

work against Plaintiff as evidenced herein.

The evidence of record shows that Defendant has maliciously created the assessment against him due to the ongoing challenges of Defendant's own administrative activities, and without any evidence or support of assessment, and is in the process of excuses in way of distractions, court and procedural form facades,⁽⁴⁾ semantics and collusion to avoid being held accountable to standing law and due process. The enclosed is not a complete record of evidence in the record, but suffices for this NOTICE and call for investigations and witnesses. All involved in all past cases may be subject to this evidence conclusions.

EVIDENCE OF RECORD IN SUPPORT OF SYSTEMIC BIAS AND FRAUD ON THE COURT WHICH THE COURTS SHOULD STRONGLY CONSIDER FOR JUSTICE AND GRAND JURY PURPOSES

1. When Plaintiff began this trek to receive lawful and constitutional answers to obviously questionable legal conflicts from the Defendant some 12 years ago, he genuinely had trust and belief in the rule of law, due process, and the judicial system, and confident that it, and Defendant, would credibly address the underlying challenges as presented and supported by the U. S. Supreme Court's own stare decisis, which has never been overturned.
2. Defendant and courts have never once addressed the evidence of record, and have declared Supreme Court stare decisis as moot and invalid, calling them "frivolous"⁽⁵⁾ but without any rebuttal.
3. The Supreme Court previously ruled that the government was unconstitutionally taxing private Americans through a direct tax on them which was declared unconstitutional unless apportioned.⁽⁶⁾ This practice continues today under *color of law*,⁽⁷⁾ but is still unconstitutional, but is being suppressed.

⁴ "The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form." *Simon v. Craft*, 182 U.S. 427 (1901).

⁵ 1:22-cv-00830-PAB-NRN, Docket 17, P. 5, top.

⁶ *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 11, 12, 18 (1916).

⁷ Color of law. The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." *Atkins v. Lanning*, D.C.Okl., 415 F.Supp. 186, 188. Black's Law Dictionary, 6th Edition; (See also 18 U.S.C. §242, §245 and 42 U.S.C., 1983).

4. Defendant has failed repeatedly to constitutionally or statutorily define “income”⁽⁸⁾ and is relying on false beliefs by Americans and the courts, and not required to be proven by the courts. Plaintiff’s attempts to clear up the presumed⁽⁹⁾ status quo definition of this word “income” and Supreme Court’s clear but conflicting IRS definition has fallen on deaf ears, even to the point of obstruction⁽¹⁰⁾ of this evidence being exposed.

5. Private American’s wages are being directly taxed at their source as “income” when in lawful and constitutional fact, that is not “income” according to Supreme Court never overturned precedent on the definition.⁽¹¹⁾ These cases are being suppressed and denied, yet without any

⁸ *U.S. v. Balard* 535, 575 F. 2D 400 (1976); (See also *Oliver v. Halstead* 196 VA 992; 86 S.E. Rep. 2 D 858) "The general term 'income' is not defined in the Internal Revenue Code ..."; Plaintiff provided examples of Supreme Court stare decisis on the lawful definition of income. And a complete discourse is available here: https://foundationfortruthinlaw.org/Files/11-IRS-Documents/IRS-3rd-US-Supreme-Court-appeal-complete-OCR_Redacted-filed.pdf

⁹ “The power to create [false] presumptions is not a means of escape from constitutional restrictions” *Heiner v. Donnan* 285, US 312 (1932) and *New York Times v. Sullivan* 376 US 254 (1964). “This court has never treated a presumption as any form of evidence.” See, e.g., *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) “[A] presumption is not evidence.”; See also: *Del Vecchio v. Bowers*, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) (“[A] presumption] cannot acquire the attribute of evidence...”); *New York Life Ins. Co. v. Gamer*, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) (“[A] presumption is not evidence and may not be given weight as evidence.”) “Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party’s constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party’s due process and equal protection rights. [*Viandis v. Kline* (1973) 412 U.S.441, 449, 93 S.Ct 2230, 2235; *Cleveland Bed, of Ed. v. LaFleur* (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215.

