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FILED  
U.S. DISTRICT COURT

2016 MAR 22 4:25

DISTRICT OF UTAH

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7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF UTAH**

9  
10 UNITED STATES OF AMERICA  
11 Plaintiff

12 v.

13 JEREMY JOHNSON, Et Al.,  
14 Defendants

**MOTION TO CLARIFY GAG-ORDER**  
**[DE 287]**

Case No.: 2:11-CR-501

District Judge David Nuffer  
Magistrate Judge Paul M. Warner

15  
16  
17 COMES NOW, Pro Se Defendant Jeremy Johnson, and hereby respectfully requests  
18 clarification on the Courts Gag-Order DE 287.

19  
20  
21 On March 21, 2016 Defendant Jeremy Johnson filed a motion to dismiss based on  
22 prosecutorial misconduct. DE 1376 The next day Mr. Johnson received an email from AUSA  
23 Michael Kennedy stating "Your pleading is little more than an undisguised effort to violate the  
24 Court's gag order. We are treating it as such."<sup>1</sup>. Mr. Kennedy offered no further explanation.

25 During trial the United States called Cardflex employees (Will Swaim and Kelby Berg) as  
26

27  
28 <sup>1</sup> See Exhibit 1, 3/22/2016 Email from AUSA Kennedy

1 witnesses which the prosecution team knew would give false testimony.<sup>2</sup> In closing argument, the  
2 United States noted the witnesses' testimony and built an argument largely around testimony the  
3 Prosecution knew to be false. **In short, the Prosecution made arguments and promoted**  
4 **testimony to the Jury which the prosecution team does not themselves believe.**  
5

6 Accordingly, Mr. Johnson filed his motion with proof in the form of recordings that the  
7 prosecution knew that the testimony and arguments were false when they made the decision to  
8 present them to the jury. Mr. Johnson has never understood the courts Gag-Order prevented him  
9 from taking any action in his defense aside from making public statements about the case and in  
10 fact understood the very opposite as stated in the Gag-Order  
11

12 While the entry of an order pursuant to criminal rule 57-6 is clearly within this  
13 court's power, the court is sensitive to the Defendants' First Amendment right of  
14 free speech, as well as their right to a fair trial. *See* DE 287, p.3

14 Additionally, in regards to the allegations of Government misconduct, in the March 12,  
15 2013 hearing, the Court has already stated on the record that they should be filed "by way of  
16 motion to the court":  
17

18 THE COURT: I appreciate that, Mr. Xaiz. And let me just reiterate, I have no  
19 problem with any criminal defendant maintaining their innocence. That's a different  
20 issue than casting aspersions or accusations about the vindictive nature or improper  
21 nature of the exercise of prosecutorial discretion. There are appropriate vehicles and  
22 forums to handle that kind of obligation, but that would come by way of motion to  
23 the Court and not in a public forum or social media or whatever. *See* DE 1067-3, 3-  
24 12-2013 Hearing, p.28, 10-18

22 Mr. Johnson intends to file more evidence of Outrageous Government Conduct in this case  
23 which include more recordings as evidence of the Governments intent. Prior to doing so Mr.  
24 Johnson seeks clarification from the Court on what he may or may not use as evidence, what  
25

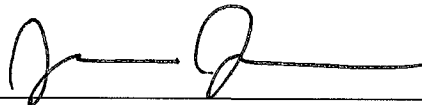
26 \_\_\_\_\_  
27 <sup>2</sup> Its worth noting that the Prosecution did this with full knowledge that a reporter was present in  
28 the court room at the time and the sensational testimony would generate favorable news stories for  
the United States, which it did.

1 arguments he may or may not make, and in what manner is appropriate for Mr. Johnson to present  
2 the evidence and argument before the Court. Mr. Johnson already understands from the Courts  
3 order today that any recordings should be redacted, however should Mr. Johnson also redact any  
4 quotes from the recordings? Does the redaction apply to all recordings or just recordings of  
5 members of the prosecution team on this case? Is Mr. Johnson allowed to make arguments that  
6 cast a negative light on the prosecution? Etc.

8 Mr. Johnson, respectfully requests that the court clarify and give guidance on how Mr.  
9 Johnson may proceed before he makes anymore filings.

