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July 1, 2024

BY ECF

The Honorable Rachel P. Kovner
United States District Court
Eastern District of New York
225 Cadman Plaza East
Courtroom 4E-N
Brooklyn, NY 11201

**Re: *United States v. Gentile, et al.*,
21 Cr. 054 (RPK) (PK)**

Dear Judge Kovner:

We write in response to the Government’s two sur-sur-reply letters (ECF Nos. 402 and 403), filed under seal on June 30 and July 1, 2024, respectively, and ask that they be struck.

The Government did not seek leave to file any sur-sur-reply (let alone two), and they should be struck for this reason alone. “Procedurally, the party seeking to submit reply papers should submit an informal request in writing *in advance of filing its sur-reply* [or its multiple sur-sur-replies].” *Walker v. Royce*, No. 20-CV-2386 (PKC), 2024 WL 1158801, at *7 (E.D.N.Y. Mar. 18, 2024) (emphasis added). The request to file a sur-reply (or, as here, two sur-sur replies) must “set[] forth the basis for the request, identify[] the new issue to which it seeks to reply, and specify[] the basis for its belief that that issue is a material one.” *United States v. Int’l Bus. Machs. Corp.*, 66 F.R.D. 383, 385 (S.D.N.Y. 1975). Courts in this Circuit have consistently held that “[t]he proposed reply papers should not accompany the request for leave to submit them,” because doing so—as the Government did here—improperly “enable[s] the requesting party to accomplish the goal of placing the papers before the court.” *Id.*; accord *Walker*, 2024 WL 1158801, at *7. In other words, the Government has circumvented the requirement of seeking leave to submit a sur-sur-reply, which enabled it to place additional arguments before the Court without the Court first finding that such additional arguments were appropriate and necessary. The Court should not permit this violation of procedure.

Defendants do not believe anything in the Government’s two sur-sur-reply letters raises any question as to the privileged nature or admissibility of the at-issue communications. However, should the Court disagree, we respectfully request permission to address the new information in

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the Government's sur-sur replies orally (or in writing, if the Court prefers) before trial resumes, or at such other time as the Court directs.

Respectfully submitted,

/s/ Sean S. Buckley

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