

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 16 CR 00064-WCG-DEJ
v.	)	
	)	Honorable William Griesbach
RON VAN DEN HEUVEL and	)	Magistrate Judge David E. Jones
KELLY VAN DEN HEUVEL,	)	
	)	
Defendants.	)	
	)	
	)	

**DEFENDANT KELLY VAN DEN HEUVEL’S REPLY IN SUPPORT OF  
MOTION FOR DISCOVERY**

Kelly Van Den Heuvel seeks targeted discovery about a single \$250,000 loan that the grand jury alleged was fraudulent. The undisputed evidence establishes that all of the proceeds went for their intended purpose – to buy a home. The undisputed evidence further establishes that no “straw borrower” existed on this loan – none of the \$250,000 went to Ron Van Den Heuvel or his companies. This was not a loan like the others alleged in the indictment – perhaps why the grand jury did not include these allegations in the individual counts charged. Nevertheless, the government argues in its response that “there is ample evidence to conclude that the KYHKJG, LLC loans were fraudulent.” Dkt. 119 at 4. But, its “evidence” boils down to an odd claim that renting the house to Mr. Van Den Heuvel’s ex-wife constituted fraud. That allegation is nowhere in the indictment. And, the cases the government cites are completely inapposite to the particularized request made by Ms. Van Den Heuvel in this case.

Unlike the case law relied upon by the government, Ms. Van Den Heuvel has presented sufficient evidence to demonstrate a particularized need for the discovery of all information

provided to the grand jury concerning the \$250,000 loan to KYHKJG, LLC as alleged in Count I of the Superseding Indictment.

### ***DISCUSSION***

The evidence the government offers to support its theory of fraud surrounding the \$250,000 loan are alleged “emails” that Ms. Van Den Heuvel exchanged with Paul Piikkila to arrange paying off the Chase Bank mortgage (the mortgage Ms. Van Den Heuvel took over when she purchased a home in De Pere, Wisconsin with the \$250,000 loan proceeds). *See* Dkt. 119 at 4. The government suggests that these emails provide “ample evidence to conclude that the KYHKJG, LLC loans were fraudulent.” *See id.* However, the single email communication that the government relies upon (and not multiple “emails”) says no such thing and instead is indicative of regular communications regarding the purchase of a home.

After reading the government’s response brief, counsel for Ms. Van Den Heuvel reviewed the discovery to attempt to locate the multiple email communications referenced by the government that purportedly demonstrate the fraudulent nature of the \$250,000 loan. Counsel located one email between Ms. Van Den Heuvel and Paul Piikkila related to the \$250,000 loan. *See* Ex. A. In the email, Ms. Van Den Heuvel writes Piikkila and explains that Chase Bank had been using the wrong fax number to send the closing proceeds. Ex. A. Nothing in this email suggests that the \$250,000 loan was part of scheme in furtherance of a conspiracy.

Counsel for Ms. Van Den Heuvel conferred with the government to confirm whether this was, in fact, the email the government had referenced in its response brief. Dkt. 119. The government confirmed that this “email string” was the email referenced in its response that purportedly establish the “ample evidence” of fraud. *See* Ex. B.

This evidence and the government's mischaracterizations supports Ms. Van Den Heuvel's particularized need for grand jury materials. A "particularized need" exists when the grand jury material is "needed to avoid a possible injustice[.]" *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979). As Ms. Van Den Heuvel articulated in her opening brief, a potential injustice exists here because the government has failed to articulate a theory of fraud surrounding the \$250,000 loan in Count I of the Superseding Indictment. Ms. Van Den Heuvel needs grand jury materials to prepare a defense to these allegations and determine whether a motion to strike this portion of the Superseding Indictment is appropriate.

The government's attempt to liken Ms. Van Den Heuvel's case to *United States v. Williams*, No. 16-CR-111-JPS, 2017 WL 1437119 (E.D. Wis. Apr. 24, 2017) and *United States v. Arms*, No. 14-CR-78-LA, 2015 WL 5022640 (E.D. Wis. Aug. 24, 2015), further demonstrates why disclosure is necessary.

