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From: usernotice@google.com
Sent: Monday, April 25, 2022 2:10 PM
To: usernotice-noreply@google.com
Subject: [REDACTED] Notification from Google



Dear Google user,

Google has received legal process issued by the Federal Bureau of Investigation compelling the release of information related to your Google account. The agency reference number or case number on the legal process is 17-CR-20487-MGC; 11-2.

Unless we promptly receive a copy of a filed motion to quash that is file-stamped by a court of competent jurisdiction, Google may provide responsive documents pursuant to applicable law, such as the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq. In most cases, the file-stamped motion to quash must be received by Google within 7 days of the date of this notification.

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Regards,
Legal Investigations Support
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA (MIAMI DIVISION)
CASE NO. 17-20487-CR-COOKE
USA vs. Jonathan Cruz et al.

FILED BY *[Signature]* D.C.
MAY 02 2022
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - FT. LAUD.

MOTION TO QUASH SUBPOENA

1. JONATHAN CRUZ (“defendant”) files this motion to quash two unlawful subpoenas issued by the FBI seeking to illegally invade the privacy of an investigative journalist and witness that is covering this newsworthy case as part of a book project, website and documentary project (attached as Exhibit 1).

2. [REDACTED] Ali (“Mr. Ali”) is the owner of the email address and phone number that is the subject of the subpoenas attached as Exhibit 1. Mr. Ali is an investigative journalist that converses the topic of federal corruption. He obtained his journalism and psychology degree from an accredited CUNY institution in New York in September 2001 and went on to work for several prominent media companies, law firms and also a CIA front company operating in a foreign country (while also working on his book project documenting newsworthy federal corruption scandals). Mr. Ali is also an experienced paralegal, investigator and technology expert that helps indigent federal inmates with their cases (for free) on behalf of his religious organization.

3. The instant unlawful subpoena appears to have originated with South Florida federal authorities who have an extreme disdain for the First Amendment and the work of journalists who expose federal crimes. In 2018, Mr. Ali began to investigate an unlawful criminal conspiracy by federal authorities in the Southern District of Florida to violate 18 USC 1347. After federal authorities discovered that Mr. Ali was recording his conversations with them to report on these crimes to the public, they retaliated by kidnapping Mr. Ali into FDC Miami from May 13th, 2019 until September 13th, 2019 to punish him for allegedly violating Florida’s “two-party consent” recording laws concerning a matter under federal jurisdiction. The following is an excerpt of

recording/transcripts with the *federal* official who illegally imprisoned Mr. Ali after admitting that she was doing it to enforce her alleged “rights” under Florida’s “two-party consent” laws:

<https://www.youtube.com/watch?v=1UH5MBA5EME>

FED: Ok. Stop. You do not have my permission to be recording me, so if you’re tape recording this conversation –

ALI: You gave me permission.

FED: No I did not. I’m being very clear. I had – you – I had – Do not – You do not have my permission to tape record me. If you are doing so, you’re committing a misdemeanor and ***I will file charges.*** (Emphasis Added)

4. ... and then she filed false charges to kidnap Mr. Ali into FDC Miami without any legal justification whatsoever. Mr. Ali was not concerned about her illegal kidnapping because he was expecting to be afforded an immediate preliminary and/or detention hearing to easily establish that there was no probable cause for him to be detained (as required by federal statutes), but that never happened because federal officials do not release you from imprisonment when you have recordings that expose federal crimes. When Mr. Ali directed his court-appointed Public Defender to retrieve the exculpatory recordings from his family so they could be submitted to the court to win his release from unlawful pretrial detention, the Muslim-biased Public Defender refused after he also adopted the above federal official’s false claim that the recordings were illegal under federal law (despite Mr. Ali instructing him on the laws and precedents which affirm they are not). Mr. Ali would later discover that they were also friends. Pretrial detention without probable cause was then imposed upon Mr. Ali at FDC Miami for four months to specifically prevent him from submitting lawfully made recordings to the Court which would have exonerated him of the illegal retaliation attempted by a disgruntled federal criminal. And now the FBI is again issuing unlawful subpoenas to threaten Mr. Ali with further kidnappings without probable cause (for the same non-offense of recording crimes for documentation to the public).

5. While unlawfully imprisoned under the unconstitutional conditions present at FDC Miami, Mr. Ali continued to investigate additional scandals involving even more federal officials after the guards started committing hazing rituals against Mr. Ali and numerous other inmates as part of an effort to deliberately torture them into violence, depression, anxiety and suicide. Mr. Ali directly witnessed a Muslim inmate named Orlando Lorenzo attempt to kill himself due to the unconstitutional conditions of this jurisdiction. A guard discovered Mr. Lorenzo hanging in his cell and was able to save him before he died. Shortly after that event, Mr. Ali then witnessed another inmate named Pedro Rene Gonzalez also threatening to commit suicide due to the unconstitutional conditions of this jurisdiction. When Mr. Ali notified the guards to save Mr. Gonzalez's life, they refused to put him on suicide watch and instead allowed him to kill himself. The conditions were so horrific that Mr. Ali continued to have nightmares about them after release.

6. Mr. Ali was eventually released from the unlawful imprisonment after being exonerated of the false charges when the federal official (documented in the recording provided in paragraph 3) refused to testify under oath about her crimes once Mr. Ali was finally able to regain access to his exculpatory recordings only after finally succeeding in dumping his corrupt Public Defender to thereby proceed PRO SE (only after 4 months of trying). Mr. Ali immediately emailed the BOP Director to alert her to the conditions of the prison (without any response). Mr. Ali would continue to monitor the situation and confirm that numerous other inmates had committed suicide both before and after his release despite reporting the conditions of the prison directly to the head of the BOP. Mr. Ali thereby decided to document the scandals of FDC Miami which are now part of a formidable list of major scandals he has investigated since 1987 (which are all being documented in a book he intends to publish in September of 2022). Mr. Ali submits youtube links that contain testimony of inmates complaining about FDC Miami refusal to provide medical attention, suicides

and even the manslaughter of an inmate by a guard. This evidence is collected to report on these newsworthy scandals to the public.