12 Dated this 22nd Day of March, 2016.

14 Respectfully submitted by,

15   
16 \_\_\_\_\_

JEREMY JOHNSON

17 *Pro se*

# **EXHIBIT 1**

**Subject:** RE: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss  
**Date:** Tuesday, March 22, 2016 at 2:20:25 PM Mountain Daylight Time  
**From:** Kennedy, Michael (USAUT) <Michael.Kennedy@usdoj.gov>  
**To:** Jeremy Johnson <notguiltyonallcounts@gmail.com>, Lunnen, Robert (USAUT) <RLunnen@usa.doj.gov>, Marcus Mumford (mmumford@mumforddrawson.com) <mmumford@mumforddrawson.com>, rockitryan@gmail.com <rockitryan@gmail.com>, utdj\_Nuffer@utd.uscourts.gov <utdj\_Nuffer@utd.uscourts.gov>, Lori\_Lewis@utd.uscourts.gov <Lori\_Lewis@utd.uscourts.gov>  
**CC:** gskordas@schhlaw.com <gskordas@schhlaw.com>, killpack@rocketmail.com <killpack@rocketmail.com>, Burt, Jason (USAUT) <JBurt@usa.doj.gov>, Fojtik, Karin (USAUT) <KFojtik@usa.doj.gov>

Your pleading itself is little more than an undisguised effort to violate the Court's gag order. We are treating it as such.

*Michael Kennedy*

Assistant United States Attorney  
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**From:** Jeremy Johnson [mailto:notguiltyonallcounts@gmail.com]  
**Sent:** Tuesday, March 22, 2016 2:18 PM  
**To:** Lunnen, Robert (USAUT); Marcus Mumford (mmumford@mumforddrawson.com); rockitryan@gmail.com; utdj\_Nuffer@utd.uscourts.gov; Lori\_Lewis@utd.uscourts.gov  
**Cc:** gskordas@schhlaw.com; killpack@rocketmail.com; Burt, Jason (USAUT); Fojtik, Karin (USAUT); Kennedy, Michael (USAUT)  
**Subject:** Re: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

Apparently you don't understand how youtube works. You said you could not download the recordings so I sent you a link to download it from youtube. As noted in my first email...Nothing is nor has it been published on youtube. Because of your displeasure I have now disabled your links as well. May I please come pick up my hard drive? I will have your thumb drive ready shortly.

Thanks,

Jeremy Johnson

**From:** "Lunnen, Robert (USAUT)" <[Robert.Lunnen@usdoj.gov](mailto:Robert.Lunnen@usdoj.gov)>  
**Date:** Tuesday, March 22, 2016 at 2:03 PM  
**To:** Jeremy Johnson <[notguiltyonallcounts@gmail.com](mailto:notguiltyonallcounts@gmail.com)>, "Marcus Mumford ([mmumford@mumforddrawson.com](mailto:mmumford@mumforddrawson.com))" <[mmumford@mumforddrawson.com](mailto:mmumford@mumforddrawson.com)>, "[rockitryan@gmail.com](mailto:rockitryan@gmail.com)" <[rockitryan@gmail.com](mailto:rockitryan@gmail.com)>, "[utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov)" <[utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov)>, "[Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)" <[Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)>  
**Cc:** "[gskordas@schhlaw.com](mailto:gskordas@schhlaw.com)" <[gskordas@schhlaw.com](mailto:gskordas@schhlaw.com)>, "[killpack@rocketmail.com](mailto:killpack@rocketmail.com)" <[killpack@rocketmail.com](mailto:killpack@rocketmail.com)>, "Burt, Jason (USAUT)" <[Jason.Burt@usdoj.gov](mailto:Jason.Burt@usdoj.gov)>, "Fojtik, Karin (USAUT)" <[Karin.Fojtik@usdoj.gov](mailto:Karin.Fojtik@usdoj.gov)>, "Kennedy, Michael (USAUT)" <[Michael.Kennedy@usdoj.gov](mailto:Michael.Kennedy@usdoj.gov)>  
**Subject:** RE: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

Posting these recordings to youtube is a violation of the Gag order. We will be asking the court to impose sanctions pursuant to the order.