¹⁰ 18 U.S. Code Chapter 73 - OBSTRUCTION OF JUSTICE - Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C.A. §§ 1501-1517). Two types of cases arise under the Omnibus Clause involving Obstruction of Justice: The concealment, alteration, or destruction of documents; and the encouraging or rendering of false testimony. Actual obstruction is not needed as an element of proof to sustain a conviction. The Defendant's endeavor to obstruct justice is sufficient. "Endeavor" has been defined by the courts as an effort to accomplish the purpose the statute was enacted to prevent. **The courts have consistently held that "endeavor" constitutes a lesser threshold of purposeful activity than a criminal "attempt."** Federal obstruction of justice statutes have been used to prosecute government officials who have **sought to prevent the disclosure of damaging information**. 18 U.S. Code § 4 - Misprision of felony. Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same to some judge** or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both. See also 42 U.S.C. § 242 & § 245; 42 U.S.C. 1983. (Emphasis added).

¹¹ 1913 Congressional Record, P.3 843, 3844; Senator Albert B. Cummins: "The word 'income' has a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all of the courts of this country ... If we could call anything that we pleased income, we could obliterate all the distinction between income and principal. The Congress can not affect the meaning of the word 'income' by any legislation whatsoever..."; *Conner v. United States*, 303 F. Supp. 1187 (1969) P. 1191: 47 C.J.S., Internal Revenue 98, P. 226: "(2) Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th amendment became effective, it was true at the time of the decision in *Eisner v. Macomber*; it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income. [1] ... It [income] is not synonymous with receipts."

evidence to support this frivolous position.

6. No criminal claims or charges of tax evasion by Defendant against Plaintiff have ever been of record. No Fifth Amendment Grand Jury indictment for tax evasion of any kind, and only “administrative” actions are of record despite Plaintiff’s demands to charge him if a “law” has been broken by him.

7. Defendant has presented “conclusive presumptions”⁽¹²⁾ regarding Plaintiff’s alleged taxable wages, which violates his due process rights, and some courts have supported this erroneous position, yet without a shred of financial documentation in support,⁽¹³⁾ as proven by his FOIA

Doyle v. Mitchell Brother, Co., 247 U S 179 (1918)"We must reject in this case ... the broad contention submitted in behalf of the Government that all receipts, everything that comes in are income within the proper definition of the term 'income' ... "; *U.S. v. Balard* 535, 575 F. 2D 400 (1976); (See also *Oliver v. Halsteacl* 196 VA 992; 86 S.E. Rep. 2 D 858)"...'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. There is a clear distinction between 'profit' and 'wages' or 'compensation for labor.' Compensation for labor cannot be regarded as profit within the meaning of the law ... The word profit is a different thing altogether from mere compensation for labor ... The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who performed the services ... is without support either in the language of the Act or in the decisions of the courts construing it and is directly opposed to provisions of the Act and to Regulations of the Treasury Department ... ";

U.S.C.A. Const.Am 16 - "There must be gain before there is 'income' within the 16th Amendment." Gov. A.E. Wilson on the Income Tax (16) Amendment, *New York Times*, Part 5, P. 13, February 26, 1911"The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system." *Edwards v. Keith*, 231 F. 110 (2nd Cir. 1916) "The statute and the statute alone determines what is income to be taxed. It taxes only income 'derived' from many different sources; one does not 'derive income' by rendering services and charging for them."

Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937] "Income within the meaning of the Sixteenth Amendment and Revenue Act, means 'gains' ... and in such connection 'gain' means profit ... proceeding from property, severed from capital, however invested or employed and coming in, received or drawn by the taxpayer, for his separate use, benefit and disposal ...*Merchants Loan & Trust Co. v. Smietanka*, 225 U.S. 509, 518, 519. (1923); "Income, as defined by the Supreme Court means, 'gains and profits' as a result of corporate activity and 'profit gained through the sale or conversion of capital assets.'" Also see 399. *Doyle v. Mitchell Bros. Co.* 247 U.S. 179, *Eisner v. Macomber* 252 U.S. 189, *Evans v. Gore* 253 U.S. 245, *Summers v. Earth Island Institute*, No. 07-463 [U.S., March 3, 2009] [citing *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 {1986}];

Southern Pacific v. Lowe, U.S. 247 F. 330. (1918)" ... [I]ncome; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income.'; *Lucas v. Earl*, 281 U.S. 111 (1930) "It has to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income derived from salaries, wages, or compensation for personal services." (Emphasis added - Many more cases could be cited).