Refusal by guards to provide medical attention, suicide of Latitia Houser and Anibal Mustelier:
<https://www.youtube.com/watch?v=VICsbX11lrQ>

The involuntary manslaughter of Drew Curtis Sikes:
<https://www.youtube.com/watch?v=qEUppmCuTEE>

7. Mr. Ali also started to investigate the instant case (USA vs Nelus et al) after being imprisoned with Defendant Jorge Aponte who was openly bragging to him and others about having committed *numerous* homicides. Although Mr. Aponte was only charged and (recently) convicted of one murder, he is a suspect in approximately 7 more. The existence of a potential serial killer in South Florida is obviously a newsworthy story, and so Mr. Ali decided to investigate it and try to determine if there was any truth to these claims being made by Mr. Aponte.

8. Although Mr. Aponte was bragging about numerous uncharged homicides to almost anyone in the prison willing to listen, for whatever the unlawful reason, the FBI was refusing to conduct a proper operation within the prison to record these confessions directly as they have done in numerous other federal cases. If they did, they are unlawfully refusing to provide such recordings to the defense because they would be exculpatory to the charges filed against some of the defendants (to include defendant Cruz). Mr. Ali continued to request a direct meeting with the FBI from 2019 to present to discuss all these scandals. They refused.

9. The refusal of the FBI to properly document "The Many Confessions of Mr. Aponte" is not without consequences for other innocent victims of his continued shenanigans. For example, Mr. Aponte was openly admitting to numerous inmates at the prison that he directly shot and killed an innocent Uber driver, but the FBI was refusing to record his confession to that crime (or if they recorded it, they then refused to provide it to defense counsels and likely forced an unnecessary

trial to move forward as a result). When Mr. Aponte learned that his co-defendant Trayvon Thomas was going to cooperate against him concerning the Uber homicide, Aponte then changed his story and started claiming that it was Trayvon Thomas who pulled the trigger. Then after Mr. Aponte discovered that his co-defendant Mr. Gonzalez was also planning to cooperate against him immediately prior to the Uber murder trial, he then knowingly committed perjury by testifying at trial that it was Mr. Gonzalez who pulled the trigger. The ability of Mr. Aponte to falsely blame other co-defendants for crimes he committed, could have easily been restrained if the FBI had merely recorded Mr. Aponte's confessions directly while he was openly bragging about them to the entire prison. It is obvious that they must have received a tsunami of solicitations from opportunistic inmates seeking to cash in on this potential lottery ticket out of the prison.

10. As part of this behavior, Aponte also developed a scheme to profit from his crimes by selling details of these uncharged homicides to other inmates who would then relay the information back to the FBI as part of their own attempt to obtain reduction in their sentences by "cooperating." Mr. Aponte also used this successful financial scheme (for which he was allegedly able to obtain substantial money payments from some inmates) as a tool by which to target his perceived enemies. For example, Mr. Aponte's disclosures to the other inmates would continue to change based upon whomever Mr. Aponte is upset with at any given moment. At first Mr. Aponte was accusing other cooperating defendants (like Trayvon Thomas) of being involved in these additional uncharged homicides, but at some point Mr. Aponte hatched a plot to try and also extort the defendant Mr. Cruz for money. When Mr. Cruz refused to submit to such extortions, all of a sudden Mr. Aponte changes the story and informs at least one of his former cellmates that it was defendant Cruz who is responsible for these unsolved homicides (and this cellmate came forward to Mr. Ali to provide recorded testimony confirming this fact).

11. The “Many Confessions of Mr. Aponte” is not a movie that the FBI wants the Court and/or a jury to see because it proves that the FBI certainly botched this investigation pretty bad. Had Mr. Ali remained imprisoned with Mr. Aponte, he could have easily just convinced him to simply confess all his crimes directly to the federal authorities in exchange for their promise not to seek the death penalty (instead of trying to sell his cases to other unscrupulous inmates, which now exposes him to potential additional State prosecutions once the FBI extricates themselves from their botched investigation). It appears that the FBI is intentionally avoiding any further prosecution of the remaining uncharged homicides in this matter simply because Mr. Aponte’s confessions would likely exonerate defendant Cruz (and others) of some of the overcharging engaged by FBI in this matter (to overcompensate for the botching of the Aponte investigation). Mr. Ali’s own investigation indicates that Mr. Aponte is truly the “bossman” of his own conspiracy, as he wielded the most dominating role over all other co-defendants by virtue of his reputation for absolutely random and depraved violence. Only after defendant Cruz was imprisoned did he learn Mr. Aponte was also bragging about having plotted (with at least one other co-defendant) to try and rob and kill him too. Despite his current hardship, defendant Cruz recognizes that he is very lucky to be alive. The crimes alleged to be committed by Aponte are so extreme and his behavior since arrest so bizarre, that it is likely Mr. Aponte was not even competent at the time of his recent trial (and yet no one ever requested a competency evaluation despite the extreme signs of mental disorder he has exhibited in the prison for 5 years straight).

12. Mr. Ali thereby found this scandal newsworthy because it involves a purported serial killer and his bizarre plot to make money off attempting to implicate nearly all of his co-defendants in numerous murders that he himself committed (for which they have no involvement). Even in the Uber murder trial, the truth of that case was never presented to a jury (as corroborated by the

numerous additional testimony that was allegedly never captured or introduced by the FBI). The apparent truth is that Trayvon Thomas and David Gonzalez were completely caught off guard with the senseless nature of that crime committed by Mr. Aponte directly (despite rejection of Aponte's intended conduct once it became apparent to them). The original testimony of Aponte as given to Mr. Ali and other inmates, is that he handed the gun to defendant Gonzalez and actually ordered him to kill the Uber driver, but defendant Gonzalez (to his credit) refused to do it. That is when Aponte grabbed the gun back from Mr. Gonzalez and killed the Uber driver himself to punish him for attempting to hide \$15 and a cell phone (and perhaps to show off in front of two girls he wanted to impress with his ruthless gangster persona). This type of random and extreme violence is exactly how Mr. Aponte ultimately dominated other co-defendants on this case. It was thereby fascinating and newsworthy for Mr. Ali to witness the FBI refusing to simply record their hit blockbuster "The Many Confessions of Mr. Aponte" which would likely solve additional uncharged homicides and bring justice to the victim and their family (which should always be the most important goal of *every* homicide investigation).