---

**From:** Jeremy Johnson [<mailto:notguiltyonallcounts@gmail.com>]  
**Sent:** Tuesday, March 22, 2016 1:57 PM  
**To:** Lunnen, Robert (USAUT); Marcus Mumford ([mmumford@mumforddrawson.com](mailto:mmumford@mumforddrawson.com)); [rockitryan@gmail.com](mailto:rockitryan@gmail.com); [utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov); [Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)  
**Cc:** [gskordas@schhlaw.com](mailto:gskordas@schhlaw.com); [killpack@rocketmail.com](mailto:killpack@rocketmail.com); Burt, Jason (USAUT); Fojtik, Karin (USAUT); Kennedy, Michael (USAUT)  
**Subject:** Re: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

Mr. Lunnen,

Sorry about the delay. The recordings are too large for CD so I had to run and get thumb drives. I will drop one by your office and the Court clerk as soon as I get them finished. I gave you a hard drive a few weeks ago with some of these recordings, is it possible to get the hard drive back? Also you are correct that one of the recordings of you is from the meeting in your office about plea negotiations. The other was recorded by another source several years later and that person does not wish to be identified. I am happy to provide a full copy of my recording however. I was able to upload them to youtube as well (unpublished).

Lunnen-1 ;  
Lunnen-2 ;

Thanks,

Jeremy Johnson

**From:** "Lunnen, Robert (USAUT)" <[Robert.Lunnen@usdoj.gov](mailto:Robert.Lunnen@usdoj.gov)>  
**Date:** Tuesday, March 22, 2016 at 1:43 PM  
**To:** Jeremy Johnson <[notguiltyonallcounts@gmail.com](mailto:notguiltyonallcounts@gmail.com)>, "Marcus Mumford (mmumford@mumforddrawson.com)" <[mmumford@mumforddrawson.com](mailto:mmumford@mumforddrawson.com)>, "[rockitryan@gmail.com](mailto:rockitryan@gmail.com)" <[rockitryan@gmail.com](mailto:rockitryan@gmail.com)>, "[utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov)" <[utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov)>, "[Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)" <[Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)>  
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**Subject:** RE: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

Mr. Johnson: We are waiting on a response from you as to whether you will provide copies of the recordings you site in your motion to dismiss. We were finally able to access the web sites. One recording is only 10 seconds in duration and the other 40 seconds. I believe that both are excerpts from our plea negotiation meeting that was held sometime in 2012. That meeting was well over an hour long. We would like the full version of each recording. Please let us know whether you intend to provide a complete copy of the recording or not.

Rob Lunnen

---

**From:** Lunnen, Robert (USAUT)  
**Sent:** Tuesday, March 22, 2016 10:25 AM  
**To:** Jeremy Johnson ([notguiltyonallcounts@gmail.com](mailto:notguiltyonallcounts@gmail.com)); Marcus Mumford ([mmumford@mumforddrawson.com](mailto:mmumford@mumforddrawson.com)); [rockitryan@gmail.com](mailto:rockitryan@gmail.com); [utdj\\_Nuffer@utd.uscourts.gov](mailto:utdj_Nuffer@utd.uscourts.gov); [Lori\\_Lewis@utd.uscourts.gov](mailto:Lori_Lewis@utd.uscourts.gov)  
**Cc:** [gskordas@schhlaw.com](mailto:gskordas@schhlaw.com); [killpack@rocketmail.com](mailto:killpack@rocketmail.com); Burt, Jason (USAUT); Fojtik, Karin (USAUT); Kennedy, Michael (USAUT)  
**Subject:** FW: Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

Mr. Johnson: Please provide both of the recordings you refer to in your motion to dismiss filed yesterday. The recordings are sited in support of your argument, but not provided as exhibits. We are unable to access the websites you referenced in the footnotes. You may leave copies of the recordings in the District Court Clerk's Office, for the attention of the United States Attorney's Office.

Rob Lunnen

**From:** [utd\\_enotice@utd.uscourts.gov](mailto:utd_enotice@utd.uscourts.gov) [[mailto:utd\\_enotice@utd.uscourts.gov](mailto:utd_enotice@utd.uscourts.gov)]  
**Sent:** Monday, March 21, 2016 2:46 PM  
**To:** [ecf\\_notice@utd.uscourts.gov](mailto:ecf_notice@utd.uscourts.gov)  
**Subject:** Activity in Case 2:11-cr-00501-DN-PMW USA v. Johnson et al Motion to Dismiss

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**Case Number:** 2:11-cr-00501-DN-PMW  
**Filer:** Dft No. 1 - Jeremy David Johnson  
**Document Number:** 1376

**Docket Text:**

**MOTION to Dismiss, MOTION for Declaration of Mistrial filed by Jeremy David Johnson (Attachments: # (1) Exhibit 1) (alt)**

**2:11-cr-00501-DN-PMW-1 Notice has been electronically mailed to:**

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75920235299ddd29821817eeef15ac20e4ca5c3624556f7f9f76baa15ec72]]

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