IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES *

vs. * Case No.: 22-15 APM

THOMAS E. CALDWELL *

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CALDWELL'S MOTION TO STAY SENTENCING HEARING

COMES NOW, Thomas E. Caldwell, by and through counsel, David W. Fischer, Esq., and respectfully requests that the sentencing hearing in this matter, currently scheduled for December 20, 2023, be vacated, and that sentencing in this matter be stayed until the U.S. Supreme Court resolves *Fischer v. United States*, and as grounds therefore states as follows:

- 1) Caldwell is awaiting sentencing by the Court subsequent to his guilty findings on Counts 4 & 13 of the Indictment, which charged him with, respectively, Obstruction of an Official Proceeding (18 U.S.C. § 1512(c)(2)) and Obstruction (evidence tampering) (18 U.S.C. § 1512(c)(1)). Sentencing in this matter is scheduled for December 20, 2023.
- 2) On December 13, 2023 the United States Supreme Court granted certiorari in *Fischer v. United States*, 64 F.4th 329 (2023), *cert. granted* 23-5572. The question presented to the Supreme Court in *Fischer* is: "Did the D.C. Circuit err in construing 18 U.S.C. § 1512(c) ("Witness, Victim, or Informant Tampering"), which prohibits obstruction

of congressional inquiries and investigations, to include acts unrelated to investigations and evidence?"

- 3) In pretrial motions, at trial, and in post-trial motions, Caldwell noted several objections to dispute that 18 U.S.C. § 1512(c)(2) applied to the factual circumstances pertaining to his prosecution. Resolution of *Fischer* directly impacts Count 4 of the Indictment and could lead to dismissal or acquittal in relation to that count.
- 4) The government is requesting a 14-year sentence for Caldwell based almost entirely upon his finding of guilt as to Count 4. Additionally, Caldwell's potentially high sentencing guidelines are driven almost entirely by Count 4.
- 5) Caldwell has maintained a perfect record of compliance while on pretrial release. A continuance of his sentencing hearing poses no threat to public safety, and serves the interest of judicial economy.
- 6) The government opposes this request.

WHEREFORE, Caldwell respectfully moves the Court to stay his sentencing hearing until *Fischer* is resolved.

Respectfully Submitted,

/s/

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CERTFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2023, a copy of the foregoing Motion to Stay Sentencing Hearing was electronically filed with the Clerk of the United States District Court using CM/ECF, with a notice of said filing to the following:

Counsel for the Government: Kathryn Rakoczy, AUSA

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