

FULTON COUNTY SUPERIOR COURT  
STATE OF GEORGIA

STATE OF GEORGIA,

V.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

CASE No. 23SC188947

JUDGE MCAFEE

**MOTION TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF O.C.G.A § 17-5-32**

COMES NOW, Kenneth Chesebro, by and through undersigned counsel, pursuant to O.C.G.A. § 17-5-32(d), and asks this Honorable Court to exclude and suppress any evidentiary documents that were obtained via search warrants in violation of O.C.G.A. § 17-5-32(c). In support of his request Mr. Chesebro shows as follows:

**PROPOSED FINDINGS OF FACT**

On July 20, 2023, Fulton County Superior Court Judge Dempsey signed a search warrant for Mr. Chesebro's MSN email account. This search warrant was presented to Judge Dempsey by Fulton County District Attorney's Office Senior Investigator Trina Swanson-Lucas. Mr. Chesebro was subsequently indicted on August 14, 2023.

Two facts stand out as important, and fatal to the search warrant. First, Section 17-5-32(c) authorizes the use of warrants to search and seize attorney documents where "there is probable cause to believe that documentary evidence will be destroyed or secreted if a search warrant is not issued," yet on the date the warrant issued there existed no such concern, because months earlier Microsoft had archived all the e-mails in

question, pursuant to a preservation order.<sup>1</sup> Second, despite the detailed provisions of Section 17-5-32(c)(4), designed to minimize the intrusiveness of a search of an attorney's documents, by involving a person "who appears to have possession or control of the items sought," none of the three lawyers representing Mr. Chesebro (Adam Kaufmann, Scott Grubman, and Manny Arora) was ever contacted to schedule a hearing for review of the obtained documents in order to minimize review of documents falling outside the scope of the warrant, and to ensure that there would be no review by prosecutors of documents presumptively protected by the attorney-client privilege or work-product doctrine, absent a determination by the Court regarding whether there was a basis for piercing privilege.

#### **CITATION TO AUTHORITY AND ARGUMENT**

O.C.G.A § 17-5-32 is the controlling statute for search warrants pertaining to documentary evidence in the possession or custody of attorneys. It is clear that the Legislature intended to authorize the use of search warrants directed at attorneys only when proceeding by way of subpoena carries a risk of the evidence being destroyed or secreted. The Legislature also intended to provide an additional layer of protection for attorneys, by requiring the use of a special master. In doing so, the Legislature created a two-pronged system to ensure that attorneys are able to maintain attorney-client privilege and protected work product without needlessly interrupting an ongoing investigation. The system so created outlines a plan in which "[a]t the time the warrant is issued[,] the court shall appoint a special master to accompany the person who will

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<sup>1</sup> See Preservation Letter, Attach. A.

serve the warrant.” O.C.G.A. § 17-5-32(c)(1). “Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested.” *Id.* The statute also provides:

If the party who has been served states that an item or items should not be disclosed, such items shall be sealed by the Special Master and taken to the superior court for a hearing. At the hearing[,] the party whose premises has been searched shall be entitled to raise any issues which may be raised pursuant to O.C.G.A. § 17-5-30 as well as claims that the item or items are privileged or claims that the item or items are inadmissible because they were obtained in violation of the Code section.

O.C.G.A § 17-5-32(c)(2).

Finally, Section 17-5-32(d) states that “evidence obtained in violation of this Code section **shall** be excluded and suppressed from the prosecution’s case-in-chief or in rebuttal, and such evidence **shall not be** admissible either as substantive evidence or for impeachment purposes” (emphasis added).

Here, the search warrant was drafted and issued to Microsoft by an investigator of the Fulton County District Attorney’s Office. Significantly, the warrant specifies that Microsoft is to send the requested information to a *filter team* within the District Attorney’s Office. *See* Search Warrant at 2 (Attach. B).<sup>2</sup> It is striking that the information was first sent to a filter team, which is an independent group whose sole purpose is to identify and separate privileged information within the seized items. This is analogous to the provisions of Section 17-5-32(c) which require that a special master be appointed

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<sup>2</sup> The warrant further identifies Lester Tate of Cartersville, Georgia as the recipient on behalf of the Filter Team. *See* Search Warrant, Attach. B.

to hear any claims regarding privilege and to conduct the search without the participation of law enforcement or the prosecutor serving the warrant. Thus, it is clear that the District Attorney's Office was aware of the requirements of Section 17-5-32 and drafted its search warrant in an effort to appear that it was complying with the statute.

However, the search warrant does not actually comply with the statute. Here, the search warrant failed to appoint a special master to accompany the person who served the warrant, or even notify Mr. Chesebro or any counsel for him of the items being sought under the search warrant. *See* O.C.G.A. § 17-5-32(c)(1). Indeed, no qualified special master accompanied the person serving the warrant or notified anyone for the defense.<sup>3</sup>

Further, it is apparent from the affidavit attached to the search warrant that the

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<sup>3</sup> There is no basis for the District Attorney to suggest that the procedures set out in Section 17-5-32(c) to minimize the intrusiveness of the search of an attorney's documents can be dispensed with on the theory that Mr. Chesebro was a "suspect." Mr. Chesebro was one of dozens of witnesses who waived objection to appearing before the special grand jury, and prior to the indictment the District Attorney's Office never gave any indication that he was regarded as a suspect, despite the fact that it did send formal target letters to co-defendants and unindicted co-conspirators in this case. *See* Dennis Aftergut et al., *Why the "Target Letters" Fani Willis Sent Out in Her Trump Probe Are Such a Big Deal*, SLATE (July 19, 2022, 6:53 PM), <https://slate.com/news-and-politics/2022/07/fani-willis-trump-probe-target-letters-rudy-ouch.html>. Further, whether or not an attorney is a suspect is irrelevant if the factual predicate set out by the Legislature for authorizing *any* warrant for an attorney's documents has not been met: that "there is probable cause to believe that documentary evidence will be destroyed or secreted if a search warrant is not issued . . . ." O.C.G.A. § 17-5-32(c). Here there was no probable cause to believe the e-mails, which had been archived off cloud storage by Microsoft months earlier, would be at risk if a search warrant did not issue. Because the statute's factual predicate for issuing a warrant for an attorney's documents could not be met, the proper course was for the District Attorney's Office to subpoena the documents from Microsoft, giving Mr. Chesebro's counsel notice of the subpoena.

