

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIA BEATRICE KELEHER [1],

Defendant.

CASE NUMBER: 19-431 (PAD)

**SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

COMES NOW the defendant, Julia Beatrice Keleher, through her undersigned counsel, and respectfully files this Second Notice of Supplemental Authority in support of her position that Counts One through Eleven of the Superseding Indictment should be dismissed as a matter of law for failure to state a claim in light of the United States' Department of Justice newly-announced position regarding confidential government information as a predicate for Wire Fraud, 18 U.S.C. §1343. In support thereof, Ms. Keleher states as follows:

1. Pending before the Court is Ms. Keleher's *Motion to Dismiss Counts One through Twenty-three of the Superseding Indictment* (Docket No. 429, "Motion"). In the Motion, Ms. Keleher argued the Supreme Court's decision in *Kelly v. United States*, 140 S.Ct. 1565 (2020), foreclosed the Superseding Indictment's attempt to allege money or property fraud premised on the notion that the object of the fraud, confidential government information, was "property." Ms. Keleher acknowledged that the Supreme Court had yet squarely to address the question. (*See Motion at 23-24*).
2. On February 11, 2021, Ms. Keleher filed a *Notice of Supplemental Authority* (Docket No. 465) informing the Court that the Supreme Court's had vacated the Second Circuit's

decision in the case of *Blaszczak v. United States*, which had affirmed a conviction premised on the disclosure of confidential governmental information and ordered the case remanded for “for further consideration in light of [the *Kelly* decision],” signaling the Supreme Court’s skepticism that a conviction can be sustained on the theory that confidential government information is “property.” See *Blaszczak v. United States*, Supreme Court Docket No. 20-5649.

3. On March 26, 2021, the government filed its *Consolidated Response to Defendants’ Motions to Dismiss Counts Relating to a Deprivation of Confidential Information*<sup>1</sup> addressing several motions to dismiss filed by various defendants on grounds similar to those raised by Ms. Keleher. (Docket No. 485). The government argued that dismissal was not warranted under *Kelly*, as “for over three decades the Supreme Court has recognized that the mail and wire fraud statutes criminalize schemes to deprive others of intangible as well as tangible property rights . . . and . . . nothing in *Kelly* or any other Supreme Court decision” has altered that fact. (*Id.* at 5).
4. With respect to the *Blaszczak* case, the government addressed it in a footnote, which suggested that the government was of the opinion that the Supreme Court’s remand to the Second Circuit was rather inconsequential to this case. The government’s footnote read as follows:

As Defendant Keleher stated in her “Notice of Supplemental Authority,” the Second Circuit recently affirmed the wire fraud convictions of defendants who participated in a scheme involving the misappropriation of a government entity’s confidential information for the benefit of hedge funds, which used that information to obtain a competitive advantage in trading stocks. Defendant Keleher correctly pointed out that the Supreme Court granted certiorari, vacated the Second Circuit’s decision, and remanded the case for further consideration in light of *Kelly*. What **Defendant Keleher omitted, however, is that the Supreme Court did**

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<sup>1</sup> Ms. Keleher will address the remainder of the government’s arguments in opposition in her reply.

**so at the request of the Office of the Solicitor General.** In any case, it is well-settled that a GVR [*i.e.*, a grant of *certiorari*, *vacatur*, and remand] has no precedential weight and does not dictate how the lower court should rule on remand. **To date, the case remains pending before the Second Circuit. The parties will, no doubt, keep this Court apprised of any developments in the *Blaszczak* case.**

(*Id.* at 8 n. 8)(emphasis ours)(citations and marks omitted)

5. The government thus concurrently admitted that the United States Department of Justice (“USDOJ”) requested that *Blaszczak* be remanded to the Second Circuit for further consideration in light of *Kelly*, while in the same breath suggesting that the case had no impact on the government’s ability to try Ms. Keleher for wire fraud under a theory of deprivation of confidential information. The government also vowed to keep the court apprised of any further developments in the *Blaszczak* case.
6. On April 2, 2021, in its brief on remand the U.S. Department of Justice confessed error in the case, requested the dismissal of eight counts of conviction (based on the treatment of confidential information as a property right), and announced a new policy sanctioned by the Solicitor General, which was to be followed by the USDOJ. The policy was categorical and unequivocal - **“it is now the position of the Department of Justice that in a case involving confidential government information, that information typically must have economic value in the hands of the relevant government entity to constitute “property” for purposes of 18 U.S.C. §§ 1343 and 1348”**. *United States v. Blaszczak, et al.*, Circuit No. 18-2811 at 7 (emphasis ours).
7. While the government in this case denied that the Supreme Court’s action in *Blaszczak* sent a clear signal that the conduct alleged in Counts One through Eleven of the Superseding Indictment cannot support wire fraud offenses, as confidential government information is not “property” for purposes of the statute, the USDOJ has now echoed the Supreme Court’s

sentiment and explicitly foreclosed the government's theory underlying Counts One through Eleven in this case.

8. Here, the DOE retained the information at issue (e.g. the names and position numbers of certain teachers) and Ms. Keleher's alleged disclosure of the information to Individual A no more deprived DOE of the information and transferred it to someone else than Blazczack deprived CMS of its confidential information and transferred it to someone else.

**WHEREFORE**, the defendant, Julia Beatrice Keleher, respectfully requests the Court take notice of the above and dismiss Counts One through Eleven as a matter of law, pursuant to *Kelly* and *Blaszczak*, for failure to state a claim.

Respectfully submitted on this 9th day of April 2021, in San Juan, Puerto Rico.

**I HEREBY CERTIFY** that on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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