13. After discovering that defendant Aponte is a reputed serial killer, Mr. Ali thereby decided to document this additional botched investigation as part of his book project which is documenting non-public details concerning numerous unsolved homicides going all the way back to 1994. Mr. Ali thereby conducted a substantial investigation of this case to include conducting recorded interviews with defendant Cruz, other co-defendants (to include Mr. Aponte) and also numerous other inmates over the course of several years since 2019. Mr. Ali even attended the entirety of defendant Aponte's trial which occurred without incident up until the last day of the trial when Mr. Ali was approached by Mr. Aponte's mother and asked to identify himself to her. After Mr. Ali informed Aponte's mother that he was a journalist intending to write about the case,

she then responded by stating “ok, because if you are one of his friends, I was going to ask you to leave.” Mr. Ali did not know how to interpret that statement, so he merely assured her that he was not Mr. Aponte’s friend and walked away, but he refused to leave the trial because he has a right to report upon this newsworthy story.

14. What Mr. Ali didn’t tell Mr. Aponte’s mother, is that he still cares about Mr. Aponte as a human and does not want to see him get the death penalty for manifesting these extreme psychological dysfunctions at such a young age (especially as he is also father to a young child himself). Mr. Ali personally believes that if these additional stories of uncharged homicides are true, that Mr. Aponte should immediately confess them all to federal authorities without any further attempts at deception or trying to “sell” his cases to other inmates as intermediaries to the FBI (who are apparently refusing to speak to him directly despite his numerous requests).

15. If Mr. Aponte leaked enough details of these uncharged crimes to the FBI through other inmates (to whom he sold the details), the FBI has already located the murders and is merely refusing to charge them, apparently because Mr. Ali discovered them before they did (while illegally imprisoned himself). The fact that FBI is refusing to charge these additional homicides indicates that they are contemplating laundering any continued investigation/prosecution of Mr. Aponte through State authorities as a means by which to increase (not decrease) the chance for a death penalty sentence to issue (if Mr. Aponte is ultimately convicted of any additional homicides).

16. Mr. Ali believes that if Mr. Aponte provides a full confession to the federal authorities immediately (regardless if they are doing everything possible to avoid allowing it), he would still have a higher chance of being able to negotiate a deal for life imprisonment in the Federal system rather than trying to do the same if charged with additional brutal homicides in the State system. It may already be too late, as the conduct of the FBI in forcing a trial on just one of the homicides

(and their demonstrated intent to threaten Mr. Ali with more kidnappings just for documenting this newsworthy botched case), seems to indicate that Mr. Aponte only has a short window of time left to demand an opportunity confess any of his remaining uncharged crimes directly to the FBI and pray they have mercy on his soul by merely solving the cases without requesting the death penalty. Once the last remaining federal trial is completed in this matter, Mr. Ali's long-term experience with this type of federal corruption seems to indicate that it is unlikely Mr. Aponte will be afforded a federal prosecution concerning any other additional uncharged crimes.

17. Following the completion of defendant Aponte's trial, prosecutor Alejandra Cruz commented to defendant Cruz's attorney that she observed Mr. Ali attend the trial. As a result of that statement by prosecutor Lopez to Mr. Cruz's assigned counsel, Mr. Ali wrote prosecutor Lopez an email to introduce himself to her and also offer her access to the evidence he accumulated as part of his own investigation of what is clearly a newsworthy matter. In that email, he provided prosecutor Lopez youtube links to review snippets of recorded conversations documenting his investigation of numerous unsolved homicides going all the way back to 1994 (all of which will be covered as part of his book and documentary project exposing substantial federal corruption).

18. Mr. Ali also provided prosecutor Lopez with a recording of Mr. Ali and defendant Aponte discussing his scheme to sell details of uncharged homicides to other inmates, and a recording with another inmate to whom Aponte bragged about committing a quadruple homicide (a triple homicide in a home invasion, and another homicide related to that event). Mr. Ali also offered to meet with prosecutor Lopez and the FBI to attempt to convince them to merely seek a direct confession from Mr. Aponte, and to provide copies of the complete conversations for which Mr. Ali provided excerpts in his email. In response to that email attempting to assist prosecutor Lopez and the FBI to gain a better understanding of this case by merely asking for a face-to-face

meeting to discuss it, the FBI then issued an illegal subpoena to Google seeking private account information concerning the email address and telephone number from which the email originated. They refused to call/email Mr. Ali to make an appointment to meet him, and instead they attempt a raid of his email/phone accounts looking for information he is already offering them voluntarily.

19. Google notified Mr. Ali of the unlawful request and gave him seven days to file a motion to quash or else they will release the records immediately. Google refuses to provide a non-redacted copy of the subpoena and so Mr. Ali does not know the full nature of whatever false claims the FBI put forward to attempt to justify their request. This subpoena obviously has no legitimate purpose other than to threaten Mr. Ali with another illegal raid of his private properties and/or body for nothing more than investigating yet another case that was severely botched by the FBI (and this is not the first murder case). It is illegal for the FBI to threaten witnesses, obstruct justice and then act to illegally threaten a journalist from reporting these crimes to the public.

20. Upon discussing this bizarre subpoena request with defendant Cruz's assigned counsel Mr. Della Fera (who was cc'd on the email to prosecutor Lopez), the only thing that Mr. Della Fera could also surmise is that federal authorities are again alleging that the recordings which Mr. Ali forwarded to her in his email are somehow illegal (as the feds previously attempted to claim starting since 2018). As a result of this belief, Mr. Della Fera is himself now refusing to receive any additional recordings from Mr. Ali as a result of the subpoena issued by FBI (despite the fact that these recordings are exculpatory to his client's case and also completely legal to record pursuant to the First Amendment).

