

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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CENTER FOR RESPONSIBLE ETHICS))	
IN WASHINGTON,))	
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Plaintiffs,))	
v.))	Case No. 1: 22-cv-03350-TSC
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U.S. DEPARTMENT OF HOMELAND))	
SECURITY, <i>et al.</i>))	
))	
Defendants.))	
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DECLARATION OF ROGER GREENWELL

I, Roger Greenwell, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Chief Information Officer (CIO) and Director, Enterprise Integration and Innovation at the Defense Information Systems Agency (DISA) of the United States Department of Defense (DoD), having held this role since October 2021. Prior to this, I served as the DISA CIO and agency Risk Management Executive. DISA provides, operates, and assures command, control, information-sharing capabilities and a globally accessible enterprise information infrastructure in direct support to multiple DoD components, including the Office of the Secretary of Defense. I am responsible for, among other things, overseeing the adoption and standardization of technology used by the DISA workforce, implementing standards and actions to achieve compliance with DISA and DoD policy, and ensuring that appropriate actions are being taken to secure DISA’s information systems, networks, and data.

2. My statements herein are based upon my personal experience and knowledge of DoD operations and information, my review of events and records in this case, and information furnished to me in the course of my official duties.

3. On January 11, 2021, DoD received FOIA requests from the Center for Responsibility and Ethics in Washington (CREW) seeking certain January 6-related records and communications (the “Requests”), including responsive “text messages” from former Acting Secretary of Defense Christopher Miller and former Chief of Staff to the Acting Secretary of Defense Kashyap Patel.

4. On August 5, 2022, DoD received a letter from the National Archives and Records Administration (NARA) inquiring about the potential loss of text messages from the government phones of former Acting Secretary of Defense Christopher Miller, former Chief of Staff Kashyap Patel, and former General Counsel Paul Ney (collectively, “DoD Officials”). DoD provided an initial response to NARA on October 24, 2022.

DoD’s SEARCHES FOR TEXT MESSAGES

5. After receiving the Requests, DoD initiated searches where it believed January 6-related communications and records would be located, including the DoD network account files of the DoD Officials, which include email files. DoD’s searches of the DoD network account files of the DoD Officials did not yield any responsive text messages.

6. Federal law and DoD regulations require that DoD officials and employees (users) preserve text messages that constitute federal records. Unless a DoD user forwards a copy of a text message to his or her DoD network email account or otherwise transfers it to the DoD network, any text message sent or received by the DoD user would not be stored on any DoD network. These messages may reside on the user’s mobile device, so long as they are not

deleted by the user, and may also be stored on a third-party mobile service provider's network (e.g., AT&T). As discussed in paragraph 15, the Deputy Secretary of Defense's August 3, 2022 memorandum modified this process by requiring DoD to preserve all text messages on mobile devices.

7. Although in possession of the DoD Officials' mobile devices, DoD was unable to search the devices for responsive text messages. DoD determined that when these mobile devices were turned in by the DoD Officials on the dates the DoD Officials left the agency, their mobile devices were subsequently reprovisioned by DoD IT technicians in accordance with the IT policy at that time. No images or backup copies of the mobile devices were created before being reprovisioned.

8. Reprovisioning is a standard procedure undertaken by IT staff to reset devices to their factory condition when a DoD user departs, in order to either decommission the device or reissue the device to another DoD user. A device that has been reprovisioned does not contain recoverable text message content from the prior user.

9. On or about January 20, 2021, former Acting Secretary of Defense Christopher Miller returned his DoD mobile device and left DoD. On or about January 21, 2021, former Chief of Staff to the Acting Secretary of Defense Kashyap Patel returned his DoD mobile device and left DoD. On or about January 20, 2021, former General Counsel Paul Ney returned his DoD mobile device and left DoD.

10. The DoD mobile devices of the DoD Officials were reprovisioned on or around January 20-22, 2021. Before DoD could initiate a search of the mobile devices for relevant text messages the mobile devices were reprovisioned and as a result did not contain any recoverable text messages to or from the DoD Officials.

DoD THIRD-PARTY MOBILE SERVICE PROVIDER INQUIRIES

11. Text messages sent by DoD mobile devices are serviced by a third-party mobile service provider. Text messages may be preserved by the third-party mobile service provider for a specified period of time in accordance with the mobile service provider's policy.

12. The DoD Officials used devices serviced by AT&T.

13. DoD made an inquiry to AT&T to ascertain if it preserved text messages sent or received by the DoD Officials. DoD was informed by AT&T that AT&T does not retain text messages beyond forty-eight (48) hours after the message is sent or received. AT&T further confirmed that at the time of DoD's inquiry, no text messages from the devices the DoD Officials used were retained by AT&T.

14. Based on DoD's findings that: the DoD Officials' mobile devices were reprovisioned before the devices could be searched; AT&T did not possess any of the DoD Officials' text messages at the time of DoD's inquiry; and no responsive text messages from the DoD Officials existed on DoD account network files, DoD was unable to confirm the existence of any responsive text messages, but DoD was able to conclude that no text messages from the DoD Officials were recoverable.

DoD TEXT MESSAGE RETENTION POLICY

15. As a supplemental means to retain text messages that may qualify as records under the Federal Records Act, on August 3, 2022, Deputy Secretary of Defense Kathleen Hicks directed all mobile device service providers within DoD to capture and save the data resident on DoD-provisioned mobile devices when devices are turned-in by users, prior to reprovisioning.

16. To reinforce the obligation DoD personnel have under DoD policy to retain text messages that qualify as records under the Federal Records Act, Deputy Secretary Hicks

subsequently directed mandatory supplemental training for all DoD personnel regarding their obligations under DoD policy with respect to records and information management for mobile data and text messages. Such training has been completed across DoD.

17. DoD working groups are further collaborating to define technical requirements for DoD mobile device service providers specific to records management. Updated DoD policy and guidance may be forthcoming based on these efforts.

Executed this 2nd day of March 2023, in Arlington, VA.

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ROGER S. GREENWELL