Fulton County District Attorney's Office already had access to several emails from Mr. Chesebro that are undeniably protected under attorney-client privilege. For example, the affidavit specifically references an e-mail Mr. Chesebro sent to counsel for the Trump Campaign, Mr. Rudolph Giuliani. *See* Search Warrant Aff. & Appl. (Attach. B) at 7, ¶ 11. These kinds of communications are the exact type of communications that O.C.G.A § 17-5-32 is meant to protect. It is obvious that the Fulton County District Attorney's Office understood this because it implemented a filter team to review the warrant returns. Despite that, the State has backdoored its way into protected communications, and then used those same protected communications as a means to obtain further protected documents. This is in direct conflict with the Legislature's careful articulation of when a warrant may issue to obtain an attorney's documents, and what procedures must be employed, when such a warrant does issue, to minimize the intrusiveness of the search, under O.C.G.A § 17-5-32.

Upon receiving the returns of the warrant, the filter team never gave Mr. Chesebro or his counsel the opportunity to state that an item or items should not be disclosed due to privilege. No such items have been sealed, and no hearing has been provided as required by the statute. The search warrant and its service are therefore defective, and the seizure — and any subsequent search of the requested materials — are illegal.

Even setting aside the statutory dictates, what happened here following the seizure of the e-mails from Microsoft can hardly be termed a "reasonable" search within the meaning of the Fourth Amendment. Nobody is permitted to review privileged information other than a neutral and detached judge whose task is to ensure that

privileged information is not shared with any law enforcement or prosecuting agency. See generally *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159 (4th Cir. 2019); *In re Search Warrants*, 2021 WL 5917983, No. 1:21-CV-04968-SDG (N.D. Ga. Dec. 15, 2021); *In re Sealed Search Warrant & Application for Warrant*, 11 F.4th 1235 (11th Cir. 2021).<sup>4</sup>

The prosecution's half-hearted attempt here to disguise its search warrant as compliant with O.C.G.A. § 17-5-32 is hardly the first sign of trouble on this front. The Fulton County District Attorney's Office had already violated this Code section in another case less than two months before the search warrant here was issued.<sup>5</sup> There can be little doubt that the Office will continue to violate the statute in future cases unless and until a judge applies the remedy for such conduct identified by the Legislature: exclusion of the improperly obtained evidence.

For these reasons, the warrant is defective, and the search and seizure predicated thereon is illegal. Pursuant to O.C.G.A § 17-5-32(d) and § 17-5-30, Mr. Chesebro prays that the Court suppress and exclude any evidence derived from the search warrant.

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<sup>4</sup> If any law enforcement officer or member of the prosecution team has reviewed any privileged information pending a decision in this matter, that should immediately be disclosed to the Court, and the person who has reviewed any privileged information should be disqualified from any participation in the case, and warned that if the person discloses what was reviewed, it will further taint other members of the prosecution team and subject the person to sanctions from the Court.

<sup>5</sup> In May 2023, the Fulton County District Attorney's Office seized a computer belonging to a defense attorney in the YSL RICO case without complying with O.C.G.A. § 17-5-32. A judge later allowed a second search, ostensibly in compliance with the statute, to stand after prosecutors obtained a new warrant after the first search was declared unlawful. See Shaddi Abusaid, *YSL Case: Judge Allows Search of Defense Attorney's Laptop*, ATLANTA J.-CONST. (Aug. 11, 2023), <https://www.ajc.com/news/crime/ysl-case-judge-allows-search-of-defense-attorneys-laptop/XA7D322CFJEXNMMPU6UB6N6H4Y>.

WHEREFORE, Mr. Chesebro requests that this Honorable Court grant this motion and suppress and exclude any evidence obtained through the defective search warrant in violation of O.C.G.A. § 17-5-32.

Respectfully submitted, this the 21st day of September, 2023.

/s/ Scott R. Grubman  
SCOTT R. GRUBMAN  
Georgia Bar No. 317011  
Counsel for Defendant

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Dunwoody, Georgia 30338  
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/s/ Manubir S. Arora  
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FULTON COUNTY SUPERIOR COURT  
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CASE No. 23SC188947

JUDGE MCAFEE

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing *Motion to Suppress Evidence Obtained in Violation of O.C.G.A § 17-5-32* via the e-filing system.

This the 21st day of September, 2023.

/s/ Scott R. Grubman  
SCOTT R. GRUBMAN  
Georgia Bar No. 317011  
Counsel for Defendant

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/s/ Manubir S. Arora  
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# EXHIBIT A

OFFICE OF THE FULTON COUNTY DISTRICT ATTORNEY  
ATLANTA JUDICIAL CIRCUIT  
136 PRYOR STREET SW, 3RD FLOOR  
ATLANTA, GEORGIA 30303

*Fani T. Willis*  
District Attorney



TELEPHONE 404-612-4639

November 3, 2022

Microsoft Corporation, USA  
Attn: Microsoft Law Enforcement and National Security Team  
One Microsoft Way  
Redmond, WA 98052  
<https://leportal.microsoft.com>

**RE:** Request for preservation of e-mail records for kenchesebro@msn.com

Dear Microsoft Law Enforcement and National Security Team,

The Office of the Fulton County District Attorney, Atlanta Judicial Circuit (hereinafter referred to as "the District Attorney"), is conducting a criminal investigation that involves one or more e-mail addresses serviced by Microsoft Corporation, USA. Pursuant to 18 U.S.C. § 2703(f), we are requesting that you preserve:

- The content of all e-mails associated with the account including stored or preserved copies of emails sent to and from the account, draft emails, deleted emails, archived emails, the source and destination addresses associated with each email, the date and time at which each email was sent, and the size and length of each email, as well as the entirety of header information for each email;
- All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
- The types of service utilized and/or associated with this account to include all identifiers for these services and any connection logs associated with the usage of these services; and
- All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files.

The items to be preserved are from the following e-mail account serviced by Microsoft Corporation, USA and for the dates of:

1. E-mail address: kenchesebro@msn.com

2. Dates: October 1, 2020 at 0000 hour (UTC) to February 28, 2021 at 2359 hours (UTC)

We expect to obtain a court order or other process in the next 90 days. As such, we are requesting that said records be retained for a period of 90 days from receipt of this request, pursuant to 18 U.S.C. § 2703(f)(2).

You are also requested to not disclose this request to the subscriber of this email address or any other person associated with the subscriber.