21. "Two-party consent" laws are a violation of the First Amendment and thus unconstitutional, as confirmed by the fact that Federal jurisdiction is "one party consent." It is not unlawful under federal law for a person not acting under color of law to intercept a wire, oral or

electronic communication where such person is *a party* to the communication. See 18 USC 2511 (2)(d). In *United States v. DiFelice*, 837 F. Supp 81,82 (S.D.N.Y. 1993), the Court found that the victim's recording of telephone conversations with the defendant was admissible in federal criminal prosecution even though taping might have violated Massachusetts law. Also, "Evidence admissible under Federal law cannot be excluded because it would be inadmissible under State law." *United States v. Pforzheimer*, 826 F.2d 200, 204 (2nd Cir 1987)(quoting *U.S. v. Quinones*, 758 F.2d 40,43 (1st Cir. 1985).

22. Furthermore, the most recent 11th Circuit decision concerning "two party consent" laws of Florida is *McDonough v. Fernandez-Rundle*, No. 15-14642 (July 12, 2017) wherein the 11th circuit confirmed of Florida's wiretapping law §934.02 (2016) that:

"Section 934.02 does not apply to the recording of all oral communications. It is expressly limited to communications "uttered by a person *exhibiting* an expectation that such communication is not subject to interception ." ... "Exhibit" means "to show externally," "to display" and "to demonstrate." ... The Florida Legislature's choice of this verb is telling: it required that the expectations of privacy needed to trigger application of the statute must be *exhibited*; in other words they must be "shown externally" or "demonstrated." The Legislature did not want expectations of privacy to count that remained unexpressed. Consequently, the Legislature imposed a simple requirement that the expectation be "*exhibited*" <https://caselaw.findlaw.com/us-11th-circuit/1867669.html> (Emphasis Added)

23. Thus according to 11th Circuit, even under the unconstitutional "two party consent" laws of Florida, Mr. Ali's recordings are all still legal because they are made with persons who never *exhibited* any expectation of privacy. The 11th Circuit did not reach the question of whether the Florida "two party consent" statute was unconstitutional because they resolved the dispute on other grounds (in that the questioned conduct was not even a violation of the State law). The FBI's instant issuance of an unlawful subpoena to *again* investigate the alleged violation of "federal two party consent" laws (that do not exist), is now occurring on the heels of a prior 4-month long unlawful imprisonment for the same non-offense in 2019.

24. Mr. Ali cannot pursue his function as a journalist without recording his interviews verbatim. If a federal operative or witness does not want Mr. Ali to record whatever testimony they seek to provide by engaging in a direct conversation with him, then do not speak to him (as that is everyone's constitutional right if they do not wish to be recorded). But when a conversation takes place between two or more parties, there is nothing to prevent at least one of the participants of the conversation from lying about what was said (unless the conversation was recorded verbatim). Journalism must always be accurate, and the best way to maintain accuracy of the record is to audio and/or video record witness testimony. It is the year 2022 and with all the disinformation out there, it is impossible for an independent journalist to be considered credible when reporting on major government scandals without providing strong evidence to corroborate such claims.

25. Regardless of these facts, the FBI appears to have issued an unlawful subpoena to invade Mr. Ali's private internet and phone accounts based upon a claim that he committed a non-crime under both State and Federal law by recording people to corroborate his investigation and reporting of federal crimes to the public (activity which is clearly protected under the First Amendment). Based upon a pattern of illegal misconduct committed by the FBI anytime he acquires recorded evidence of their crimes, it is thereby clear that the unlawful subpoena is issued as part of a continued conspiracy to engage illegal intimidation of a journalist (a witness in a federal criminal proceeding), and also obstruction of justice (all felony criminal offenses under federal law), and also a clear threat to engage illegal imprisonment of Mr. Ali as what occurred in 2019.

26. Mr. Ali's email and phone accounts clearly do not contain evidence of any alleged crimes because none were committed by him. To the extent that the government is alleging that these private internet and phone accounts contain evidence of crimes committed by others, that evidence is openly available to the FBI through other lawful means. The FBI can easily go out

and interview the same witnesses that Mr. Ali has interviewed (but they refuse). If the FBI would like Mr. Ali to voluntarily share his own recordings with them, all they have to do is ask nicely and also confirm receipt of the recordings. In prior scandals, federal authorities received copies of recordings from Mr. Ali concerning a murder which took place in the 1990s, and they responded by obstructing the investigation. After years of asking for the status of that particular investigation, finally a group of different agents responded and claimed that the prior agents were stating that they never received any recordings. Thus based upon prior experience, Mr. Ali believes he can present credible evidence to this court to confirm that the issuance of this subpoena is a veiled threat to unlawfully imprisonment Mr. Ali if he testifies in any further proceedings or publishes recordings he made to lawfully expose federal crimes to the public.

ARGUMENT

27. The unlawful FBI subpoena to steal newsgathering materials, private emails, private phone records from ██████████ Ali is also unlawful for the following reasons:

- (A) the subpoena violates the express provisions of the Privacy Protection Act;
- (B) the subpoena violates the First Amendment;
- (C) the subpoena violates the common law Reporter's Privilege; and
- (D) the subpoena violates the Fourth Amendment.

28. The Privacy Protection Act, 42 U.S.C. § 2000aa et seq. ("the PPA") makes it unlawful, notwithstanding any other law, for a government employee "in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product [or other documentary] materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication." 42 U.S.C. §2000aa.a. The only exception to this prohibition is where there is "probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate [but not where] the offense to which the materials relate consists of the receipt,

possession, communication, or withholding of such materials or the information contained therein.” Id. at § 2000aa.a.1.

29. The DOJ itself has construed this “suspect” exception to the PPA to be applicable only where “the member of the news media is a subject or target of a criminal investigation for conduct not based on, or within the scope of, newsgathering activities.” §50.10(d)(4) (emphasis added). The First Amendment forbids government action that “abridge[es] the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. Const. amend. I. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

A. The Use of Search Warrants and/or Subpoenas to Seize Work Product and Documentary Materials Belonging to ██████████ Ali Violates the Privacy Protection Act.

