

The Law Offices of
ANDREW J. FRISCH, PLLC
40 Fulton Street, 17th Floor
New York, New York 10038
212-285-8000

March 19, 2023

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Douglass Mackey, Criminal Docket No. 21-0080 (NGG)

Dear Judge Garaufis:

I respectfully submit this letter on behalf of Douglass Mackey to provide advance notice of some additional objections to government exhibits. While the government and I may resolve some of these objections before its summary witness testifies, I register these objections now rather than take time away from a trial day. Upon consultation with the government, I do not believe that any of these exhibits will be the subject of opening statements, so I propose that the Court reserve decision until after opening statements and time permits for the possibility that the parties may narrow disputes and also for further discussion with the Court.

To facilitate the Court's consideration of these objections, I refer to the chats by government exhibit number corresponding to the government's final exhibits. I incorporate herein the bases for Mr. Mackey's earlier objections to chats and supplement them here by noting two things: a few of the chats refer to or depict the former president and have no true probative value, and many of them (including those that refer to or depict the former president) serve to press inferences which the government can press from other chats:

- GX 200-7 Mr. Mackey proposes that the word "terrorism" be replaced with "warfare" or some other less-charged word, and that the word "loldongs" (no one appears to know what it means) be omitted;
- GX 200-10 Mr. Mackey objects to the quoted phrase in the first blue-highlighted chat;
- GX 200-71-72 Mr. Mackey objects to the reference to and photograph of the former president;
- GX 200-73,74 Neither of these chats has anything to do with the allegedly deceptive memes; at least one of them (found in the government's discovery) is a photoshop of Trump holding a photograph ala Thomas Dewey that says, "Clinton Defeats Trump;" its use is misleading and confusing;
- GX 200-80; GX 430-2 The government will seek a clarifying ruling for these two chats;
- GX-113 This tweet refers to so-called "low information voters" generally, that is, those who support either candidate, and is unduly confusing, misleading, and prejudicial;

GX 400-5 This meme shows the former president with an assault rifle at his border wall;
GX 400-6 This meme shows the former president as a gladiator stomping his opponent in her neck with a sword;
GX 401-7-8 The government has many memes about Drafting Daughters, and these make use
GX 410-6, 14 of children's faces and an African-American soldier, none of them posted by Mr. Mackey;
GX 420-8 The chat and its off-color language has little or no probative value'
GX 420-18 Mr. Mackey is not involved in this chat from April 2016, the last line of which speaks to a photo-shopped pop star's "dumb fans;"
GX 430-8-13 The pictorial background is a purported Muslim terrorist, and the memes (though partially redacted) are about Trump's Muslim ban;
GX 430-22 Political speech with little or no probative value and is cumulative;
GX 430-24 Objection to the word "Rotten;"
GX 430-38 The unflattering photograph is unnecessary, cumulative, and unduly prejudicial;
GX 430-59 Mr. Mackey does not participate in this meme depicting President Biden;
GX 430-66 The meme contains hearsay about the reason for the Twitter suspension and is confusing because the meme was false both because it purports to be issued by the Clinton campaign and also the availability of voting by text; the hearsay does not distinguish, and Mr. Mackey is not present in the exchange;
GX 430-69 The use of the pejorative comes after the posting of the memes, is inflammatory, and refers to a term then used by an African-American pop star who supported Trump.

Respectfully submitted,

/s/ Andrew J. Frisch

Andrew J. Frisch

cc: AUSA Erik Paulsen
AUSA Turner Buford
AUSA William Gullotta