Sincerely,  
/s/Trina Swanson-Lucas  
Trina Swanson-Lucas  
Senior Investigator  
Fulton County District Attorney's Office  
Atlanta Judicial Circuit  
136 Pryor Street SW  
3<sup>rd</sup> floor  
Atlanta, Georgia 30303  
404-612-5855

## EXHIBIT B

Fulton County District Attorney's Office  
Case Number: 2022EX001279

**WARRANT FOR SEARCH AND SEIZURE – FILED UNDER  
SEAL**

**TO: ALL PEACE OFFICERS OF THE STATE OF GEORGIA**

An affidavit and sworn testimony having been presented before this Court by **Trina Swanson-Lucas**, a Senior Investigator employed with the Fulton County District Attorney's Office, and sworn as a peace officer to enforce the criminal laws of the State of Georgia, who, in her official capacity and after being duly sworn, deposes and on oath says that she has probable cause to believe that located within the custody of:

**Microsoft Corporation**  
**One Microsoft Way**  
**Redmond, WA 98052**

there is certain information and data which is subject to search and seizure under O.C.G.A. §§ 17-5-21(a)(1) & 17-5-21(a)(5) and 18 U.S.C. § 2701 et seq. as evidence of the crimes of O.C.G.A. §§ 16-4-8 & 16-9-23 (Conspiracy to Commit Impersonating a Public Officer); O.C.G.A. §§ 16-4-8 & 16-9-1(b) (Conspiracy to Commit Forgery in the First Degree); O.C.G.A. §§ 16-4-8 & 16-10-20 (Conspiracy to Commit False Statements and Writings); O.C.G.A. §§ 16-4-8 & 16-10-20.1 (Conspiracy to Commit Filing False Documents); and O.C.G.A. § 16-14-4 (Conspiracy to Commit Violation of the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act). Said crimes are related to the administration, counting, and transmitting of votes of 2020 election in Georgia and other states; said crimes are further related to conduct leading up to and after the January 6, 2021 joint session of the United States Congress in Washington, D.C.

The below-listed data and information regarding the **kenchesebro@msn.com** account serviced by the Microsoft Corporation (Microsoft), believed to belong to and used by Kenneth Chesebro; said data being stored and maintained by Microsoft from **November 4, 2020 at 0000 hours (UTC), to January 10, 2021 at 2359 hours (UTC)** is to be seized:

1. Subscriber registration information: The name, account creation information, associated e-mail address(es), associated recovery e-mail address(es), associated phone number(s), associated recovery phone number(s), physical address associated with the foregoing account.
2. Sign in IP addresses and associated time stamps.
3. Device information: Logs as to the device(s) used by and associated with this account to include said device(s)' Electronic Serial Number (ESN), Integrated Circuit Card ID Number (ICCID), International Mobile Subscriber Identity (IMSI), International Mobile Equipment Identity (IMEI).

4. E-mails: The contents of e-mails sent from or received by the above account, including any attachments, whether such e-mails are deleted, stored, or preserved, along with any draft e-mails and associated attachments, the source and destination addresses associated with all such e-mails, the date and time at which each e-mail was sent or received, the size and length of each e-mail, and the true and accurate header information including the actual Internet Protocol (IP) addresses of the sender and the recipient of these emails. The e-mails to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
5. Non-content information. The non-content information to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
6. Address books and calendars associated with the above referenced Microsoft account. The information to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
7. Any photos or videos captured or stored in connection with the Microsoft account identified above, to include any metadata attached to such images or videos (camera make, model, capture date and time, capture latitude and longitude, etc.), and original sized images associated with those images and videos.
8. The electronic data listed above to be seized shall only be those reasonably related to and evidence of the commission of the above-listed crimes.

The Court having considered the evidence presented before it this date is satisfied that there is probable cause to believe that the evidence so described is presently concealed in and on the property herein described, and that grounds for issuance of this warrant are true.

**THEREFORE, YOU ARE HEREBY COMMANDED** to forthwith execute this warrant and to seize from the above-named **Microsoft Corporation** the data and information listed above concerning Microsoft account **kenchesebro@msn.com** from **November 4, 2020 at 0000 hours (UTC), to January 10, 2021 at 2359 hours (UTC).**

**IT IS FURTHER ORDERED AND COMMANDED** that a copy of this Warrant shall be left with the appropriate designee of Microsoft and a return, under oath, shall be filed with this Court, showing the manner of execution of this Warrant within ten (10) days of its execution.

**IT IS FURTHER ORDERED AND COMMANDED** that Microsoft, upon receipt of this warrant, send the data to the Fulton County District Attorney's Office Filter Team in accordance with Attachment A to this warrant.

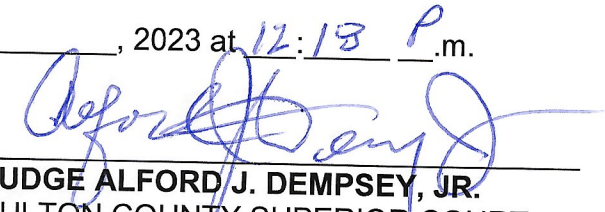
**IT IS FURTHER ORDERED AND COMMANDED** that, pursuant to the State's request made under Georgia Uniform Superior Court Rule 21, the Court having found that the matters contained in this search warrant, affidavit, and return are part of an ongoing investigation that would be jeopardized by premature disclosure of information

STATE OF GEORGIA  
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WARRANT FOR SEARCH AND SEIZURE  
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contained herein and that such potential harm clearly outweighs the public interest in inspecting this application, affidavit, and search warrant, this application, affidavit, and search warrant shall be sealed from public access in their entirety for a period beginning from the filing of this application, affidavit, and search warrant, and ending on October 31, 2023.

This 20 day of July, 2023 at 12:18 P.m.

  
\_\_\_\_\_  
JUDGE ALFORD J. DEMPSEY, JR.  
FULTON COUNTY SUPERIOR COURT  
ATLANTA JUDICIAL CIRCUIT

**Attachment A - Filter Policy**

1. The Fulton County District Attorney's Office (FCDA) Filter Team ("Filter Team") shall receive the seized data from the holder of the data via e-mail delivery to lester@akin-tate.com or via physical delivery to:  
Fulton County District Attorney's Office  
c/o Lester Tate  
P.O. Box 201468  
Cartersville, GA 30120
2. The Filter Team shall process the seized items and provide them to counsel for the privilege holder, on a rolling basis, so that counsel for the privilege holder may perform the initial privilege review. Within fifteen (15) days of receipt of these items, counsel for the privilege holder shall release all non-privileged items to the FCDA investigative/prosecution team and provide a privilege log to the Filter Team for all items for which they assert a privilege.
3. The Filter Team shall be comprised of attorneys and staff from outside the FCDA. Any attorney and staff involved in the filter review shall be walled off from the underlying investigation.
4. The Filter Team is permitted to review any items listed on the privilege holder's privilege log and may challenge any of the privilege holder's privilege designations.
5. The Filter Team and the privilege holder's counsel shall confer and attempt to reach a resolution as to those items challenged by the Filter Team.
6. If the parties are unable to reach a resolution, the parties shall file a joint notice with the Court. Either the Court or a special master shall rule on the parties' privilege disputes.
7. The Filter Team will provide to the investigative/prosecution team only those items which are related to and evidence of the commission of certain crimes, and for which the parties agree that no privilege exists or for which an assertion of privilege has been overruled.

