

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

v.

EHAB MESELHE and  
KELIN HU

Criminal Action No. 19-00061-SDD-EWD

**REPLY IN SUPPORT OF**  
**MOTION TO DISMISS THE INDICTMENT**

Defendant Ehab Meselhe (“Dr. Meselhe”), by and through counsel, files this reply in further support of his Motion to Dismiss the Indictment (R. Doc. 24) and to address arguments in the Government’s opposition (R. Doc. 53). Since Dr. Meselhe filed his Motion to Dismiss on July 1, 2019, defense counsel has acquired additional evidence from the Government which (1) further demonstrates Dr. Meselhe’s actual innocence, and (2)—more troublingly—flatly contradicts certain representations that the Government has previously made to this Court.<sup>1</sup>

1. **Additional witness interviews conducted by the Government confirm that the Water Institute does not own the Basin Wide Model.**

In his Motion to Dismiss the Indictment, Dr. Meselhe asserted that the Basin Wide Model is a publically owned property and, accordingly, cannot be a trade secret owned by the Water Institute. R. Doc. 24-1 at 2. The Government claimed, in opposition, that “the alleged ‘public’ nature of the BWM and any resultant, claimed ability to access the BWM through proper channels

---

<sup>1</sup> The defense includes this evidence as attached exhibits. Because this evidence comes from documents produced by the Government, the Defense assumes such documents are undisputed. *See United States v. Flores*, 404 F.3d 324 n. 6 (noting that “a district court may make preliminary findings of fact necessary to decide the questions of law presented by pre-trial motions so long as the court’s findings on the motion do not invade the province of the ultimate finder of fact”).

is likewise not dispositive or even relevant.” R. Doc. 53 at 8. But soon after Dr. Meselhe filed his Motion to Dismiss, the Government dispatched investigators to interview members of the US Army Corps of Engineers (“ACOE”) on this question. To say that these interviews disfavor the Government’s case is an understatement.

A supervisory engineer named Sherie Price stated that ACOE worked with the Water Institute and CPRA on the Mississippi River Hydrodynamic and Delta Management Study.<sup>2</sup> According to Ms. Price, “everything that was developed by the sponsor, CPRA, for The Study belonged to The Corps too. The Corps had a right to get all of the code, models, inputs, outputs, data, etc.” Thus, “[i]f the Institute developed something to inform The Study, or if they developed something that was used to make decisions in The Study, everything would belong to The Corps.”<sup>3</sup> Ms. Price also rejected the Government’s spurious “Water Institute-as-licensee” theory, stating that ACOE “never signed any [NDAs] or [IP] agreements with The Institute.”<sup>4</sup>

Senior Project Manager Darrel Broussard echoed this position, stating that “the models that were made as a part of the Mississippi River Hydrodynamic and Delta Management Study were owned by The Corps. Once it’s paid for, The Corps puts it in the domain, and it’s public. . . . The Corps owns those models.”<sup>5</sup> The Government also interviewed ACOE attorney Mary Kinsey, who “believed that The Corps owned anything developed under the relationship with CPRA for The Study,” and that “The Corps owned anything developed by a third party who contracted with CPRA, like the Water Institute of the Gulf (The Institute), in regards to The Study.”<sup>6</sup> And the

---

<sup>2</sup> That is, the study used to develop and modify the Basin Wide Model.

<sup>3</sup> Exhibit A, Statement of Sherie Price, July 8, 2019.

<sup>4</sup> *Id.*

<sup>5</sup> Exhibit B, Statement of Darrel M. Broussard, July 8, 2019.

<sup>6</sup> Exhibit C, Statement Mary Kinsey, July 8, 2019.

Government interviewed ACOE engineer Gary Brown, who “thought that it was strange that The Institute would assert that the model was their proprietary information.”<sup>7</sup> According to Mr. Brown, everyone in the scientific community thought it was “crazy” that Dr. Meselhe and Kelin Hu had been arrested, because “[n]o one thought of ‘these things’ as proprietary.”<sup>8</sup>

It is thus quite stunning that the Government would continue to defend its charges when apparently *nobody* in the relevant community accepts the Government’s theory of the case.<sup>9</sup> Perhaps this is why the Government has been reduced to claiming that it need not prove the existence of a trade secret all, as long as it can show that the Defendants *believed* they were taking a trade secret, *see* R. Doc. 53 at 14. But if the entire scientific community in which Dr. Meselhe worked *did not* believe that the Basin Wide Model was a trade secret, how could the Government argue with any credibility that Dr. Meselhe *did* believe that?

