

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

CORTNEY MERRITTS,

Defendant.

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Case No. 25-cr-00076-JMC

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
“ADDITIONAL BRIEFING” REGARDING CROSS-EXAMINATION**

Following extensive briefing and oral argument by the parties concerning whether Defendant should be allowed to introduce evidence or testimony concerning the Government’s investigation into whether former Congresswoman Cori Bush made false statements to the Federal Election Commission— either during opening statements, cross-examination of the government’s witnesses, or otherwise—the Court ordered Defendant to “submit a supplemental memorandum to the Court on or by December 12, 2025, after which the Government w[ould] have an opportunity to respond.” *See* Dec. 5, 2025, Minute Order.

As further discussed at length during the December 5, 2025, Pretrial Conference in this case, Defendant’s purported basis for seeking to introduce evidence or testimony of the other investigation is to show that the law enforcement agents who worked on that investigation were biased against Defendant in this investigation. As such, as described in more detail during the Pretrial Conference, the purpose of the Court’s Order was to give Defendant the opportunity to provide specific authority permitting cross-examination of witnesses on that basis.¹ Having failed

¹ The Government has ordered a copy of the transcript of the Pretrial Conference but has not yet received it. The Government’s description of what was discussed during the Pretrial Conference is based on the assigned prosecutors’ notes and best recollections.

to provide any such authority in his initial Opposition (ECF No. 32 at 12-15) to the Government's Motion *In Limine* to preclude, *inter alia*, evidence and argument regarding the other investigation (ECF No. 24 at 7-8), and having had no such authority available during the Pretrial Conference, Defendant has now utterly failed yet again to offer support for his position.

Instead of providing specific authority that is responsive to the Court's request, Defendant cites a litany of cases for the uncontroverted proposition that a criminal defendant may generally cross-examine the Government's witnesses in order to challenge their credibility, including by demonstrating bias. ECF No. 41. Yet the Government remains baffled by what "bias" Defendant seeks to demonstrate, or on what grounds he supports a good-faith belief that any such "bias" even exists. As the Government previously explained, Ms. Bush, not Defendant, was the target of the other investigation. The evidence that Defendant seeks to offer concerning an investigation of a different target, for different crimes involving different people, organizations, courses of alleged conduct, and time periods, through the cross-examination of law enforcement agents who lack the authority to charge a crime, is not relevant.² But it would be unduly prejudicial, invite jury nullification, and open the door to extensive testimony, evidence, and additional witnesses from both sides that have nothing at all to do with the charges against Defendant in this case, thereby greatly expanding the scope of the trial and creating undue confusion and delay.

The truth is that Defendant is not interested in exposing "bias" of the Government's law enforcement witnesses. Rather, he seeks to cast this straightforward fraud case as some kind of

² Nor are the law enforcement agents whom Defendant seeks to cross-examine about the other investigation the Government's "star" witnesses, no matter how many times Defendant casts them as such. To the contrary, there is no "star" witness in this case. The Government intends primarily to meet its burden at trial through documents, including Defendant's loan applications and related filings, his tax filings (or lack thereof), and his own financial records. The law enforcement agents who are expected to testify at trial are summary witnesses who will dispassionately describe that evidence to the jury.

political witch hunt. He wants to make this trial about a campaign funds investigation rather than the false statements he made on his loan applications. He wants to make this case about Ms. Bush rather than about his own conduct. This is a blatant attempt at nullification by inviting the jury to reach a verdict on something other than the merits of the evidence and the law. Moreover, permitting Defendant to pursue lines of questioning about the other investigation would effectively undo the Court's previous Order denying Defendant's Motion to Dismiss the Indictment for Selective Prosecution. This Court has already ruled in no uncertain terms that Defendant showed neither a discriminatory effect nor a discriminatory intent by the Government in pursuing and indicting this case. That ends the inquiry, and Defendant cannot now backdoor evidence and testimony that this Court has already determined must be excluded. *See United States v. Washington*, 705 F.2d 489, 495 (D.C. Cir. 1983) ("[T]he issue of selective prosecution is one to be determined by the court, as it relates to an issue of law entirely independent of the ultimate issue of whether the defendant actually committed the crimes for which she was charged." (citations omitted)); *United States v. Abboud*, 438 F.3d 554, 579 (6th Cir. 2006) ("[T]he defense of selective prosecution is a matter that is independent of a defendant's guilt or innocence, so it is not a matter for the jury."); *United States v. Sutton*, 636 F. Supp. 3d 179, 209-10 (D.D.C. 2022) (granting motion *in limine* and describing selective prosecution argument as "irrelevant, inappropriate for consideration by the jury," and prone to "invit[ing] jury nullification [] and distract[ing] from the issues at trial"); *United States v. Smirnov*, No. 2:24-CR-00091-ODW, 2024 WL 4893937, at *5 (C.D. Cal. Nov. 26, 2024) (granting government motion *in limine* and excluding "evidence, argument, or questioning that suggests the prosecution is politically motivated").

Despite the Court's invitation to do so, Defendant has offered no authority permitting such cross-examination. He has failed because no such authority exists. But there is ample authority

supporting the Government’s position that where, as here, a defendant offers no foundation for a good-faith belief that any such bias may even exist, the Court enjoys ample discretion to limit cross examination. *See United States v. Lin*, 101 F.3d 760, 763–64 (D.C. Cir. 1996), as amended (Jan. 28, 1997) (“The court’s limitation on the cross-examination of [a] government witness ... was not an abuse of discretion because defense counsel did not demonstrate a reasonable basis for asking highly prejudicial cross-examination questions.”); *United States v. Sampol*, 636 F.2d 621, 658 (D.C. Cir. 1980) (“[C]ounsel must have a reasonable basis for asking questions on cross-examination which tend to incriminate or degrade the witness and thereby create an unfounded bias which subsequent testimony cannot fully dispel. The general rule in such situations is that ‘the questioner must be in possession of some facts which support a genuine belief that the witness committed the offense or the degrading act to which the questioning relates.’” (quoting *United States v. Fowler*, 465 F.2d 664, 666 (D.C. Cir. 1972))); *United States v. Smoot*, 463 F.2d 1221, 1222 (D.C. Cir. 1972) (affirming as being “well within the court’s discretion” a “ruling limiting defense counsel’s cross examination of a Government witness on the ground that he was embarking on a fishing expedition to attempt to find bias”); *see also Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (“[T]he Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” (emphasis omitted)); *United States v. Wilson*, 605 F.3d 985, 1012 (D.C. Cir. 2010) (“[T]he Supreme Court has instructed with regard to cross-examination to expose potential bias of a prosecution witness, that ‘trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or

interrogation that is repetitive or only marginally relevant.” (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986))).

The Government’s Motion *In Limine* to exclude evidence and arguments regarding the prior investigation into Ms. Bush should be granted.

Respectfully submitted,

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