

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

**UNITED STATES OF AMERICA**

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v.

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**CRIMINAL NO: SAG-23-0123**

**CHARLES A. JENKINS,**

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**Defendant**

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**JENKINS' REPLY MOTION TO GOVERNMENT'S  
RESPONSE AND TO CO-DEFENDANT KROP'S REPLY**

Defendant Charles A. Jenkins, by and through undersigned counsel, hereby replies to the Government's Omnibus Motions Response (DE #22.), and co-defendant Krop's Reply (DE #25.), and asks this Honorable Court to sever the trials of defendants Krop and Jenkins. In support thereof, Defendant Jenkins states as follows:

**A. MOTIVE DISPARITY.**

In the Government's Response, they concede that defendant Jenkins received nothing in return for signing the law letters that are the subject of this prosecution. (DE #22, pps. 12-13.) Now that the government has come to that realization, there is a substantial disparity in the evidence reflecting the motive of each defendant to commit the crimes alleged.<sup>1</sup> While the government is not required to establish a motive, the Indictment, at ¶13 and ¶14, nevertheless alleges same. The government asserts that they will introduce evidence of motive as to Krop at trial. Juries focus on motive evidence because it explains why the crime was committed. The

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<sup>1</sup>. The Indictment, at ¶14, states "TMGN [The Machine Gun Nest] offered political support to JENKINS in recognition of his support for TMGN's business." This statement is followed by the recitation of a couple emails between Isaac Burrell, an employee of TMGN, and defendant Jenkins, when Burrell invited Jenkins to come by the shop *inter alia*, to discuss the possibility of sponsoring a fund raiser for Jenkins' pending run for election for his fifth term as Sheriff in Frederick County. Defendant Jenkins said "no thank you" to that offer.

indictment clearly alleges that Krop's motive was purely financial. Specifically, defendant Krop allegedly reaped the financial benefits of possessing the machine guns, by renting them to customers at The Machine Gun Nest. At trial, the government will seek to establish the financial motive for Krop to enter into this alleged illegal conspiracy. In contrast the government cannot establish any ostensible reason as to why defendant Jenkins would have joined this illegal scheme. Again, the government concedes no such evidence exists as to Jenkins. This is a disparity that justifies severance.

B. DISPARATE DEFENSES

Disparate defenses require severance in this case.

1. First, as addressed by the Court in her Memorandum Opinion (DE. #27), there is the unmistakable emergence of inconsistent, even hostile, defense strategies. Defendant Krop, through counsel, has blatantly and repeatedly alleged illegal and improper political motivations by the government in bringing this case. As the Court may know, counsel for defendant Krop, Daniel L. Cox, ran, unsuccessfully, as a Republican candidate for the office of governor of Maryland in the last general election. Whether the sentiments expressed against the "Biden Administration" are from Krop or Cox, or both, is not clear. But the sentiments are crystal clear. It is one thing to establish that the agents and government have an improper motive for this prosecution. That could have relevance at a trial. In contrast, the political beliefs of a defendant and/or counsel is not relevant in the least.<sup>2</sup>

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<sup>2</sup> To be clear, defendant Jenkins, and his counsel, have grave concerns about the government's motivation in this case. During the May 25, 2022, recorded interview with Jenkins, - an entire year before the indictment - after extensively questioning Jenkins for an hour, the agents ended their interview by asking Jenkins about his involvement in the events at the U.S. Capitol on January 6, 2021. They suggested that Jenkins paid for a bus to transport citizens from Frederick to the Capitol that day, which is absolutely not true. Sheriff Jenkins had no involvement in anything that happened at the Capitol on January 6, and in fact Sheriff Jenkins called an FBI tip

While this Court has admonished Krop's counsel to not make this case about politics, it is not beyond peradventure that Krop's counsel will raise a Second Amendment defense. This country's struggle with the issue of firearms, another political lightening rod, may become a backdrop in trial for Krop. When Krop was questioned by the ATF agents, the interview allegedly ended with Krop saying, "Glad to see the Biden Administration at work." The government might attempt to introduce this statement at trial. Similarly, in light of the harsh political tenor to Krop's court filings, Krop may seek to introduce this statement at trial. The vitriol with which Krop and his counsel have approached this issue will inevitably spill over onto defendant Jenkins. This consideration requires that these trials be severed.

2. Defendant Krop, through counsel, has advanced specific personal attacks on both the prosecutors and the case agents. These allegations and sentiments constitute a strategy that counsel for Jenkins believes is dangerous, and which will reflect badly on both defendants and defense counsel. Counsel for Jenkins believes it would more than likely enhance the chances of a conviction. Without question, it will spill over onto defendant Jenkins. While the Court has admonished counsel on this point, it is a risk that defendant Jenkins should not have to take. The potential prejudice to defendant Jenkins requires that these trials be severed.