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**ORDER DIRECTING MICROSOFT CORPORATION TO NOT DISCLOSE GOVERNMENT REQUEST**

The State of Georgia, represented by Fulton County District Attorney, Fani T. Willis, has obtained a warrant for certain data and information from Microsoft Corporation concerning the following data and time period:

- i. E-mail address: **kenchesebro@msn.com**
- ii. Time period: **November 4, 2020 at 0000 hours (UTC), to January 10, 2021 at 2359 hours (UTC)**

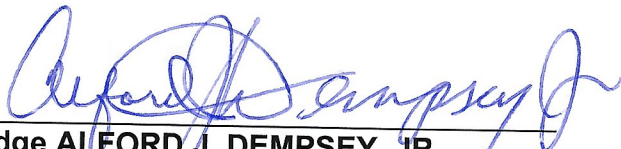
The State has also applied to the Court, for an order commanding Microsoft Corporation, a provider of electronic communications services and remote computing services, not to notify any other person of the existence of said warrant. In support of its request, the State relies on 18 U.S.C. § 2705(b), which states "The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial."

The Court, having considered the facts set forth in the affidavit for said warrant, hereby **ORDERS** that no agent, employee, or any other person or entity associated legally or otherwise with Microsoft Corporation or its affiliates shall disclose the existence of said warrant. This ORDER shall remain in effect until October 31, 2023.

**HEREIN NOT FAIL, UNDER THE PENALTY OF LAW.**

SO ORDERED this 20 day of July, 2023.

  
**Judge ALFORD J. DEMPSEY, JR.**  
FULTON COUNTY SUPERIOR COURT  
ATLANTA JUDICIAL CIRCUIT

Fulton County District Attorney's Office  
Case Number: 2022EX001279

**AFFIDAVIT AND APPLICATION**  
**FOR SEARCH WARRANT**  
**- FILED UNDER SEAL**

Personally appeared before me, Trina Swanson-Lucas, a Senior Investigator employed with the Fulton County District Attorney's Office, and sworn as a peace officer to enforce the criminal laws of the State of Georgia, who, in her official capacity and after being duly sworn, deposes and on oath says that she has probable cause to believe that located within the custody of:

**Microsoft Corporation**  
**One Microsoft Way**  
**Redmond, WA 98052**

there is certain information and data which is subject to search and seizure under O.C.G.A. §§ 17-5-21(a)(1) & 17-5-21(a)(5) and 18 U.S.C. § 2701 et seq. as evidence of the crimes of O.C.G.A. §§ 16-4-8 & 16-9-23 (Conspiracy to Commit Impersonating a Public Officer); O.C.G.A. §§ 16-4-8 & 16-9-1(b) (Conspiracy to Commit Forgery in the First Degree); O.C.G.A. §§ 16-4-8 & 16-10-20 (Conspiracy to Commit False Statements and Writings); O.C.G.A. §§ 16-4-8 & 16-10-20.1 (Conspiracy to Commit Filing False Documents); and O.C.G.A. § 16-14-4 (Conspiracy to Commit Violation of the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act). Said crimes are related to the administration, counting, and transmitting of votes of 2020 election in Georgia and other states; said crimes are further related to conduct leading up to and after the January 6, 2021 joint session of the United States Congress in Washington, D.C.

**A. Target account**

This warrant and affidavit applies to data associated with the **kenchesebro@msn.com** account serviced by the Microsoft Corporation (Microsoft), believed to belong to and used by Kenneth Chesebro; said data being stored and maintained by Microsoft.

**B. Information to be seized by the State**

The State is requesting the below-described information and electronic data that is evidence of violation(s) of O.C.G.A. §§ 16-4-7, 16-4-8, 16-9-23, 16-9-1(b), 16-10-20, 16-10-20.1, and 16-14-4 from November 4, 2020 at 0000 hours (UTC), to January 10, 2021 at 2359 hours (UTC):

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1. Subscriber registration information: The name, account creation information, associated e-mail address(es), associated recovery e-mail address(es), associated phone number(s), associated recovery phone number(s), physical address associated with the foregoing account.
2. Sign in IP addresses and associated time stamps.
3. Device information: Logs as to the device(s) used by and associated with this account to include said device(s)' Electronic Serial Number (ESN), Integrated Circuit Card ID Number (ICCID), International Mobile Subscriber Identity (IMSI), International Mobile Equipment Identity (IMEI).
4. E-mails: The contents of e-mails sent from or received by the above account, including any attachments, whether such e-mails are deleted, stored, or preserved, along with any draft e-mails and associated attachments, the source and destination addresses associated with all such e-mails, the date and time at which each e-mail was sent or received, the size and length of each e-mail, and the true and accurate header information including the actual Internet Protocol (IP) addresses of the sender and the recipient of these emails. The e-mails to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
5. Non-content information. The non-content information to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
6. Address books and calendars associated with the above referenced Microsoft account. The information to be seized and provided by Microsoft shall only be those reasonably related to and evidence of the commission of the above-listed crimes.
7. Any photos or videos captured or stored in connection with the Microsoft account identified above, to include any metadata attached to such images or videos (camera make, model, capture date and time, capture latitude and longitude, etc.), and original sized images associated with those images and videos.
8. The electronic data listed above to be seized shall only be those reasonably related to and evidence of the commission of the above-listed crimes.

This affidavit is made in support of an application for a search warrant under O.C.G.A. §§ 17-5-21(a)(1) & 17-5-21(a)(5) and 18 U.S.C. § 2701 et seq. The information to be searched and seized is maintained on computer servers controlled by Microsoft, a provider of electronic communication services and remote computing services.

**C. Background Information**

1. I am a POST-certified peace officer presently employed as a Senior Investigator with the Fulton County District Attorney's Office Anti-Corruption Unit. I have been employed as a Fulton County District Attorney's Office Senior Investigator for

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approximately 2.5 years assigned to criminal investigations and previously served as an investigator with the DeKalb County District Attorney's Office for approximately 18 years. As a result of my training and experience, I am familiar with tactics, methods, and techniques involving the use of social media, electronic communication, and other technology commonly used in the planning and commission of crimes.