¹² "... conclusive presumptions have been held to violate a party’s due process and equal protection rights. *Viandis v. Kline*, supra. (Footnote #6)

¹³ 19-cv-03464, *Maehr v. U.S.*, Motion for Summary Judgment, Doc 51, P. 7, #26: Defendant testified that even the “original” third party summonsed documents were allegedly “charged out” and even these could not be located, nor were copies made of these alleged original documents. Also, Id, P. 14, #56, “Winters cannot conclude that the third party summons records sought by the Plaintiff have been destroyed because she has not been able to locate anyone with actual knowledge of the third-party summonsed records at this point to know whether they still

case.⁽¹⁴⁾

8. The evidence in this case has been provided in approximately 20 court cases as part of Plaintiff's request for clarification from the Defendant on the conflicting evidence of record, and subsequent frivolous, erroneous and arbitrary tax and unproven assessment against a disabled veteran. Plaintiff was attacked for challenging the status quo, and defending against *color of law* actions never adjudicated in any past court, including the Tax Court, as proven in this case.

9. As the cases flew by, Plaintiff's original and foundational questions and challenges based on conflicting Defendant code and records vs Supreme Court and other lacking debt evidence went unanswered, and Plaintiff originally chocked this up to not having experience in the legal arena and in presenting his evidence in the manner in which it could be adjudicated as Plaintiff sought, with constitutional sound answers forthcoming.

10. Plaintiff's concerns began in earnest when his FOIA case was dismissed in Defendant's favor, (*Maehr v United States*, 19-cv-03464,) which he filed to force the Defendant to comply with the FOIA laws, which it twice violated and denied Plaintiff proof of debt evidence. Despite Plaintiff having succeeded in obtaining the evidence he needed for this case (#1:22-cv-830-NYW-NRN) via the FOIA court action itself, he was denied any just remedy and the case itself. This was a red flag of something wrong to Plaintiff.

11. The very fact that the court dismissed Plaintiff's suit when it was the suit itself which forced Defendant to respond, and the suit which made it possible to obtain previously court-denied discovery and lacking evidence of debt substantiating the assessment against him. Plaintiff clearly achieved what he wanted, but he lost the case and costs associated with bringing the suit for remedy anyway in forcing Defendant to comply with the law when it was dismissed after the fact.

12. This was patently unfair in that Plaintiff actually succeeded in his suit, but was denied that success by the court, and dismissal granted to Defendant because they "complied with the FOIA request," within the court case itself, which does NOT negate the law being violated. Dismissal makes the FOIA law moot and of no effect. Plaintiff did not appeal the case because of his successfully obtaining exculpatory and inculpatory evidence, and couldn't afford to do so, and didn't comprehend the extent of the bias that now appears obvious in full examination.

13. This single event began a series of research projects into the issue of judicial and government bias, prejudice, (28 U.S.C. 144 & 455), collusion, R. I. C. O., and their appearances and substance, and Plaintiff has now concluded that there has been systemic bias against him based

exist or if they have been destroyed. (*Id.* ... 92)." Of course, no such "destruction" was authorized under Defendant's own testimony, (*Id.*, P. 11, #44 & #45) and documents should still exist in Plaintiff's record since this assessment and garnishment is still active.

¹⁴ *Maehr v United States*, 19-cv-03464, Docket 51.

on the above and following evidence of record, past court rulings notwithstanding.⁽¹⁵⁾ The courts never ruled on the actual evidence of record, and this fact is being suppressed on multiple levels.

14. Plaintiff is pro se, and the clear historical court records show that pro se Plaintiffs or Defendants have a very poor track record of successful litigation, which is suspect by itself.

15. Plaintiff has consistently been denied a jury trial in all past assessment cases despite his 7th amendment right to such⁽¹⁶⁾ considering the assessment itself, and the garnished amount, especially without any proof of debt or other evidence in support.

16. Plaintiff has been consistently denied assistance of counsel despite his disabled veteran impoverished past, and his inability to secure said counsel for these highly controversial issues, despite trying for years and dozens of attorney sources.

17. Plaintiff's arguments and evidence have consistently been ignored and not adjudicated in any past court, nearly 20 to date, denying *Due Process of law*,⁽¹⁷⁾ and flippantly violating other constitutional and statutory rules in the process. No proof of full adjudication is of record.

18. Plaintiff was denied *findings of fact and conclusions of law* ⁽¹⁸⁾ being provided on the issues that were of record in past courts presented by Plaintiff which clearly rebutted Defendant's assessment claims and other conflicting activities and evidence.

