

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

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CRIMINAL NO: SAG-23-0123

CHARLES A. JENKINS,

*

Defendant

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**DEFENDANT JENKIN'S MOTION FOR
GRAND JURY MINUTES AND WITNESS TESTIMONY**

Defendant Charles A. Jenkins, by and through undersigned counsel, hereby moves this Honorable Court, pursuant to Federal Rule of Criminal Procedure 6(e)(3)(E), for the Court to Order the disclosure of all grand jury minutes, witness testimony and instructions given to the grand jury – to include the elements of each crime charged and how the evidence supported each element – when the witnesses were outside of the grand jury room.

The Defendant is deliberately filing this motion in advance of his Reply to Government's Opposition to Defendant's Motion to Dismiss.¹ The Defendant will consent to an *in camera* review by the Court of the requested information and will defer to the Court on the disclosure following the Court's review.

¹ If there are, in fact, irregularities regarding the Grand Jury Proceedings that led to these charges, there may be additional grounds to support Defendant Jenkins' Motion to Dismiss.

PRELIMINARY STATEMENT

1. Sheriff Charles Jenkins has been indicted in five counts of a six-count indictment which alleges a conspiracy and four additional substantive counts related to Sheriff Jenkins' signing law letters, ultimately used by The Machine Gun Nest (TMGN), a local Federal Firearms Licensee (FFL) to obtain machineguns for rental by the customers at TMGN. The Indictment was returned on April 5, 2023. Also charged, as a co-defendant, is Robert Justin Krop, who co-owns TMGN with his wife, Stephanie Krop.

2. On July 4, 2023, Jenkins filed a Motion to Dismiss the Indictment on the grounds that the indictment against Jenkins is void for vagueness and fundamentally unfair. *ECF 31*. On August 1, 2023, the government filed their Opposition to Jenkins Motion to Dismiss. *ECF 52*.

3. The government's opposition filing contains numerous misstatements of facts which the defendant addressed in his Reply to the government's Response. They will be addressed again below. These misstatements are deeply troubling: the misstatements have caused the defendant to have legitimate concerns about what information the government presented to the grand jury, and what directions the government gave to the grand jury regarding the application of the law.

MISREPRESENTATIONS BY THE GOVERNMENT

4. In the opening paragraph of the government’s Opposition, titled “Background and Introduction”, the government misstates the evidence.² The government asserts that in *each* of these law letters authored by Jenkins, that the defendant was “falsely claiming he was seeking demonstrations of machineguns” and that Jenkins “claimed that [he] was considering purchasing the machineguns for use by the Frederick County Sheriff’s office when he was not.” ECF 52, p. 1. In fact, the first paragraph of the letter dated October 8, 2015, said the opposite:

“The Frederick County Sheriff’s Office is requesting a demonstration by RK86 LLC. This request is *not indicative of any interest* by the Frederick County Sheriff’s Office to procure firearms.” This demonstration will evaluate the firearms listed below. (Emphasis added.)

In this letter, Sheriff Jenkins expressly said that he had **no interest in purchasing any firearms**. Yet the government is representing to the Court that Jenkins said he “was considering purchasing machineguns for use by the [FSCO].” *Id.* It is possible that this was an innocent mistake. It is also possible that this was a knowing and willful representation by the government to mislead the Court.

5. More bizarrely, the government relied on this October 8, 2015 letter - confirming that the Sheriff had **no interest in purchasing any firearms** - as the subject matter of an overt act alleged in the indictment. *See Indictment*, ¶ 19b. The overt act

² The five letters are attached as Exhibit 4 to defendant Jenkins’ Motion to Dismiss. ECF 31. These letters, all addressed to defendant Krop or one of his FFL businesses, are dated August 25, 2015, October 8, 2015, August 19, 2016, April 10, 2018, and March 29, 2022.

quotes part of the letter, but suspiciously does not include the sentence in the middle where it says, “This request is not indicative of any interest by the Frederick County Sheriff’s Office to procure firearms.” *Id.* That the government deliberately omitted such an important sentence when drafting the Indictment is concerning to say the least. Was this yet another innocent mistake? Or was there a knowing and willful intent to deceive the grand jury by omission?

6. Another misstatement of fact by the government can be seen regarding the letter dated March 29, 2022. That letter begins,

“As Chief Law Enforcement Official for Frederick County, I have verified that the transfer of the below listed post-1986 machine guns from the Havre-de-Grace, Maryland Police Department to The Machine Gun Nest located in Frederick County. (sic) The machine guns being transferred will remain in the possession of and be used solely by The Machine Gun Nest for demonstration purposes only on the premises.”