2. As part of my duties, I routinely gather evidence from providers of electronic communication services and remote computing services, which includes electronic mail providers, cell phone service providers, social media companies, and companies that provide and store data on the internet (the "cloud").
3. The information set forth in this affidavit is based on professional experience, professional training, personal experience, or a combination of these elements.
4. In my experience as a law enforcement officer, people routinely use electronic devices in their everyday lives. Many of these devices, such as cell phones, utilize wireless or cellular to connect to and provide the device's user connectivity to services provided by various providers of electronic communication services. These electronic communication services include, but are not limited to, phone calls; e-mail; text messaging such as short message service (SMS) and multimedia messaging service (MMS); Internet Protocol-based messaging such as Apple iMessage, WhatsApp, or Telegram; websites; and social media networks.
5. Electronic devices are so ubiquitous, portable, and affordable that it is not uncommon for a person to have one or more devices on their person throughout the day. Various information about the device, the person using the device, and how the device is being used can be stored on the device itself and/or on a server run by a third-party provider of electronic communication services who is providing services to that device.
6. People routinely use electronic devices such as cell phones to research, plan, coordinate, facilitate, and execute crimes. Additionally, the data stored on the phone or on servers in the cloud can include visual evidence of the commission of the crime, such as photographs, videos, or audio recordings.
7. People likewise routinely use e-mail to plan, coordinate, facilitate, and execute crimes. Archives and copies of e-mail stored on computer and servers in the cloud can include evidence of the commission of crimes including the texts of these e-mails, attachments to the e-mails, and can include visual evidence of the commission of the crime, such as photographs, videos, or audio recordings.
8. Evidence is also frequently found on electronic devices or servers linked to electronic devices as these devices are used after the crime has happened by the perpetrators of the crime to brag, confess, and share details of the crime they participated in. Information from these communications may also indicate the level of involvement of the parties to the communication and may even exonerate either party.
9. In like fashion, people involved in crimes who do not necessarily plan their crimes

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will also communicate with others when the crime or incident is occurring as excited utterances, and/or to seek advice/assistance from others to prevent them from being implicated in the crime. These utterances and other communications can be evidence of the person's involvement and make those they communicated with a potential witness.

10. Microsoft is a technology company that provides a variety of services to its users to include, e-mail (MSN), data storage (OneDrive), and website browsing (the Microsoft Edge web browser and the Microsoft search engine Bing).

**D. Jurisdiction**

1. This Court has jurisdiction to issue the requested warrant because it is a court of inquiry and which can issue search warrants under state laws pursuant to O.C.G.A. § 17-5-21(a) and is therefore a "court of competent jurisdiction" as defined by 18 U.S.C. § 2711(3)(B) that can issue search warrants pursuant to the Stored Communications Act (18 U.S.C. § 2701 et seq.) for information and data under the custody and control of provider of electronic communication services and remote computing services. As set forth herein, there is probable cause to believe that on the computer systems of Microsoft, there exists evidence concerning violations of O.C.G.A. §§ 16-4-8 & 16-9-23 (Conspiracy to Commit Impersonating a Public Officer); O.C.G.A. §§ 16-4-8 & 16-9-1(b) (Conspiracy to Commit Forgery in the First Degree); O.C.G.A. §§ 16-4-8 & 16-10-20 (Conspiracy to Commit False Statements and Writings); O.C.G.A. §§ 16-4-8 & 16-10-20.1 (Conspiracy to Commit Filing False Documents); and O.C.G.A. § 16-14-4 (Conspiracy to Commit Violation of the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act). This affidavit is made in support of an application for a search warrant under O.C.G.A. §§ 17-5-20 et seq. and 18 U.S.C. § 2701 et seq. to require Microsoft, a provider of electronic communication services and remote computing services, to disclose to the State records and other information in its possession pertaining to the **kenchesebro@msn.com** account.

**E. Case-Specific Facts Establishing Probable Cause**

1. I have knowledge of this case from my own involvement and from the collective knowledge of law enforcement. This affidavit is based upon my participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals, as well as my training and experience. Because this affidavit is being submitted for the limited purpose of obtaining the requested information, it does not include all the facts that I have learned during the course of this investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated. In addition, unless otherwise indicated, statements by others referenced in this affidavit were not necessarily made to me but may have been provided to me by someone else to

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whom I have spoken, whose report I have read (and who in turn may have had either direct or indirect knowledge of the statement), or may have been said in recorded conversations I have listened to. Similarly, unless otherwise indicated, information in this affidavit resulting from surveillance may not necessarily set forth my personal observations but may have been provided to me by other law enforcement agents who observed the events, and to whom I have spoken or whose report I have read. Except as otherwise noted, the information set forth in this affidavit is within my personal knowledge or has been provided to me by law enforcement officers. I have not set forth every fact learned during the course of this investigation. Rather, I have set forth facts I believe are necessary to establish probable cause for the issuance of search and seizure warrants requested in this affidavit.

2. This investigation began on or about January 2, 2021, when, following the 2020 presidential election in Georgia, former President Donald Trump and other individuals associated with his presidential campaign placed a telephone call to Georgia Secretary of State Brad Raffensperger. During the telephone call, which was widely published in the media, former President Trump made multiple false claims of widespread voter fraud in Georgia and made multiple requests of the Secretary of State that, if carried out, may have disrupted the lawful administration of the 2020 elections in the State of Georgia.
3. The false claims of widespread voter fraud made by former president Trump included allegations that "thousands and thousands" of ballots were cast under the same voters' names, that 4,502 ballots were cast for individuals not registered to vote, that 4,925 ballots were cast for individuals who did not reside in Georgia, that "close to 5,000" ballots were cast for deceased voters, that "3,000" pounds of ballots were illegally shredded or otherwise destroyed, and that poll workers had intentionally and fraudulently cast "at least 18,000" illegal votes for President Joseph R. Biden.
4. Attorney Kenneth Chesebro, whose e-mails are the subject of this search warrant, wrote a memorandum dated November 18, 2020 to Wisconsin Trump Campaign lawyer Jim Troupis titled "The Real Deadline for Settling a State's Electoral Votes." In this memorandum, Chesebro stated that January 6, 2021 was the "real deadline" for when a joint session of United States Congress was to meet for the counting of electoral votes. Chesebro also said that it was necessary under federal law for electors to meet on December 14, 2020. This memorandum was central to later events involving Chesebro and others in Trump's attempt to overturn the results of the 2020 presidential election in Georgia, Wisconsin, and other states.
5. On November 20, 2020, pursuant to O.C.G.A. § 21-2-499, Secretary of State for the State of Georgia Brad Raffensperger certified the votes cast in the November 3, 2020 election in Georgia. Georgia Governor Brian Kemp later certified the slate of presidential electors which received the highest number of votes: the Democratic slate. On December 7, 2020, Secretary of State Raffensperger recertified the votes cast after a recount and Governor Kemp recertified the same slate of electors: the Democratic slate.
6. As part of the RICO conspiracy, Chesebro's co-conspirator John Eastman prepared

a memorandum titled "The Constitutional Authority of State Legislatures To Choose Electors." Said memorandum laid out that state legislatures, including Georgia's legislature, had the ability to "tak[e] back their plenary power to determine the manner of choosing electors, even to the point of adopting a slate of electors themselves." John Eastman was an attorney who, by his own admissions, was "retained by former President Trump and his campaign committee to represent the former President." On December 7, 2020, Eastman also sent Chesebro's November 18, 2020 memorandum to Trump's attorney Rudolph Giuliani, thus showing that Eastman and Chesebro (through Eastman) were working with Giuliani on the false elector plot in this time frame.