30. ██████████ Ali is protected by the PPA inasmuch as the singular purpose of his involvement with this case is to “disseminate to the public a newspaper, book, broadcast, or other similar form of public communication” documenting scandals of public interest occurring in this matter (and to testify about them if called upon to do so). 42 U.S.C. §2000aa.a. The materials that the FBI is demanding to seize from Mr. Ali’s private accounts comprise private communications with family and friends, as well as work product materials and/or documentary materials pertaining to his work as a paralegal and journalist protected by the PPA (and other laws). There can be no legitimate dispute that these materials were created or acquired in the course of newsgathering activities that Mr. Ali has engaged in his entire life. Put differently, there is no accurate and complete set of facts the government can provide to this court that would make invasion and/or

seizure of Mr. Ali's private email and phone records, electronic devices and/or his body as being lawful under the PPA (and other constitutional protections).

31. Congress directed the DOJ to promulgate regulations to provide for the protection of privacy interests, including the First Amendment principles underlying the PPA, when prosecutors seek to obtain documentary materials in criminal investigations. See 42 U.S.C. § 2000aa-11. Those regulations governing DOJ use of subpoenas and search warrants to obtain documents and other information from journalists are codified at 28 C.F.R. § 50.10 ("the DOJ Regulations"). As explained below, the DOJ regulations prohibit reliance on the PPA "suspect" exception to seize newsgathering materials. Importantly, the DOJ regulations recognize that warrants or subpoenas to obtain information from journalists are "extraordinary measures, not standard investigatory practices." 28 C.F.R. § 50.10(a)(3). As such, warrants or subpoenas may be used only with authorization by the Attorney General, or by another senior official . . . when the information sought is essential to a successful investigation, prosecution, or litigation; after all reasonable alternative attempts have been made to obtain the information from alternative sources; and after negotiations with the affected member of the news media. *Id.* These requirements for pursuit of alternative sources of information and negotiations with the affected journalist, however, are relaxed where the Attorney General determines that the "suspect" exception to the PPA is applicable. See § 50.10(c)(4)(i). In that circumstance the Attorney General could approve issuance of a subpoena to a journalist even where the "investigation relat[es] to an offense committed in the course of, or arising out of, newsgathering activities."

32. The Attorney General announced that the DOJ "will no longer use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering activities." See July 19, 2021 Attorney General

Memorandum, avail. At <https://www.justice.gov/ag/page/file/1413001/download> at 1. This new policy was prompted by a recognition that DOJ's internal procedural protections heretofore may have insufficiently weighed "the important national interest in protecting journalists from compelled disclosure of information revealing their sources, sources they need to apprise the American people of the workings of their government." Id. The DOJ Regulations, however, establish markedly more stringent limitations on the use of search warrants to seize information from a journalist. The Attorney General or his designee is authorized to approve application for a journalist search warrant pursuant to the "suspect exception" of the PPA only "when the member of the news media is a subject or target of a criminal investigation for conduct not based on, or within the scope of, newsgathering activities." § 50.10(d)(4) (emphasis added). Therefore, this DOJ regulation prohibits the use of warrants to seize newsgathering materials, and neither the Attorney General nor his designee could have approved the unlawful subpoena issued by the FBI to invade ██████████ Ali's accounts. These regulations were enacted at the direction of Congress to ensure that its prohibition on the use of subpoenas and search warrants to seize newsgathering materials was understood and respected by prosecutors.

B. The Use of Subpoena to Seize Work Product and Documentary Materials Belonging to ██████████ Ali Violates the First Amendment.

33. The subpoena enables the government to rummage through ██████████ Ali's internet and phone accounts at their leisure and without any lawful justification. Through this illegal surveillance, the government seeks to review Mr. Ali's private paralegal and journalism work on multiple scandals he is documenting (and not just the instant scandal), and to seize the identities of confidential sources, documents and information received from sources, story leads and outlines, audio and video recordings, client information, private communications with family and friends, and much more. These seizures are not limited to sensitive information pertaining to the

instant case, as the government seeks to seized all such data going all the way back to January 1st, 2020 (a period of over two years). This attempted seizure is in blatant violation of the First Amendment. *Bartnicki v. Vopper*, 532 U.S. 514 (2001) forecloses the “violation of two-party consent” theory apparently underpinning the government’s investigation of ██████████ Ali – alleging that as a journalist he violated unconstitutional “two-party consent” laws with regards to his investigation of a federal matter which is proceeding under “one-party consent” jurisdiction.

34. In *Bartnicki*, the Court held that the government may not constitutionally punish a journalist’s receipt of information obtained unlawfully where the recipient’s purpose is to disseminate that information to the public. The plaintiff in *Bartnicki* invoked Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which prescribes criminal penalties and civil damages for the intentional disclosure of the contents of an electronic communication when the defendant “know[s] or ha[s] reason to know that the information was obtained” through an illegal interception. 18 U. S. C. § 2511(1)(c). *Vopper*, a radio commentator, played on his public affairs talk show a recording of a surreptitiously intercepted cell phone conversation to which *Bartnicki* was a party. *Bartnicki*, 532 U.S. at 519.

35. *Bartnicki* filed an action for damages against *Vopper* and other media representatives who published the recording, and the defendants raised various defenses including that disclosure was protected by the First Amendment. *Id.* at 520. The government intervened on appeal in support of the enforcement of the statute’s sanctions. The ruling in *Bartnicki* is clear and controlling here, and would apply even if ██████████ Ali had obtained recordings from another source who himself violated the “one party consent” jurisdiction of federal law (by intercepting a communication to which he was *not* a party), or even if ██████████ Ali received information from an inmate who uses an illegal cellular phone to call him. Since Mr. Ali is not involved in any way whatsoever with the

smuggling of contraband into the prison, he does not forfeit his privacy rights as a citizen or a journalist simply because an inmate happens to call him using an illegally-smuggled cellular phone. In fact, some of the scandals involving the prison guards are so sensitive that the inmates cannot even use the recorded wall phones to talk about them or else they risk physical retaliation in the form of assault and/or murder by the guard-mafia implicated in such scandals (in an environment where the FBI is complicit and helping to cover up the crimes of the guards).