In referring to this letter, the government falsely alleges that Jenkins “claimed that [he] was considering purchasing machineguns for use by the [FCSO].” *ECF 52, p.1.* There is nothing in the March 29, 2022 letter which communicates a desire by Sheriff Jenkins to purchase machineguns. This letter is a confirmation of transfer only letter.

7. In the government’s opposition, they also state that these law letters permitted Krop to “acquire machineguns. . . that he would otherwise have been prohibited from obtaining.” *ECF 52, p.2.* This is an incorrect statement of the law and the government’s own Indictment refutes the statement. Paragraphs 8., 9., and 10. of the Indictment , specifically state that “[e]xcept for narrow exceptions” an FFL could not obtain these machineguns without a law letter. The Government cannot claim in their indictment that

there exist ‘narrow exceptions’ permitting an FFL to obtain the identified machineguns without a law letter, and later claim, in a pleading, that the FFL could only obtain the identified machineguns with a law letter. One of these statements must be untrue.

8. The defendant has genuine concerns about what kind of instructions the grand jury received – about the facts and the law – regarding each of the overt acts, about each of the counts, and what the grand jurors were directed were the required elements of each count, especially since there is a dearth of evidence showing an agreement or any evidence of criminal intent on the part of Sheriff Jenkins. It is difficult to know if the government’s disregard of its own evidence is just carelessness, or something more nefarious.

**GROUND MAY EXIST TO DISMISS THE INDICTMENT BASED
UPON SPECIFIC ALLEGATIONS OF GOVERNMENT MISCONDUCT**

9. The Defendant acknowledges that there exists a strong preference for non-disclosure of grand jury proceedings. However, Federal Rule of Criminal Procedure 6(e)(3)(E)(ii) allows that a court may order the disclosure of grand jury matters “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Sheriff Jenkins makes that request now, based upon his pending Motion to Dismiss and in light of the material misrepresentations made by the government in both the indictment and the pleadings that have been described.

10. The Defendant acknowledges the burden he must meet to access the requested information under this exception:

Under the rule, a court may release grand jury material to a defendant “who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed.R.Crim.P. 6(e)(3)(E)(ii). To justify this release, the defendant must show what has been described as a “particularized need.”

United States v. Rodriguez-Torres 570 F. Supp. 2d 237, 242 (D. Puerto Rico 2008)

11. The particularized need must “support the proposition that irregularities in the grand jury proceedings” occurred which may form the basis of a dismissal of the indictment. United States v. Loc Tien Nguyen 314 F. Supp. 2d 612, 616 (E.D. Va 2004), citing United States v. Abcasis 785 F. Supp. 1113, 1119 (E.D.N.Y 1992)

12. Sheriff Jenkins has shown a particularized need for the material: He has a pending Motion to Dismiss which describes numerous factual inaccuracies and misrepresentations in the Government’s opposition Response about their own evidence. It is impossible for a defendant who is standing in his position to not believe that “irregularities in the grand jury proceedings” are what led to the pending Indictment against him. The government has conceded that Jenkins incurred no benefit whatsoever in authoring the law letters utilized by TMGN. But because they keep harping on the email exchange between an employee of TMGN and Sheriff Jenkins, more than a month after the last letter Jenkin’s wrote, it is not unreasonable to wonder what the grand jury was told. The government’s theory is that the law letters were “false” because no demonstration of the machineguns ever took place after co-defendant Krop obtained them. The

government's theory continues that because he did not request "demonstrations" of machineguns, which he did not know had been acquired by the FFL, he is guilty of criminal conduct. However, as defense counsel has previously stated, there is no statute or regulation that requires a demonstration to take place. There is no statute or regulation that defines what constitutes a "demonstration." Nor is there any statute or regulation that provides for the period of time within which these "demonstrations" – whatever they are - must occur.

Why the grand jury perceived there was a crime committed by Jenkins can only be understood with the disclosure of the requested grand jury materials.

WHEREFORE, it is respectfully requested that the Court order the government to disclose to the defendant the following: grand jury minutes, transcripts of witness testimony, and all instructions given to the grand jury regarding the elements of each crime charged and the evidence alleged to support the elements of each crime charged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August , 2023, a copy of the foregoing motion was filed via ECF causing copies to be sent to all parties of record.

By /s/ Margaret A. Teahan
Margaret A. Teahan, Esquire