7. Despite Governor Kemp's certification and recertification of the votes in Georgia, in a December 9, 2020 memorandum titled "Statutory Requirements for December 14 Electoral Votes," Chesebro wrote that Republican electors could "take the essential steps needed to validly cast and transmit their votes." Said memorandum laid out the logistical details of when the electors were to meet, who was required to meet, what would happen at the meeting, what documents were required to be completed, and to whom the documents were required to be delivered. Chesebro also specifically said as it relates to Georgia, "it seems imperative that every effort be made to secure the participation of all 16 electors, and to avoid making a substitution if at all possible." Chesebro sent this memorandum and his November 18, 2020 memorandum from the **kenchesebro@msn.com** e-mail account to then-Georgia Republican Party Chairman David Shafer on December 10, 2020. In this e-mail, Chesebro stated that high-level Trump campaign officials had asked him to contact Shafer to "help with logistics of the electors . . . in casting their votes on Monday [December 14, 2020]."
8. Chesebro then sent a follow up e-mail to Shafer and other Republican presidential electors on December 10, 2020 and stated that he had spoken with Rudolph Giuliani and attached documents to be used by the Republican electors on December 14, 2020. He stated in this e-mail that Giuliani was hopeful that the "Georgia electors will go along with the strategy" on December 14, 2020. He also gave more details on the specific steps that Shafer needed to take to get these documents to the President of the United States Senate, Michael Pence, on January 6, 2021. This e-mail shows that Chesebro went beyond merely providing a theoretical framework of how election law works and is instead evidence of Chesebro's advocating on behalf of Rudolph Giuliani for the Georgia Republican nominee electors to violate Georgia law on December 14, 2020 by representing that they were the duly-elected presidential electors in the State of Georgia. A third document was titled "HOW TO CAST ELECTORAL VOTES IN GEORGIA" and gave specific instructions on which forms to fill out, how many copies to make, how to prepare the envelopes to mail the documents, and who exactly needs to sign which documents.
9. Furthermore, on December 11, 2020, Chesebro e-mailed from the **kenchesebro@msn.com** e-mail account to Michael Roman an e-mail titled "7 documents for GA electors" containing 6 separate Microsoft Word documents. Michael Roman was the head national election-day operations officer for the Trump campaign in 2020. All of these documents were related to Georgia and were

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templates for the Republican nominee electors to use on December 14, 2020. Specifically, one of the documents was titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA" and falsely stated that the Republican electors were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia." One of the other documents was a document titled "MEMORANDUM" meant to be sent by mail with the "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA" to the President of the United States Senate, the Archivist of the United States Senate, the Georgia Secretary of State, and the Chief Judge for the United States District Court in the Northern District of Georgia.

10. On December 11, 2020, Michael Roman forwarded Chesebro's December 11, 2020 e-mail to Robert Sinners, who was the head Trump campaign election-day operations officer in Georgia. Sinners then e-mailed Chesebro at the **kenchesebro@msn.com** e-mail account and asked if there was a missing document. Chesebro responded to Sinners from the **kenchesebro@msn.com** e-mail account and included an additional document for Sinners to use to fill vacancies and in a December 13, 2020 e-mail response to Sinners and Roman stated that "the Mayor wants to keep this quiet until after all voting is done." This reference to "the Mayor" likely means Giuliani, who was former mayor of New York City. Sinners then forwarded these documents to David Shafer.
11. On December 13, 2020, Chesebro wrote an e-mail to Rudolph Giuliani and outlined a plan wherein Vice President Michael Pence would, on January 6, recuse himself from both presiding over the joint session of Congress and from opening and counting electoral college votes, on grounds that he has a conflict of interest. According to Chesebro, a replacement would then preside over the joint session and refuse to count votes from contested states (including Georgia). This would then lead to a process whereby Pence or the replacement could then have state legislatures appoint its own electors. On January 2, 2021 and January 4, 2021 Chesebro forwarded this e-mail to John Eastman. Eastman would then propose this "return to the state legislatures" plan directly to Pence and Pence's advisors, who flatly rejected this anti-democratic plan as unconstitutional.
12. In Georgia, the effort to carry out the false elector scheme was partly coordinated and organized by David Shafer. Shafer was also a presidential elector on the Republican slate of electors in the State of Georgia for the 2020 presidential election.
13. On December 14, 2020, Shafer and other Republican electors signed multiple documents in which they falsely represented themselves as the "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia." One of these documents was the same "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA" that Chesebro had sent to Sinners and others, the only change being the filling in of blanks in the template.
14. Subsequent to the December 14, 2020 meeting, the "Certificate of the Votes of the 2020 Electors from Georgia" containing the above-referenced false statements was sent to the President of the Senate of the United States of America, the Archivist of

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the United States of America, the Secretary of State of the State of Georgia, and the Chief Judge of the United States of America District Court for the Northern District of Georgia. The postmark for the "Certificate" sent to the Archivist of the United States of America shows that it was delivered to the United States Postal Service in Fulton County, Georgia for further delivery to the Archivist of the United States of America. The Archivist received these documents and they are in the public record of the Archives of the United States of America.