3. The disparity of conduct in this case is so significant that severance is more than justified. While this motion is on behalf of Sheriff Jenkins, the joint trial of these defendants will be overwhelmingly prejudicial to defendant Krop.

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line and provided information following that horrendous day in American history. This specific questioning by the ATF agents is very concerning, and quite frankly astonishing. It may well be relevant at trial as part of defendant Jenkins' defense. The defendant submits that the government's motives and actions may well be relevant at trial. How a defendant feels politically has no place in trial.

- Assuming for the sake of discussion that this conspiracy actually existed between Krop and Jenkins, only Krop has a motive. Krop had a choice in order to obtain post-86 machine guns. He could get a law letter from a law enforcement agent, or he could manufacture them himself. According to counsel for Krop, his license allowed him to obtain the firearms by manufacturing them. But manufacturing these guns would be substantially more expensive. Again, a financial motive for Krop is clear. Jenkins had no motive.
- Krop therefore initiates contact with Sheriff Jenkins.
- Krop or his staff draft the law letters and email them to Ms. Commert, Sheriff Jenkins' assistant.
- Ms. Commert puts the law letter on Frederick County Sheriff's Office letterhead and put the law letter on the Sheriff's desk for his signature.
- Krop decides which guns.
- Krop decides how many guns.
- Krop files the law letter along with the requisite forms with the ATF. Jenkins had no contact with the ATF during this process at any time.
- Krop or his staff have periodic contact with personnel from the ATF, including when the ATF asked Krop to edit one of the law letters. Krop made the changes and had Ms. Commert resubmit the corrected law letter to Jenkins.
- Krop received the firearms. Unless the government has evidence yet to be disclosed on this point, there is no evidence that Jenkins was ever advised when or if the machine guns showed up at TMGN.
- Krop receives open letters from ATF instructing the specific requirements of law letters.
- Krop rents out the machine guns and makes money, which notwithstanding the issues raised in this prosecution, is completely legal for Krop to do.

Sheriff Jenkins vehemently denies joining any conspiracy. Counsel for Jenkins has yet to see any evidence in the 2,000 or so pages of discovery, or in the half dozen audio tapes, that reflects that Jenkins knowingly and willfully joined any conspiracy. There is no evidence of an agreement.

4. Finally, ATF interviewed a number of past and present employees of TMGN.

The Reports of Investigation filed by the ATF agents in this case, reflect that the employees at TMGN understood precisely why Krop was pursuing law letters, and that it was Krop who was driving this train, without any input from Jenkins.

- TMGN employee Isaac Burrell told the agents “...that renting the machine guns at TMGN was their only reason for obtaining machine guns.” (ROI #5, ¶4.)
- Former TMGN employee Matthew Jones stated he thought the law letters were like a “rubber stamp” and that Krop had told him, “It was very straight forward in that you send the [law] letter over, as long as they sign it and is potentially used for demo purposes, and that was it.” (ROI #8, ¶17 & at ¶18.)
- Former TMGN employee Nicole Arnold said, “it was Krop wanting to add to the inventory for rental use to make money,” and that he had been making hundreds of thousands of dollars due to the rentals. She did not believe that “Jenkins and Krop are friends.” She advised that she, not Jenkins’ Assistant, used a template to write a law letter, would send it over to Jenkins to get a machine gun approved. She added that “Krop sent Jenkins’ secretary flowers or a gift for getting the letter turned around really fast for him.” Arnold also said she was “*not sure if Jenkins knew what he was signing off on.*” She also recalled “no *quid pro quo* with Jenkins.” (ROI#9, ¶10, ¶13, & ¶14.)

Needless to say, if the government doesn’t call these witnesses and ask these questions, defendant Jenkins will. This testimony, as with all the evidence reviewed to date, is so damaging to Krop, especially in contrast to Jenkins. There is simply no evidence that Jenkins knowingly and willfully joined any conspiracy. He signed some letters so Krop could obtain machine guns for less money than Krop could have obtained them for anyway. A joint trial will force Krop to defend on two fronts. The disparity is glaring and defense counsel for Sheriff Jenkins will point to that disparity in trial at every opportunity it gets.

For all the reasons set forth in defendant's Motion to Sever and herein, defendant Jenkins asks this Court to sever the trials of these to defendants.

Respectfully submitted,

SILVERMAN/THOMPSON/SLUTKIN/WHITE

/s/Andrea L. Smith

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*Attorneys for Charles Austin Jenkins*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2023, a copy of the foregoing motion was filed via ECF causing copies to be sent to all parties of record.

/s/\_\_\_\_\_  
Andrea L. Smith

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**CHARLES A. JENKINS,**

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**Defendant**

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**ORDER**

The Court having reviewed Defendant Jenkin's Reply Motion to Government's Response and to Co-defendant Krop's Reply, it is

This \_\_\_\_\_ day of \_\_\_\_\_, 2023

ORDERED \_\_\_\_\_

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The Honorable Stephanie A. Gallagher  
United States District Court  
For the District of Maryland