

LEAVE TO FILE GRANTED

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4/19/22

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MICHAEL A. SUSSMANN,

Defendant.

TECH EXECUTIVE-1,

Proposed Intervenor.

Case No. 1:21-cr-00582 (CRC)

NON-PARTY TECH EXECUTIVE-1'S MOTION TO INTERVENE

Non-party Tech Executive-1, by and through his undersigned counsel, respectfully submits this Motion to Intervene for the limited purpose of filing his opposition to the *Government's Motion to Compel the Production of Purported Privileged Communications Withheld by Non-Party Entities for In Camera Inspection by the Court*. (Dkt. 64).¹ Because the Special Counsel's Office ("SCO") seeks to invade the attorney-client privilege which is held by Tech Executive-1, intervention is appropriate to permit Tech Executive-1 to submit his Opposition to the Government's Motion to Compel, attached hereto as Exhibit A.

Although a non-party, Tech Executive-1 is the holder of the privilege for four e-mails and attachments that are the subject of the SCO's Motion. *See Nat'l Sec. Couns v. Cent. Intel. Agency*, 969 F.3d 406, 411-12 (D.C. Cir. 2020) ("[I]t is axiomatic that the attorney-client privilege is held by the client."). Therefore, Tech Executive-1 has standing to intervene in this

¹ Tech Executive-1 uses the pseudonym that the Government uses to refer to him in the Motion.

litigation and defend the privilege which he holds. *See United States v. Martoma*, 962 F. Supp. 2d 602, 605-06 (S.D.N.Y. 2013) (“[I]t is settled law that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings ... A third party’s reasonable assertion of privilege with respect to documents to be produced in a criminal action is sufficient grounds on which to grant the third party’s motion to intervene and consider the merits of that party’s application.”) (collecting cases); *United States v. Jesenik*, 2020 WL 7406531, *5 (D. Or. Dec. 17, 2020); *cf. In re Sealed Case*, 737 F.2d 94, 98 (D.C. Cir. 1984) (recognizing that *Perlman* doctrine permits non-party standing to appeal claim of privilege); *Perlman v. United States*, 247 U.S. 7 (1918).

For the foregoing reasons, Tech Executive-1 requests the Court grant him leave to intervene for the limited purpose of defending the applicability of the attorney-client privilege to certain communications identified by the Government and submitting the attached Opposition (Exhibit A).

Dated: April 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2022, I caused the foregoing to be filed and served via electronic mail upon all counsel of record:

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