36. The Court clearly held that journalists are not liable for receiving or publishing newsworthy information that was obtained and/or transmitted unlawfully by a source. *Id.* at 533-34 (“[t]he enforcement of [a federal criminal statute] implicates the core purposes of the First Amendment it imposes sanctions on the publication of truthful information of public concern”). Yet in this instant matter ██████████ Ali did not violate any State or Federal statutes and still the FBI is issuing subpoenas to raid his accounts to investigate non-crimes. To the extent that inmates have had access to cellphones inside the prison that were used to call Mr. Ali to report on the scandals he is documenting for the public, that too is not sufficient for the FBI to invade Mr. Ali’s privacy because *Bartnicki* clearly prohibits it (especially as there is no allegation made by FBI that Mr. Ali is in any way responsible for smuggling any contraband into the prison).

37. In *Jean v. Mass. State Police*, 492 F.3d 24 (1st Cir. 2007). Local police threatened to prosecute *Jean*, a political activist who maintained a website displaying information critical of law enforcement, for publishing an illegally recorded video of an arrest and search. *Id.* at 25-26. *Jean* sought an injunction citing her First Amendment rights. The district court entered an injunction, and on appeal the government argued that *Bartnicki* was distinguishable on the ground that *Jean* “assisted, conspired, [] served as an accessory to”, “aid[ed] and abet[ed],” and was in “active collaboration” with the individual who made the illegal recording. *Id.* at 31, 33. The First Circuit

rejected the government's efforts to distinguish *Bartnicki*, reasoning that "the fact that [the defendant in *Bartnicki*] received the tape 'passively' and *Jean* received the tape 'actively' is a distinction without a difference." *Id.* at 32.

38. There is a great body of First Amendment jurisprudence that regularly favors the issuance of equitable relief in favor of those who seek to exercise their rights to free speech and association. "Loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And the chilling effect on protected First Amendment activities constitutes irreparable injury and generally supports the issuance of injunctive relief. *Ostrokwski v. Local 1-2, Utility Workers of America, AFL-CIO*, 530 F. Supp. 208, 215 (S.D.N.Y. 1980) (citing *Chicago Area Military Project v. City of Chicago*, 508 F.2d 921, 926 (7th Cir. 1975)). The mere threat of prosecution for speech that the government deems "objectionable" violates the First Amendment. See, e.g., *Bantam Books v. Sullivan*, 372 U.S. 58, 71-72 (1963).

39. Relief is regularly afforded where one demonstrates "an objectively justified fear of real consequences" before they actually occur. *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082, 1088 (10th Cir.2006) (internal quotations omitted). Here, the First Amendment injury has already occurred when [REDACTED] Ali was illegally imprisoned for four months in 2019 for lawfully recording federal officials committing crimes while engaged in performance of official duties (information he absolutely intends to publish as part of his book/documentary project which is tentatively scheduled for release in September 2022).

40. The First Amendment also protects the right to political privacy and association with likeminded supporters, sources and other journalists. Those rights are violated here by the compelled disclosure of private, confidential information from [REDACTED] Ali's email account which

includes communications with other journalists, to include at least one other journalist who was also illegally raided by the FBI. It is clear from public news reports of this additional crime by FBI against journalists, that at least several of [REDACTED] Ali's emails from the current subpoenaed account were already illegally seized by FBI as part of their illegal intimidation tactics against another journalist who also specialized in the exposure of government corruption. It appears clear that the FBI is also punishing Mr. Ali for merely associating with other like-minded journalists that also make liberal use of recordings to document government crimes (although none of them were kidnapped into imprisonment for four months as what was done to Mr. Ali in 2019).

41. The seizure of newsgathering (and other private) materials, and consequent threat to prosecute journalists is precisely the sort of punitive action that discourages the exercise of constitutionally protected rights. *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966). Few journalists would risk investigating the FBI or other federal agencies if their First Amendment freedoms could be brushed aside so easily. This chilling effect is compounded by the fact that the government's investigation here was triggered by, and is seeking to punish, the content of speech. There can be no serious dispute that the DOJ and FBI have brought their collective forces to bear upon [REDACTED] Ali because of his long-term newsgathering work to document the most serious federal scandals imaginable. Enforcement action motivated by a "disagreement with the message" violates the First Amendment. *Police Dep't of Chicago v. Mosle*, 408 U.S. 92, 95 (1972) ("But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content"); see also *Doe v. Ashcroft*, 334 F. Supp. 2d 471, 507-08 (S.D.N.Y. 2004), vacated on other grounds sub nom. *Doe v. Gonzales*, 449 F.3d 415, 418 (2d Cir. 2006) (FBI national security letters restricting disclosure of law enforcement activity are content-based and subject to strict scrutiny).

C. The Use of Subpoenas and/or Search Warrants to Seize Work Product and Documentary Materials Belonging to ██████████ Ali Violates the Reporter's Privilege.

42. That the PPA and First Amendment protect newsgathering information from government seizure is not the end of the story. In the years after *Branzburg v. Hayes*, 408 U.S. 665 (1972) declined to reach the question of whether a qualified common law privilege also protects newsgathering, at least ten Circuit Courts of Appeal have answered that question in the affirmative. See Introduction to the Reporter's Privilege Compendium, available at <https://www.rcfp.org/introduction-to-the-reporters-privilege-compendium> (last updated Nov. 5, 2021) (gathering cases). Many of these decisions rely on Federal Rule of Evidence 501, which authorizes federal courts to develop privileges "in the light of reason and experience." *Id.*; see also *Trammel v. United States*, 445 U.S. 40, 47 (1980) ("[Rule 501] acknowledges the authority of the federal courts to continue the evolutionary development of testimonial privileges."). "The reporter's qualified privilege extends to both civil and criminal cases." *United States v. Burke*, 700 F.2d 70, 77 (2d Cir. 1983).

43. *Burke* recognized that: What is required is a case-by-case evaluation and balancing of the legitimate competing interests of the newsman's claim to First Amendment protection from forced disclosure of his confidential sources (and other private information), as against the defendant's claim to a fair trial which is guaranteed by the Sixth Amendment. *Id.* There is no principled reason for a different test when it is the government seeking to force disclosure of the newsman's materials. Sixth Amendment fair trial rights are fundamental. See, e.g., *Barber v. Page*, 390 U.S. 719, 721 (1968) (noting "essential and fundamental requirement for [a] fair trial which is this country's constitutional goal"). There is no comparable constitutional guarantee for the government's right to seize or otherwise gather evidence *independent of a grand jury investigation*.

