

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Case No. 21-582 (CRC)
	:	
MICHAEL A. SUSSMANN,	:	
	:	
Defendant.	:	

**SUPPLEMENTAL FILING REGARDING GOVERNMENT’S DISCOVERY UPDATE
AND REQUEST FOR ADDITIONAL TIME TO PRODUCE RESIDUAL DISCOVERY
MATERIALS**

1. The United States of America, by and through its attorney, Special Counsel John H. Durham, respectfully submits the below clarifying information concerning paragraph 10(a)(ii) of the “Government’s Discovery Update and Request for Additional Time to Produce Residual Discovery Materials.” Dkt. No. 33 at 15.

2. Paragraph 10(a)(ii) states: “[I]n early January 2022, the Special Counsel’s Office learned for the first time that the OIG currently possesses two FBI cellphones of the former FBI General Counsel to whom the defendant made his alleged false statement, along with forensic reports analyzing those cellphones.” *Id.* The Government wishes to provide some additional context for this statement.

3. After reviewing the Special Counsel’s Office’s public filing, the DOJ Office of Inspector General (“OIG”) brought to our attention based on a review of its own records that, approximately four years ago, on February 9, 2018, in connection with another criminal investigation being led by then-Acting U.S. Attorney Durham, an OIG Special Agent who was providing some support to that investigation informed an Assistant United Attorney working with

Mr. Durham that the OIG had requested custody of a number of FBI cellphones. OIG records reflect that among the phones requested was one of the two aforementioned cellphones of the then-FBI General Counsel. OIG records further reflect that on February 12, 2018, the OIG Special Agent had a conference call with members of the investigative team, including Mr. Durham, during which the cellphones likely were discussed. OIG records also reflect that the OIG subsequently obtained the then-FBI General Counsel's cellphone on or about February 15, 2018. Special Counsel Durham has no current recollection of that conference call, nor does Special Counsel Durham currently recall knowing about the OIG's possession of the former FBI General Counsel's cellphones before January 2022.

4. On January 5, 2022, members of Special Counsel Durham's current investigative team conducted a conference call with the FBI's Inspection Division in an effort to obtain information about call log data for the former FBI General Counsel. Subsequent to that call, on January 6, 2022, personnel from the FBI's Inspection Division informed the Special Counsel's Office via email that the OIG currently was maintaining custody of the former General Counsel's FBI cellphones. On January 7, 2022, the Special Counsel's Office requested information concerning the cellphones from the OIG so that it could make any appropriate disclosures in accordance with the Court's pretrial scheduling order. The OIG provided the requested information on January 10, 2022.

5. The prosecution team has produced to the defense today OIG forensic reports of the aforementioned two cellphones. Moreover, at the request of the Special Counsel's Office, the OIG conducted additional forensic examination of those cellphones earlier this month and, on the evening of January 26, 2022, provided the Special Counsel's Office with those additional,

completed forensic reports, which the prosecution team will produce to the defense upon review. After reviewing the OIG's records from the aforementioned criminal investigation referenced in Paragraph 3 above, the Special Counsel's Office also recently requested and will review additional cellphones in the OIG's possession for discoverable materials.

Respectfully submitted,

JOHN H. DURHAM
Special Counsel

By:

/s/ Andrew J. DeFilippis
Andrew J. DeFilippis
Assistant Special Counsel
andrew.defilippis@usdoj.gov

Jonathan E. Algor
Assistant Special Counsel
jonathan.algor@usdoj.gov

Michael T. Keilty
Assistant Special Counsel
michael.keilty@usdoj.gov