15. This "Certificate" states that 16 individuals, including David Shafer, were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia" and that each individual cast their ballots for Donald J. Trump and for Michael R. Pence. This Certificate was signed by David Shafer as an elector.
16. Additionally, Shafer signed his name as "Chairman, 2020 Georgia Electoral College Meeting" to a document titled "Re: Notice of Filling of Electoral College Vacancy" addressed to Georgia Governor Kemp that contained the false statements that the Republican electors "assembled in accordance with O.C.G.A. § 21-2-11" and that he was the "presiding officer of the Georgia Electoral College." These statements were false because the Republican nominee electors had not actually been elected by the voters of the State of Georgia, because it was the Democrat electors who the voters of Georgia had elected.
17. Further, Shafer signed his name as "Chairperson" to four separate documents each titled "Certificate of Filling Vacancy of the 2020 Electors from Georgia" which falsely represented that four people had been elected by the Republican nominee electors on December 14, 2020 to "fill the vacancy in the manner provided by law" of nominee electors who were not able to attend the December 14, 2020 meeting. This, again, is a false statement as the Republican nominee electors did not have the ability or authority under Georgia law to fill vacancies because Shafer and the other nominee electors were not the lawful electors who Georgia voters had elected.
18. The aforementioned "Certificate of the Votes of the 2020 Electors from Georgia," "Re: Notice of Filling of Electoral College Vacancy," and four "Certificate[s] of Filling Vacancy of the 2020 Electors from Georgia" were delivered by United States mail to the Archivist of the United States of America and in person to the office of the Governor of Georgia.
19. Based on the above, there exists probable cause to believe that David Shafer, and the other Republican nominee electors, falsely represented to the President of the Senate of the United States of America, the Archivist of the United States of America, the Secretary of State of the State of Georgia, and the Chief Judge of the United States of America District Court for the Northern District of Georgia that they were the "duly elected and qualified Electors for President and Vice President of the United States of America" when in fact they had were not elected, were not qualified, and had not certified by Georgia Governor Brian Kemp as the presidential electors from Georgia.
20. The signing by Shafer of the 6 documents referenced above in which Shafer and others falsely represented themselves as public officers (the duly elected and qualified presidential electors from the State of Georgia), the sending of the

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documents to the Governor of Georgia and the Archivist of the United States, are violations of various laws in the State of Georgia including O.C.G.A. § 16-9-23 (Impersonating a Public Officer); O.C.G.A. § 16-9-1(b) (Forgery in the First Degree); O.C.G.A. § 16-10-20 (False Statements and Writings); O.C.G.A. § 16-10-20.1 (Filing False Documents), all of which are acts of racketeering activity under O.C.G.A. § 16-14-3(5)(A).

21. As stated above, Kenneth Chesebro used his **kenchesebro@msn.com** account to provide the documents used by the false electors in Georgia directly to Michael Roman at the national level, and Roman then provided the documents to Robert Sinners on the ground in Georgia. Chesebro also communicated directly with Robert Sinners using his **kenchesebro@msn.com** e-mail account. Chesebro knew that this scheme was problematic, as in his December 9, 2020 memo, he stated that "voting by an alternate slate of electors is ... somewhat dicey in Georgia. . . ."
22. Chesebro's role in overturning the presidential election through the use of false electors was not limited to Georgia, however. He contacted various Republican officials and operatives in Arizona, Wisconsin, Nevada, and Pennsylvania with documents similar to those used in Georgia but tailored for use in these specific states.
23. But Chesebro's role in the Presidential election in the State of Georgia did not end with the December 14, 2020 meeting of the false electors. Even after Shafer and other Republican electors around the country took his advice, he came up with additional theories and plans on how to overturn the election. On January 1, 2021, he sent an e-mail to John Eastman and Boris Epshteyn, another Trump attorney, titled "Filibuster talking points." Chesebro set out in this e-mail a new iteration of the January 6 plan. Specifically, he stated that "[a]nother way to create delay and pressure for further action would be for" Pence to *sua sponte* take the position that the debate provisions in the federal Electoral Count Act were unconstitutional. This would allow for United States Senators and Representatives to "engage in filibusters to prevent a final vote on the states unless and until there was further action by the Supreme Court or state legislatures." This again shows that one part of Chesebro's plans was for state legislatures to override their citizens' votes in their respective states for President and Vice President, in contravention of laws in those states.
24. The evidence stated above shows that Kenneth Chesebro used the **kenchesebro@msn.com** e-mail account to conspire with others in the Trump campaign and in Georgia to violate Georgia law. Specifically, Chesebro provided the documents and guidance that co-conspirators on the ground in Georgia would then use to falsely represent on forged documents on December 14, 2020 that they were the "duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia" despite Georgia Governor Brian Kemp certifying multiple times that Joseph Biden had received more votes in Georgia than had Donald Trump. Chesebro also provided the documents and guidance that allowed these forged documents to be submitted and entered into the public record maintained by the National Archives of the United States of America. He furthermore used this e-mail account to communicate with co-conspirators after December 14, 2020 to disseminate plans to overturn the election by having state

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legislators select the President of the United States in contravention of the laws of the states of the United States of America, including Georgia.

25. The above-listed Georgia crimes of Impersonating a Public Officer, Forgery in the First Degree, False Statements and Writings, and Filing False Documents are acts of racketeering activity under Georgia law, and Chesebro's acting as the intermediary and liaison between officials in the Trump campaign and David Shafer, who committed the overt acts of signing and sending the documents, is evidence and proof of Chesebro's conspiracy to commit these acts of racketeering activity.
26. Through this investigation, which was initiated after the January 2, 2021 phone call, and which has expanded to acts committed both before and after the phone call, the State has determined through witness interviews and evidence obtained from multiple sources that the State of Georgia's administration of elections in 2020, include the State's election of the President of the United States of America, was subject to possible criminal disruptions.
27. These disruptions may include completed criminal acts as well as overt and predicate acts in furtherance of a conspiracy of participation in racketeering activity including, but not limited to, making false statements to government officials in Georgia and elsewhere, filing false documents into the public record in Georgia and elsewhere, uttering forged instruments in Georgia and elsewhere, soliciting actions from government officials in Georgia and elsewhere that may constitute criminal solicitation, directly committing threats of harm and indirectly encouraging the commission of threats of harm by others directed at government officials and private citizens in Georgia and elsewhere, and otherwise committing overt acts and advising, encouraging, and procuring others to commit overt acts toward a conspiracy aimed at unlawfully influencing the outcome of the 2020 presidential election in Georgia.
28. Through its investigations, the State has determined that former President Trump and other known and unknown co-conspirators regularly used products and services provided by electronic communication services and remote computing services to include e-mail, phone calls, text messages, social media, and other services.
29. The information and data to be seized will show who Kenneth Chesebro was communicating with by e-mail during his efforts in November 2020, December 2020, and January 2021 to have the results of the November 3, 2020 election overturned and instead have Donald Trump be chosen as President of the United States of America. As stated herein, Mr. Chesebro was operating with other persons, some of whom are known and some of whom are unknown. The e-mails, documents, browser search history, and other data requested in this search warrant will show the content of the communications between Chesebro and these people around the crucial time periods of the enterprise's activity as well as Chesebro's intent in engaging in the aforementioned acts. I am requesting data between the specified dates because these are the dates that include the communications detailed about in this affidavit as well as the dates immediately surround these communications. In my experience, communications from the day of the completed crime (if the crime happened on a discrete day) and around the time of the crime are frequently evidence of communication among co-conspirators including planning of the

conspiracy, cover-up of the conspiracy, and the mere fact that the parties were connected which is itself evidence. The requested data will further show the extent of the enterprise both in terms of the people involved and also the timeframe in which the enterprise has been operating.