In both *Williams* and *Arms*, the court denied the defendants' motion for grand jury materials after the defendants submitted blanket requests for grand jury material without providing any supporting legal precedent or substantiated evidence. Specifically, in *Williams*, a defendant charged with sex trafficking, narcotics distribution, evidence destruction, and witness tampering moved for disclosure of the entire grand jury transcript to determine whether venue would be proper and to "better understand what evidence the government intend[ed] to rely upon at trial." *Williams*, 2017 WL 1437119 at \*1-\*3. In denying the defendant's motion, the court noted that the defendant's request for the grand jury transcripts "constitute[d] no more than 'blanket' claims of need..." and the request could not be granted "to permit [] a 'fishing expedition.'" *Id.*

Ms. Van Den Heuvel's request for grand jury materials is not comparable to the request in *Williams*. Ms. Van Den Heuvel seeks targeted discovery of grand jury material with respect to a single overt act in Count I in the Superseding Indictment. Ms. Van Den Heuvel has presented ample

evidence that this material is necessary because all of the evidence suggests that this loan relates to the lawful purchase of a residence in De Pere, Wisconsin and not the use of a “straw borrower” to illegally steer funds to Mr. Van Den Heuvel. Indeed, the evidence establishes that the entire loan proceeds were used to pay a title company and Horicon Bank. Thus, this is not a case where Ms. Van Den Heuvel seeks grand jury materials merely to “aid in [] trial preparation[.]” *Id.* at \*3. Unlike the defendant in *Williams*, Ms. Van Den Heuvel has provided compelling evidence of a particularized need for the disclosure of grand jury materials.

The government’s reliance on *Arms* is equally misplaced. In *Arms*, the defendant moved for disclosure of grand jury materials because the defendant believed the grand jury may have received inaccurate information about the date in which a conspiracy began. *Arms*, 2015 WL 5022640 at \*11. In denying the defendant’s motion, the court reasoned that disclosure was inappropriate because it was unclear whether the issue would even arise at trial. *Id.*

Ms. Van Den Heuvel is not seeking the disclosure of grand jury material to clarify an issue that may or may not arise at trial. *Id.* at \*11. Count I of the superseding indictment directly implicates Ms. Van Den Heuvel because of her purported involvement in a \$250,000 loan that was allegedly taken to advance an illegal conspiracy. The government will undoubtedly present evidence at trial to attempt to demonstrate Ms. Van Den Heuvel’s involvement in the criminal conspiracy alleged in Count I and specifically her involvement in what appears to be a normal personal loan. Grand jury materials are needed for Ms. Van Den Heuvel to understand the theory of fraud surrounding the \$250,000 loan and to determine whether the grand jury properly considered the evidence on this loan. Indeed, even the government’s own cooperator, Paul Piikkila acknowledged that he “didn’t see these loans [the \$250,000 and the \$70,000 loan] as a way to circumvent the bank.” *See* Dkt. 107, Ex. A. Thus, the government’s failure to present any evidence that suggests the

\$250,000 loan was taken as part of an illegal conspiracy further supports Ms. Van Den Heuvel's particularized need for the early disclosure of grand jury materials related to the \$250,000 loan.

As Ms. Van Den Heuvel articulated in her opening brief, the circumstances here are more akin to the circumstances in *United States v. Way*, No. 14-CR-00101-DAD-BAM, 2015 WL 8780540 (E.D. Cal. Dec. 15, 2015). There, the court ordered a limited disclosure of grand jury materials after finding that the defendant demonstrated a particularized need for grand jury materials to avoid a potential injustice relating to a "faulty indictment." *Id.* at \*1. In *Way*, the court evaluated the competing interests of disclosure and the need for secrecy and concluded that limited disclosure was appropriate in light of the limited information requested and the fact that the grand jury proceedings had concluded. *Id.* at \*7. Ms. Van Den Heuvel's case is similar: 1) her request for material is targeted to a single overt act alleged in one count of the superseding indictment; 2) she has presented sufficient evidence to demonstrate a particularized need; 3) the need for secrecy of proceedings has diminished given the procedural posture of this case; and 4) the government has failed to present sufficient evidence of fraud relating to the overt act alleged in the indictment.