**2. The Government’s prior representations to this Court about what Dr. Meselhe was “told” about taking the Basin Wide Model are apparently false.**

The Government states, in its opposition, that Dr. Meselhe and Kelin Hu exceeded access to the Water Institute’s “protected computer to obtain proprietary information for the purpose of commercial advantage and private financial gain and in furtherance of a theft of the valuable trade secret known as the BWM.” R. Doc. 53 at 17. But there can be no wrongful taking or “exceeding of access” where Dr. Meselhe told that Water Institute in an email that he planned to take the Basin Wide Model with him, and the Water Institute did not object, *see* R. Doc. 14 at 1.

In response to this particularly damning piece of evidence, Government counsel made the following representations in filings to this Court: On June 28, Government counsel stated that

---

<sup>7</sup> Exhibit D, Statement of Gary Brown, July 8, 2019.

<sup>8</sup> *Id.*

<sup>9</sup> The defense anticipates that all of these witnesses will testify at trial.

“Meselhe at the time was told in no uncertain terms that he could not take the Basin Wide Model with him.” R. Doc. 21-1 at 5.<sup>10</sup> On July 2, Government counsel stated that “Meselhe was told ‘no,’ that he could not take the Basin Wide Model with him.” R. Doc. 31.

On July 10, 2019, Defense counsel received a document production from the Government. The production included Water Institute CEO Justin Ehrenwerth’s direct email response to Dr. Meselhe’s written intention to take the Basin Wide Model. Far from telling Dr. Meselhe that he could not take the model, Mr. Ehrenwerth stated “I agree with you that this should be collaborative and done such that we can continue working together on all fronts.”<sup>11</sup> The document production also included an email from Ehrenwerth dated January 16, 2019—five days after the incident with Hu—stating the following in regards to Dr. Meselhe’s request to take the Basin Wide Model:

FYI – I *never agreed or disagreed* with Ehab’s representations about the status of the models as he outlines below. Also I never agreed that he could take any models with him when he left the Institute. I think it’s worth considering what he sets out here (whether we agree or disagree with his assessment) as well as our views on the status of other models in anticipation of the interviews tomorrow.<sup>12</sup>

The gravity of this revelation cannot be underestimated. Government counsel has repeatedly represented that the Water Institute affirmatively told Dr. Meselhe that he could not take the model. These emails show such representations to be false.<sup>13</sup> More importantly, these

---

<sup>10</sup> This statement was even quoted and published in The Advocate: “Assistant U.S. Attorney Brian Frazier disputed that in a motion filed Friday. ‘Meselhe at the time was told in no uncertain terms that he could not take the Basin Wide Model with him,’ Frazier wrote.” [https://www.nola.com/news/courts/article\\_0cf1b76e-9c40-11e9-9477-ab494bdc7989.html](https://www.nola.com/news/courts/article_0cf1b76e-9c40-11e9-9477-ab494bdc7989.html).

<sup>11</sup> Exhibit E, email from Justin Ehrenwerth to Ehab Meselhe, October 16, 2018.

<sup>12</sup> Exhibit F, email from Justin Ehrenwerth to Jennifer Butler and Alyssa Dausman, January 16, 2019 (emphasis added).

<sup>13</sup> Earlier today, Government counsel filed a “Notice of Supplement” stating that the Government intends to re-interview Ehrenwerth regarding these apparent contradictions, but that Ehrenwerth is “out of the country.” R. Doc. 54.

emails show that Dr. Meselhe and Kelin Hu cannot have conspired to “steal” a trade secret or to “exceed authorized access” to a computer. Because no crime has been committed under the facts of this case, this Court should dismiss the Indictment.

\*\*\*

For the reasons stated here and by earlier memorandum, Dr. Meselhe respectfully moves for dismissal of the Indictment against him in its entirety.

Respectfully submitted,

*/s/ Michael W. Magner*

---

MICHAEL W. MAGNER, #01206  
P.J. KEE, #34860  
JOHN R. GUENARD, #36483  
Jones Walker LLP  
201 St. Charles Avenue, 49th Floor  
New Orleans, Louisiana 70170-5100  
(504) 582-8000

*Attorneys for Dr. Ehab Meselhe*

**CERTIFICATE OF SERVICE**

I certify that on July 11, 2019, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF System, which will send a copy of the pleading to all parties via email.

*/s/ Michael W. Magner*

---

MICHAEL W. MAGNER