30. Based on the foregoing facts and circumstances, Your Affiant believes there exists probable cause to believe that there is information and data now located in the databases of Microsoft that is evidence of the crimes described above and that is crucial to the investigation of this case and the offenses described above, and a search warrant is requested pursuant to O.C.G.A. § 17-5-21 and 18 U.S.C. §§ 2701 et seq.

**F. Search Procedure**

1. This warrant will be served upon Microsoft via the Microsoft Law Enforcement Request Portal available at <https://leportal.microsoft.com/home>.
2. Your Affiant understands that Kenneth Chesebro is an attorney and that because of the nature of his work and relationships, the data to be seized will likely include attorney-client communications and attorney-work product communications. I also understand that there are potential communications between Chesebro that are wholly unrelated and not relevant to the 2020 presidential election. Given this, I am requesting that the only data to be seized and provided by Microsoft be data that is relevant to the crimes listed in this warrant. And I am requesting that Microsoft comply with the Fulton County District Attorney's Office filter procedure, as outlined in Attachment A to this Affidavit and Application for Search Warrant. This policy will allow only those e-mails and communications relevant to and evidence of the above-listed crimes and for which no privilege exists to reach the Fulton County District Attorney's Office investigators and prosecutors who are investigating and prosecuting the above-listed crimes. This policy has safeguards in place so that the content that makes it to the investigative/prosecuting team has been reviewed by multiple parties for privilege issues and, if any dispute as to privilege exists, such issue has been adjudicated before reaching the investigative/prosecuting team.

**G. Request for Sealing**

1. Pursuant to Ga. Unif. Super. Ct. 21, the State requests that this affidavit, the accompanying search warrant, and the return be sealed from public access in their entirety for a period beginning from the filing of this application and affidavit and ending on October 31, 2023. In support of this request, the State submits that the matters contained in this application, affidavit, and search warrant are part of an ongoing investigation that would be jeopardized by premature disclosure of information contained herein and that such potential harm clearly outweighs the public interest in inspecting this application, affidavit, and any search warrant issued. Sealing is requested as disclosure of the warrant, affidavit, and return for public inspection would necessarily cause heretofore unknown details of the investigation to be released and disseminated and cause irreparable harm to the investigation and to the privacy of persons associated with this case, either as witnesses or potential defendants. Such a release of this sensitive information would likely hinder

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the efficacy of the investigation. People who could and would cooperate in the investigation would likely become uncooperative if they knew that their actions or cooperation would be made public before this investigation has finished. Additionally, disclosure may incite known and as-yet-unknown targets of the investigation to institute countermeasures including, but not limited to, deleting target data to which they have access, and informing other co-conspirators of the State's investigation. Further, disclosure of the warrant, affidavit, and return would necessarily include the disclosure of personal details of all parties involved in this case including witnesses, potential defendants, investigators and law enforcement officers, and judicial officers; and a sealing to limit access to these filings is necessary as the harm of disclosure clearly outweighs the public interest.<sup>1</sup>

**H. Request for Non-Disclosure**

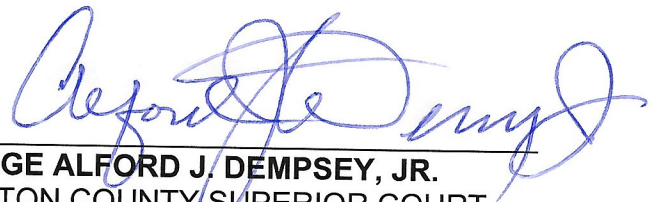
1. Pursuant to 18 U.S.C. §§ 2703(b)(1)(A) & 2705(b), the State requests an order delaying the notification of the search warrant required under 18 U.S.C. § 2703(b) until October 31, 2023. In support of this request, the State submits that notification of the existence of the search warrant may have an adverse result, including endangering the life or physical safety of individuals involved in this investigation; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing of this investigation.

I swear or affirm that all of the information contained with this Affidavit and all other testimony given by me under oath is true to the best of my knowledge and belief:



**SENIOR INVESTIGATOR TRINA SWANSON-LUCAS**  
**FULTON COUNTY DISTRICT ATTORNEY'S OFFICE**  
AFFIANT

Sworn to and subscribed before me this 20 day of July, 2023,  
at 2023 at 12:18 .m.



**JUDGE ALFORD J. DEMPSEY, JR.**  
**FULTON COUNTY SUPERIOR COURT**  
ATLANTA JUDICIAL CIRCUIT

**Attachment A - Filter Policy**

1. The Fulton County District Attorney's Office (FCDA) Filter Team ("Filter Team") shall receive the seized data from the holder of the data via e-mail delivery to lester@akin-tate.com or via physical delivery to:  
  
Fulton County District Attorney's Office  
c/o Lester Tate  
P.O. Box 201468  
Cartersville, GA 30120
2. The Filter Team shall process the seized items and provide them to counsel for the privilege holder, on a rolling basis, so that counsel for the privilege holder may perform the initial privilege review. Within fifteen (15) days of receipt of these items, counsel for the privilege holder shall release all non-privileged items to the FCDA investigative/prosecution team and provide a privilege log to the Filter Team for all items for which they assert a privilege.
3. The Filter Team shall be comprised of attorneys and staff from outside the FCDA. Any attorney and staff involved in the filter review shall be walled off from the underlying investigation.
4. The Filter Team is permitted to review any items listed on the privilege holder's privilege log and may challenge any of the privilege holder's privilege designations.
5. The Filter Team and the privilege holder's counsel shall confer and attempt to reach a resolution as to those items challenged by the Filter Team.
6. If the parties are unable to reach a resolution, the parties shall file a joint notice with the Court. Either the Court or a special master shall rule on the parties' privilege disputes.
7. The Filter Team will provide to the investigative/prosecution team only those items which are related to and evidence of the commission of certain crimes, and for which the parties agree that no privilege exists or for which an assertion of privilege has been overruled.

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<sup>1</sup> See, *Pennsylvania man arrested after declaring 'open season' on FBI agents*, (Aug. 16, 2022), <https://www.washingtonpost.com/nation/2022/08/16/adam-bies-fbi-death-threats/>. See also, *Donald Trump supporters send death threats to judge who approves Mar-a-Lago search*, (Aug. 17, 2022), <https://www.pbs.org/newshour/politics/donald-trump-supporters-send-death-threats-to-judge-who-approved-mar-a-lago-search>.