44. “[T]o protect the important interests of reporters and the public in preserving the confidentiality of journalists’ sources, disclosure may be ordered only upon a clear and specific showing that the information is: highly material and relevant, necessary or critical to the maintenance of the claim, and not obtainable from other available sources.” *Burke*, 700 F.2d at 76-77. The government cannot satisfy this standard by refusing to interview exculpatory witnesses in their own investigation of this instant case, and then demanding a right to steal documentation of such interviews from others who did (such as Mr. Ali). The attempt by FBI to seize Mr. Ali’s private email and phone records (as part of a continued threat to arrest him which is still operative since 2019 because it was never resolved), therefore, could not be considered “highly material [or] critical to the maintenance of the claim” by any reasonable measure. *Burke*, 700 F.2d at 77.

45. The government also cannot present truthful and complete information to this Court sufficient to show that whatever “evidence” they claim this subpoena will provide them is not obtainable from other available sources (such as the witnesses they refuse to question themselves, and other divisions of the FBI which are merely stealing this information as part of other illegal “parallel construction” investigations). At the time the government applied for the subpoena, the FBI was already illegally invading all of ██████ Ali’s email and phone accounts pursuant to another FBI “parallel construction” investigation originating from Wilmington Delaware, Washington DC, New York and Florida (and also through the unconstitutional FISA court due to Mr. Ali being biologically related to a prominent foreign government official under investigation).

46. Judge Tatel chronicled the development of the Reporter’s Privilege and described the essence of the requisite balancing test in a simple question: does “the public interest in punishing the wrongdoers...outweigh[] any burden on newsgathering?” That balancing weighs overwhelmingly in favor of ██████ Ali. The federal government’s interest in conducting unlawful

harassment of ██████ Ali for investigative conduct that is clearly legal under State and Federal laws (despite the unlawful 4-month imprisonment in 2019), is not even permitted. As far as ██████ Ali is aware, the interest taken by FBI in issuing an unlawful subpoena arose only after ██████ Ali forwarded copies of his recordings to the prosecutor. This is also the primary reason why defendant Cruz's counsel is himself now refusing to receive any further recordings from Mr. Ali unless the matter is first resolved by the Court. There is no compelling law enforcement need to threaten, intimidate or harass exculpatory witnesses in this matter.

47. The import of the matters allegedly currently under investigation by FBI by virtue of their unlawful subpoenas cannot be seriously compared to investigations of the leak of a covert CIA agent's identity, see *In re Grand Jury, Judith Miller*, 438 F.3d. at 1173; the leak of government plans to seize assets of terrorist organizations, see *New York Times Co. v. Gonzales*, 459 F.3d 160, 163 (2d Cir. 2006); or even to the unlawful use and sale of drugs. See *Branzburg v. Hayes*, 408 U.S. 665 (1972). On the other side of the scale lies the First Amendment's express protection for "freedom . . . of the press" which forecloses any debate about that institution's "important role in the discussion of public affairs." *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966). "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Brown v. Hartlage*, 456 U.S. 45, 52 (1982). The press, "which includes not only newspapers, books, and magazines, but also humble leaflets and circulars...play[s] an important role in the discussion of public affairs." *Mills*, 384 U.S. at 219. "Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change...muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." *Id.*

48. The DOJ itself has recognized that these critical free press interests outweigh the government's investigative needs even for the most serious of crimes, and even where only non-content information is being sought by investigators. The DOJ Regulations establish federal policy, reinforcing the legislative mandate of the PPA, to protect "news media from forms of compulsory process, whether civil or criminal, which might impair the news gathering function." 28 C.F.R. § 50.10. In this matter, not only is the FBI subpoena designed to unlawfully deter ██████ Ali's attempt to document this scandal, it is clearly a veiled threat to imprison him based upon the prior history of this exact issue since it first came up in the Southern District of Florida starting since 2018. In these circumstances, the balancing of interests required by the Reporter's Privilege tilts entirely in favor of ██████ Ali and demands this Court's vigorous attention.

D. The Government Violates the Fourth Amendment in Applying for a subpoena to invade the private email and phone accounts of Mr. ██████ Ali.

49. For the reasons identified above, the subpoenas issued by FBI in this matter are also not supported by any probable cause to believe that any State or Federal crime has been committed. The subpoena provided by Google is redacted, and so ██████ Ali is not able to fully develop this point until the Court orders the government to provide him with an unredacted copy to confirm the full nature of their request. It is also clear that the prosecutors are withholding information from the Court in order to obtain this subpoena by failing to disclose (or because they don't know) that the FBI is already illegally seizing this information through other unlawful investigations which remain ongoing against ██████ Ali for as long as he exists as a living human, able to speak, with access to knowledge about government scandals they wish to keep secret. The subpoena is thereby rendered unreasonable when the prosecutors and FBI are themselves withholding material information, possibly from each other and certainly from the Court (who issued it), including that the subpoena was prohibited by DOJ's own regulations.

50. The importance courts attach to these DOJ Regulations in determining whether to approve warrants (and other compulsory process) is illustrated by the November 9, 2021 Order issued by Chief Judge Howell of the District Court for the District of Columbia. This Order circulated to district and magistrate judges the Attorney General's July 19, 2021 Memorandum announcing that, with very narrow exceptions, applications for search warrants (and other compulsory process) to obtain information from members of the news media were prohibited. The Order also directed that "any government application for a warrant [or other compulsory process]... seeking information from or records of an individual or entity who is, or who purports to be, a member of the news media... shall include a statement confirming that... the submitting attorney is familiar with... the applicable requirements set forth in [DOJ Regulations], the Justice Manual, and the July 19, 2021 DOJ Memorandum."