19. Plaintiff's social security was 100% garnished for the unproven assessment for years, and

¹⁵ "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Plaintiff has repeatedly sought judges to convene grand jury foreman access to present evidence and witnesses but been routinely denied this rightful access. How does an "objective observer" enter into this case without a jury?

¹⁶Amendment VII: In suits at common law, **where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...** (Emphasis added).

¹⁷ "The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form." *Simon v. Craft*, 182 U.S. 427 (1901); *Pennoyer v. Neff* 96 US. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby... upon the question of life, liberty, or property, (Fifth Amendment-JTM) in its most comprehensive sense; to be heard by testimony or otherwise, **and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law and in fact is a VIOLATION of due process.**" [Black's Law Dictionary, Sixth Edition, p. 500;]. (Emphasis added); The Supreme Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth Amendment also applies to the federal government under the due process clause of the Fifth Amendment. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

¹⁸ "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). FRCPA Rule 52.

that also occurred unlawfully in violation of standing statute.⁽¹⁹⁾

20. Plaintiff's passport was confiscated due to the erroneous assessment certification to the State Department, and he lost several years of usage and work opportunity, and had to reapply and was hampered due to the assessment certification and destruction of his most recent passport.

21. Magistrate judges are NOT Article III judges⁽²⁰⁾ unbeknownst to Plaintiff. Plaintiff was provided an option to deny magistrate judges in the past but was never informed of the non-Article III constitutional status of these judges, thus, the courts were NOT Article III constitutional courts, and such cases not heard and adjudicated by constitutional judges.

22. Most judges and defense counsel are members of the same private BAR organization creating the appearance of a conflict of interest against Plaintiff.

23. Judges and defense counsel are both paid by the same government entity based on Defendant's assessment and tax scheme which has been repeatedly challenged by Plaintiff, ending in case #1:22-cv-830-NYW-NRN for refunding of garnished social security assets taken under *color of law*.

24. "*Rule of Necessity*" regarding courts and recusal which would address any courts and judges in mass could be given another title... RICO... under certain circumstances. The issue is that the significance of the above issues to Plaintiff's challenges and evidence must be provided an independent forum (jury, grand jury⁽²¹⁾ or special grand jury⁽²²⁾) for investigation of all longstanding systemic processes which violate due process and the rule of law which Plaintiff is systematically being denied. In fact, this matter demands a grand jury investigation if bias and

¹⁹ "*Taxpayer Relief Act - Public Law 105-34 Section 1024 - Continuous levy on certain payments*" which clearly states "up to 15%" of said funds could be subject to garnishment, which was repeatedly raised by Plaintiff, but also ignored by Defendant and courts, to Plaintiff's damage over garnishment time, adding to the wrongful taking.

²⁰ <https://www.uscourts.gov/statistics-reports/judges-and-judicial-administration-journalists-guide>

²¹ In *United States v. John H. Williams, Jr.*, 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352), the court stated... "...the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not. *United States v. R. Enterprises*, 498 U.S. 111 S.Ct. 722, 726, 112 L.Ed.2d 795 (1991) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643, 70 S.Ct. 357, 364, 94 L.Ed. 401 (1950))"; "This Court has, of course, long recognized that the grand jury has wide latitude to investigate violations of federal law as it deems appropriate..." (Complete motion and Memorandum of Law for Grand Jury summons is available to be filed if necessary).

²² It is well-established by the courts and our federal law that both a grand jury and a special grand jury have the power to investigate crimes and the power to return and present an indictment for signature and prosecution by the United States Attorney. *See, e.g., U.S. v. Cecerelli*, 350 F. Supp. 475, 479 (W.D. Pa. 1975). *See also*, 1970 U.S. Code Cong. and Adm. News, p. 4007 et seq.; *U.S. v. Forsythe*, 429 F. Supp. 715, 730 (W.D. Pa. 1977) ("any duly constituted federal grand jury can validly return a conventional indictment for violation of any provision of the federal criminal law"), rev'd on other grounds, 560 F.2d 1127 (3d Cir. 1977).

prejudice are not barriers to due process on sensitive and constitutional matters that are being ignored, but noticed by countless Americans. The DOJ, FBI, FDA, etc., are being exposed... is it a stretch to carry this over to Defendant activities, especially where they have been warned by the Supreme Court in the past⁽²³⁾ yet obviously disregarding that warning? Plaintiff's call for a grand jury have been denied and ignored repeatedly despite extensive evidence pointing to crimes and coverups taking place on unconscionable levels. Why?

