

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA** :  
 : **No. 21-cr-708-RCL**  
**v.** :  
 :  
**LEO KELLY,** :  
 :  
**Defendant.** :

**GOVERNMENT’S MOTION FOR IMMEDIATE STATUS CONFERENCE**

The United States of America, by and through counsel, respectfully submits this motion for an immediate status conference. As discussed below, the Bureau of Prisons (“BOP”) mistakenly released defendant Leo Kelly from custody following the United States Court of Appeals for the D.C. Circuit’s order vacating the defendant’s conviction under 18 U.S.C. § 1512(c)(2) and (2). After communicating with BOP and opposing counsel, the government thus seeks a status conference to address the defendant’s current release status, as well as schedule a resentencing consistent with the mandate, and the Court’s prior orders. *See* ECF No. 151 (denying release on August 1, 2024). To briefly expound:

On May 9, 2023, a jury convicted the defendant, Leo Kelly, of six counts, including 18 U.S.C. § 1512(c)(2) and (2), for his actions at the U.S. Capitol on January 6, 2021.

On August 18, 2023, the Court sentenced the defendant, Leo Kelly, to 30 months of incarceration. Minute Order (8/18/2023).

On August 25, 2023, the defendant appealed his conviction to the United States Court of Appeals for the D.C. Circuit. *See* ECF No. 137 (Appeal No. 23-3140).

On September 14, 2023, the defendant filed a motion for bond pending appeal. ECF No. 139. The Court denied that motion. ECF No. 142.

On July 9, 2024, the defendant renewed his motion for bond pending appeal. ECF No. 148. In that motion, the defendant moved the Court to release him from custody not later than October 18, 2024. The Court denied that request, explaining that, even if the Section 1512(c)(2) count drops away, the Court is likely to impose a sentence of at least 12 months, and perhaps greater, including a likely upward variance from the guidelines, given the defendant's "harmful and egregious" conduct on January 6, 2021. *See* ECF No. 151 at 9-10.

On August 29, 2024, upon joint motion of the parties, the D.C. Circuit vacated the defendant's conviction under 18 U.S.C. § 1512(c)(2) and (2), and remanded the case for further proceedings. *See* Case No. 23-3140, Per Curiam Order (9/9/2024).

Upon information and belief, the government learned that, following this remand order, defense counsel alerted the Bureau of Prisons of the D.C. Circuit's remand order. Without an order for release or any judgment and commitment order, by mistake, BOP then released the defendant from custody on or around September 19, 2024. When the defendant was released from custody, he had served only approximately 11 months of his 30-month sentence. *See* ECF No. 147 (noting self-surrender on October 18, 2023). The government is aware that the defendant earned First-Step Act credits while serving.

The government requests a prompt status conference to address the defendant's release, which the government believes to be in error. Alternatively, the government requests that the Court schedule a re-sentencing for the defendant, in accord with the D.C. Circuit's remand order and the anticipated schedule by the government. The government has conferred with opposing counsel, who has availability this upcoming Tuesday and Wednesday, September 24-25, 2024. The government can be made available at the Court's convenience.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney  
DC Bar No. 481052

By: /s/ Ashley Akers  
ASHLEY AKERS  
MO Bar #69601  
Trial Attorney  
United States Attorney's Office  
601 D Street, N.W.  
Washington, DC 20530  
Phone: (202) 353-0521  
Email: Ashley.Akers@usdoj.gov

/s/ Gregory Rosen  
GREGORY ROSEN  
Assistant United States Attorney  
VA Bar No. 82584  
U.S. Attorney's Office  
District of Columbia  
601 D Street N.W.  
Washington, D.C. 20530  
Gregory.rosen@usdoj.gov  
(202) 252-6932