E. The Subpoenas Were a Disproportionate Response to the Gravity of the Alleged Non-Offense Under "Investigation" since 2019

51. The Fourth Amendment establishes a requirement that "all searches and seizures must be reasonable." *Kentucky v. King*, 563 U.S. 452, 459 (2011). Reasonableness has many dimensions, and one is "proportionality between the gravity of the offense and the intrusiveness of the search." *United States v. Lyles*, 910 F.3d 787, 795–96 (4th Cir. 2018). That was absent here. Even accepting, arguendo, the government's characterization of the conduct under investigation, which can only be Mr. Ali's alleged violation of "two-party consent" (as claimed since 2019), or receiving calls from cell-phones that were illegally smuggled into a prison (for which Mr. Ali has no participation in the smuggling), is contrary to the goals of any prosecution (which is to investigate evidence, not threaten witnesses for offering to providing it). *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984) (the "underlying offense . . . [was] relatively minor"). But in fact, as explained above, the prosecutors are investigating ██████████ Ali for actions which, under, *Bartnicki*,

do not constitute either a State or Federal offense. By no reasonable measure can the wholesale seizure of newsgathering materials, attorney-client privileged communications, and irrelevant personal information contained in Mr. Ali's electronic accounts and/or devices be considered a proportional response to an alleged non-offense of recording witness testimony, receiving calls from inmates using cellphones, or sending an email offer of evidence directly to the FBI (with a phone number to call to schedule a direct meeting to receive it).

F. The Subpoenas Allow Prohibited General Searches

52. "The chief evil that prompted the framing and adoption of the Fourth Amendment was the indiscriminate searches and seizures conducted by the British under the authority of general warrants." *United States v. Galpin*, 720 F.3d 436, 445 (2d Cir. 2013) (internal quotations omitted). This practice is foreclosed by the requirement that an affidavit supporting a search warrant indicate "that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). There must "be a nexus . . . between the item to be seized and criminal behavior." *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307 (1967); accord *United States v. Brown*, 828 F.3d 375, 382 (6th Cir. 2016) (requiring that affidavits must set forth "sufficient facts demonstrating why the police officer expects to find evidence in the [place to be searched] rather than in some other place") (citation omitted). These general subpoenas enable the government to obtain and peruse at their leisure, communications that ██████ Ali had with confidential sources, other journalists, legal counsel, family members and friends. The stunning reach of the subpoenas is apparently not limited to the email content. The subpoenas also commanded the production of phone records which include voicemails, text messages, and other private content. This breach of confidentiality is especially harmful to ██████ Ali who relies heavily on other witnesses and whistleblowers to investigate government misconduct.

CONCLUSION

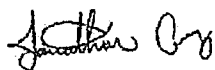
53 [REDACTED] Ali engages in journalism that is protected by the First Amendment. But it is a form of journalism of which the government disapproves, especially where the subject of the newsgathering is federal corruption. Disapproval of Mr. Ali's reporting is no justification to engage pre-dawn raids of Mr. Ali's internet, electronic properties and/or physical body. These actions are expressly prohibited by the PPA (as well as the DOJ regulations and policy implementing it), the First Amendment, and common law Reporter's Privilege. Whether the FBI and prosecutors have operated without appropriate supervision, or the highest levels of the Biden administration's DOJ are complicit in this unlawful multi-jurisdiction investigation into [REDACTED] Ali's whistleblower activities, it is time for the Court to curb the government's lawless behavior.

RELIEF REQUESTED

54. Defendant Cruz and [REDACTED] Ali join in this motion together, and request for the Court to order the FBI to provide them an unredacted copy of the attached subpoenas, and for the Court to quash them. Mr. Ali also requests a declaratory judgement affirming that "two-party consent" laws are a violation of First Amendment, and also an injunction prohibiting State/Federal authorities from investigating and/or prosecuting Mr. Ali for recording any conversation to which he is a party (and which is otherwise in full compliance with all known federal laws).

CERTIFICATE OF SERVICE – Defendant certifies this motion is served on all counsel of record via email/ecf.

Respectfully submitted on April 30, 2022.



Jonathan Cruz PRO SE
#15022-104
Federal Detention Center Miami
P.O. BOX 019120
MIAMI, FL 33101

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America)

v.)

Nelus et al)

Defendants)

Case No. 17-CR-20487-MGC

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: Google

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: United States District Court 400 N. Miami Avenue Miami, Florida 33128	Courtroom No.: 11-2
	Date and Time: 08/24/2022 10:00 am

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable): Please see separate attachment

(SEAL)

Date: 04/19/2022



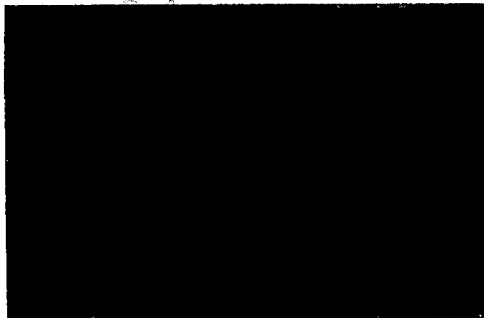
CLERK OF COURT

Handwritten signature of Angela E. Noble

Signature of Clerk or Deputy Clerk
Angela E. Noble

The name, address, e-mail, and telephone number of the attorney representing (name of party) United States of America

, who requests this subpoena, are:



UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America)

v.)

Nelus et al)

Defendants)

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	Date and Time: 08/24/2022 10:00 am

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable): Please see separate attachment

(SEAL)

Date: 04/26/2022

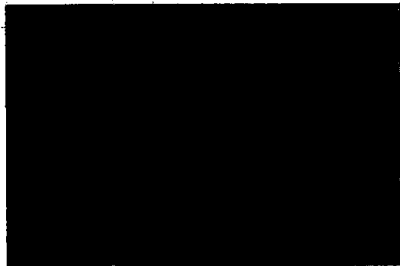


CLERK OF COURT



The name, address, e-mail, and telephone number of the attorney representing (name of party) United States of America

, who requests this subpoena, are:



SUBPOENA ATTACHMENT

Google

Please provide the Subscriber Information, Account Information, and Account History from January 1, 2020- Present Day.

- Phone (305) [REDACTED]

Please provide the subpoenaed records via email to:

[REDACTED]

[REDACTED]