-examination to disclose possible bias is necessarily increased for “star” witnesses, which it cannot be gainsaid that a FBI case agent and/or governmental auditor qualifies as in a PPP fraud case similar to the case at bar.

Accordingly, the Court should permit full and robust cross-examination including, but not limited to, the unsuccessful investigation into Congresswoman Bush's payments to the Defendant.

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III

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Joseph A. DiRuzzo, III
MARGULIS GELFAND DiRUZZO & LAMBSON, LLC
500 East Broward Blvd., Suite 900
Ft. Lauderdale, FL 33394
954.615.1676 (o)
954.827.0340 (f)
jd@margulisgelfand.com

/s/ Justin K. Gelfand

Justin K. Gelfand
MARGULIS GELFAND DiRUZZO & LAMBSON, LLC
7700 Bonhomme Avenue, Suite 750
St. Louis (Clayton), Missouri 63105
314.390.0230 (o)
314.485.2264 (f)
justin@margulisgelfand.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on Dec. 12, 2025, a true and correct copy of the foregoing has been filed via ECF and that a NEF will be provided to counsel of record.

/s/ Joseph A. DiRuzzo, III

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