25. If 20 courts could not and did not provide *findings and conclusions* on the issue at hand, and no rebuttal of standing and ruling U.S. Supreme Court stare decisis precedent⁽²⁴⁾ was even discussed, there has been no actual due process. Answers should be readily available to settle the controversies and should be quite easy to prove, and defense against Plaintiff's questions and challenges readily available if Plaintiff's position is truly "frivolous." Despite repeated challenges as to what makes the questions frivolous, not a single court discussed the laws and Supreme Court evidence. Why?

26. This evidence further supports investigation by a grand jury into Defendant's constitutional and lawful activities as presented on the record. Plaintiff's confidence in the judicial system has been severely eroded, as with all who are aware of these cases, regarding the obvious lack of due process, and Defendant not providing redress of grievance⁽²⁵⁾ lawfully due Plaintiff.

27. If Defendant and courts had even a modicum of good faith or interest in the truth, justice and correcting its aberrant misplaced behavior, they should want the evidence, and would not object to or continue to interfere with the actual evidence from the Supreme Court and many other resources proving the ongoing unlawful activities likely unknown by the vast majority of Defendant employees, and the courts across our Republic. If Defendant believes in and is right and lawful in its administrative application of its code and laws, it would not object to a Grand Jury investigation and would WANT to assure the public that what it is doing IS lawful and just, and FINALLY settle this growing controversy.

28. Defendant, in the IRS Document 9300, Catalog # 21066S, has claims of high ethical principles: "Ten Core Ethical Principles; Honesty. Integrity/Principled. Promise Keeping. Loyalty. Fairness. Caring and Concern for Others. Respect for Others. Civic Duty. Pursuit of

²³ *Schulz v. IRS and Anthony Roundtree*, U.S. Court of Appeals, Docket No. 04-0196, P. 10, lines 10-17.

²⁴ All agencies and courts are bound by the rule that they must follow applicable Supreme Court precedent unless and until it is overruled by the Supreme Court. *Agostini v. Felton*, 521 U.S. 203, 237 (1997); *Internal Revenue Manual*: 4.10. 7.2.9.8 (01-01-2006) Importance of Court Decisions; 1. Decisions made at various levels of the court's system are considered to be interpretations of tax laws and may be used by either examiners **or taxpayers** to support a position. 2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and **takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions.** (Emphasis added).

²⁵ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the Government for a redress of grievances.**" First Amendment. (Emphasis added)

Excellence. Personal Responsibility / Accountability.”) This 12 year defense history pretty much destroys any aspect of these “principles” claimed by Defendant.

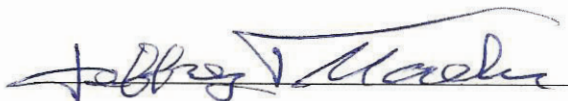
29. Plaintiff herein holds all previous filings and responses in all past court cases as further evidence for this allegation of bias, prejudice, collusion, fraud on the court, and indifference to the rule of law, and now, especially with the recent “Recommendation” to dismiss Plaintiff’s case without lawful merit or evidence.

30. These filings will be provided to various members of Congress, the DOJ, the DOD, Space Force, Donald J. Trump, and alternative media outlets and filed publicly.

For the reasons provided herein, Plaintiff believes that a clear bias and prejudice against him and his arguments exist, and that this should be grounds for disqualifying past court cases, and for this case to be provided to a jury and Grand Jury for full adjudication to begin if we are yet a Democratic Republic with a Constitution, due process, and the rule of law.

Respectfully submitted,

Date: November 17, 2022

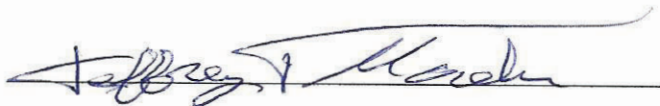


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CERTIFICATE OF SERVICE

Plaintiff certifies that he timely filed a true and complete copy of this NOTICE OF SUSPECTED BIAS to E. CARMEN RAMIREZ, at E.Carmen.Ramirez@usdoj.gov, counsel for the defense, and to the District Court at cod_prose_filing@cod.uscourts.gov, on November 17, 2022.

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