The government's theory regarding the alleged fraudulent nature of the \$250,000 loan is marked by inconsistency and confusion. The targeted disclosure of the \$250,000 loan is needed because of the government's inability to articulate what the theory of fraud is behind this loan. Therefore, Ms. Van Den Heuvel has established a particularized need for the disclosure of grand jury material relating to the \$250,000 loan alleged in Count I in the Superseding Indictment and the Court should grant her motion for discovery.

## *CONCLUSION*

For the reasons set forth herein and for the reasons stated in Ms. Van Den Heuvel's opening memorandum in support of discovery, Kelly Van Den Heuvel respectfully requests that the Court grant her motion to compel discovery of grand jury materials.

Respectfully submitted,

/s/ Andrew Porter

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. 5 and the General Order on Electronic Case Filing (ECF), the following document:

**DEFENDANT KELLY VAN DEN HEUVEL'S REPLY BRIEF IN SUPPORT OF  
MOTION FOR DISCOVERY**

was served pursuant to the district court's ECF system.

\_\_\_\_\_/s/ Andrew Porter

# **EXHIBIT A**



**Paul Piikkila - Fwd: mortgage information**

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**From:** Kelly Vandenheuvel <klyvdh@aol.com>  
**To:** Paul Piikkila <PaulP@horiconbank.com>  
**Date:** 11/7/2008 10:22 AM  
**Subject:** Fwd: mortgage information

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This is what my brother-in-law sent me. The number that Chase had been using to send the payoff by fax was actually the bank direct line and not the fax line. Pedro spoke to Chase yesterday afternoon after I got your email and they said they would fax it but that request take 24 hours. You should get it today. That is why Pedro sent the info below.

Kelly

Begin forwarded message:

**From:** Kiml Fernandez <kimlmax@hotmail.com>  
**Date:** November 6, 2008 4:38:50 PM CST  
**To:** Kelly Vandenheuvel <klyvdh@aol.com>, <klyvdh@gmail.com>, Pedro <plernandez@incubrandellsle.com>  
**Subject:** mortgage information

Kelly -

Here is the information you should need for closing tomorrow. If you have any questions, call Pedro.

For wiring Instructions:

Account No: 32355379  
ABA Routing No: 021000021

Chase Home Finance  
LLC - Payoff Wire Account  
Loan No. 1583809055

Make sure the property address & my name is on the pay off

Pedro M Fernandez  
1520 Silver Maple Drive  
De Pere, WI 54115

Amount of Pay off : **\$259,946.58**

**Call me with any questions!**

**Pedro**

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file:///C:/Documents%20and%20Settings/PaulP/Local%20Settings/Temp/XPgrpwise/4914... 11/7/2008

# **EXHIBIT B**

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**From:** Krueger, Matthew (USAWIE) <Matthew.Krueger@usdoj.gov>  
**Sent:** Wednesday, July 19, 2017 1:43 PM  
**To:** Porter, Andrew C.; Johnson, Mel (USAWIE) 10  
**Cc:** dorbelle@ldm-law.com; DeLange, Carrie E.  
**Subject:** RE:

Andrew:

Yes, that is the email string we referenced in our response.

As to 404(b) evidence, we may offer evidence that arguably falls with 404(b). If so, we will you give reasonable notice of the particular evidence and propensity-free chain of relevance.

Regards,  
Matt

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**From:** Porter, Andrew C. [mailto:Andrew.Porter@dbf.com]  
**Sent:** Tuesday, July 18, 2017 3:43 PM  
**To:** Johnson, Mel (USAWIE) 10 <MJohnson10@usa.dof.gov>; Krueger, Matthew (USAWIE) <mkrueger@usa.dof.gov>  
**Cc:** dorbelle@ldm-law.com; DeLange, Carrie E. <Carrie.DeLange@dbf.com>  
**Subject:**

Mel or Matt,

In your response to the grand jury disclosure motion, you reference an email between Kelly and Paul Piikila regarding the \$250,000 loan to KYHKJG. Is the attached email the one you reference? If not could you email me the document to which you refer (or the Bates number)? Thanks!

Also, in terms of our 404(b) motion (such as it is), my memory is that you indicated you had no 404(b) evidence to present about Kelly. Am I correct?

Thanks!

Andrew

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